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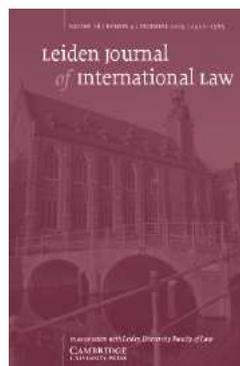
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# International Toleration: Rawlsian versus Cosmopolitan

KOK-CHOR TAN\*

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## Abstract

How should liberal societies respond to nonliberal ones? In this paper I examine John Rawls's conception of international toleration against what is sometimes called a cosmopolitan one. Rawls holds that a just international order should recognize certain nonliberal societies, to which he refers as decent peoples, as equal members in good standing in a just society of peoples. It would be a violation of liberalism's own principle of toleration to deny the international legitimacy of decent peoples who, among other things, affirm human rights and accept peaceful coexistence with other societies. According to the cosmopolitan idea of international toleration, on the contrary, only societies that are liberal in character meet the criteria for toleration. I suggest that, against the Rawlsian conception of international toleration, the cosmopolitan idea is more consistent with the fundamentals of liberal political morality. I then clarify the ways in which cosmopolitan toleration is not worryingly interventionist even as it is not altogether toothless; and I end with some reflections on why cosmopolitanism is not morally imperialistic.

## Key words

cosmopolitanism; international justice; intervention; Law of Peoples; liberalism; moral imperialism; Rawls; toleration

What is the limit and scope of international toleration? Given the fact of global pluralism, which in itself need not be regrettable and is likely to be a permanent feature of our world, an account of international justice has to provide some guidance for identifying the limits of permissible pluralism. That is, it has to offer a principle of toleration that can define the type of global diversity that a just world order can permit and identify the forms of political life that are objectionable and would not be accommodated in an ideally just world. The question of toleration is especially challenging if the international theory of justice that we are constructing is proposed as a *liberal* international theory. This is because while the principle of toleration is one of the fundamental ideals of liberal political morality, liberalism is also defined by its commitment to individual liberty and freedom, and these two ideals can sometimes pull in different directions, as when the toleration of a collective way of life is at odds with the protection and promotion of individual liberty. An acceptable liberal theory of international justice must, therefore, balance these two potentially conflicting commitments in a coherent and plausible way.

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The problem of toleration is one of the central concerns in John Rawls's *The Law of Peoples*. As Rawls puts it, 'decent nonliberal points of view exist, and . . . the question of how far nonliberal peoples are to be tolerated is an essential question of liberal foreign policy'.<sup>1</sup> Thus a 'main task in extending the Law of Peoples to nonliberal peoples is to specify how far liberal peoples are to tolerate nonliberal peoples'.<sup>2</sup> Rawls holds that liberal peoples ought to tolerate nonliberal but decent peoples. This means that liberal peoples should not, through their foreign policy, attack or put pressure on decent peoples to become liberal. Given the propensity of states, including ostensibly liberal ones, to intervene in nonliberal states in the name of advancing liberal democracy globally, Rawls's cautious account of toleration has obvious appeal. Yet some cosmopolitan theorists, who hold that the limits of liberal toleration ought to be defined by the liberal commitment to individual liberty, find the toleration of decent peoples problematic, especially when tolerating decent peoples means that the international community is compelled to condone restrictions on the liberty of individuals (in these decent societies).<sup>3</sup>

This paper is an examination of Rawls's international toleration and the cosmopolitan alternative to it. To provide some background, I first briefly highlight some of the relevant features of Rawls's international theory and his conception of international toleration. I then offer some arguments for the cosmopolitan alternative to Rawls's account. In particular, I shall argue that the cosmopolitan conception of international toleration is more consistent with liberalism's own commitments to individual freedom and liberty. Finally, I address the concern that a cosmopolitan conception of toleration will ease the path of liberal military intervention against nonliberal but decent peoples, and I try to assuage the concern that cosmopolitanism amounts to a form of moral imperialism.

My discussion is concerned more with political philosophy than with legal philosophy and international law. My aim is to clarify the norms of toleration that a just world order inspired by fundamental liberal values should uphold. How fundamental moral political commitments explicitly connect with international law is a point I will largely leave to one side. But I believe that, in so far as we hope that international law does reflect our justice-based commitments, clarifying the limits of toleration can help to identify for us the range of international legal arrangements that can be described as just. Principles of justice are directed at the background institutions of society, and in so far as these background institutions include (though are not limited to) the legal institutions of society, principles of justice do influence our evaluation of our legal arrangements. In this respect, normative political philosophy

1. J. Rawls, *The Law of Peoples* (1999), 10.

2. *Ibid.*, at 59.

3. See, for example, the writings of two of the contributors to this issue: T. Pogge, 'Rawls on International Justice', (2001) 51 (203) *Philosophical Quarterly* 246; Pogge, 'An Egalitarian Law of Peoples', (1994) 23 (3) *Philosophy and Public Affairs* 195; and S. Caney, *Justice Beyond Borders: A Global Political Theory* (2005); *idem*, 'Cosmopolitanism and the Law of Peoples', (2002) 10 (1) *The Journal of Political Philosophy* 95–123. Other critics include D. Moellendorf, 'Rawlsian Constructivism and Cosmopolitan Justice', in *idem*, *Cosmopolitan Justice* (2002); A. Kuper, 'Rawlsian Global Justice: Beyond the Law of Peoples to a Cosmopolitan Law of Peoples', (2000) 28 *Political Theory*, 640–74; C. Beitz, 'Rawls's Law of Peoples', (2000) 110 *Ethics* 669; also my *Toleration, Diversity and Global Justice* (2000).

can identify the fundamental norms that our global legal institutions should reflect.

## I. RAWLS'S LAW OF PEOPLES

The central arguments of Rawls's *The Law of Peoples* are well known, so some brief remarks should suffice. The key question for Rawls is how the content of a theory of international justice 'might be developed out of a liberal idea of justice similar to, but more general than, the idea [of] *justice as fairness*'.<sup>4</sup> This 'globalizing' project (as we may call it) proceeds in three main stages. The first stage extends 'the social contract idea to the society of liberal peoples'.<sup>5</sup> Here representatives of liberal peoples, operating behind a veil of ignorance, so that they do not know among other things the wealth and the extent of the territory and the size of the population of the society that they represent,<sup>6</sup> are to agree on principles regulating relations between liberal peoples.<sup>7</sup> Rawls suggests that representatives of liberal peoples in the global original position will agree to the following (familiar) principles: (i) peoples are free and independent; (ii) peoples are to observe treaties; (iii) peoples are equal and are parties to the agreements binding on them; (iv) peoples have a duty of non-intervention; (v) peoples have the right of self-defence, but not the right to wage war other than for self-defence; (vi) peoples are to honour human rights; (vii) peoples are to observe justice in war; and (viii) peoples have a duty to assist peoples lacking the resources to sustain just regimes.<sup>8</sup>

The second stage of Rawls's theory construction extends the reasoning to include nonliberal but decent peoples. Here Rawls aims to show how and why representatives of certain kinds of nonliberal but well-ordered peoples would also endorse the same set of principles. These are nonliberal peoples in that they do not endorse the standard range of liberal democratic rights, such as freedom of expression and association, religious equality, the right to equal political participation, and so on. That is, individual members of these nonliberal societies are 'not regarded as free and equal citizens, nor as separate individuals deserving equal representation'.<sup>9</sup> Yet these peoples honour the basic human rights of their members (e.g. the right to life

4. Rawls, *supra* note 1, at 3. I discuss the relation between peoples and states more in 'The Problem of Decent Peoples', in R. Martin and D. Reidy (eds.), *Reading Rawls's Law of Peoples: A Realistic Utopia?* (forthcoming). For the purpose of this paper, I will use 'peoples' or 'societies' (interchangeably as Rawls does) instead of 'states'.

5. Rawls, *supra* note 1, at 4–5.

6. *Ibid.*, at 32–3.

7. The original position, as we may recall, is 'a device of representation' where representatives of rational and reasonable individuals deliberate according to the appropriate principles of justice for the basic structure of their society. To ensure that this hypothetical deliberation is fair and equal, parties to the original position go behind a 'veil of ignorance'. That is, they are asked to imagine that they do not know their actual status and stations in society, their talents and conceptions of the good, and other particular facts about themselves. In this way, no party to the deliberation can insist on terms biased towards her own interests according to her own social, historical contingency and conception of the good. See, e.g., Rawls, *A Theory of Justice* (1971), 17 et seq. An important difference in the global original position is that the parties to the deliberation are representatives of *peoples* rather than of *individuals*. The significance of this anti-individualist shift will be clearer in due course.

8. Rawls, *supra* note 1, at 37.

9. *Ibid.*, at 71; see also 71–5.

and security, and to subsistence) and are respectful of other peoples<sup>10</sup> as required by the Law of Peoples. Accordingly, these nonliberal peoples are able to affirm and conform to the principles of the Law of Peoples as identified above. Because they accept the principles of the Law of Peoples, these ‘decent peoples’, as Rawls calls them, qualify as ‘societies in good standing’, and are, therefore, to be tolerated by liberal societies. This means that liberal societies are ‘to recognize these nonliberal societies as equal participating members in good standing of the Society of Peoples’, and not just ‘refrain from exercising political sanctions – military, economic, or diplomatic – to make a people change its ways’.<sup>11</sup> Nonliberal peoples are tolerated as a matter of liberal principle. They are societies in ‘good standing’ and are not accommodated merely because of the moral and practical costs of intervention.<sup>12</sup>

This two-stage process of extending the Law of Peoples to decent peoples – by first identifying the principles that liberal peoples would accept and only then examining if decent peoples could also accept these principles – must be emphasized. The Law of Peoples wants to achieve a global stability with respect to justice, and not stability, as a *modus vivendi*, that is, stability as a balance of forces.<sup>13</sup> The two-stage procedure is thus crucial because it attempts to show that the global principles proposed by liberal peoples are also principles that can be independently adopted by decent nonliberal peoples, that it is not the case that liberal peoples have tailored their global principles specifically with a view to accommodating nonliberal peoples or existing global institutional arrangements. Whether Rawls succeeds in achieving his stated goal is a question we shall take up below. But the thrust of the argument is that because decent peoples, even though they are nonliberal, can affirm the same set of principles that liberal peoples independently accept, there is simply no principled reason to condemn or criticize decent peoples. As such, to recognize liberal peoples as members in good standing of the Society of Peoples and not to grant similar membership to decent peoples would be a clear case of double standards.

The third stage of Rawls’s construction concerns non-ideal theory: how are liberal and decent peoples to deal with outlaw societies that do not conform to the agreed Law of Peoples and with societies that because of unfavourable economic and social conditions are unable to support well-ordered institutions and become compliant members of the Society of Peoples?<sup>14</sup> For our purpose, what is relevant is that the Law of Peoples does not tolerate outlaw societies. Outlaw societies do not honour the constraints of just war and/or are in systemic violation of the human rights of their own citizens. So outlaw societies do not meet the standards of toleration because either they pose a threat to other peoples or they violate the minimum standard of decency by violating basic human rights, or both. Simply put,

10. Ibid., at 64–7.

11. Ibid., at 59.

12. From here on, the term ‘nonliberal peoples’ will also refer to decent peoples, unless the context clearly determines otherwise. Rawls’s categories of peoples are ideal types, and so no real country will qualify as a decent society. But as illustration, the constitutions of countries such as Tunisia, Jordan, Singapore, Malaysia, Kuwait, and possibly Saudi Arabia are close examples of a Rawlsian decent nonliberal society.

13. Rawls, *supra* note 1, at 12–13, 44–5.

14. Ibid., at 89–90.

outlaw societies do not accept principles for conduct that all reasonable peoples accept.<sup>15</sup>

Some may find it objectionable that liberal peoples are able to label a state ‘as an outlaw state’. Does this not rest on the dangerous assumption that liberal peoples enjoy a certain privileged moral viewpoint? Martti Koskenniemi, for example, worries that in Rawls’s theory, the ‘different-thinking Other becomes not just my adversary, but an enemy of humanity because he fails to accept what I know is true of all humanity’.<sup>16</sup> But in his defence, Rawls begins his project from the understanding that the principles of international justice cannot simply be based on what liberals hold to be ‘true of all humanity’. Rawls’s motivating goal in *The Law of Peoples* is to show that his conception of a just Society of Peoples as developed from within political liberalism is not ethnocentric. The principles of the Law of Peoples are not based narrowly on what liberals believe to be true, but are principles that can be affirmed by different reasonable peoples for different reasons. For Rawls, outlaw societies are renounced not because they deny the same moral worldview that liberals hold (as Koskenniemi’s objection seems to imply), but because they refuse to acknowledge principles that all *reasonable* peoples accept.<sup>17</sup> The necessary conditions for being a member in good standing of the Society of Peoples – respect for peaceful coexistence and respect for basic human rights – do not derive from any unique (e.g. liberal) standpoint but stem from a shared understanding and experience of our collective existence as diverse peoples. Concerning human rights, Rawls writes that the idea of human rights reflects the profound changes in global morality since the Second World War and is now very much part of humanity’s common moral vocabulary.<sup>18</sup> This seems right – no states today openly reject universal human rights. To be sure, some states continue to violate human rights. But the fact that human rights offenders are also compelled to deny that they are violating human rights when challenged is evidence that they accept that human rights are an inherent part of the normative landscape whose violations per se cannot reasonably be justified.

Along the lines of the concern voiced above, it might be pointed out that allowing liberal peoples to categorize states according to their moral standing is akin to the questionable practice during the nineteenth and early twentieth centuries, when European (Western) states used their own ‘standard of civilization’ to determine who was eligible for membership of the international legal community. But this concern can be deflected because the two cases are radically different. The issue is not the categorization of states per se, but the reasons for their categorization and the principles on which the categories are based. As mentioned above, the categorization of some societies as ‘outlaw’ in Rawls’s account is based on reasons that nonliberal peoples also accept. If the Law of Peoples can be described to be using a ‘standard of civilization’, what is significant is that its standard is not an ethnocentrically liberal one. Moreover, while in the nineteenth and twentieth centuries’ ‘civilizing’ project was

15. *Ibid.*, at 80–1.

16. Martti Koskenniemi, *The Gentle Civilizer of Nations* (2001), 493.

17. Rawls, *supra* note 1, at 80–1.

18. *Ibid.*, at 79.

carried out, in the eyes of some, in the name of liberalism, it was not necessarily consistent with the principles of liberalism. I will return to this point later in the paper.<sup>19</sup>

The discussion of outlaw societies is useful in helping to clarify the philosophical basis of Rawls's toleration of decent peoples. Outlaw societies do not comply with the principles of the Law of Peoples, and so clearly do not meet the standards for liberal toleration; indeed they may be attacked when the self-defence of liberal and decent peoples warrants it, and they can also be intervened against when their abuse of their own citizens' human rights is serious enough and an intervention is morally and politically appropriate (that is, meets the standard 'just war' criteria). So the Law of Peoples clearly does not tolerate regimes that fail to comply with the principles agreed to by the Society of Peoples, and in grave and urgent cases can justify military action against them.<sup>20</sup> Decent peoples, however, belong to a different moral category – they are not to be attacked because they are peace-loving and respect the human rights of their own citizens and others. But it is important to note that the difference between decent peoples and outlaw societies is not fundamentally that the latter may be intervened against whereas the former may not. Indeed, it would be a serious error to distinguish between outlaw and decent societies purely in terms of intervention. It is not the case that (for Rawls) all outlaw societies can be intervened against or attacked. Only where the situation is urgent enough and military action a reasonable and workable last resort is going to war an acceptable move.<sup>21</sup> Decent peoples are decent (and unlike outlaw societies) not simply because it would be wrong to attack them, but primarily because they affirm the principles of the Law of Peoples and so there is no philosophical basis for criticizing them. To treat the limits of intervention as synonymous with the limits of toleration thus misses an important difference between decent and outlaw societies within the moral framework of the Law of Peoples – which is that there is no moral basis for criticizing decent peoples while there are principled grounds for criticizing outlaw societies. The question of intervention raises more specific issues in addition to that of toleration. As we shall see later in the paper, this distinction between toleration and not intervening is an important point, for it allows the possibility of a cosmopolitan alternative to Rawlsian toleration that is not necessarily interventionist.

## 2. RAWLS'S INTERNATIONAL TOLERATION

Thus, for Rawls, tolerating another society entails more than just refraining from forceful intervention against it. It includes the notions of acceptance and recognition, or what we may call 'recognitional legitimacy', adopting Allen Buchanan's phrase.<sup>22</sup> When liberal peoples tolerate decent peoples, they not only refrain from acting coercively against them (by not engaging in military intervention, for example);

19. This paragraph paraphrases an important question raised by the editors.

20. Rawls, *supra* note 1, at 37, 81, 93 n. 6.

21. *Ibid.*, Part III.

22. A. Buchanan, *Justice, Legitimacy, and Self-Determination: Moral Foundations for International Law* (2004), ch. 6.

they are, more fundamentally, recognizing the legitimacy of decent peoples and their status as equals. Toleration thus expresses a certain normative attitude towards the subject that is being tolerated, and is not just a prescription against military action against the subject.

To put the above in a different way, Rawls's account of international toleration must *not* be understood primarily as a principle that defines the limits of intervention but, more fundamentally, as a principle that defines the limits of permissible criticisms and judgments between peoples regarded as free and equal. Of course, when we intervene to defend human rights, we are acting to enforce our judgment that the rights violation is morally unacceptable. But judging that a human rights violation is wrong is distinct from the act of enforcing that judgment, and the principle of toleration is concerned foremost with the boundaries of judgment rather than with enforcement. In other words, Rawls's account of toleration deals with the more fundamental question of appropriate judgment rather than intervention – his principle of toleration sets limits on the kinds of judgment that liberal peoples may reasonably make, and not just the kinds of action that they may take to enforce their judgment.<sup>23</sup>

The distinction between *making a judgment* (criticizing) and *enforcing that judgment* (intervening) allows us to understand better that even though outlaw societies fail to meet the test for liberal toleration, it does not immediately imply that they may be attacked or intervened against. As stated, the principle of toleration concerns the more fundamental question of judgment – whether the legitimacy of a government is to be recognized by a liberal people. But whether or not a liberal people may act with force against a tyrannical or outlaw regime will depend on a variety of further moral and pragmatic considerations, including the severity of the wrongs of the regime, the potential repercussions (locally and globally) of forceful military action, the probability of success of a military action, and so on. Waging war against a tyrannical regime, even purely for the purpose of protecting basic rights, brings into play additional considerations about the morality of going to war that the fact of illegitimacy in itself does not address.

That toleration includes recognition and not merely non-intervention is an important point for Rawls's project. It reflects and reinforces Rawls's claim that decent peoples are accepted into the Society of Peoples not for the sake of global stability as a final end (or a *modus vivendi*). That is, decent peoples are tolerated on Rawls's account not as a second-best arrangement for the sake of minimizing conflict and antagonism in spite of what justice demands. If this were so, the Law of Peoples would be stable for the wrong reason. Rather, decent peoples are accepted into the just Society of Peoples as members in good standing as a matter of liberal justice and respect. For Rawls, their tolerance is a requirement of justice, not a compromise.

To be sure, Rawls's account of international toleration allows space for private (liberal) citizens to challenge decent peoples within the rules of the basic structure of the Society of Peoples. Rawls's toleration is thus not so implausibly restrictive as

23. The distinction between judgment and intervention is from W. Kymlicka, *Multicultural Citizenship: A Liberal Theory of Minority Rights* (1995), 164–6.

to prevent liberal individuals from speaking out against decent peoples and even organizing nonviolently for their reform.<sup>24</sup> If it were, Rawls's theory would be a perversion of liberalism – the right of individuals to criticize nonliberal ways of life and to organize to protest against them non-violently follows from the liberal freedoms of expression and association. Accordingly, one might think that Rawlsian international toleration is not as restrictive as some of Rawls's critics have charged because individual liberals can go on promoting liberal values globally through private non-governmental channels. But this concession to Rawls's critics does not go far enough. Indeed, it misses the point of the dispute. The issue is what kinds of background institution should be in place, not just what individuals should or may do within the rules of institutions. As a political ideal, the principle of toleration is a principle for regulating institutions, and Rawls's principle of international toleration will shape in an important way the background rules and norms for the basic structure of the Society of Peoples in favour of decent peoples. So while there is surely space within the terms of Rawls's international theory for liberal persons to criticize decent peoples, the crucial question remains as to whether this space is correctly drawn. If the aim of justice is to identify and establish the appropriate background conditions of justice against which moral agents interact, then cosmopolitans do have a case when they say that it is beside the point that the Law of Peoples permits liberal citizens in their personal capacities to criticize nonliberal peoples. The question of global justice concerns not just what individuals and private associations may do within the rules of global institutions, but the kind of global institutions that should be established and defended.

### 3. THE COSMOPOLITAN ALTERNATIVE

Rawls's cosmopolitan critics reject his account of international toleration. Cosmopolitans will agree with Rawls that there are good moral and practical reasons for not engaging in military intervention against decent peoples, and certainly they accept that there are no reasons to attack them on grounds of self-defence because decent peoples are not internationally aggressive. But cosmopolitans wonder whether liberal peoples should not at least take a more critical stance towards these nonliberal societies than Rawls's account of toleration allows, and whether the rules of a just Society of Peoples should recognize these societies as members in good standing of a Society of Peoples. According to the cosmopolitan view, this withholding of membership and recognition from decent peoples is required both as an affirmation of the demands of justice and as an incentive for decent peoples to become liberal.<sup>25</sup>

What is it about the toleration of decent peoples that exercises Rawls's cosmopolitan critics? The problem of such toleration is not that it blocks liberals from imposing liberal values on all persons. Cosmopolitans do not paternalistically demand that all individuals regard themselves as free and equal. The problem of tolerating decent peoples is that it lets down dissenting individual members in these

24. Rawls, *supra* note 1, at 84.

25. See Caney, *Justice Beyond Borders*, *supra* note 3; and Pogge, 'Rawls on International Justice', *supra* note 3.

nonliberal societies. According to the Law of Peoples, liberal peoples are not just required to refrain from intervention in these cases; they are asked that they do not even take sides in internal disputes, for this would be at odds with the ideal of mutual respect and recognition that liberal peoples are to show decent peoples. Defenders of decent peoples seem to take international paternalism to be the central global problem. Cosmopolitans, in contrast, are worried about individuals whose liberties and liberal freedoms are denied by their own state. The fact of dissent in any society (liberal or nonliberal) is a given, even under the construction of an ideal theory. It is, after all, the inevitability of personal disagreements over conceptions of the good that move political philosophers to care about the fairness of the background rules of a society against which such differences are to be adjudicated. To assume away the fact of dissent is to assume away the relevance or 'usefulness' of the subject of justice. Indeed Rawls recognizes the presence of individual dissent in decent societies, and he expects a decent society to permit dissent. But the problem is that Rawls allows the exercise of dissent to be limited by the hierarchical arrangement of the society in accordance with its common-good conception of justice. To take one example, we can imagine a decent society in which women who wish to question their subordinate political position in society may do so, but can do so only through their corporate representatives (such as male heads of households or religious leaders or tribal leaders) as determined by the non-egalitarian (but decent) social structure of that society.<sup>26</sup> To say that the exercise of dissent is adequately provided for in this case, however, seems paradoxical, for the structure of expressing dissent is constrained by the hierarchical values of the society that are themselves the very source of contention. The problem of decent peoples, then, presents the question of how to accommodate and permit meaningful individual dissent in nonliberal societies. The cosmopolitan criticism is that Rawls's account of toleration fails to offer a satisfactory response, that it fails to offer sufficient protection to individuals in decent societies whose aspirations to become free and equal persons are being thwarted by their state.

In other words, while Rawls's toleration of decent peoples is motivated by the ideal of respect for the autonomy and independence of peoples as well as by a concern, implicitly, for global peace and stability (that can be upset by liberal interventionism), cosmopolitans are moved by a distinct concern, that of supporting individuals within decent societies whose liberal rights and freedoms are being denied. This is not to say that cosmopolitans are indifferent to intervention, global stability, and national self-determination. But, for cosmopolitans, there are other pressing global moral values against which these concerns need to be balanced. Cosmopolitanism is thus not a form of moral imperialism or paternalism that has as its fundamental intention the imposition of liberalism on all societies. Rather it is concerned fundamentally about protecting the rights of individuals, no matter where they are, to choose a life for themselves.

To be sure, we can imagine a hierarchical decent society in which all persons are content with their station and the duties accruing to it in the prevailing social

26. The situation of women in Saudi Arabia may be invoked as an example of this case. See also Rawls's own discussion of the fictional Kazanistan, *supra* note 1, at s. 9.3.

order and there will be no visible dissent in this society. But one can reasonably suspect that such a society is not really a decent one but a ‘successfully’ tyrannical one that has effectively stymied or stunted any opposing views members of that society would otherwise have, through, say, religious or political indoctrination. Thus my account does not hold that cosmopolitans may not respond unless there are dissenting individuals in decent societies. Cosmopolitans can reasonably be sceptical of societies, liberal or otherwise, in which there is no open dissent at all, and will therefore be moved to investigate why this is the case.

Why does Rawls reject the cosmopolitan position?<sup>27</sup> Rawls’s central reason is that a Law of Peoples founded on the cosmopolitan ideal of individuals as free and equal would make the basis of that law ‘too narrow’.<sup>28</sup> In other words, to construct an international theory of justice premised on the cosmopolitan ideal that all individuals qua citizens are free and equal is to propose a conception of justice that nonliberal peoples, who hold different conceptions of political persons, could *reasonably* object to. It would amount in effect ‘to saying that all persons are to have the equal liberal rights of citizens in a constitutional democracy . . . that only a liberal democratic society can be acceptable’.<sup>29</sup> And this, Rawls says, ‘would fail to express due toleration for other acceptable ways (if such as there are, as I assume) of ordering society’.<sup>30</sup> It is for this reason that Rawls rejects, as I noted earlier, a single global original position procedure where *individuals* of the world are represented, opting instead for a multi-stage procedure in which only representatives of *peoples* are convened at the later stages of the original position.<sup>31</sup> A single global original position would have to assume that all individuals ‘have the equal liberal rights of citizens in a constitutional democracy’,<sup>32</sup> and this, in the name of liberal toleration, we should not do.

This toleration of nonliberal ways of organizing society, Rawls argues, stems from a principle that is central to political liberalism, that ‘a liberal society is to respect its citizens’ comprehensive doctrines – religious, philosophical, and moral – provided that these doctrines are pursued in ways compatible with a reasonable political conception of justice and its public reason’.<sup>33</sup> Likewise, liberal societies are to tolerate nonliberal societies as long as these are decent, that is, capable of conforming to the principles of the Law of Peoples.

27. To be sure, Rawls’s commitment to human rights on the grounds that the interests of individuals are fundamental suggests a sort of cosmopolitan commitment, Rawls’s own rejection of the cosmopolitan position notwithstanding (*supra* note 1, at 82–3, also 119–20). But if we wish to read the Law of Peoples as fundamentally a cosmopolitan one, a substantive difference between Rawls and his cosmopolitan critics remains, in that his critics advanced a stronger cosmopolitan position which holds that global justice ought to regard each individual as a free and equal citizen in her own political community, whereas Rawls affirms a weak cosmopolitan position that demands only that societies respect the basic rights of their own citizens. The distinction between weak and strong cosmopolitanism is from D. Miller, ‘The Limits of Cosmopolitan Justice’, in D. Mapel and T. Nardin (eds.), *International Society* (1998).

28. The phrase in quotes is from Rawls’s essay ‘The Law of Peoples’, in S. Shute and S. Hurley (eds.), *On Human Rights* (1993), 65.

29. Rawls, *supra* note 1, at 82–3.

30. *Ibid.*, at 59.

31. *Ibid.*, at 82–3, 30–5.

32. *Ibid.*, at 82.

33. *Ibid.*, at 59, 69–70.

The idea of public reason, which is central to Rawls's political liberalism, limits the kinds of reason that individuals 'may reasonably give one another when fundamental political questions are at stake'.<sup>34</sup> It holds that in such matters individuals may not appeal to reasons based on their comprehensive moral, religious, or philosophical doctrines but only to reasons that they can publicly justify to each other within their shared understanding of the political conception of justice.<sup>35</sup> This idea of public reason is extended to the international context in the following way: 'in proposing a principle to regulate the mutual relations between peoples, a [liberal] people or their representatives must think not only that it is reasonable for them to propose it, but also that it is reasonable for other peoples to accept it'.<sup>36</sup> So while it would not be unreasonable, but is indeed 'a consequence of liberalism and decency',<sup>37</sup> to criticize, and even in grave cases intervene against, violations of *basic* human rights in outlaw societies, it would be unreasonable to demand that all societies adopt liberal democratic institutions. Similarly, while it is a reasonable requirement of liberal (and indeed human) decency to assist others lacking basic resources for a decent human life, it would be unreasonable to expect independent peoples with distinct political and economic cultures to support ongoing distribution of resources for the sake of minimizing inequalities.<sup>38</sup>

Thus Rawls's conception of international toleration is presented as an extension of the idea of toleration as it is developed within political liberalism for the domestic society. But there are two important differences between Rawls's conception of toleration in the domestic context and his conception in the international context that seem to me to impair the alleged analogy. First, the scope of toleration is unduly extended as the idea of toleration is extended to the international domain. Second, the background context and institutions against which the tolerance of nonliberal groups takes place is significantly different in the domestic and international arenas. I will explain these two points in turn below.

### 3.1. Tolerating political diversity

Is it necessarily the case, as Rawls says, that 'political liberalism would fail to express due toleration for other acceptable ways . . . of ordering society'<sup>39</sup> if it insisted on a cosmopolitan conception of toleration? Rawls, to recall, argues that liberalism has to be accepting of well-ordered though nonliberal modes of ordering society. This, he says, is analogous to the political liberal ideal of tolerating nonliberal but reasonable philosophical, moral, or religious comprehensive views within a democratic liberal society. But this supposed analogy between the domestic and the international spheres does not seem to hold: while political liberalism tolerates nonliberal philosophical, moral, and religious outlooks, it does not, and cannot,

34. *Ibid.*, at 132.

35. *Ibid.*, at 141.

36. *Ibid.*, at 57.

37. *Ibid.*, at 81.

38. For comments on public reason and the law of peoples, see D. Reidy, 'Rawls on International Justice: A Defense', (2004) 32 *Political Theory* 291. For a comprehensive study of Rawls's understanding of public reason see S. Freeman, 'Public Reason and Political Justifications', (2004) LXXII *Fordham Law Review* 2021.

39. Rawls, *supra* note 1, at 59.

tolerate challenges to liberal political ideals themselves. As Rawls himself points out in his discussion of liberal domestic justice, 'comprehensive doctrines that cannot support . . . a democratic society are not reasonable'.<sup>40</sup> That is to say, the scope of liberal toleration does not and cannot extend to alternatives to liberal justice itself. A political philosophy, for reasons of consistency, must take a stance against competing political philosophies. Indeed, Rawls is explicit in *Political Liberalism* that a liberal must take steps, even invoke comprehensive claims when necessary, to defend liberalism against alternative political conceptions. For example, he writes,

Nevertheless, in affirming a political conception of justice we may eventually have to assert at least certain aspects of our own comprehensive religious or philosophical doctrine (by no means necessarily fully comprehensive). This will happen whenever someone insists, for example, that certain questions are so fundamental that to insure their being rightly settled justifies civil strife. The religious salvation of those holding a particular religion, or indeed the salvation of a whole people, may be said to depend on it. At this point we may have no alternative but to deny this, or to imply its denial and hence to maintain the kind of thing we had hoped to avoid.<sup>41</sup>

If it is correct that the scope of liberal toleration does not extend to nonliberal ways of ordering politics in the domestic context, reasons must be given as to why the scope of toleration should extend to nonliberals when we move to the global context. To be consistent with its own fundamental commitments, a liberal law of peoples has to globalize the standard liberal commitments, even if this entails taking a stance against decent peoples. While decent peoples may find the cosmopolitan commitment an imposition, this is not an unreasonable imposition from the liberal point of view. A Law of Peoples that claims to be 'an extension of a *liberal* conception of justice for a domestic regime to a Society of Peoples'<sup>42</sup> has to remain steadfast in its commitment to liberalism, and this means supporting the cosmopolitan view that individual freedom is what ultimately matters.

So the tolerance of reasonable comprehensive doctrines in Rawls's account of domestic political liberalism is not quite the same as tolerating nonliberal peoples. In one case, it is the tolerance of nonliberal comprehensive nonpolitical views; in the other it is the tolerance of nonliberal political views.

Accordingly, some cosmopolitans have argued that even if we do not adopt a single global original position (in which individuals of the world rather than peoples are to be represented behind the veil of ignorance) but grant Rawls's multi-stage original position procedure (with liberal peoples represented in the first stage, and decent peoples in the subsequent stage), liberal peoples would still come up with a slightly different set of principles that would rule out decent peoples as inadmissible. Liberal peoples in the first stage of the reasoning would not be content with principle 6 on human rights, which minimally holds that all peoples respect basic human rights defined as the class of urgent rights pertaining to the security and subsistence of

40. Ibid., at 172–3, also 178–9. See also J. Rawls, *Political Liberalism* (1992), 152–3.

41. Rawls, *supra* note 40, at 152.

42. Rawls, *supra* note 1, at 9 (emphasis added).

persons and without which social co-operation between persons is impossible.<sup>43</sup> Rather, they would require, in addition, that all peoples respect standard liberal rights, such as the right to equal representation, the right to democratic participation, equal individual right of dissent and of expression and association, and so on. After all, if only liberal peoples are present in the first stage of the construction, and if (naturally) liberal peoples respect and honour liberal rights in addition to basic human rights, why would they settle for a principle that protects only basic human rights? Their liberal commitments would motivate them to settle for a more robust principle on rights. Thus even on Rawls's own method of construction, decent peoples would be ruled out as members in good standing for the same reason that outlaw societies are ruled out – they cannot live up to the demands of the liberal Law of Peoples. The above observation has been made by Thomas Pogge, who writes that it is 'quite unclear why delegates of liberal societies would not want to incorporate more than Rawls's list [of universal rights], which specifically excludes freedom of speech . . . , democratic political rights . . . , and equal liberty of conscience and freedom of thought'.<sup>44</sup>

In anticipation of this objection, Rawls argues that liberal peoples, without assuming whether or not decent peoples are to be tolerated, could not demand such a principle without prejudicing the case against decent peoples. He asks, rhetorically, 'how do we know, before trying to work out a reasonable Law of Peoples, that nonliberal societies are always, other things being equal, the proper subject of sanctions?'<sup>45</sup> The point here seems to be that liberal peoples, with the general knowledge that the world is not made up only of liberal societies but contains also nonliberal societies, should worry that a more stringent principle on rights would be disrespectful of nonliberal decent peoples and so would be in contravention of the liberal principle of toleration. So, being reasonable peoples, liberal peoples would not demand anything stronger than Rawls's principle 6.

But this response seems to beg the question in favour of tolerating decent peoples. The point of the construction of an international theory of justice is to determine the limits of liberal toleration, and the terms of toleration are to be defined by the principles of justice arrived at independently of whether it violates any existing practice of toleration. Unless there are reasons why liberals *should not* opt for the revised (more robust) principle 6 that are not motivated by a prior wish to tolerate decent peoples (for this would be question-begging), the Law of Peoples need not regard decent peoples as beyond criticism. Liberal peoples cannot assume that a principle requiring liberal rights would be intolerant until they first clarify what justice demands; and to clarify what justice in fact demands, they should not take the toleration of decent peoples to be a desideratum that their account of justice should accommodate. This would make the idea of justice subject to existing beliefs about toleration, when in fact the limits of toleration are to be determined by reference to the demands of justice.

43. *Ibid.*, at 37.

44. Pogge, 'An Egalitarian Law of Peoples', *supra* note 3, at 215; see also Pogge, 'Rawls on International Justice', *supra* note 3.

45. Rawls, *supra* note 1, at 60.

For this reason Beitz wonders if the Law of Peoples has not given too much weight to what he calls a 'pre-theoretical' understanding of toleration. According to Beitz, the tolerance of decent peoples is taken in Rawls's theory construction as condition that any plausible liberal theory of global justice has to accommodate. Yet, Beitz continues, if one of the goals of a theory of justice is to establish the criterion of toleration, then the starting assumption that decent peoples must be tolerated cannot serve as one of the fixed points from which to begin our theory construction. Rather, this is an assumption that must be tested against the account of justice that we arrive at independently of this consideration.<sup>46</sup>

Samuel Freeman makes the challenging observation that because representatives of liberal peoples are interested only in the justice of their own society when deliberating behind the global veil of ignorance, they do not have the motivation to require that all peoples be liberal. They will want all peoples to be at least decent (hence the refusal to tolerate outlaw societies) because outlaw societies pose a threat to the peace and security of all peoples. Freeman rightly points out that even when an outlaw society is not aggressive but violates only the rights of its own citizens, it still presents a grave potential threat to world peace, as a quick look at historical events reveals. So liberal representatives will want a principle that basic human rights be honoured by all for the sake of ensuring the justice of their own societies, but this self-interest of liberal peoples in the justice of their own respective societies does not require more.<sup>47</sup>

Freeman is right to remind critics that deliberators at the Rawlsian original position have a very narrow and specific role, that they are conceived as agents of the interests of those whom they represent. But even if Freeman is right that the self-interest of liberal peoples does not require a world of liberal peoples, this does not derail the general cosmopolitan critique presented above. For cosmopolitans still have a response in hand, which is to deny (that which was granted above) that a proper construction of a liberal international theory of justice must take *peoples* as the basic moral unit, that it is representatives of peoples that are to be present behind the veil of ignorance. Rather, cosmopolitans would insist here, it is representatives of *individuals* who ought to be present at a global original position. A liberal construction of justice could not proceed in any other way given liberalism's fundamental commitment to individual well-being. Accordingly, on this understanding of the global original position, representatives of individuals, who are motivated by the well-being of individuals whose interests they represent, will opt for a global order in which basic liberal rights and freedoms of all persons are protected. It is part of any person's interests, surely, that they be free to form, pursue, and revise their conceptions of the good, a right that only citizens of a liberal society enjoy. Because representatives of individuals behind a veil of ignorance in the global original position do not know what kind of country the persons they represent will belong to when the veil of ignorance is lifted, they would want a global principle protecting not just the human rights but also the liberal rights of all persons in the world.

46. Beitz, *supra* note 3, at 681.

47. S. Freeman, 'The Law of Peoples and Distributive Justice', (forthcoming 2005) *Social Philosophy and Policy*.

### 3.2. The right of exit

So the scope of toleration shifts without clear justification from domestic to global contexts in Rawls's project: nonliberal political demands, intolerable in the domestic context of political liberalism, become tolerable in the context of the Law of Peoples. But there is another problem with extending to the global context the idea of toleration conceived for the domestic context. While nonliberal comprehensive doctrines are tolerated within the confines of a liberal state, individual liberty to pursue liberal conceptions of the good is nonetheless protected because of the state-protected individual right of exit from domestic associations. That is, in the domestic context, the right of exit (as ensured by the liberal right of free association and the freedom to form, pursue, and revise one's conception of the good) may help to facilitate the reconciliation of the liberal tolerance of nonliberal comprehensive doctrines with its concern for individual basic liberties. Should individuals find their associative membership oppressive, they are free to leave the association and join more liberal ones should they wish. Thus, within the domestic liberal state, the right of exit supposedly ensures that the (generous) toleration of nonliberal comprehensive views is not at the cost of protecting the freedom of individuals to live a life of their own choosing. So it is tempting to think that as long as the Law of Peoples protects the right of exit (from decent societies), which it does,<sup>48</sup> the tolerance of decent societies is not detrimental to individual liberty. To put it in a different way, the cost of tolerating decent peoples is acceptable if there is a guaranteed right of exit for individual members of these nonliberal groups.

But this appeal to the right of exit from nonliberal societies does not successfully temper the potentially illiberal cost of tolerating decent peoples. The right of exit does not serve as an escape valve in the global context as it might in the domestic, given the different background conditions in each case. As an aside, it is worth pointing out that the claim that a right of exit from private associations sufficiently protects individual liberty in the domestic context is itself contestable.<sup>49</sup> But even granting that nonliberal associations within domestic societies are tolerable as long as the individual right of exit is respected, it is doubtful that a recognized right of exit in the global case offers similar protection to individuals living in oppressive countries. There are two reasons for this. First, it is not obvious that the right of exit can effectively provide a real and meaningful individual choice when the oppressive arrangement in question is a country rather than a private association within a country. Leaving one's country often involves much more than leaving a private association – it often requires moving away from a familiar culture and language to an unfamiliar one; it involves leaving behind family and friends as well as a way of accessing and understanding the world. Rawls himself notes as much. While he holds that exit from private associations is a normal and reasonable enough occurrence in domestic society, Rawls writes that exiting a political society

48. Rawls, *supra* note 1, at 74.

49. For more on the inadequacy of a right of exit for internal minorities, see L. Green, 'Internal Minorities and Their Rights', in J. Baker (ed.), *Group Rights* (1994), 101–17. See also A. Gutmann, *Identity in Democracy* (2003), 59–64.

'is a grave step: it involves leaving behind the society and culture in which we have been raised, the society and culture whose language we use in speech and thought to express and understand ourselves, our aims, our goals, our values'.<sup>50</sup> A right of exit does not offer individuals adequate protection from oppressive societies, because the cost of exit is often unreasonable for persons to bear. Of course it is not impossible for many people to bear this cost, and historically individuals have. But the question is whether it is just to expect them to do so.

The second reason why the right of exit does not properly make up for tolerating oppressive societal arrangements is that it seems to be an empty right in the absence of a corresponding duty on the part of other societies to accept them as members. The right of exit as it applies to countries is essentially the right of emigration. But the right to emigrate is a hollow right if there is no corresponding right to immigrate to another country. The Law of Peoples affirms that decent and liberal societies permit its members to leave; it would be a restriction of a basic human right if individuals are prevented from exiting the society of their birth. Yet the Law of Peoples does not affirm a corresponding duty on the part of all peoples to accept all hopeful immigrants. Indeed, Rawls notes that is possibly 'at least a qualified right to limit immigration'. One of the reasons for this right, Rawls mentions, following Michael Walzer, is 'to protect a people's political culture and its constitutional principles'.<sup>51</sup> The right of exit without the mirror right of entry into another country makes the exit right a right in name only, and not a real and meaningful right that can provide individuals with real options so as to justify liberal toleration of their oppressive societies. In the domestic context, exercising the right of exit from an oppressive arrangement does not deprive a person of membership of a legal and political institution that can continue to protect her rights and entitlements. She has a larger membership, as a citizen, that can never be taken from her and that larger society serves as her default community. There is no similar default community and membership of the global context when we are speaking of the individual right of emigration, and so, without the right also to join a new political society, the right of exit is actually a rather empty right. It is a right that cannot be readily exercised, even if individuals are prepared to assume its costs, without further globally sanctioned provisions such as the right of immigration.

One might think that the duty of countries to accept refugees, as exemplified in the spirit of the 1951 United Nations Convention Relating to the Status of Refugees, shows that individuals who find their domestic conditions oppressive have a right to seek refuge in a third country. But, internationally, refugees are those persons who can demonstrate that they have a 'well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion'.<sup>52</sup> Under this standard guideline, members of an ideal Rawlsian decent society do not qualify for refugee status even though they may object to their lack of personal liberty. Indeed, to allow members of decent societies to claim refugee status

50. Rawls, *supra* note 40, at 222; also Kymlicka, *supra* note 23, at 86–7.

51. Rawls, *supra* note 1, at 39 n. 48.

52. United Nations, 1951 Convention Relating to the Status of Refugees, Art. 1.

is to imply their unjust treatment by their own states, a position that is inconsistent with Rawls's conception of decent peoples as peoples who satisfy the requirements of global justice. According to Rawls's theory, only citizens of outlaw societies can justly claim to be persecuted.

In sum the right of exit in the global context does not offer an adequate safeguard for tolerating oppressive groups (even if we grant that it does in the domestic context) because of the additional and unique costs of leaving one's country and the emptiness of that right absent a meaningful right of immigration.

For the above reasons, cosmopolitans would argue that Rawls's account of toleration has erred too much on the side of decent people and fails to protect seriously the basic liberties of citizens within these societies. This does not mean that decent societies may therefore be forced by military might to conform to liberal ways. A cosmopolitan conception of toleration is not necessarily interventionist. As I will try to clarify in the next section, cosmopolitans can be sensitive to the different reasons why intervention may not be the best or even a morally acceptable way of enforcing their critical evaluations against decent peoples. But it will certainly mean that liberal peoples, consistent with the demands of justice and equal respect, are obliged to take a critical stance with regard to decent peoples. It is no more a show of disrespect for decent peoples to criticize their internally nonliberal arrangements than it shows lack of respect to criticize associations within a liberal state that aspire to disband the liberal constitution of that state. According to the cosmopolitan conception, a necessary condition for meeting the membership criteria for a just Society of Peoples is that a society honours not just the basic human rights Rawls identifies but also the standard liberal rights that liberal states offer their own citizens.

#### 4. IS COSMOPOLITAN TOLERATION INTERVENTIONIST?

An immediately appealing aspect of Rawls's account of international toleration is that it rules out intervention by liberal states against decent peoples. Allowing liberal peoples to evaluate critically the domestic arrangements of decent peoples, it is argued, will pave the way for liberals to attack these otherwise peaceful societies on the ground that liberal rights, such as democratic participation, equal citizenship of members, and so on, are not being honoured. Even if a liberal should find objectionable such restrictions of personal liberties, she should take greater moral offence at the prospect of allowing a country to be invaded by another with the goal of promoting and defending liberal democratic values. After all, while violations of basic rights count as a serious violation whose urgency may call for military action to help put an immediate end to these serious violations, the restriction of liberal freedoms, unfortunate as it is, does not seem to warrant the high moral cost of any military action. The understandable fear that the cosmopolitan account of toleration would take us down the path of intervention is one reason why some commentators might hesitate to endorse the cosmopolitan ideal.

But the cosmopolitan idea of toleration need not ground an interventionist liberal international policy. What the cosmopolitan position does is to establish the standards for critically evaluating the legitimacy of societies. It will disqualify decent

peoples from membership in good standing of the Society of Peoples. But while cosmopolitan toleration does not hold decent peoples to be in good standing, whether it also necessarily opens the way to intervention is a further matter that is subject to additional moral considerations. This is because the making of a critical judgment that a state is unjust is a necessary but insufficient condition for intervention. The act of a military invasion must satisfy further conditions before it can be treated as justified. These conditions are the familiar ones of the just war theory: right authorization, right intent, last resort, reasonable chance of success, and so on. There are good moral reasons why a permissible intervention has to satisfy a right authorization condition; there are good reasons why a permissible intervention has to be one that can reasonably be believed to be likely to be successful. I don't assume that these conditions are definitive or beyond dispute; my point is that making the judgment that a regime is highly illegitimate is not a sufficient warrant for intervening against it; other conditions must be met before military action, even in the service of enforcing liberal rights, can be seen as a morally appropriate way of enforcing the judgment. As mentioned earlier, cosmopolitan toleration is about 'how to judge'; how we are to act on that judgment is a further consideration that the principle of cosmopolitan toleration itself is not meant to settle.

Some commentators might think that affirming cosmopolitan justice means also accepting the enforcement of cosmopolitan justice. This is right, if enforcement is not limited to intervention. Yet some readers might think that my non-interventionist cosmopolitan position is a toothless one, that the making of a critical judgment means also accepting the means necessary for imposing that judgment. Fernando Tesón might be cited as an example of a cosmopolitan who holds the view that cosmopolitans must be prepared to act on their critical judgments against nonliberal regimes.<sup>53</sup> But this observation implausibly and mistakenly thinks that a critical judgment must be enforced without consideration of the costs of the enforcement.

Indeed, Tesón has recently clarified his position on cosmopolitan intervention, and he now writes that it is not possible 'to ground the legitimacy of humanitarian intervention *solely* on the question of the moral legitimacy of the regime, because there are many cases where the collapse of political legitimacy will not be enough to justify intervention'.<sup>54</sup> The judgment of the moral illegitimacy of a regime provides a necessary condition for intervening against it – one obviously could not permissibly intervene against a legitimate regime. But while illegitimacy is a necessary condition, it is also obviously not sufficient for justifying intervention. Additional questions must be addressed before intervention against an illegitimate regime is morally permissible: is the moral crisis perpetrated by the illegitimate regime sufficiently severe and urgent to warrant military action in order to put an immediate end to it? Is military action the only reasonable option left, after political negotiation and other non-violent attempts at correcting the situation have been tried and shown to have

53. See F. Tesón, *Humanitarian Intervention* (1997); *idem*, 'Kantian Theory of International Law'; and *idem*, 'Kantian Theory of International Law', (1992) 92 *Columbia Law Review*, 53–102. See also D. Luban, 'Just War and Human Rights', (1980) 9 (2) *Philosophy and Public Affairs* 160.

54. F. Tesón, 'The Liberal Case for Humanitarian Intervention', in J. L. Holzgrefe and Robert Keohane (eds.), *Humanitarian Intervention* (2003), 99 (emphasis in original).

failed? Is there proper authorization of the intervention in order to ensure that the intervention is not performed by a particular state solely for ulterior self-interested reasons, but that it is indeed grounded on universal principles? Is military action going to be productive rather than counter-productive (which it will be if a military invasion ostensibly to protect human rights actually results in greater human rights violations)? Does a particular intervention satisfy the condition of proportionality? It would hardly be surprising that few forceful impositions and defences of liberal democratic rights (as opposed to basic human rights that are being systemically violated) can pass the test of proportionality. I do not intend decisively to address these questions about just intervention here; I raise them only to stress that the legitimacy of an intervention hinges on a host of complex questions in addition to the question of a country's nonliberal character. Furthermore, it will be a misunderstanding to treat these questions as simply pragmatic and political rather than moral ones. Conditions such as last resort, rightful authority, and proportionality are not simply matters of strategy but of rightful action.

Thus few cosmopolitans actually claim, implausibly, that nonliberal states are immediately legitimate targets of intervention. Tesón in fact affirms this distinction between judging and enforcing a judgment to be obvious in his analysis, and notes that his earlier analysis on intervention fails to highlight explicitly this obvious distinction, thus giving his readers the impression that the illegitimacy of a regime is both a necessary and sufficient condition for intervention.<sup>55</sup> Indeed, cosmopolitans can be aware that interventions to promote liberalism may not be the most effective strategy and indeed may be counter-productive. Local resentment and anger against outside military action can help concentrate the power and authority of conservative illiberal elements in a society, further stymieing efforts at liberal reform.

But the fact that cosmopolitan toleration does not necessitate intervention to pursue cosmopolitan ends does not mean that cosmopolitan justice is toothless and unenforceably utopian. It is certainly not presented as idly utopian. There are different ways in which cosmopolitan values can be promoted and impressed on others without military intervention. Active critical engagement, political negotiations, and trade incentives (and even disincentives under appropriate conditions) are obvious non-military alternatives of realizing cosmopolitan ends without resort to force. The active and organized use of what Joseph Nye calls 'soft power' – education, intellectual exchanges, cultural dissemination, and so on – to encourage nonliberal states to come to appreciate liberal values is another peaceful and co-operative method of encouraging liberalization in nonliberal societies that cosmopolitans can endorse.<sup>56</sup> A non-interventionist cosmopolitan position has at its disposal these and other means for encouraging liberal reforms in decent societies. Rawls questions the propriety of offering incentives to decent peoples for them to reform; he also cautions against allowing world bodies such as the United Nations to take sides against nonliberal regimes, and he objects to the 'granting of subsidies

55. *Ibid.*, at 98–9, 99 n. 18.

56. J. Nye, *Soft Power: The Means to Success in World Politics* (2004).

[by liberal peoples] to other peoples as incentives to become more liberal'.<sup>57</sup> But according to the cosmopolitan conception, these kinds of pressures and other forms of incentives to encourage liberal reforms are acceptable methods of promoting cosmopolitan values by non-military means. The use of institutional authority and power need not always be violent and coercive, and global institutional authority can be understood in this same way.

The cosmopolitan position will thus encourage more open debate and constructive criticism in international fora concerning nonliberal domestic practices and institutions. By open debate I mean that liberal peoples must be prepared always to give reasons and arguments for their criticisms, and to reply in good faith to the responses of those criticized. Thus broad-brush and unsupported and ill-informed criticisms and curt dismissal of responses are ruled out. But this does not mean that liberals must assume the equal validity of all positions. They are to stand by their commitments by defending and giving reasons for them. But if the nonliberal constitution of decent peoples can be criticized, so also can the illiberal practices of constitutionally liberal countries be subject to critical discussion. For example, the practice of capital punishment in the United States should be a legitimate discussion topic at the United Nations and not be rejected out of court as a meddling in internal affairs.<sup>58</sup>

The European Union's policy of conditioning membership on domestic liberal democratic reforms is another example of non-forceful means of urging and encouraging liberalization. This, I take it, does not mean that membership of a world body such as the United Nations be currently limited only to members in good standing of the liberal Society of Peoples, since the United Nations provides the only viable institutional setting for discussions and debates between states whether legitimate or not (and illegitimate states must still be spoken to). The Society of Peoples, if we like, refers to a moral membership rather than an actual institutional one. According to the cosmopolitan view, a world federation of liberal peoples, as envisioned by Kant, would be the hope.<sup>59</sup> Until that hope is realized, however, as long as an ideally just Society of Peoples is still a moral aspiration, there must be a place for international organizations in which all societies, liberal or not, can engage one another in peaceful fashion – the alternative would be war. But it is another thing to use moral membership of the Society of Peoples as a criterion for other forms of co-operative institutional membership. For example, it is reasonable to condition membership of special trading blocs and other international co-operative organizations on liberal reforms.

One important implication of the cosmopolitan account is that the principle of state sovereignty, as commonly understood in international law, will have to be revised. As Rawls notes, the notion of absolute sovereignty – a state having absolute right over how it treats its own citizens – is now obsolete.<sup>60</sup> But cosmopolitan

57. Rawls, *supra* note 1, at 84–5.

58. Recall the attitude of the former US Senator Jesse Helms who, as chair of the US Senate Committee on Foreign Relations, scornfully dismissed a 1998 UN-commissioned report that was critical of the practice of the death penalty in the United States as 'dead on arrival'.

59. The European Union, with its liberal democratic requirements for membership, is thus a good indication of what such a world federation based on the moral membership of a Society of Liberal Peoples might look like.

60. Rawls, *supra* note 1, at 25–7.

toleration will entail further revision of the idea of sovereignty – it will hold sovereignty conditional on states meeting the standards of liberal justice.<sup>61</sup> The establishment of an international criminal court to try violations of rights within a country's own boundaries will be one consequence of a cosmopolitan limitation on sovereignty.

Holding sovereignty conditional on how states respect the liberty of their citizens may appear very troublesome to some. But this concern is allayed if, again, we are clear that failing to meet conditions for sovereignty does not mean that a state loses all standing and can be attacked. The lack of sovereignty only means primarily that the legitimate authority of the state can be morally questioned (whether it should be intervened against or not is a separate point), that other peoples are not bound to treat it as the proper voice of its people just because it enjoys *de facto* authority. For example, as Pogge suggests, according to the revised view of sovereignty the right of an authoritarian regime to borrow capital from global markets or its right to sell the country's resources, currently seen as any *de facto* government's entitlement, need not be recognized.<sup>62</sup>

Critics might worry that tying state legitimacy to liberal democratic standards overly narrows the definition of legitimacy. Surely, the concern is expressed, legitimacy cannot be limited to liberal democratic states. But, in reply, if legitimacy is a central issue, it would seem that meeting some basic liberal democratic standards of justice has to be a necessary condition for state legitimacy. As Allen Buchanan puts it, 'democratic theory provides an account of the conditions under which citizens can have an obligation to one another to take compliance with the laws seriously'.<sup>63</sup> Legitimacy is grounded on the state's recognition of the equality of each of its citizens, and a nonliberal state's failure to treat each one of its citizens as equals offends against this minimal condition for legitimacy.

Even if a critical evaluation of decent peoples does not necessarily justify intervening against them, critics of the cosmopolitan conception might still be concerned that it puts us on a slippery slope towards intervention. But this concern is too hasty if we can imagine the establishing of appropriate institutional safeguards within a cosmopolitan framework. An example of such a safeguard is the requirement of multilateral authorization for any intervention. One might say that this safeguard can easily be abused or ignored, but this abuse or ignoring of the requirement is not made easier because of the cosmopolitan position but in spite of it. (The question is whether there can be safeguards in place to help to ensure that the adoption of a principle does not itself make its abuse likely, not whether there can be safeguards against immoral actions in general). Indeed, Rawls's own account of the limits of permissible war in Part III of *The Law of Peoples* is sensible and can be endorsed by cosmopolitans consistently with the cosmopolitan account of toleration. Again, judging a regime to be illegitimate is still many steps away from the conclusion

61. For one discussion of reforming our understanding of sovereignty under a cosmopolitan framework, see T. Pogge, 'Cosmopolitanism and Sovereignty', in *idem*, *World Poverty and Human Rights* (2002).

62. *Ibid.*, ch. 6.

63. Buchanan, *supra* note 22, at 253.

that the regime may be attacked. Cosmopolitan toleration provides a benchmark for legitimacy, but some account of just war (which a complete cosmopolitan theory must offer) is needed to provide the bridging premises towards the conclusion that intervention is required.

Given that most cosmopolitans would sensibly accept that intervention to promote and protect liberal freedoms and rights must meet strict standards and hence is rarely justified in practice, there may be little practical difference between Rawlsian toleration and cosmopolitan toleration with respect to the issue of intervention. But, as suggested, other important practical differences remain. Unlike international Rawlsians, cosmopolitans will allow for other means of encouraging liberal reforms within decent societies; they can criticize the organization of decent societies for failing to meet standards of international justice.<sup>64</sup> This critical evaluation with the aim of transforming nonliberal societies into more liberal ones is ruled out by the Rawlsian model.

So while it is true that under real-world conditions liberal peoples may have to accommodate decent peoples, it is another thing to say that they should not aspire to transform them 'in a liberal direction', as Thomas Nagel notes.<sup>65</sup> According to a liberal conception of toleration, the accommodation of decent peoples should be seen as part of non-ideal theory rather than as a principle of toleration within ideal theory, *contra* Rawls. It is important to see that this distinction between ideal and non-ideal theory is not a substantively vacuous one. Ideal theory, as Rawls himself writes, 'presents a conception of a just society that we are to achieve if we can'; that is, its principles set the goals that we are to strive for.<sup>66</sup> Even if these goals are not attainable for the moment because of real-world constraints, ideal theory nonetheless identifies for us the direction in which to go. To treat the toleration of decent peoples as part of ideal theory means that our conception of a fully just global order is compatible with the presence of certain nonliberal societies and that there are moral reasons against wanting to take them in a more liberal direction.<sup>67</sup> In treating the accommodation of decent peoples as a matter of non-ideal theory, on the other hand, we have a different vision. We will hold that, even though we cannot get there now, a fully just global order will be one consisting of liberal states. It is this higher vision that the cosmopolitan conception of toleration aspires to, and this higher standard will influence the foreign policy of liberal peoples. It does, therefore, make a substantive normative difference whether we treat the accommodation of decent peoples as necessitated by non-ideal conditions or whether their tolerance is required as a matter of justice within ideal theory.

64. There is, of course, the administrative and legal question of who is to decide whether a society has met the standards of justice. But there are already international bodies in place administering the demands of international justice and law. The UN High Commission on Human Rights and the UN Security Council, for example, currently play this role. As always, hard questions of judgment are involved, and the question of how to reform and design better institutional decision-making procedures is continually to be confronted. But the cosmopolitan proposal does not *per se* require special or unachievable modes of administering justice compared with the Rawlsian approach. It just establishes different guiding principles. A suitably reformed United Nations operating on different principles can serve as the authority making such judgments.

65. T. Nagel, 'The Problem of Global Justice', (2005) 33 (2) *Philosophy and Public Affairs* 113, at 135.

66. Rawls, *supra* note 7, at 246.

67. Nagel, *supra* note 65, at 135.

The fear that the cosmopolitan account of toleration will lead to excessive liberal intervention seems to me, then, to be fuelled by the failure to distinguish the ideal of toleration from the practice of intervention. The idea of toleration, disengaged from the question of intervention, will eliminate the burden of limiting the occasions of war from that ideal, and will thus remove the overly cautionary stance that constrains Rawls's understanding of international toleration. If we see international toleration as an ideal designed not to demarcate the limits of intervention as such but rather to define the limits of proper judgment, we will feel less pressured to conceive toleration generously in the way in which Rawls does for fear of otherwise opening the floodgates to intervention. We can confidently advance a more stringent account of international toleration if we are also able to work out, within the cosmopolitan framework, a clear set of strict conditions for when the military enforcement of cosmopolitan right may take place.<sup>68</sup> Cosmopolitan toleration sets higher standards at which all peoples should aim, but it is compatible with that aspiration to want to realize these standards peacefully.

## 5. IS COSMOPOLITAN TOLERATION IMPERIALISTIC?

A common perception of the cosmopolitan position that I am defending is that even if it is not interventionist, its universalist moral aspiration amounts to a form of moral imperialism.<sup>69</sup> It, after all, treats liberalism to be the appropriate moral benchmark for all societies. Note, however, that this 'realist' concern applies also to Rawls's Law of Peoples, for Rawls's project also offers universal principles to regulate the relations between peoples. But it is true that the more robust moral commitments of the cosmopolitan position I am defending makes it apparently more vulnerable to the realist challenge. That is, the realist challenge against liberal universalism applies *a fortiori* to the cosmopolitan alternative to Rawls. So let me close with some pre-emptive remarks to temper this concern.

First, if the concern is that cosmopolitanism is imperialistic because of its universalizing tendency, the response will be that there is nothing imperialist per se about universalist aspirations. What is of concern is the universal imposition of views or principles on peoples that they can reasonably reject. But the cosmopolitan position is based on arguments and is presented to others not by appeal to their fear (of

68. My remarks draw on Beitz's point that once we recognize the role of human rights to be that of setting the moral limits of sovereignty and not that of setting the limits of permissible intervention, we may be more prepared to defend universally a more robust account of rights than does Rawls. If human rights are seen narrowly as the standards by which the limits of non-intervention are breached, then for many good reasons we would want to err on the side of caution and be modest in our proposal of universally defensible human rights. The world is vulnerable to excessive intervention as it is, and we do not want to render it even more vulnerable by setting more stringent standards for states to meet if they wish to escape intervention from zealous defenders of human rights. But if the role of human rights is seen to be more general than that of determining the legitimacy of states, that still leaves open the issue of the appropriate enforcing and defence of these rights, and we can advance a more exacting list of rights without fear that we are also lowering the bar for going to war. C. Beitz, 'Human Rights as a Common Concern', (2001) 95 (2) *American Philosophical Review* 269.

69. The discussion in this section is prompted by questions raised at the Leiden symposium and comments by the editors of the journal.

extinction if they reject our proposal) but by appeal to their reason. Indeed, central to the cosmopolitan ideal is the concept of reasons *that others can share*, and this straightaway means that cosmopolitans have to be prepared to listen to the arguments of others and revise their own policy commitments when there are good reasons for doing so. Thus the cosmopolitan idea that I am defending can embrace what Martti Koskenniemi calls a 'culture of formalism'. It seeks to avoid 'imperialism while at the same time continuing the search for something beyond particular interests and identity politics, or the irreducibility of difference'.<sup>70</sup> Koskenniemi rightly warns against smugly presuming that standards of justice applicable to one's own society must also be applicable to all others.<sup>71</sup> But the cosmopolitanism account of toleration I am defending does not entail such a smugness and complacency. The standards of justice applicable to liberal peoples are applicable to other peoples not simply because they happened to be affirmed by liberal peoples who have the means to promote their ideals, but because these are principles grounded on reasons that others can come to share.

The cosmopolitan view that I am proposing is grounded on liberal principles. But there should be no inherent concern that this will mean the imposition of a doctrine whose totality is beyond dispute and criticism. Liberalism is not a 'dead dogma', to use Mill's phrase and, to prevent it from becoming so, its active engagement with other doctrines is helpful. Unlike their smug and overbearing colonial predecessors, contemporary liberals today must adopt a more self-critical and tentative attitude. They should be ready to see flaws in their own views in the light of what others can tell them and of what their own values commit them to, and be prepared to admit mistakes and be ready to revise their commitments in the light of new arguments or facts. Liberals do have plenty to learn from other viewpoints, and they have in recent times benefited enormously from heeding their critics. It was the communitarian challenge that provoked liberals to restore the community to its rightful place in their discourse. In the latter half of this century, the socialist objection inspired an egalitarian interpretation of liberalism. Feminist critiques too have moved liberals to examine certain issues long overlooked, such as justice within the family and the question of free speech with regard to pornography and hate-speech. In the international arena, the emphasis placed by some so-called 'communitarian' countries on individual responsibility, a point many liberal practitioners tend to miss in their zeal to protect individual rights, has likewise reminded liberal states of their practical failings with respect to cultivating responsible citizenship.<sup>72</sup> None of these lessons compelled an abandonment of liberalism in its entirety; but they set in motion

70. Koskenniemi, *supra* note 16, at 500.

71. *Ibid.*, at 493, also 499.

72. Some (primarily nonliberal) countries have proposed a 'Universal Declaration of Human Responsibilities' as a counter-balance to the Universal Declaration of Human Rights. While I do not think that the idea of individual responsibility is fundamentally philosophically different from the idea of rights but is indeed the flip-side of the same idea (to be coherent, individual rights must presuppose corresponding responsibilities on the part of other individuals, and to be consistent one who accepts that she has rights must also accept responsibilities on her part), the coming into force of a declaration of human responsibilities will nonetheless counteract the general emphasis in liberal practice on rights to the detriment of duties and responsibilities (without which rights cannot be claimed).

important revisions or debates within liberal thought and practice, revisions and debates which have helped to strengthen the liberal position by making it more alive to new agendas and challenges. A healthy dose of trepidation and awareness of fallibility when advancing our ideas, rather than rendering them impotent and insecure, invigorates and renews them.<sup>73</sup>

In short, universalism is in itself not a concern; what is of concern is universalism without reason, and this latter does not apply to the cosmopolitan position properly understood. Critics of cosmopolitanism will have to show how cosmopolitan principles are subjective and based on narrow interests in the way in which they believe. I have not, of course, demonstrated here beyond dispute that that cosmopolitanism is grounded on reasons that all can share; my more modest claim is that it should not be concluded out of court that cosmopolitanism is a subjective viewpoint that is not grounded on universalizable reasons.

Further, the perception might be motivated by the moral failures of liberal cosmopolitanism when it has been put into practice historically. Critics often point to colonialism and to modern-day neo-imperialism to highlight the dangers of moral universalism and as evidence of how cosmopolitan principles (or some universalist principles much like them) provide convenient disguises for self-interested ends. Koskenniemi's discussion of the 1965 US intervention in the Dominican Republic in the name of universal principles provides an example of such an abuse.<sup>74</sup> But this line of criticism mistakes any project with a global ambition for a cosmopolitan one. Empire-building is a globalizing project that is not grounded on principles and reasons all peoples can share. Cosmopolitanism has a universalist aspiration, but not all policies that have universalist aspirations are based on cosmopolitan principles. The Dominican Republic intervention may be rationalized as an intervention to protect freedom, but the question is whether it can indeed be shown to be so. Cosmopolitans can accept Koskenniemi's reasons why that intervention was morally unjustified. That intervention was morally flawed precisely because it could not be justified by universal principles, not because it was required by universal principles. The fault, in short, was because universal principles were not taken seriously enough. And while it is certainly correct that abstract humanitarian principles can be, and historically have been, invoked to justify self-interested interventions and foreign policies, the fact that principles can be misappropriated for particular and narrow ends does not invalidate these principles. If this were so, there would be few moral principles left in any domain. That the principle of free speech can be misused does not alone compel the denial of that principle.<sup>75</sup> That just-war principles can be falsely invoked to justify aggressive war does not mean that we should not bother with clarifying the moral conditions for a just war – on the contrary, it means that we need all the more a clear set of conditions to provide us with a standard against which to judge such wars. To put my point concisely, there is

73. For more discussion on the failure of liberal universalism in practice see Tan, *supra* note 3, ch. 8.

74. Koskenniemi, *supra* note 16, at 480 et seq.

75. I discuss this point in 'The Unavoidability of Morality', in T. Nardin and M. Williams (eds.), *Humanitarian Intervention* (forthcoming 2005).

nothing astonishing about the observation that cosmopolitan principles can be and have been abused for self-aggrandizing ends, or that they can be wrongly enforced even if with good intention. What is astonishing is the critics' conclusion that these principles are therefore suspect, when the fault lies with actors who abuse principles. To be sure, even well-meaning attempts to enforce cosmopolitan principles can have morally drastic results.<sup>76</sup> But this only means that more care and good judgment is needed to apply these principles, not that these principles should be abandoned.

The real concern, then, is not whether cosmopolitan principles can be misused or abused for non-cosmopolitan ends; any moral principle can be misappropriated. It is never a necessary condition for the validity of a principle that it cannot be abused. The real question is whether cosmopolitanism necessarily leads to the forcible imposition of worldviews on others that they can reasonably reject. And I would argue that it does neither of these.

The cosmopolitan conception is not grounded on an imperialistic ambition, but is fundamentally motivated by the recognition that there are individuals whose liberal rights are being systemically denied by their own states. Cosmopolitans are not motivated by the assumption that they know best how all societies are to be run; rather they are moved by the oppression of individuals whose freedoms are being denied by their own state. Cosmopolitan principles serve to defend the defenceless, not to impose a conception of the good society on all peoples. It cannot be an argument against cosmopolitan justice that it has a universalistic moral agenda – for this is precisely and explicitly its point. The issue is whether that agenda is grounded on reasons that all reasonable peoples should accept.

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76. David Kennedy draws attention to the dangers, what he calls 'the dark sides', of enforcing abstract humanitarian principles in D. Kennedy, *The Dark Sides of Virtue* (2005). But Kennedy's warning that agents take heed of the implications of intervention ('the pragmatism of consequences', as he calls it) and maintain 'a clear-eyed focus on the purpose of our work' ('the pragmatism of intent') against a blind and impulsive enforcement of humanitarian principles is a point cosmopolitans can surely agree with (*ibid.*, at xx). As I suggest above, there are moral reasons why cosmopolitans will refrain from intervention just because a state is deemed intolerably unjust. That a given intervention will make matters worse is, of course, one important moral consideration against it. Kennedy's warning of the dark side of humanitarian enforcement is not a complaint against universal humanitarian principles, but an exhortation that salient competing moral considerations not be overlooked by humanitarian agents (*ibid.*, ch. 9).