

RAWLS'S THEORY OF INTERNATIONAL JUSTICE: A BRIEF RECONSTRUCTION AND CRITICAL COMMENTARY

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Abstract. The aim of this paper is to offer a concise and faithful account of Rawls' theory of international justice, in an effort, first, to elucidate the structure of the argument that is advanced in that theory and, second, to present a critical assessment of it. The critical assessment section attempts, on the one hand, to cope with crucial methodological issues, which have a more general bearing upon Rawls's overall political philosophical position, including the constructivist perspective of theory making and the division between a political conception and a comprehensive doctrine; on the other hand, to weigh up a set of substantive claims made in the Rawlsian theory of international justice including the recognition of peoples as the fundamental subjects of international law, the toleration of the so-called decent peoples and the considerably thin construal of human rights encompassed in *The Law of Peoples*. The paper attempts to provide a series of reasons that could be well-suited to explicate its author's doubts about the soundness of the Rawlsian theoretical perspective with regard to both its formal methodological features and its more content-oriented convictions.

Keywords: philosophy of law, political philosophy, human rights, Rawls.

1. Introduction

Few topics of Rawls' complex and multifaceted moral and political thought have ever been more inviting to dissatisfaction and criticism than his theory of international justice. Drawing on major issues, as the condensed list of rights demanding protection at the international level, or the absence, not only of a globally applicable «difference principle» but also of any global distributive principle at all, a legion of thinkers have doubted the status of Rawls's international law theory as an appropriate

extension of his domestic theory of justice. A source of ongoing controversy is, furthermore, his determination to recognize the peoples as the principal actors and ultimate bearers of right at the global stage of social interaction, not to mention his inclusion of the so called «decent peoples» as equal members of the global society. In that regard, the aim of this paper is to take up a brief reconstruction of the Rawlsian views on the topic of international justice, in an effort to appreciate, at a second stage, their argumentative force in relation to the aforementioned, by and large, issues without disregarding for an in passing commentary of some other debatable matters.

2. The *Law of Peoples* in outline

Rawls' *The Law of Peoples*, a work belonging to the later period of the philosopher's career, purports to put forth «a particular political conception of right and justice that applies to the principles and norms of international law and practice».¹ The compliance with the ideals and principles ingredient in this conception of international law is about to establish a «Society of Peoples», well-suited to put an end to political injustice, which is the main root of the great evils of human history, «unjust war and oppression, religious persecution and the denial of liberty of conscience, starvation and poverty, [...] genocide and mass murder»² etc. Accordingly, the particular content of the ideals and principles that must be introduced for the regulation of the global society «might be developed out of a liberal idea of justice similar to, but more general than, the idea»³ Rawls labels «justice as fairness».

A conception of justice is fair on the condition that the procedure that engenders it is similarly fair, that is, the parties called upon to agree on principles of justice are afforded a fundamentally equal status by virtue of their shared capacity to have a sense of justice and a conception of the

¹ *Rawls John. The Law of Peoples with the Idea of Public Reason Revisited.* Harvard University Press, 2001. P.3. (hereafter LoP). Thomas W. Pogge locates the central difference between the domestic and the international law in that in the domestic case some matters are nonnegotiable, «for example, that none will be slaves or be left to starve», whereas in the international arena «the dominant assumption-and well-grounded fear-is that everything is negotiable, that any law, treaty, charter, or declaration may be reinterpreted, violated, renegotiated, abrogated, abandoned, or simply forgotten». See *Thomas W. Pogge. Realizing Rawls.* Cornell University Press, 1989, P. 228.

² *LoP.* P. 6-7.

³ *LoP.* P. 3.

good.⁴ The possession of this twofold capacity makes persons reasonable and rational respectively. The equal participants to this hypothetical and nonhistorical social contract procedure are, according to Rawls, neither individual persons nor states, but peoples, which are ideotypically seen as falling into five major categories: reasonable liberal peoples, decent peoples, outlaw states, societies burdened by unfavorable conditions, benevolent absolutisms. Among them, only liberal and decent people meet in an adequate way the criteria to qualify for the Rawlsian normative ideal of well-orderedness.

The arrangements that have to be in place at the international level for the sake of global justice, peace and stability ought to take seriously into consideration the empirical condition of «reasonable pluralism», a term Rawls employs in his *Political Liberalism* to describe the cardinal predicament of modern liberal democratic societies, being now extended to the global domain where comprehensive doctrinal diversity is regarded to be even more excessive, due to peoples' «different cultures and traditions of thought, both religious and nonreligious».⁵ A liberal political conception of global justice seeks to alleviate the potentially dissolutive consequences of the unregulated international pluralism, setting the stage for an all the more cohesive «Society of Peoples», an ideal larded with realistic and utopian features at the same time.

A liberal political conception of global justice is realistic, on the one hand, to the degree that it is not incompatible with the natural laws and the objective facts about human nature that can be deduced by them; on the other hand, to the extent that its contents «are workable and applicable to ongoing political and social arrangements».⁶ It is, respectively, utopian, in that its contents are expected to «specify a reasonable and just society»;⁷ that is, a conception, or a family of conceptions, conducive to the building of a global society that honors basic rights and liberties,

⁴ In his *Reason and Justice*, State University of New York Press, 1988, P. 107, Richard Dien Winfield appropriately remarks that «like the traditional social contract, the original position would forfeit its foundational role as the exclusive source of the principles of justice if its choice procedure were at all predicated upon any prior virtues, idea of the good, or rights and duties». In this regard, Rawls is guilty of inconsistency because «the rationale for the veil of ignorance lies [...] in a prior assumption that justice is fairness, where fairness is understood to consist in treating individuals equally in respect to their capacity as choosing selves, without regard for any other differences between them».

⁵ *LoP*. P. 11.

⁶ *LoP*. P. 13.

⁷ *LoP*. P. 14.

assigns special priority to them over other social concerns, grants «primary goods» for substantial and effective worth to be imparted to the basic rights and liberties and satisfies the «criterion of reciprocity» between equal, free and reasonable social agents. Other requirements for a realistic utopian conception of global justice are the following:

(1) it must lean on a construal of the political as a «free-standing» domain of public practical discourse, insulated from the Babel of «comprehensive doctrines»;

(2) it must result in the establishment of an institutional framework capable of inculcating into the social actors the sense of justice and the virtue of political cooperation for the sake of «stability for the right reasons» (following from the agents' sense of justice and conception of the good, i.e., their reasonableness and rationality, respectively);

(3) it must receive affirmation by an «overlapping consensus of comprehensive doctrines»,⁸ so that social unity and stability would not be the outcome of an external and mechanical political compromise, as it is the case, for instance, with Hobbes;

(4) it must constitutively enclose a reasonable idea of political toleration.

As already mentioned, Rawls asserts, in familiar, traditional contractual terms, that the content of the political conception of international justice is to be reached via a procedure of construction,⁹ invoking once again, at

⁸ See *Mandle Jon.* Rawls' A Theory of Justice. Cambridge University Press, 2009. P.147.

⁹ Rex Martin and David A. Reidy offer a lucid description of a constructivist conception of justice, which «represents the principles of justice not as part of some timeless and mind-independent moral order known through theoretical reason, but rather as an outcome of a procedure of construction rooted in practical rather than theoretical reasoning. Practical reason concerns the production of objects in accord with a particular conception of them. If our practical task is to produce a just society, we need practical principles to guide us in this undertaking. These we construct through a procedure that models both the noncontroversial empirical facts that constrain our undertaking as well as our shared understandings of the ingredient ideals of persons, fair social cooperation, well-orderedness, and so on. These ideals we draw from our moral and political self-understanding as practical moral agents. Whether the outcome of our procedure of construction, our tentatively selected conception of justice, is correct or not is not a function of its truth theoretically assessed, but rather of its reasonableness practically assessed. We have correctly identified the principles of justice if after due to reflection they are in wide reflective equilibrium with our other considered convictions. If they are, they mark the practically correct way for us to make together the just society we jointly desire. There is no further court of appeal beyond our shared practical reason». See their Introduction in *Rawls' Law of Peoples, A Realistic Utopia?*, ed. Rex Martin and David A. Reidy, Blackwell Publishing 2006, P.11.

this level, the idea of the «original position» and its attendant idea of the «veil of ignorance». Still, other than the construction of principles at the domestic level, the representatives of parties in this particular connection do not represent individual persons, as was the case with the domestic original position, but rather peoples, who act through their governments. Thus, in contrast with his domestic individualism, Rawls seems, to the discomfort of his liberal cosmopolitan readers, to subscribe to a, more or less, communitarian position in his international law theory, even though he resists the conservative realism of viewing the international arena as inescapably inhabited by and regulated on the basis of traditional political states.

The expressed reason for this maneuver is that the peoples are much more prone to act morally, namely, in a peaceful and respectful of human rights manner, in stark contrast with the, by definition, self-interested and trigger-happy character of the political states. In this regard, the people are deemed to be to a greater degree inclined to restrict their formal autonomy and arbitrary self-centeredness, abiding by the norms of international law to the benefit of global peace and stability, whereas the states, traditionally conceived in their irreducible sovereignty, are not realistically expected to do so.

Peoples, in general, are considered by Rawls as collective entities, the members of which are tightly connected by virtue of strong cultural and historical bonds, like common traditions, common historical past, common language etc. The liberal peoples, even in the differentiated variety of liberal doctrines they happen to espouse, figure as the most just, reasonable and well-ordered representatives of the global medley of peoples. The next lower position on this normative climax is reserved for «decent peoples», on the premise that their protection of human rights, their reluctance to carry out unjust wars, their commitment to a common good conception of politics, their provisions for basic liberties (though not the full set of liberal ones) allows for the inclusion of the notion of decency into the normative guiding framework of the international system of cooperation, even though the normative force of decency is much weaker and of lesser value for a political conception of global justice compared with the notion of liberal reasonableness.

The rest of the possible types of peoples, namely, outlaw states, burdened societies and benevolent absolutisms are, on Rawls' account, very far from satisfying the criteria of liberal reasonableness or decency, being under the sway of a multitude of adverse factors afflicting their political culture and institutions in many respects. They are, therefore, unsuited

for membership in the international «Society of Peoples».

The notion of the «original position» at the international level is deployed as a model of fair representation for the reasonable peoples, liberal and decent. Under the «veil of ignorance» the representatives are denied access to a great deal of particularities characterizing their peoples. They ignore, for instance, the comprehensive doctrines, the extent of the natural resources, the level of the economic development, «the size of the territory, or the population, or the relative strength of the people whose fundamental interests they represent».¹⁰ This is a formal condition employed to safeguard impartiality and foreclose the possibility for a biased outcome of the deliberative procedure.

Since the norms and principles ultimately to be agreed upon are intended to be component parts of a strictly political and not comprehensive conception of justice, the process of their identification is imperative to be conducted without appeal to any particular philosophical, moral or religious ideas, but only to the «various fundamental ideas drawn from the public political culture of a democratic society».¹¹ Only reasons that derive from the public political culture of a democratic society are, to Rawls' mind, relevant to the procedural workings of the original position, as enabling factors of a «political conception of justice that can be the focus of an overlapping consensus and thereby serve as a public basis of justification in a society marked by the fact of reasonable pluralism».¹²

In so far as the political conception of global justice is uncovered through a rational consideration of the norms inherent to the public political culture of a democratic society, its content is anything but unfamiliar and adventitious. Rather, it is seen by Rawls to frame principles deep-seated within the political culture of the modern world. In the general absence of systematic deductive processes in Rawls' philosophical methodology, the resulting principles of international justice are not regarded as definite and are placed in an order of mere enumeration:

- (1) peoples are to be respected as free and independent in their reciprocal relations;
- (2) they are to observe treaties and undertakings;
- (3) they are equal parties to the agreements that bind them;
- (4) they are to observe a duty of nonintervention;
- (5) they have the right of self-defense but no right to instigate war for reasons other than self-defense;

¹⁰ *LoP*. P. 32.

¹¹ *Ibid.*

¹² *Ibid.*

- (6) they are to honor human rights;
 (7) they are to observe certain specified restrictions in the conduct of war;
 (8) they have duty to assist other peoples living under unfavorable conditions that prevent their having a just or decent political and social regime.

These principles are and must be open to different formulations and interpretations, which is actually the main task to be carried out by the representatives of the peoples. Moreover, the political conception of global justice is to encompass additional principles «for forming and regulating federations (associations) of peoples, and standards of fairness for trade and other cooperative institutions».¹³ On the ground of this, or maybe another comparable set of reasonable liberal principles, the global society attains to its specific public reason, which is the ultimate guiding framework for the evaluation and justification of any particular social and political normative claims made by peoples at the international level.

The liberal political conception of global justice expounded so far in outline belongs to the first part of the ideal theory,¹⁴ according to the architectonics of *The Law of Peoples*. In the second part of the ideal theory Rawls introduces and elaborates on the notion of the toleration of nonliberal peoples, laying out arguments for the extension of the liberal international law to decent hierarchical peoples, as he calls them. The case is made by means of an analogy with the domestic level. Namely, to the same extent that the principles of domestic justice are addressed, through the basic structure of domestic society, to the citizens, regardless of their reasonable comprehensive doctrines, the norms of international law are addressed to the peoples, no matter of their even more diversified and conflicting reasonable comprehensive doctrines. Given that the only kind of peoples, apart from the liberal democratic ones, who partially satisfy the social, institutional and political criteria to be counted as reasonable, are the decent peoples, the liberal political conception of justice is extended to them alike. Indeed, the conception in question has been sketched by Rawls in notably minimal terms, so as to be fitting to be agreed upon by decent

¹³ *LoP*. P. 38.

¹⁴ «Ideal theory asks which principles of justice would regulate a perfectly (or nearly perfectly) just society, that is [...] well-ordered. Nonideal theory in turn asks which principles to adopt under less happy conditions when perfect justice is, at best, a distant goal». See *Stemplowska Z., Swift A. Rawls on Ideal and Nonideal Theory. A Companion to Rawls* / ed. Jon Mandle, David A. Reidy. Wiley-Blackwell, 2014. P. 112. The topics included in the nonideal theory are the theory of punishment, the doctrine of just war, the justification of various ways of opposition to unjust regimes etc.

peoples too, on the fairly realistic assumption that the cultural background of those peoples (think of an Islamic society for example) figures as an unfavorable condition for their endorsing a fuller set of liberal democratic ideals, unless this was made by external force and imperialistic intervention on the part of liberal democratic peoples. But such an intolerant attitude is highly undesirable for Rawls, on the presumption that it would infringe on the equality, self-respect and self-determination of the decent peoples. After all, decent peoples, besides a large portion of other acceptably reasonable features of their background justice, pay due respect to human rights, which is the supreme normative criterion of international toleration for Rawls.

However, the conception of human rights enveloped in the «public reason» of the «Society of Peoples» as the ultimate arbiter of claims on war and toleration is, on par with the overall political conception of justice at this level, particularly weak from the perspective of the standard liberal mindset, in as much as it is incommensurate with the richer class of human rights enjoyed by the citizens of a constitutional democratic regime at the domestic level. In fact, what must count as intolerable in the international interaction, not only permitting but also dictating political, if not armed intervention in the internal affairs and external policy of other peoples, otherwise autonomous, is the violation of a considerably condensed list of human rights, which Rawls classifies as «urgent rights». These may include «freedom from slavery and serfdom, liberty (but not equal liberty) of conscience, and security of ethnic groups from mass murder and genocide».¹⁵ The upshot at this point is that the notion of human rights is rendered a subset of the more extended and demanding class of rights that is normally protected by the legal systems of constitutional democracies, in a pragmatically propelled attempt to relax the normative qualifications for membership in the «Society of Peoples», so that illiberal but decent peoples are not excluded, which would be to the detriment of global stability.

When it comes to the nonideal theory, or the more empirically-centered theory of noncompliance or only partial compliance with the mandates of the political conception of global justice that is ideally set forth as the supreme standard of international lawfulness, Rawls initially addresses the traditional issue of just war theory, accepting the right of resort to armed force only in the case of self-defense, or in the case of the violation of human rights, as already mentioned. Still, the exercise of the right to war

¹⁵ *LoP*. P. 79.

is not unlimited or unqualified, but is subject to principles restricting the conduct of war, mostly concerning the rights of the noncombatants.

Furthermore, in reference to societies burdened by unfavorable cultural, institutional or financial conditions, Rawls goes at length to adduce supporting arguments to his rejection of a global application of the difference principle, or of any other kind of global distributive principle of justice. To the discomfort of many of his readers, who justifiably cry out the outrageous inequalities in the global distribution of income, Rawls instead proposes a more moderate remedy, via the less requiring «duty of assistance», which is the duty «to assist burdened societies to become full members of the Society of Peoples and to be able to determine the path of their own future for themselves».¹⁶ Contrary to the difference principle or other distributive principles, the duty of assistance has a specific cut-off point designated by the assurance that the societies under assistance «have achieved just liberal or decent basic institutions».¹⁷ Beyond this point, any supply of assistance, financial, institutional, technological, could be a paternalistic deviation that falls short of the respect owed to the political autonomy of societies burdened with unfavorable conditions.

In the concluding remarks to *the Law of Peoples* and in response to the objection that the proffered political conception of global justice is hopelessly western-centered and actually at odds with its intended universal reach, Rawls pinpoints that, as it is the case also with the notion of human rights, the liberal political conception of international justice is not necessarily peculiar to western culture, but objectively valid. In consistency with his overall argumentative tactics, the epistemological claim on objectivity is not here, once again, advanced on the comprehensive grounds of philosophical epistemology. What is instead appealed to as the proper standard for objectivity to be measured by is whether the liberal political conception of global justice «satisfies the criterion of reciprocity and belongs to the public reason of the Society of liberals and decent Peoples».¹⁸ On this weaker, noncomprehensive account of objectivity, the criterion of reciprocity confers universal validity in the sense that it represents the sine qua non condition of minimal social cooperation at any level, while the notion of public reason is invoked as the appropriate politically-oriented epistemological antidote in a pluralistic world actually occupied by a large number of competing epistemological doctrines.

¹⁶ *LoP*. P. 118.

¹⁷ *Ibid.*

¹⁸ *LoP*. P. 121.

3. Elements of a critical commentary of *The Law of Peoples*

3.1. Rethinking the distinction between the political and the comprehensive

In the light of this sketchy reconstruction of the Rawlsian theory of international justice, I shall now proceed to lay out a series of critical remarks bearing in mind that any faithful and fair assessment at this point should, first of all, be reminiscent of the fact that this work is not primarily patterned upon the strong theoretical claims of the classic *A Theory of Justice*, but rather upon the weaker ones of the *Political Liberalism*. The latter work largely emerged from Rawls' growing discontent with the *Theory's* «congruence argument», which attempted to demonstrate the objective compatibility and necessary connection of the conception of justice as fairness with the good of the individual persons and the intrinsic worth of their converging with that principle of conduct.¹⁹ The optimistic view being held there, namely, that the principle of justice as fairness, by virtue of its more or less objective harmony with the autonomous moral nature of the individual persons, would come to be widely approved by them, even more on the premises just delineated, was about to decisively change during the next decades, once Rawls were to take more seriously into account the fact of «reasonable pluralism».

More exactly, Rawls progressively came to the pressing for him awareness that in a modern pluralistic society, where freedom of conscience, expression and association are institutionally secured, a little consensus is to be expected over the definition of the good, since in such a society the individual persons actually endorse many different «comprehensive doctrines», which, in fact, embrace many different, if not competing and conflicting conceptions of the good. What is thus needed for the practical applicability of the liberal norms of justice and the ensuing social stability is, to Rawls' mind, a merely «political conception» of justice appropriately configured to attain to an «overlapping consensus of comprehensive doctrines». Significantly, the consensus in question should indeed rely on reasons that are internal to the reasonable comprehensive doctrines advocated by individuals. The main reason for this provision is that the social stability thereby achieved would be firmer than just an externally and artificially accommodated *modus vivendi*.

This is not to say that Rawls ever came to cast doubt on his previous

¹⁹ See Freeman S. Rawls. Routledge, 2007. P. 315-322.

commitment to the notion of justice as fairness. Nevertheless, his change of perspective in the direction of the realistic concern regarding the possibility of the actual and consent-based enforcement of the principle of justice as fairness motivated a significant modification of the general sense of that principle for the sake of the removal of the comprehensive elements that stayed afflicting it as potential sources of disagreement with other comprehensive worldviews. In other words, the distinction drawn in the *Political Liberalism* and, by extension, in *The Law of Peoples*, between a neutral political conception of justice and a conception of justice articulated in terms of a comprehensive doctrine is predominantly attributable to the empirical contextualization of the principle of justice as fairness and the correlated prioritization of an inquiry into the prerequisites of a stable social unification under the precepts of a more minimal conception of liberal justice.

The aforementioned account may leave as with some puzzles to be solved (e.g., if a large majority of individual persons in a liberal democratic society are presupposed as accepting, for any reasons, the constitutional essentials of this society, why does the problem of stability loom so large in Rawls' account? Or, provided that the overlapping consensus rests on reasons interior to the several comprehensive doctrines, what is the reason for justification in terms of a political conception and the companion idea of public reason?), but it partially explains the strikingly condensed version of a modern conception of social justice to be implemented, according to *The Law of Peoples*, in the domain of international relations and within the theoretical framework of the Rawlsian distinction between the political and the comprehensive, particularly in the face of the truism that the global social and political stage is even more pluralistic than the domestic. But it is precisely that theoretical framework that I don't find adequately convincing.

As a matter of fact, one could ask for the underlying principle of the division of the political and the comprehensive, unless one resolves to distill it from merely contingent empirical considerations. For reasons of consistency, that principle must be political rather than comprehensive. However, that would condemn the explication and the justification of the division to a question-begging devoid of explanatory force. If, on the other hand, the division of the political and the comprehensive were deemed to be a comprehensive one, the priority of the political would be, incoherently, unsustainable. And, to my mind, this is at any rate the case.

To put it in slightly different terms, once «reasonableness» is rendered an attribute of a comprehensive conception that is in accord with the

liberal democratic political conception of justice, then the thus construed standard of reasonableness cannot be met by the political conception of justice itself if the inconsistency of *petitio principii* is to be evaded. If, on the other hand, the reasonableness of the political conception is affirmed to derive from its correspondence with an objectively reasonable comprehensive doctrine, then the political conception's supposed function as the primary foundation of reasonableness has to be repudiated. Either way, the freestanding political conception of justice cannot account for the reasonableness it allegedly confers to the comprehensive doctrines that are in conformity to it.

Moreover, if, in line with the requirements of practicability, political legitimacy and social stability, an ample amount of comprehensive doctrines can actually qualify for a reasonable compliance with the liberal democratic conception of justice, even more from their own resources, then the appeal to a strictly political conception is made redundant. The liberal-oriented content of those comprehensive conceptions is, in that event, sufficient for the purpose of social unity, well-orderedness and stability, and no recourse to the «doctrinal autonomy» of a «free-standing» political conception is necessary. If, by contrast, there could be hardly any possibility for such compliance, then the political conception of justice as a commonly accepted denominator of just conduct would end up being a chimera.

Furthermore, provided that the liberal political conception is invoked to override controversial philosophical claims susceptible to ignite socially harmful disagreement, one might wonder if the content of the liberal political conception itself is burdened with controversy too, which cannot be dispelled by a simple reduction to the alleged neutrality of the political. After all, the liberal democratic political conception is certainly not the fruit of a self-contained evolution of the western political culture that has taken place in isolation from decisive reorientations in modern philosophical theory, not to mention religion, or other comprehensive cultural aspects. The pursuit of a political justification that holds no communion with the other constitutive parts of a wider cultural horizon is vain, in as much as the concept of the political is itself dubitable (e.g., Marxists would eagerly discard it), let alone the notion of justification as such, whose nature is a complex and highly debatable epistemological problem for one to pin his hopes on any common sense reasoning resting on the formal procedures of the political discourse.

This is even more the case as regards the claims on personal value, liberty, autonomy, democracy, equality, which represent notions inerasably

charged with huge controversy, irrespective of whether they are subsumed to the category of the philosophical and comprehensive or the political. If these controversies were unlikely to be settled on philosophical grounds, their reduction to the political would fare no better, given that their normative content remained intact. A supporter of a comprehensive doctrine that casts doubt on the principles of a liberal democratic constitution is quite unlikely to agree and act at liberty upon just the same principles by virtue of their being robbed of any serious justification apart from their association with the presumably indubitable necessities of the political condition *per se*. On the contrary, if those controversies could be resolved by rational philosophical argument, which is what Rawls doubts, then it would be more appropriate, instead of consigning philosophical rationality to the formality of a political conception, to act the other way round and assign formality to the comprehensive views that fail to exhibit a rational content. In the same vein, a reply to the possible objection that that might injure the self-respect of those committed to those unfounded opinions could be that their self-respect is, in that regard, once again formal. By insuring the possibility of a «free-standing» sort of justification *per se*, Rawls is in essence taking this direction, though he should have insisted on locating it in the philosophical rather than the political.

The advantage of the philosophical over the political, in terms of doctrinal autonomy and exegetical independence, is that the conceptions developing within the former carry their fostering reasons within them, whereas the political conceptions, in the way Rawls construes them, either appear as accidental cultural stipulations, privileged in an ungrounded manner over any other political conceptions embedded in our political culture, or rather remain hostage to the heteronomy of the comprehensive justifications that constitute the overlapping consensus. Either way, the form of justification is stripped of its content and the content is stripped of its form. The remedy to this disruption is the promotion of a comprehensive philosophical account of justice, with the political conception being an indispensable constituent part of it. In this sense, the political domain is accorded a partial free-standingness, which lies in its role of supremely regulating and universally enforcing the whole system of justice. Nevertheless, it is at the same time part and parcel of a more thoroughly determined systematic conception of rationality that deserves to be considered as more perfectly free-standing in that it is liberated from unaccounted presuppositions and totally self-grounded by dialectically superseding the more abstract domains of morality and politics, while incorporating them as the constitutive building-blocks of its entirely

concrete doctrinal autonomy.²⁰ After all, the Rawlsian presupposition of persons' substantial allegiance towards the basic principles of the free modern world is clearly indicative of a considerable advance in our collective rationality, which has a huge effect on our traditional or other comprehensive doctrines, even the most illiberal and reactionary of them. Why should we not focus on the further development of the rational core implicit in these doctrines, rather than appealing to the problematic formalism definitive of the insulation of the political domain?

That could most probably bring about the desired legitimacy and stability, indeed for the right reasons, in accord with Rawls' prescription, and not for the often unfounded comprehensive reasons or the contingent politically determined reasons. With regard to the comprehensive doctrines, public reasoning would not be content with just bracketing and leaving intact their irrational dimensions on the condition that reasonable consent was given by them to the main set of principles informing the liberal democratic regime, but would predominantly prompt the acceleration of the cultural processes that would be most favorable for their gradual conversion. With respect, accordingly, to the political conception of justice, its justification would be rooted in stronger grounds than just relying on the immediacy of our «fundamental intuitive ideas» or on any given facts and features of social cooperation, whose empirical character would be an inappropriate basis for universal and necessary inferences, let alone judgments concerning the intrinsic value and worth of engaging in such cooperation.

Moreover, as regards the issue of toleration, its extent would then be determined by our substantially confident certainty about the stabilizing effects of our shared rationality leaving no room for compromising rationality by our formally confident appeal to the stabilizing effects of toleration. In the domestic case, where the proponents of comprehensive doctrines are presupposed by Rawls to grant sufficient consent to the essentials of the reasonable and rational conception of justice, this compromise is admittedly not so extensive as to shake the commitment to the universal appeal of the modern type of legitimizing moral and political claims in a decisive way. A full set of political liberties and their priority is insured, with the only compromise being the replacement of the possibly controversial, as for its consequences for the character of its attendant social and economic system «difference principle», with

²⁰ This is in outline the conception of rationality in work within Hegel's systematic philosophy.

the less radical but more widely accepted constitutional provision for a social minimum income. Nevertheless, when it comes to the theory of the international norms of justice, the predication of the ideal of worldwide stability upon the formal equality, consent, self-respect, self-determination and toleration of those who refuse to abandon cultural and political practices incommensurate with the modern world results in an unnecessary shrinking of the western, fundamentally rooted in the concept of freedom, paradigm of political legitimation. This is evident in Rawls' proposals regarding the normative regulation of a liberal democratic regime's relation with the so-called decent peoples.

3.2. Rethinking the concept of peoples and the toleration of decent peoples

Before commenting on this issue, I want, in passing, to express my misgiving in relation to Rawls' theoretical resolution of recognizing the peoples as the central agents of the international domain and the primary subjects of international law. This particular position issues from a further development of the realistic, preoccupied with the ideal of stability and legitimacy, perspective adopted in *Political Liberalism* and so far discussed in this paper. More precisely, the guiding framework prescribing the embrace of an uncontroversial political conception of international justice likely to gain global acceptance compels the Rawlsian account to be less critical than it is required in its confrontation with the current structure of the international stage of affairs. By assigning to the peoples, as the collective political entities in their representation by their governments, the role of being the fundamental legal subjects of international justice, no significant departure is made from the current state-determined predicament of the international arena.

Rawls appeals to morality as the distinguishing mark between peoples and states. The peoples are characterized by moral sentiments and peaceful dispositions towards other peoples, whereas the states can't help making usage of their unshaken sovereignty to infringe on the liberty of other states for purposes rooted in self-interest. In one word, peoples are conceived as more keen to be reasonable and make justice their highest-order regulative interest, whereas the agency of states is monopolized by the imperatives of the deliberative rationality.

Admittedly, our historical experience offers an unfortunate vindication of the Rawlsian misgivings about the particular traditional sovereign states and their capacity to observe the norms of international justice

and stability. However, it seems to me that the substitution of states with peoples, i.e., with an idealized version of states, makes little difference as regards the promotion of international justice and stability. Aside from the fact that the moral predisposition of peoples is anything but unquestionable (especially if one is reminded of the plethora of the unjust and brutal governments often supported or tolerated by their peoples), the moral disposition possesses no legal certification and authority in the domain of the international relations and its invocation is probably a mere wishful thinking. The appeal to the standpoint of morality in essence signifies that there is actually no objective guarantee that the peoples and their political representatives will ever develop other-regarding moral sensibilities, or that they will sincerely endorse principles of international law and act upon them.

In addition, unless the concern of realistic practicability is so tuned up as to shake the unconditioned rationality of normative philosophical theory, the states in their immediate particularity, even in their idealized version of peoples, do not meet the theoretical criteria for embodying the legitimate referents of the international political authority. On the one hand, the validation of their political status on the basis of common sympathy and shared cultural bonds among their members is unpromising, so long as those features are contingent upon random historical specificities that cannot be reasonably accounted for as factors of political relevance, let alone political legitimacy.

The point of view of any group of persons distinguished by certain subjective feelings for their national membership and by collective self-satisfaction for their cultural achievements is hopelessly particularistic and impertinent to the universal rationality of political normativity. National and cultural affiliations and differentiations may be well appreciated as major players in a global civil society, but not in a global political society.

On the other hand, if this contingency is surmounted by placing emphasis, not on the cultural particularities, but on the political dimension of peoples, irrespective of their national, territorial and other random affiliations, then the universalizable rational nature of political normativity runs, again, counter to the recognition of any political authority to separate states, or peoples. A political constitution that frames principles of justice addressable to all rational beings is not reducible to a political rule dispersed, by virtue of cultural or national considerations, into a variety of discrete territories of sovereign political authority, even if this right to sovereignty is subjected to qualifications in a well-ordered international

society, according to Rawls' prescription.²¹ In short, the voluntary cultural and national associations may well comprise subjects of legal concern within the horizon of the international civil society, whereas the political rule must be addressed to rational persons, no matter of their natural features or their cultural, national and territorial affiliations. The shared by Rawls Kantian suspicion that a global political state is actually impracticable and susceptible to degenerating into despotism is reasonable in pragmatic terms but unappealing for a rational reconstruction of the conditions of just international interaction.

We have seen before that in the Rawlsian account the international world is divided in five types of peoples: liberal democratic peoples, decent peoples, outlaw states, societies burdened with unfavorable conditions and regimes politically organized as benevolent absolutisms. This division does not purport to provide a point by point illustration of the actual global political geography, but it is rather operative in an ideotypical fashion, on the basis of some certain criteria that measure the degree of a society's well-orderedness. On that account, the attribute of well-orderedness is accorded to liberal democratic and to decent peoples. The respect for the equality and self-determination of these types of peoples, as well as their reciprocal toleration, is for Rawls out of question. By contrast, the other kind of societies, either due to the injustice of their institutions, their corrupted political life or, even more significantly, their disrespect for human rights, are not regarded as of an equal moral footing with the liberal and decent societies. For this matter, they are to be treated by liberal democratic peoples in a manner ranging from total intolerance to assistance for purposes of institutional reformation. However, since the degree of toleration owed to nonliberal societies is measured by the degree of their respect for a considerably curtailed list of pre-political human rights, many critics, in large part those of a cosmopolitan liberal theoretical orientation, maintain that the qualifications for international toleration posed by Rawls are very relaxed. For reasons built into their individualistic social ontology at the international level, they are reluctant to accept even the equal treatment of decent peoples, accusing Rawls for unnecessary

²¹ Catherine Audard is of like mind stating that «letting peoples have a moral status and adding nationalism to the equation create a situation when one set of moral values is pitched against another, where individuals have hardly any claim against their governments in the name of national solidarity. Is that the best way to deal with moral issues such as the defense of vulnerable individuals, ethnic or religious minorities and dissidents in nonliberal countries, or with poverty and powerlessness in developing countries?». See *Audard C. John Rawls*. Acumen Publishing Limited, 2007. P. 258.

conformism and conservatism at this point.

The thrust of their argument is that, for reasons of consistency, the criterion of reasonableness and well-orderedness at the domestic domain, namely, the compliance with a full set of political democratic rights and civil liberties, ought to be extended internationally. In that respect, the standard of global justice should not be compromised by the introduction of an alternative to the criterion of reasonableness, less demanding criterion of decency. In other words, the imperatives of international justice are of the supreme import to be restricted and suspended on the basis of the concern for international stability and in the name of the respect allegedly owed to the autonomous self-determination of societies that run afoul of the liberal democratic conception of justice, that is, decent peoples.

To weigh up the critical force of these objections, let me first describe the central structural features that define the political and social predicament of decent peoples, which are alternatively being referred to as decent hierarchical societies in the Rawlsian taxonomy of peoples. The central feature of such societies, which may be embodied in a variety of institutional arrangements, is their associationist form, that is, «the members of these societies are viewed in public life as members of different groups, and each group is represented in the legal system by a body in a decent consultation hierarchy».²² Defined in this way, it is clear that those societies are far from honoring the individualistic culture of the modern western world, as cosmopolitan liberals would like it. Their social structure is much more reminiscent of the medieval corporatism, or the Hegelian civil society, whose members are politically represented only on the grounds of their group-membership and not their immediate individuality. Therefore, the «one person one vote» model of current democratic political operation is here absent, and what is to be politically represented are the common interests of the social groups that persons necessarily belong to. This sort of political representation is considered by the members of decent societies to be more fruitful, since what is being granted political voice is a more rationally refined version of the individual interest.

The collectivist political orientation of the associationist type of societies can well be accommodated in the «Society of Peoples» envisioned by Rawls, on the condition that two criteria are met. First, a society structured in the way just described can qualify for decency if «it does not have aggressive aims, and it recognizes that it must gain its legitimate

²² *LoP* P. 64.

ends through diplomacy and trade and other ways of peace».²³ That is, despite the fact that these societies are socially pervaded and politically governed on the grounds of their peculiar religious (or else) comprehensive doctrines, aspiring also to a more extensive international influence of these doctrines, they do so without failing to respect the independence of other societies, their separate political orders and the social and political liberties they grant to their citizens. So the first criterion of decency is the peaceful international policy that is based on diplomatic means. The second criterion is more complex and is constructed by Rawls in a three-partite manner: first, although an associationist type of society is regulated by a «common good idea of justice» that could be harmful to the inalienable liberties of its members as private persons, it does secure «for all members of the people what have come to be called human rights».²⁴ We will soon see in detail what counts for human rights for Rawls in this context, which has given rise to a good deal of discontent on the part of Rawls' readers, and indeed the most sympathetic of them. Second, a decent people's system of law «must be such as to impose *bona fide* moral duties and obligations (distinct from human rights) on all persons within the people's territory».²⁵ This provision is drawn upon Philip Soper's *A Theory of Law* and prescribes a political society's recognition of and respect for the rational and responsible character of its members, so that the duties and obligations imposed on them are consonant with their common good idea of justice, and not seen as «mere commands imposed by force». Third, judges and other officials in a well-ordered decent regime must sincerely and not unreasonably believe that «the law is indeed guided by a common good idea of justice»²⁶, actualizing this belief through the public defense, in courts, of social injunctions justified by law.

On the condition that these institutional criteria are satisfied, Rawls maintains that the decent societies can make legitimate claims for their toleration on the part of the liberal ones, though «the decent common good idea of hierarchical peoples is a minimal idea»²⁷ of justice, much inferior to that of a liberal democratic society in objective terms. However, whereas toleration of decent peoples may be reluctantly endorsed in the name of international peace and stability, the stronger Rawlsian claim that they should be afforded an equal legal and political status to liberal

²³ *Ibid.*

²⁴ *LoP.* P. 65.

²⁵ *LoP.* P. 65-66.

²⁶ *LoP.* P. 66.

²⁷ *LoP.* P. 67.

democratic peoples is far more controversial. A considerable number of political thinkers object that societies which do not treat their inhabitants as politically equals do not, in their turn, deserve to be afforded equal status to societies that do secure the equal citizenship of their members.

Rawls' response to this objection is that «equality holds between reasonable or decent, and rational, individuals or collectives of various kinds when the relation of equality between them is appropriate for the case at hand».²⁸ On this account, he provides as supportive examples the churches and the universities stating that the very fact that the various churches exhibit many structural differences in their internal organization «doesn't rule out the propriety of treating them as equals in certain circumstances».²⁹ This similarly holds for differently organized universities. However, I don't find the Rawlsian argument convincing at this point. I instead grant that formal equality is to be recognizable, attributable and applicable only to the societies that prize it as a value and enforce it to its members. The internal organization of churches and universities is a matter of civil liberty, indifferent to political regulation in the strict sense; hence, its fairness cannot be measured by the same standards that apply to the political institutions of society. In that regard, politically modernized societies should suspend the assignment of political equality to societies that fail to respectively afford it to their members, until they succeed in reforming their institutions to this direction.

In general, the overplaying of the case of international peace and stability is manifestly detrimental to the integrity of fairness and justice at the global level, since it compels Rawls to be content with a fairly anemic qualification for international toleration, noninterference and equality, failing, in the same vein, to affirm the legitimacy of support that is to be offered to various individual or collective voices within decent hierarchical societies that are being subjected to legal and political impediments in their effort to deny the justice and demand the reformation of institutional forms that rest on unjustified inequalities and restricted civil and political liberties. The case of international justice would be seriously harmed if the criterion of decency were to suffice as a qualification for well-orderedness and therewith as a justificatory reason for tolerating and according equal political status to societies charged with a cultural background that allows for ungrounded, from the universal perspective of our enlightened rationality, inequalities and restriction of liberties in many respects. To be

²⁸ *LoP*. P. 69.

²⁹ *LoP*. P. 70.

sure, the peaceful conduct to some extent satisfies the minimum standard of toleration; however, the respect for human rights doesn't suffice for equal citizenship in the «Society of Peoples», and this is even more the case since the Rawlsian group of rights that count as human is considerably condensed.

3.3. Rethinking the minimal conception of human rights on an international scale

A first, more general point to be made in this connection is the problematic compatibility of any conception of pre-political human rights with a constructivist and contractual political theory. Namely, it is inconsistent to both hold that the principles of justice follow from an agreement and that the content of this agreement should be in accord with an independent of this agreement given set of normative standards, no matter if the latter were interpreted as substantive «perfectionist» values, or as formal rules of correct practical reasoning. This inconsistency, all the more evident in the Lockean affirmation of natural law imperatives and contractual construction at the same time, reflects the theoretical inability to successfully reconcile an immediate ontological and a mediated voluntaristic conception of right and justice, an inability plaguing the Rawlsian position too. In other words, I believe that Rawls' position is marked by an irresolvable antinomy between moral realism and moral constructivism.

Leaving this crucial methodological issue aside, Rawls' account of human rights is tailored to his pivotal normative conviction that society is in its essence a system of cooperation. In that respect, human rights are considered as «necessary conditions of any system of social cooperation». Therefore, their violation is an offense against the hard core of social interaction, degenerating cooperation into rule by brute force, and thus turning society into a «slave system». In his effort to keep with the central theoretical guidelines of *Political Liberalism*, Rawls suggests that the definition of human rights as necessary conditions of social cooperation should be captured in a purely practical political manner, without reference to any particular comprehensive doctrine, philosophical, religious, or else. On that account, to adduce arguments for human rights relying on comprehensive doctrines charged with western ideological and cultural elements would bring about unnecessary complications, since decent peoples, otherwise approving of human rights in the fundamental sense described above, would not concede to their liberal-oriented justification.

What is most notable at this juncture is that a robbed of any comprehensive doctrine justification of human rights is not employed by Rawls as a merely practical device for the sake of obtaining the decent peoples' consent. He is, more ambiguously, theoretically convinced that this is so unconditionally; hence, his assurance that «these rights do not depend on any particular comprehensive religious doctrine or philosophical doctrine of human nature».³⁰ But when one considers his conception with regard to the content of human rights at the international level — a conception that is to be described right away, — one is hardly persuaded that they comprise comprehensiveness-neutral propositions.

We have seen above that Rawls does not regard the set of human rights to be respected by the «Society of Peoples» and enforced by international law as coextensive with the full set of rights enjoyed by citizens of a constitutional democratic society. Rather, he contends that human rights express a special class of «urgent rights», such as «freedom from slavery and serfdom, liberty (but not equal liberty) of conscience, and security of ethnic groups from mass murder and genocide».³¹

My first observation at this point is that it is probably a beating around the bush to deny that the concept of human freedom, the concept of liberty of conscience, as well as the equal value of ethnic groups, do not rest on deep-seated convictions about human nature, as if the immediate facticity of their presence within our political culture could be a sufficient ground for assigning normative significance to them. The prevalence of these normative tenets, at least in the western world, is the outcome of their victory in a social and ideological battle that has taken place among a plethora of comprehensive doctrines, a victory achieved over a group of comprehensive doctrines that give assurances contrary to those modern ideas. It would certainly be a kind offer on the part of the victorious societies to present their ideological supremacy in the guise of a universally approvable, merely political conception of justice but that could well appear in the eyes of the ideologically defeated as an insincere exercise of rhetoric and an implicit exercise of political force. In any event, what is the main source of controversy here is the fact that in the name of the decent peoples' consent for the sake of international peace and stability, the list of human rights to be enforced in the Rawlsian «Society of Peoples» is dramatically shrunken.³²

³⁰ *LoP*. P. 68.

³¹ *LoP*. P. 79.

³² Ville Paivansalo in *Balancing Reasonable Justice, John Rawls and Crucial Steps Beyond*. Ashgate Publishing Limited, 2007. P. 114, observes that «democratic political

As a consequence, societies that in one way or another ground their institutions in the most distinctively modern idea of liberty are not given room, not only to legitimately intervene in the domestic affairs, or to impose sanctions on societies that severely restrict individual, social and political rights, but also to officially call into question the substantiality of the self-respect and self-determination of these societies. In a failure to properly appreciate the difference between the conditions of possibility of a free and just social order and the actual existence of that order, whereby a sufficient set of the normative standards of justice is originally established and becomes operative, decent societies are treated with undue forbearance and permissiveness, in the hope that they will finally switch to the modern normative paradigm by their own efforts and on their own responsibility.³³ But, instead of being so tolerant to decent societies in the fear of being accused of paternalistic interference, one could be more determined to serve the cause of substantial global justice, by countering the objection of paternalism with the response that the genetic processes, which lead to the building up of a just modern society, are by no means subsumed to the same standards of normativity, which are enforceable once that society is fully in place, but to much more abstract standards of right and morality. Therefore, it is inappropriate to tolerate substantial injustices in the name of a meager criterion of decency guided by insubstantial considerations about paternalistic interference or about the rights of self-respect and self-determination of these pre-modern societies, rights that should be regarded as having only a conceptual, formal status in this case calling for their actual substantiation by way of right institutional settlements. For instance, I cannot see how the concern of international stability and noninterference could be given precedence to the motive of valuing and protecting fundamental rights owed to the members of decent societies, as full liberty of conscience, equality of opportunity irrespective of religious confession, equal political standing of women and so on.³⁴

liberties were already included in the *Universal Declaration of Human Rights* (1948). Inclusion of human rights in this sense would not really leave room for decent hierarchical societies. If we also consider that human rights include the rights mentioned in the *International Covenant on Civil and Political Rights* (1976), it is even clearer that human rights could not work as a minimum basis that decent nondemocratic societies also could endorse».

³³ Among others, Annette Förster casts into doubt even the congruence of the criterion of decency with the veneration of minimal human rights, when she wonders: «Why, for example, should a society neglecting equality between its members honour human rights?». See Förster A. *Peace Justice and International Order, Decent Peace* in John Rawls's *The Law of Peoples*. Palgrave Macmillan, 2014. P. 44.

³⁴ In the same vein, Gary Chartier in his *Radicalizing Rawls, Global Justice and the*

This being the case, the robust Rawlsian principle of the priority of justice over other considerations, purposes and goals in the domestic case is seriously compromised when it comes to the international relations. This holds not only for the maximal requirements of his conception of «justice as fairness», but for a possible stock of other reasonable and acceptable liberal positions that are not discouraged in the *Political Liberalism*, by virtue of the preoccupation with the fact of «reasonable pluralism». A softened theory of human rights and the urgency of their protection in effect overshadow, in the *Law of Peoples*, the full-blown conception of justice that is reserved for the domestic case, since the realistic care for international peace and stability does in fact here override and project to an indeterminate future the realization of the ideal of global justice. But, in addition to the first principle of justice and its priority, the second principle of justice, namely, the fair equality of opportunity and the highly celebrated «difference principle» is equally compromised. With regard to the equality of opportunity, this is effected by the inclusion in the «Society of Peoples» of societies that fail to pay respect even to the more abstract, formal sense of it. With regard to the «difference principle», a not convincing line of argumentation is employed to exclude this, as much as any other distributive principle, from the political and legal essentials of the international law.³⁵ These are issues of major importance that,

Foundations of International Law. Palgrave Macmillan, 2014. P. 79, rightly observes that «Rawls has suggested that persons should be treated as morally and politically equal at the domestic level because of their possession of the two moral powers. It seems appropriate to treat persons as morally and politically equal at the global level for the same reason. Rawls explicit justifications for affirming the equality of peoples, and so the inequality of persons, at the global level are weak».

³⁵ In *On Rawls, Development and Global Justice, The Freedom of Peoples*. Palgrave Macmillan, 2011. P. 36, Huw Lloyd William identifies «in the literature that is more sympathetic to Rawls [...] four prominent accounts as to why Rawls rejects either an international difference principle or an alternative, less stringent, international distributive principle. [...] They run as follows: 1) The robust reciprocity captured by the difference principle does not exist in the international context, and therefore does not demand expression through an international analogue; 2) The fraternity captured by the difference principle does not exist in the international context, and therefore does not demand expression through an international analogue; 3) Rawls' political constructivism means that questions of distributive justice are rejected as inappropriate in the international context; 4) The principle of redress does not need to be taken into account in the international context in the same way as in the domestic context: to do so and demand the redistribution of wealth between peoples is to promote more substantive equality that would contradict the values of Rawls' system of democratic equality -it would instead represent a brand of luck egalitarianism inconsistent with Rawls' system of democratic equality».

unfortunately, cannot be further investigated in this paper.

4. Conclusion

My overall thought on *The Law of Peoples* is that it at large fails to provide the appropriate guiding framework for rightful conduct at the international stage. With regard to methodology, I claim that the Rawlsian position is not only hobbled by the major defect internal to the strategy of justification adopted in *A Theory of Justice*, that is, the epistemologically controversial oscillation between foundationalism and constructivism, but also that this controversial predicament is further sharpened in *The Law of Peoples*, due to the even more unsatisfactory methodological revisions that in the meantime had been put forth in *Political Liberalism*. Accordingly, on the substantial level and with regard to the content, the Rawlsian theory of international justice may contain, to be sure, guidelines for the foreign policy of liberal democratic countries that may contribute to the worldwide expansion of peace and stability, but are insufficient for a global peace and stability achieved and secured «for the right reasons», if I am to use his own parlance. The latter would presuppose a much more forceful account of reason in general, and of its systematic unity in particular, which would be well-suited to lay claim to a deeper and more substantive international solidarity than the one based on the formalism undermining Rawls' conception of reason. It goes without saying that the Rawlsian realism at the international level is by no means misplaced, since any inquiry into the conditions of practical applicability of a conception of global justice should not, utopically, lose sight of the real state of international affairs. However, the only truly realistic consideration is the motivation to realize what is real and actual in a deeper sense, which is no other than the rational and the just.³⁶ At least in the international case, Rawls seems to fall short of this aim.

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ТЕОРІЯ МІЖНАРОДНОЇ СПРАВЕДЛИВОСТІ РОУЛЗА: КОРОТКА РЕКОНСТРУКЦІЯ ТА КРИТИЧНИЙ КОМЕНТАР

Харілаос Стампуліс

Анотація. Мета цієї статті — запропонувати стислий і достовірний виклад теорії міжнародної справедливості Роулза, намагаючись, по-перше, з'ясувати структуру аргументу, який висувається в цій теорії, і, по-друге, дати критичну оцінку це. Розділ про критичну оцінку намагається, з одного боку, впоратися з ключовими методологічними питаннями, які мають більш загальне відношення до загальної політичної філософської позиції Роулза, включаючи конструктивістську перспективу створення теорії та поділ між політичною концепцією та комплексною доктриною; з іншого боку, зважити низку суттєвих тверджень, висунутих у теорії міжнародної справедливості Роулза, включаючи визнання народів основними суб'єктами міжнародного права, толерантне ставлення до так званих порядних людей і досить тонке тлумачення права людини, закріплені в *Законі народів*. У статті зроблено спробу навести низку причин, які могли

б добре підходить для пояснення сумнівів її автора щодо обґрунтованості теоретичної точки зору Роулза щодо як її формальних методологічних особливостей, так і більш орієнтованих на зміст переконань.

Ключові слова: філософія права, політична філософія, права людини, Роуз.

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