In this paper I shall argue that due to the constructivist procedure which John Rawls employs in "The Law of Peoples," he is unable to justify his claim that there is a relationship between limiting the internal and external sovereignty of states. An alternative constructivist procedure is viable, but it extends the ideal theory of international justice to include liberal democratic and egalitarian principles. The procedure and principles have significant implications for non-ideal theory as well, insofar as they justify a principle of international resource redistribution and weaken general prohibitions against intervention.

I.

In Political Liberalism, John Rawls argues that the principles of justice have a different status than in A Theory of Justice, where they constitute a comprehensive liberal conception of justice.1 In Political Liberalism they constitute a political liberal conception (PL 11).2 In order for the principles to qualify as political, they must be free-standing, that is not derived exclusively from any one of the many comprehensive moral, philosophical, and theological doctrines which citizens of liberal democracies hold (PL 12). Rawls prefers a political conception of justice because it affords the opportunity of wider assent to the principles of justice, resulting in greater stability for the order based upon them. This difference in status is the result of a difference in procedure. Although the original position in each of the two works situates parties in the same manner, the original position in Political Liberalism is developed as a

As Rawls notices in a footnote to this quotation, arguments in defense of state sovereignty typically have been based upon an analogy between individuals and states.4 The danger of such an analogy, on liberal grounds at least, is that it might serve to subordinate the interests of the individual to those of sovereign states. In A Theory of Justice, Rawls draws an analogy between the equal rights of citizens in a constitutional regime and the equal rights of states under the law of the peoples (TJ 378). The attempt to reformulate the powers of sovereignty in "The Law of Peoples" appears to back away from the analogy between individuals and states.

The disanalogy is, however, only partially endorsed. Rawls is willing to pierce the shell of state sovereignty in order to prohibit human rights violations and limit the legitimate use of force between states, but he is not willing to write liberal democratic and egalitarian principles of justice
into the law of peoples. I shall argue that this is a mistake. But it is also a mistake to see the conclusion that Rawls draws as necessarily following from the limitations of a procedure of construction which models the conceptions of persons and society drawn from the liberal democratic tradition, as Ackerman does. In fact, this is not at all Rawls's procedure of construction in "The Law of Peoples," although I shall argue that it should have been.

In the second section I shall explain Rawls's construction of the law of peoples and show the inadequacy of his partial disposal of sovereignty. In this section I shall also identify an expanded set of principles of the law of peoples which pays even less homage than Rawls's principles to the idea of sovereignty. In the third section I shall argue that an alternative construction procedure would better establish the relationship between the constraints on internal and external sovereignty which Rawls asserts, and would derive the expanded set of principles identified in the second section. The fourth section will compare Rawls's construction with one that I offer. It will look at the modeling done in Political Liberalism, "The Law of Peoples," and in the third section of this paper. This will involve, in part, looking at how rights are derived from each of the three procedures. In the fifth and sixth sections I shall defend the expanded set of principles of the law of peoples against two different interpretations of the charge that they would provide an excessively narrow basis of agreement. Finally, I shall look at how my procedure answers certain concerns of non-ideal theory. The result, I hope, will be fruitful both for understanding something about Rawls's constructivist procedure and a liberal theory of international justice.

2.

The first stage of Rawls's construction of the law of peoples is the construction of an ideal theory. This stage assumes that reasonably favorable conditions for democracy exist (45). The construction proceeds in two steps. The first is a construction which applies, with a significant caveat, to relations among liberal democratic states, the second expands relations to include well-ordered non-liberal, or what Rawls calls hierarchical, states. It is my belief that Rawls tailors the construction, and thus the conclusion, of the first step in order to fit the second step, and that this is unwarranted.

As soon as Rawls begins the construction of the law of peoples, he compares it to the more familiar construction, in Political Liberalism, of the principles of justice which should govern liberal societies. In Political Liberalism the original position is said to model fair conditions among free and equal citizens because their representatives are situated symmetrically and equally. Citizens are modeled as rational in virtue of their representatives' full pursuit of their interests. Finally, the veil of ignorance models reasonableness by preventing decisions based upon known advantages over others. The original position for the law of peoples is set up in exactly they same manner except that seated behind the veil of ignorance are representatives of peoples and not citizens (43). The veil of ignorance prevents the representatives of peoples from knowing their territory and population size, level of economic development, wealth of natural resources, and their strength. In a footnote Rawls defines peoples as, "... Persons and their dependents seen as a corporate body and as organized by their political institutions, which establish the powers of government" (41). As the last clause makes clear, peoples are in fact states. This is corroborated by the introduction to Political Liberalism where he states that he prefers the term "peoples" over the term "states" (PL xxviii). Thus, Rawls reinterprets the analogy between citizens and states through the procedure of construction which he employs.

This is confirmed when Rawls explains why he chooses an original position with representatives of peoples (states) rather than of all the people of the world.

Since in working out justice as fairness I begin with domestic society, I shall continue from there as if what has been done so far is more or less sound. So I simply build on the steps taken until now, as this seems to provide a suitable starting point for the extension to the law of peoples. A further reason for proceeding thus is that peoples as corporate bodies organized by their governments now exist in some form all over the world. Historically speaking, all principles and standards proposed for the law of peoples must, to be feasible, prove acceptable to the considered reflective public opinion of peoples and their governments. (42-43)

The use of a procedure which draws upon an analogy between citizens and states is justified by Rawls in this passage as a minimum standard of realism which requires that the law of the peoples not call into question the existence of the international state system. Closely related to this standard is another which stipulates that a law of peoples not require a world state, which Rawls believes, following Kant, would produce global despotism (46). Rawls meets both standards by having the parties in this new original position be representatives of states.

I mentioned at the outset of this section that the first set of principles of justice which Rawls constructs using the device of this new original position applies to relations between liberal democratic states, with a caveat. Although liberal, the states even at this first stage are not all egalitarian. The principles of justice which govern them need not include the fair value of political liberties, fair equality of opportunity, and the
difference principle. Thus, despite Rawls's claim to the contrary in the above quotation, he is not simply continuing from the construction of justice as fairness. He is instead backing away from the most significant accomplishments of that construction. In omitting the principles of egalitarian justice (e.g., the fair value of political liberties, fair equality of opportunity, and the difference principle) Rawls says merely, "These features are not needed for the construction of a reasonable law of peoples, and by not assuming them our account has greater generality" (43-44).

The seven principles which Rawls suggests that representatives of liberal democratic, but not necessarily egalitarian, states would agree upon in the original position are the following (46):

1. Peoples (as organized by their governments) are free and independent, and their freedom and independence is to be respected by other peoples.
2. Peoples are equal parties to their own agreements.
3. Peoples have the right to self-defense but not war.
4. Peoples observe the duty of non-intervention.
5. Peoples are to observe treaties and undertakings.
6. Peoples are to observe certain specified restrictions on the conduct of war (assumed to be in self-defense).
7. Peoples are to honor human rights.

He does not clarify how these principles are derived from the modeling that occurs in this new original position. But we may suppose the following: Principle (1) is derived from the interests that states have in pursuing their rational advantage; (2), (4), (5) and (6) are derived from the capacity of states to propose and abide by fair terms of cooperation; and (3) is derived from both the rational interests of states and their ability to propose and abide by fair terms of cooperation.

The inclusion of (7) is more problematic. It is not obvious why representatives who are pursuing the rational advantage of states would agree on a proposition that protects the interests of individuals. Perhaps it is because the protection of human rights just is a part of the conception of justice that all states at this step are presumed to share since they are liberal and democratic. It would, then, cost them nothing to include it.

Rawls contends that there is an important relationship between principle (7) and principles (3) and (4). Principles (3) and (4) are to be included only if principle (7) is also included. Rawls holds that respecting human rights is a necessary condition for prohibiting wars of intervention. At least, that is what the following passage suggests:

Obviously, a principle such as the fourth—that of nonintervention—will have to be qualified in the general case. While suitable for a society of well ordered democratic peoples who respect human rights, it fails in the case of a society of disordered societies in which wars and serious violations of human rights are endemic. (47)

In addition, he states unambiguously that principle (7) is a sufficient condition for the inclusion of principles (3) and (4) (59). The importance of this should not escape us. Rawls sees the power of the state to engage in war as being justifiably constrained if and only if the sovereignty of the state in its internal relations is also constrained. Thus, Rawls can legitimately claim that he has reformulated the powers of sovereignty.

Here, however, two difficulties arise. First, Rawls offers no argument that wars of intervention are illegitimate if and only if human rights are observed. Nor has he clearly justified the inclusion of the principle demanding respect for human rights. Principles (3) and (4) would be decided upon by representatives of states because of the interest that states have in pursuing their rational advantage and because of their willingness to abide by fair terms which permit each to engage in such a pursuit without infringing on the ability of others to do so. Principle (7) is there because this new original position at this first step included only representatives of states honouring human rights. Were the parties to this new original position only representatives of states which violate human rights, (7) would not be included among the list, but there is no reason to think that (3) and (4) would not be.

Second, there appears to be an omission in this set. If principle (7) follows from the character of the states as liberal and democratic, one would also expect an eighth principle:

(8) Peoples are to honor the principles of liberal democracy.

The reason that representatives of liberal democratic states would include principle (8) is the same as the (presumed) reason that they would include (7). It is part of the conception of justice of the states represented by the parties because these states are liberal democratic regimes. Thus, the states need not modify their behavior in any way by including (7) or (8). Furthermore, since the shell protecting a range of internal affairs of the state has already been pierced by principle (7), the need to preserve sovereignty could not be invoked as reason for not including principle (8).

In line with this reasoning, if the participants in this original position were seen to represent egalitarian liberal democratic states, then one could expect a ninth principle:

(9) Peoples are to honor principles of egalitarian distributive justice.

Including principles (8) and (9) accords well with a liberal democratic egalitarian outlook which recognizes that states institutionalize political
coercion. The order which is maintained by a system of units of institutionalized coercion may not, unless guarantees are provided, represent the legitimate interests of the citizens.

To analogize between individuals and states obscures the important difference that within states there may exist relations of illegitimate coercion. Rawls, of course, is aware of this danger, as all liberals are. He contends that, “No people has the right to self-determination, or a right to secession, at the expense of another people” (47). He cites an example of this the abrogation of a right to secede by the American South because it perpetuated institutions of slavery. There are clear liberal democratic and egalitarian grounds upon which to object to institutions of slavery. But there are also clear grounds to object to the institutional denial of civil and democratic rights and institutionally based illegitimate material inequalities. Liberal democratic egalitarian values, lexically ordered, may find slavery more objectionable than the denial of civil and democratic rights and the existence of great inequalities, but they would nonetheless find these latter objectionable.

Recall that Rawls seems to view the inclusion of principle (7) as necessary and sufficient for the inclusion of principles (3) and (4). But just as the absence of human rights in a state might be reason, although perhaps not sufficient reason, to intervene, so the absence of liberal democracy and egalitarian justice might be reason, although not sufficient, to intervene. Since Rawls's construction does not provide an argument that respecting human rights is a necessary and sufficient condition for prohibiting wars of intervention, he is in a poor position to resist including respect for liberal democracy and egalitarian justice as individually necessary conditions and as collectively sufficient conditions.

The omission of (8) and (9) does not sit well with Rawls's obvious concern about illegitimate state coercion. Why, then, does he not include them? His explanation for including representatives of non-egalitarian states, cited above, is telling. He is concerned that the principles which would follow from an original position which included only representatives of liberal democratic egalitarian states would exclude from possible agreement a wide range of states which are not egalitarian. So, he tailored the first step to omit (9), but he merely neglected to include (8). To include principles (8) and (9) as products of the first step would result in a set of principles that would be unacceptable in the second step.

At the second step of the ideal theory Rawls attempts to extend the law of peoples to include well-ordered non-liberal hierarchical states. These are states which ensure neither egalitarian justice nor liberal and democratic rights. They impose duties on their citizens to pursue a common good and are peaceful and respectful of human rights. Representatives of such states can be modeled by the same original position which modeled liberal democratic states because such states can

be seen as reasonable and rational. They do not try to extend their conception of the good life by war, and they have an ordered civil civic life. Thus, they can accept an original position which models fairness among peoples (states). (54) In addition, they have a conception of the good which can be modeled by the pursuit of rational advantage by their representatives in the original position.

Representatives of well-ordered hierarchical states would agree to principles (1) through (7) for the same reasons that representatives of liberal democratic societies do. Principle (1) is derived from the interests that states have in pursuing their rational advantage; (2), (4), (5), and (6) are derived from the capacity of states to propose and abide by fair terms of cooperation. Principle (3) is derived both from the rational interests of states and their capacity to propose and abide by fair terms of cooperation. Principle (7) is included because it is part of the conception of justice that well-ordered states have. Clearly principles (8) and (9) would be rejected by representatives of well-ordered hierarchical states.

Rawls does not attempt to justify his omission of principle (8) at the first step. And his exclusion of (9) seems motivated by a desire to provide a set of principles with greater generality (43-4). The motivation for omitting both principles appears to be to make the extension in the second step possible. This is hardly satisfying since one of the main conclusions that Rawls wishes to establish is that liberal and well-ordered hierarchical states will accept the same law of peoples (37). Furthermore, Rawls's account appears internally ad hoc insofar as it permits piercing the shell of sovereignty in order to defend human rights, but not in order to defend liberal democracy or egalitarianism. He seems to have neglected Kant's advice not to advance a political morality that is tailored to the concerns of the statesman.

I can easily conceive of a moral politician, i.e., one who so chooses political principles that they are consistent with those of morality; but I cannot conceive of a political moralist, one who forges a morality in such a way that it conforms to the statesman's advantage.

This advice applies also to worries about whether existing state leaders would accept principles (8) and (9). The goal of political morality is not to establish principles that leaders are likely to accept, but ones which they ought to accept, that is ones to which citizens might hold them accountable.

Liberal democratic egalitarians have special reason to be suspicious. Since states institutionalize political coercion, a representative of a non-liberal democratic or non-egalitarian state may represent the interests of the dominant powers of that state without representing the wishes of all its citizens, particularly those who advocate liberal democratic egalitarianism. Because principles (1) through (7) are congenial to the
ideal theory, they would know that reasonably favourable conditions for democracy exist. This construction conforms to Rawls's minimal standards of realism since citizens are organized into states, but it breaks the analogy between states and individuals since the interests of persons that get primary representation. States' interests are represented just insofar as these interests serve the interests of their citizens.

It might be objected that such a construction seems to allow too much knowledge behind the veil. In particular that persons are known to be citizens of states might be thought to be unjustified. If this were the case, then our choice might be between Rawls's construction and a construction which represents all the persons of the world. But if the original positions of *A Theory of Justice* and *Political Liberalism*, which employ representatives of citizens of a state, are justified, then so must be this construction which utilizes the same representatives. Furthermore, this set-up adheres to what Rawls regards as the requirements of political realism. This third construction is the one that Rawls needs in order to justify the relationship between limits on internal and external sovereignty which he wishes to assert. However, this procedure goes further than Rawls wishes as it establishes principles (8) and (9) as well.

In this third construction, the original position situates free and equal representatives of persons (taken to citizens of states) thought to be reasonable and rational. Such representatives would be far less concerned with the interests of states and far more concerned with the freedom and ability of persons to pursue their own conceptions of the good life within a fair system of cooperation than would be representatives of states. They would desire that both state institutions and the international order reflect this concern.

Representatives of persons taken to be the citizens of states would not be likely to choose Rawls's third and fourth principles, if principles (8) and (9) were not also included. If the only way that rational persons could be prevented from living according to their legitimate conceptions of the good life were through the violation of their human rights, then rationality and reason would dictate forgoing the power of intervention once human rights had been assured. This is because after assuring respect for human rights, a representative of the citizens of states would have no reason to worry that those persons which she represented might be stranded in a state which prohibited the pursuit of legitimate conceptions of the good life. But clearly illiberal, undemocratic, and non-egalitarian social orders can also prevent persons from living according to their legitimate conceptions of the good life. Principles prohibiting the right to forcefully intervene into a state's affairs would be an irrational choice in the absence of assurances of the kind that principles (8) and (9) provide.

In the absence of any knowledge of which state's citizens she represents and the state's social and political arrangements, the representative of
Utilizing each of the above ideas involves modeling them in appropriate ways in the structure of the original position or the psychology of its parties. It is far too much, and more than the argument of this paper requires, to show how every aspect of each of these three ideas gets modeled. Instead I shall focus on two related aspects of persons—persons as free and rational citizens.

In the liberal democratic tradition, understanding citizens as free involves two assumptions about their moral powers. First, they are capable of forming and rationally revising their conception of the good (PL 30). Second, they view themselves as self-authenticating sources of valid claims on others and the state (PL 31). These two powers constitute a citizen's rational autonomy (PL 72). The original position models these powers—and therefore a citizen's rational autonomy—in two ways, but for our purposes it is the first way that is important. Here the powers are modeled by making the original position a case of pure procedural justice. The representatives are neither bound by, nor are their decisions measured against, any pre-existing principle of right or justice (PL 73). In the original position, then, representatives are free to pursue the citizen's interest, within the constraints of being symmetrically situated and being behind the veil of ignorance.

The significance of this is that by analogy the same holds for states in the new original position of "The Law of Peoples". Apparently states are modeled as self-authenticating sources of valid claims. And most certainly the construction is a case of pure procedural justice. This implies that representatives of states are in no way bound to serve, or to represent, the interests of the citizens of states. The voices of persons taken to be citizens of states and a conception of intra-strate society in an appropriate fashion, and does not rest on metaphysical conceptions.

Let's turn first to Political Liberalism. The compound question which this book seeks to answer is the following: "How is it possible for there to exist over time a just and stable society of free and equal citizens who still remain profoundly divided by reasonable religious, philosophical, and moral doctrines?" (PL 47) A requirement for such a just and stable society is a political conception of justice which draws on certain shared political conceptions from the liberal democratic tradition. The central organizing ideas of the account which Rawls gives are those of society as a fair system of cooperation over time, citizens as free and equal, and a well-ordered society as a society effectively regulated by a political conception of justice (PL 14).

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The failure of this new original position to model the interests of persons is the reason that Rawls has no argument for the inclusion of principle (7). Human rights, indeed individual rights in general, cannot be secured by a procedure of construction that does not represent the interests of persons. The construction of *Political Liberalism* derives a fully adequate scheme of equal basic liberties because the parties pursue the interests of persons within the constraints of being symmetrically situated and being behind the veil of ignorance.

In “The Law of Peoples” Rawls asserts that basic human rights are minimum standards for well-ordered political institutions (57). This is a revision of the account of being well-ordered given in *Political Liberalism*. In *Political Liberalism* the requirements for a society being counted as well-ordered include only the general acceptance of the same principles of justice, and general knowledge of that general acceptance; public knowledge of, or reasonable belief in, the satisfaction of the principles of justice by the society’s basic structure; and finally a citizenry in compliance with society’s basic institutions because they are just (PL 35). According to the criteria of *Political Liberalism*, a theocracy with a citizenry sharing a common conception of the good and with a constitution brutally intolerant of other conceptions could be well-ordered. In “The Law of Peoples” the concept of a well-ordered society, with its inclusion of a human rights requirement, has spread onto liberal territory. To qualify as well-ordered in “The Law of Peoples” a state must be proto-liberal.

None of what Rawls has to say about the relationship between being well-ordered and respecting rights amounts to a justification for the inclusion of principle (7). Furthermore, although Rawls claims that well-ordered hierarchical regimes uphold “a certain liberty of conscience,” (57) this must certainly be a considerably weaker version of this liberty than is commonly invoked as a fundamental right since Rawls’s hierarchical state is organized around a conception of the good, and places duties and obligations on its members on the basis of this conception (51).

Establishing the claims that Rawls’s modeling of the interests of states is inappropriate, and that he has no adequate justification of human rights, does not constitute full proof that my modeling of the interests of persons taken to be the citizens of states is appropriate. As I have noted, Rawls asserts that a set of principles like mine must be principles of a comprehensive liberalism. He finds it troublesome to treat all persons, regardless of their society and culture, as individuals who are free and equal, and reasonable and rational (55). Rawls might in fact contend that doing so involves employing a metaphysical conception of personhood.

My procedure involves modeling all persons, whether or not they are citizens from a liberal democratic tradition, as free and equal and reasonable and rational. The main reason against doing this seems to be that, in many cases, this does not correspond with how citizens of particular states are viewed in their own tradition. But an appeal to empirical conceptions of personhood and citizenship does not fit well into this discussion. In *Political Liberalism* Rawls is careful to distinguish three different points of view (PL 28). These are the points of view of the parties in the original position, of the citizens in a well-ordered society, and of us. The first is an artificial psychology that serves as a device for constructing justice. The second is an ideal that might be (but is not yet) realized in the world. The third is the perspective (our perspective) from which the results of the construction are to be assessed. The point of modeling is not to represent individuals’ actual self-conceptions, or the metaphysical conception of the self that is affirmed by the tradition to which they belong, but to model the values that are implicit in the functioning of liberal democracies.12

An exposition of a political conception of justice has two stages. The first sets out the conception as a freestanding view. The second concerns an account of the conception’s stability, which account involves appealing to an overlapping consensus (PL 64). A concern that not all of us, that is not all of the people of the world, will positively assess the result of the construction because it is the result of modeling values which we do not all share is a concern appropriate to the second stage. That many may not positively assess the principles does not impugn the legitimacy of the construction at the first stage. Furthermore, the stability that is generated by overlapping consensus requires a political conception of justice which coheres with political conceptions of citizenship and society under ideal conditions, not necessarily conceptions currently held.

In *Political Liberalism* Rawls recognizes that not every citizen of the state in the liberal democratic tradition will accept the two principles of justice that are constructed from the original position. Many will not do so because they are unreasonable. Such citizens desire to impose their own comprehensive doctrines on others, or the comprehensive doctrine that these citizens follow is unreasonable and does not overlap enough with the principles to allow the citizens to affirm both. In any case, parties to the original position of *Political Liberalism* would be all the more concerned with securing such features of the two principles of justice as the full scheme of liberties, if they knew that there were to be unreasonable people who might try to subvert individual liberties (PL 64–5). Therefore, concerns appropriate to stage two do not affect the construction at stage one.

Even though it makes no difference to the question of the appropriateness of the construction, it is interesting to speculate about how much agreement on principles (1) through (9) we might currently find. Although Rawls simply asserts that many people would not assent to principles similar to (8) and (9), the percentage of those who would so decline may be lower than he admits. National economies, for example,
decrease in importance as the world market increases via dramatic moves towards international free trade. Few will deny that we live in a system of global cooperation in the production and consumption of goods and services. This reinforces notions of world citizenship that have been around for some time. Even in the eighteenth century Kant was well aware of these notions.

Since the narrower or wider community of the peoples of the earth has developed so far that a violation of rights in one place is felt throughout the world, the idea of a law of world citizenship is no high-flown exaggerated notion. It is a supplement to the unwritten code of the civil and international law, indispensable for the maintenance of human rights and hence to perpetual peace.

In our time there is a growing body of international law and convention which recognizes the importance of liberal democratic and egalitarian values. At the Copenhagen Meeting of the Conference of Security and Cooperation in Europe in 1990, participating states passed resolutions, among others, reaffirming that democracy is an inherent element of the rule of law, securing the rights to freedom of thought, conscience and religion, and reaffirming the importance of economic, social, and cultural rights. These resolutions were agreed to by states from Western Europe and North America with long democratic traditions but also by the post-Communist states of Eastern Europe. Even if the leaders of less democratic states would be less inclined to sign on to such principles, this tells us precious little about what the citizens of those states think.

Still it is conceivable that more people would agree to Rawls's seven principles than my nine. Determining whether or not this possible narrower base of agreement is a significant defect of the principles which I propose requires further examination of the value of the breadth of an agreement.

5.

Rawls's concern that a theory of international justice should not be excessively narrow might be interpreted as a worry about the stability of such an agreement. In this section I shall argue that greater stability is not generated by merely wider agreement; stability is instead generated by a certain kind of agreement which has nothing to do with its breadth.

One might believe that a reason to choose a wider agreement is the greater stability of the international order which would rest upon it. For one might suppose that a wider agreement about less would produce a more stable international order than a narrower one about more. In "The Law of Peoples" Rawls is concerned to see a certain kind of agreement arise, one that is stable in the right way. To be stable in the right way the agreement must be about institutions and practice which more or less satisfy the principles of justice, and the principles must be honored by all because they are just and beneficial to all (48-9). This sort of agreement is called an overlapping consensus in Political Liberalism. The object of an overlapping consensus is a moral conception, and the conception is affirmed on moral grounds (PL 147). It is precisely because an overlapping consensus involves a moral affirmation that it is stable. On this account stability is generated not by width of agreement but by the kind of agreement.

Rawls's use of the concept of overlapping consensus appears to be motivated primarily by a concern to show how a liberal regime can be legitimately stable (PL 136-7). He wants to show how a moral, and not just a prudential, obligation to the principles of justice is possible. Participants in an overlapping consensus, as opposed to a modus vivendi, are bound by more than a mere calculation of their rational self-interests. Thus, certain destabilizing problems for a modus vivendi, such as assurance problems, do not arise in an overlapping consensus. If a person's commitment to the principles is moral and not merely prudential, then presumably she will adhere to them regardless of whether she can be assured that others will do the same. This ensures the stability of the order organized around the principles.

Greater stability does not result from a wide agreement about principles of conduct, if the agreement cannot be characterized as an overlapping consensus, which requires that the agreement's basis be a moral commitment to the principles. Ironically, Rawls would be defeating the purpose of trying to establish a stable international order, if the principles on which it was founded were selected because of their apparent capacity for generating wide agreement. Agreements to adhere to such principles would be prudential not moral, and therefore subject to assurance problems.

On grounds of stability alone there is no reason to prefer a wider agreement. The choice between an agreement based on liberal democratic and egalitarian principles, such as (1) through (9), and a wider agreement on principles, such as (1) through (7), is in fact a choice between a narrow overlapping consensus and a wider modus vivendi. The latter is a modus vivendi because it would require liberal democratic egalitarian regimes to recognize illegitimate regimes.

Furthermore, whatever stability a wider agreement generated would be less desirable because the value of an agreement is a function of the principles themselves. In Political Liberalism Rawls is concerned to show that stable agreement is possible about principles which organize a liberal democratic egalitarian society. One finds no great concern to stabilize every existing order, nor should one. There is no reason to mourn the destruction of unjust social and political orders.
6.

Another interpretation of the concern about narrowness is to understand it as a worry about a lack of toleration. A liberal theory of international justice ought to incorporate the liberal value of toleration. Rawls claims that a requirement that regimes be liberal would violate this (37). This seems to me to be a misunderstanding of what toleration requires. In any case, it stands in contradiction to the account of what tolerance demands that is developed in *Political Liberalism*. Rawls's claim about the demands of tolerance in "The Law of Peoples" is wrong, but explicable by the analogy between states and individuals on which he relies.

In *Political Liberalism* tolerance requires a freestanding political conception of justice which is not justified by reference to any particular comprehensive conception of the good. This is required because there are a variety of reasonable comprehensive conceptions of the good, not all of which can be true (PL 60). "Thus, it is not in general unreasonable to affirm any one of a number of reasonable comprehensive doctrines. We recognize that our own doctrine has, and can have, for people generally no special claims on them beyond their own view of its merits" (PL 60). It would be unreasonable for the state to endorse any one particular comprehensive conception of the good life, since this would suggest that all of the others were false, and since there are no final non-controversial grounds upon which to base such truth claims. If the state were to endorse any particular comprehensive doctrine it could not maintain this without being oppressive, that is without placing unreasonable demands on those who adhere to other comprehensive doctrines (PL 37). Reason, then, demands state tolerance—lack of endorsement—of any particular comprehensive doctrine. What is required is a set of principles of justice which do not require for their justification any one comprehensive philosophical conception of the good exclusively and which can be affirmed from within any reasonable comprehensive doctrine (PL 10, 154). But reason does not demand equal treatment for unreasonable comprehensive doctrines. In cases where such doctrines lead to injustices, the doctrines themselves may have to be denied (PL 152). With respect to individual actions, justice defines the limits of toleration.

A line of reasoning analogous to this is developed by Will Kymlicka in a discussion of the value of culture. He argues that liberals should value culture far more highly than they have thus far because culture provides the context in which choices between a variety of conceptions of the good life take on meaning. Kymlicka argues that respect for an individual's culture is important to liberals just insofar as that culture contributes to that individual's capacity for freely choosing and pursuing her conception of the good life. Respect for culture does not, however, entail respect for those activities, practices, or institutions of a culture which restrict this capacity of individuals. By analogy there are many activities, practices, and institutions that liberals should not tolerate, specifically those which violate the principles of justice. The point is that the limits of toleration with regard to activities, practices, and institutions are set by the principles of justice.

In "The Law of Peoples" Rawls asks the following question: "What form does the toleration of nonliberal societies take?" (37). The answer which he offers is that the limits of toleration extend to well-ordered hierarchical societies (66). The principles of international justice must be such that they can include well-ordered hierarchical societies in addition to liberal ones. This he takes as important because he associates intolerance with imposing foreign, Western ideals on other cultures. He wishes to avoid resting the law of peoples on a theory that "many if not most hierarchical societies might reject as liberal or democratic or else in some way distinctive of Western tradition and prejudicial to other cultures" (57).

To establish principle (7), Rawls needs to ground a respect for human rights in some theory other than one which will be seen as an intolerant Western imposition. To do this he puts the notion of a well-ordered society to work. He claims that overlapping consensus about respect for human rights can exist only if the societies in consensus are well ordered. He imagines well-ordered hierarchical states in which no religions are persecuted or denied the civic and social conditions that permit their practice in peace and without fear (53).

Unless there are many such non-liberal societies (which on empirical grounds seem doubtful), it is not at all clear that such a principle of tolerance broadens the basis of agreement much beyond liberal societies. Furthermore, as already noted, since being well-ordered now requires respecting human rights, which places a state somewhat along the way to being liberal, those suspicious of the imposition of Western values might also suspect the concepts of well orderedness and human rights as "distinctive of the Western tradition and prejudicial to other cultures." The one example of a well-ordered hierarchical society respecting human rights which Rawls gives, namely Hegel's *Philosophy of Right*, would not mitigate this concern.

The more important problem, for liberal theory at least, is that Rawls's suggested limits included regimes which are organized around comprehensive conceptions of the good. These regimes are, then, internally unreasonable, intolerant, and oppressive by the standards of *Political Liberalism*. To be "tolerant" of such regimes is akin to being "tolerant" of unjust actions or oppressive cultural practices. In short, there are no good reasons for being so. In fact just as institutionalizing an arrangement which permitted individuals to be unjust could be seen.
as being complicit in the injustice, so institutionalizing principles of international conduct which licensed oppression could be seen as being complicit in the oppression.

Rawls finds his way into this problem because he views state interests as analogous to human interests. This allows him to assert that just as there are many reasonable individual comprehensive moral doctrines which should be tolerated, so there are many state ideologies which should be tolerated (66, especially note 55). Once again, we find the interests of individuals being suppressed behind the interests of the state—a matter that no liberal should tolerate.

One other element of a concern about tolerance might be about the sort of interventions justified against non-complying states. This is a concern of non-ideal theory. I turn now to brief discussion of non-ideal theory.

7.

Rawls notes two problems which non-ideal theory must address. These are the existence of states in unfavorable conditions for justice due to the lack of material and cultural resources, and the relations between states which comply with the law of peoples and those which do not. There are other problems which are equally important, but in response to Rawls in this section I shall briefly outline how my principles and their procedure of construction might be applied to matters that concern him.19

Even in unfavorable circumstances, for example due to material scarcity, Rawls sees no case for international resource redistribution. This is because he sees such a principle as constructed by a procedure which is not appropriate for the subject-matter of international justice (63). Since the publication of *A Theory of Justice* several people have argued that from the original position described in that work the difference principle would be chosen to apply across states and not merely within them.20 Such a claim might be rejected by Rawls as supposing the original position included representatives of all of the individuals of the world. He would reject such an original position because it does not fulfill his minimum standard of realism, for it might call into question the international system of states.

On the construction which I propose, representatives of citizens of states would be in a position to discuss principles of international redistribution of resources. Such principles would be of concern to them because they have no idea in which state the citizens which they represent reside and because they aim to pursue the rational advantage of those citizens. Therefore, there is a *prima facie* case for an international redistributive principle and this case results from a procedure that does not call into question the international system of states.

Another problem of non-ideal theory is that of relations between compliant and non-compliant states. Assume these latter to be states which do not honor some one or some combination of principles (7), (8) or (9). Some might fear that my account is susceptible to legitimizing imperialisit or illiberal interventions against such states. This fear is unfounded. I have argued that principles (7) through (9) (the liberal democratic and egalitarian principles) are individually necessary and collectively sufficient for including principles (3) and (4) (principles of non-intervention). Although the non-observance of some one of principles (7), (8) and (9) is sufficient for negating a general prohibition against interventions, there is nonetheless room for other conditions that must be met in order to justify a particular intervention. Perhaps confusion about the difference between negating a general prohibition against interventions and justifying a particular intervention motivates a concern about interventions into the affairs of non-Western states.

Liberals should rightly worry about imposing a liberal order. Any order which is not wanted by its citizenry, whether professing liberal goals or not, would seem required to resort to oppressive measures eventually to remain in existence. In such cases, if the imposition itself is not unjust, the resulting order may quickly become unjust. This model of intervention may be motivating Rawls's worry about intolerance. The negation of a general prohibition against intervention in the absence of a liberal democratic egalitarian order does not amount to license to intervene forcefully to establish such an order in all states in which that order does not already exist.

In order to clarify matters, two distinctions need to be drawn. The first distinguishes between forceful interventions (including military and material aid to oppositionists, espionage, embargos, etc.) and peaceful interventions (including persuasion, encouragement, and positive incentives). The second distinguishes between those conditions which warrant forceful intervention and other conditions.

I agree with Rawls that a goal of the application of non-ideal liberal international theory should be to bring all societies eventually to honor the ideal liberal theory (61), but there are a range of methods available. Different ones are applicable under different conditions. What is required to make the case for a particular forceful intervention is not merely the non-observance of principles (7) through (9), but the fulfillment of some justified criteria which specify under which conditions forceful interventions are permissible. The above comments suggest that one such criterion must be that there is some large percentage of people who uphold liberal democratic egalitarian values. Additional criteria requiring a reasonable belief that the intervening force will in fact remedy the non-observance of the relevant principle and not commit some other greater injustice are also appropriate. Still, a full set of criteria remains to be

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established. Both the establishment of such a set and a full account of the range of peaceful interventions are required by an adequate liberal theory of international justice.

Including principles (8) and (9), each as necessary conditions for the prohibition of the use of force, does not increase the likelihood of imperialist interventions. What is needed, with or without their inclusion, is greater clarity on the kinds of interventions and their justifying conditions. Furthermore, including (8) at least, would bring the law of peoples more into line with what is, on Thomas Franck’s interpretation, the general direction of current international law.

It is no longer arguable that the United Nations cannot exert pressure against governments that oppress their own peoples by egregious racism, denials of self-determination and suppression of freedom of expression. That litany is being augmented by new sins: refusals to permit demonstrably free elections or to implement their results.\(^2\)

8.

In sum, Rawls’s justification of the law of peoples appears ill-founded. The procedure relies too heavily on an analogy between states and individuals, which analogy does not permit the conclusion that he would like to draw about the relationship between limiting internal and external sovereignty. This, however, does not impugn the constructivist project either in general or with regard to this particular subject-matter. An alternative construction procedure is viable; and this procedure derives a political conception of international justice.

The implication of this argument is significant for both ideal and non-ideal liberal international theory. Principles (1) through (9) should be viewed as the ideal liberal theory of international justice, instead of merely (1) through (7) as Rawls maintains. Not only are Rawls’s seven principles insufficiently sensitive to the situation of individuals within a state, but the omission of principles ensuring liberal democratic and egalitarian principles appears ad hoc. If a concern for human rights is admitted as limiting what can be done in the name of sovereignty, other liberal democratic egalitarian concerns about the treatment of individuals should count as limiting sovereignty as well.

For non-ideal theory an implication is that where any one of the three principles, (7) through (9), is not observed, then there is a prima facie case for other states not to comply with principles (3) and (4). Although a concern to prevent the imposition of democratic functioning and egalitarian principles of justice in states may be warranted, such a concern need not lead to a general prohibition against interventions; it can be met by a set of criteria stipulating when particular forceful interventions are permissible and a full account of the range of available peaceful interventions. Those criteria and that account remain to be developed.

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NOTES

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2 References in parentheses are to be understood as follows: if only numbers appear, they refer to the page numbers of “The Law of Peoples,” Critical Inquiry, 20:1, Autumn 1993, 36–68; if numbers follow the letters PL, they refer to page numbers in Political Liberalism (New York: Columbia University Press, 1993); if the numbers follow the letters TJ, they refer to page numbers in A Theory of Justice (Cambridge: Harvard University Press, 1971).


5 Onora O’Neill also thinks that the political constructivist procedure is unable to arrive at principles which are binding for non-liberal societies. Cf. Constructions of Reason (Cambridge: Cambridge University Press, 1994), 206–18.

6 Already in A Theory of Justice, 378, Rawls presents the legislators in the original position who lay down the principles of international justice as representatives of “nations”, by which he clearly means states not individuals.

7 More recently, Rawls’s use of the term “peoples” has been ambiguous between nations and states. He claims, “I sometimes use the term ‘peoples’ to mean much the same as nations, especially when I want to contrast peoples with states and a state apparatus.” “50 years after Hiroshima,” Dissent, Summer 1995, 327, note 1. But in the same paper he makes the following inference: “A decent democratic society is fighting against a state that is not democratic. This follows from the fact that democratic people do not wage war against each other,” ibid., 323. The inference is plainly unintelligible unless “democratic people” means democratic states. Furthermore, although nations may possess certain properties, it would be bizarre to attribute democratic to, say, the French. Still, it may be perfectly appropriate to attribute it to their state apparatus. Despite what Rawls claims in the note, it is this second meaning that he seems to employ consistently in this paper.


9 This is consistent with Rawls’s view that the principles of justice should be chosen as if reasonably favorable conditions for their acceptance exist. If such conditions, in fact, do not exist, then the principles are not altered, rather long-term political reform is required. Cf. John Rawls, “Reply to Habermas,” The Journal of Philosophy, vol. XCVI, no. 3, March 1995, 152.

10 I shall not argue it here, but this construction might be taken as replacing the construction of domestic justice, rather than following upon it. This would be consistent with Henry Shue’s contention that “... It is impossible to settle the magnitude of one’s duties in justice (if any) toward the fellow members of one’s nation-state—or whatever one’s domestic society—prior to and independent of settling the magnitude of one’s duties in justice (if any) toward nonmembers.” The Burdens of Justice, The Journal of Philosophy, vol. LXIII, no. 10, Oct. 1983, 603.
Charles Beitz points out that even if the conceptions of person in the original position are more congenial to the self-conceptions of citizens of liberal democracies, the conceptions themselves may still have universal application. Charles Beitz, "Cosmopolitan Ideals and National Sentiment," The Journal of Philosophy, vol. LXXX, no. 10, Oct. 1983, 596.

More recently Rawls has argued that there are three kinds of justification of the political conception of justice in political liberalism. These are pro tanto justification, full justification and public justification. Cf. "Reply to Habermas," 142-4.


This paper is intended to meet some objections that Vermazen has raised about the treatment of the regress-problem in the author's book on the philosophy of action. This problem is shown to involve a skeptical claim about the very existence of actions as distinct from happenings. It is argued, against Vermazen's contention, that only one version of the problem is at work in that book and that, while Danto's basic actions, McCann's volitions and O'Shaughnessy's and Hornsby's tryings do not solve, after analysis, that version of the problem, the author's proposal does in fact provide a solution to it.

In his interesting paper 'Carlos Moya's Regress-Problem,' Bruce Vermazen advances criticisms of some points I made in my book The Philosophy of Action: An Introduction. Vermazen's criticisms are deep and subtle, and I am grateful to him for making them. They reveal some weaknesses in my work, though I think these weaknesses are fewer and less serious than he seems to suppose, or so I will try to show.

Vermazen's comments are restricted to the problem of regress. The title of Vermazen's paper seems to imply that my exposition of this problem is a bit idiosyncratic, and this implication becomes more explicit when he holds that I give three different versions of it and that in none of them is the problem exactly a problem of regress. Moreover, he holds that my solution to this problem is on a par with those advanced by the views I oppose: both the former and the latter can solve the (my) second version of that problem but fall prey to the third.

I will attempt to argue, against these criticisms, that there is only one version of the problem, namely the second in Vermazen's classification.