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LIBERAL CULTURAL COERCION

By

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A Thesis
Submitted to the School of Graduate Studies
in Partial Fulfilment of the Requirements
for the Degree
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LIBERAL CULTURAL COERCION
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Abstract

Hereditary self-government, the lack of a personal property system, and coercive healing practices are contemporary aboriginal cultural practices that conflict with liberalism. Is it legitimate for a liberal state to coerce peoples with these and more illiberal practices to change them when most members of the culture are opposed, all-things-considered? This thesis argues that a liberal theory of justice like Rawls’s cannot adequately justify such liberal cultural coercion. The best interpretation of political liberalism rejects war and strong economic sanctions against peoples with nonliberal cultural practices, and includes liberal cultural toleration through formal political autonomy rights of peoples of self-determination, secession and independence.

These political autonomy rights lead to less civil unrest and despotism compared to the political assimilationism of all to a dominant people’s political conception in multiprovincial states, and are fairer to all peoples. Liberal legitimacy requires that sufficient actual and not merely hypothetical or future persons endorse the reasoning and conclusions of parties in Rawls’s original position. Rawls’s hypothetical reasoning binds actual persons with obligations by engaging with their considered convictions. When the considered convictions that can be presumed in a liberal domestic public culture are not present in a people, the conditions that legitimate liberal state coercion are not present. Yet the partisan imposition of a liberal public culture would undermine political liberalism’s freestanding nature and political objectivity. Similarly, the lack of agreement of peoples that human rights violations, except of peoples’ self-determination, are a
ground for war means imposing this standard is illegitimate.

Peoples with nonliberal cultures can be credited with conceptions of reasonable disagreement that reasonably disagree with political liberalism's conception of reasonable disagreement, undercutting the latter's claim to political objectivity for a people. Without endorsing a coercive imposition that it takes to be illegitimate, political liberalism cannot justify coercively vindicating its standards among opposed nonliberal peoples.
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Abbreviations

The following abbreviations are used in the text to refer to frequently cited works by John Rawls:


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¹ The bulk of this dissertation was written before the appearance of this work, published December 15, 1999, and addresses the Law of Peoples as Rawls sketched it in “The Law of Peoples.” The thesis’s main arguments apply equally to the later work, which for the most part merely supplements the earlier article.
Chapter 1 Introduction

§1.1 Liberalism, Cultural Coercion, and Rawls

The practices and values of liberalism pervade the dominant culture within societies deriving their political and social traditions from Western Europe. These include Canada, Australia, New Zealand, the United States, and European states themselves. While liberalism co-exists in often uneasy tension in the political culture of these societies with incompatible movements such as religious fundamentalism and communism as well as more closely aligned rivals such as conservatism and social democracy, it nevertheless predominates, and these states predominate in the interstate politics of the late twentieth century. During the Cold War era, Western political theorists analysed in detail liberalism's relations with its rivals in the Western political tradition, especially various strands of Marxism. With the end of the Cold War, conflicts not a part of this ideological contest have become more salient. Furthermore, the extent to which viewing all world conflicts through the prism of East-West rivalry led to distorted understanding when these conflicts had other important aspects has become clearer. While work has begun on how to understand and shape the often strained relationship between Western liberal states and societies with nonliberal cultures and religions, opportunities for great improvements in these relations remain.

Some ways of living include activities that cannot be engaged in by individuals on
their own, such as playing in an orchestra. Liberalism accepts and often celebrates the willing participation of individuals in such social activities. Yet certain cultures are very attached to nonliberal practices that require, for example, the participation of individuals even if they are not willing participants, at least according to liberalism's understanding of 'willing.' Culturally sanctioned nonliberal practices include: hereditary leadership roles and a fusion of the sacred and the secular in the public affairs of aboriginal peoples such as the Iroquois; religious healing practices which are forced on a person through assault and confinement amongst the Coast Salish; the absence of a Western personal property regime in many aboriginal cultures; the practice of circumcisions and clitoridectomies in initiatory rites of certain cultures in Africa; and even human sacrifice and slavery similar to that practised among the Aztecs. When such practices allow or require liberal rights to freedom or equality or democracy to be violated, conflicts may arise between the cultural group and liberal states that object to the treatment of those whose liberal rights are not being protected. Cultural practices that violate a person's liberty, or right to vote, or equality with other citizens are seen by liberalism as intolerant of that person in various ways. Would it be politically and morally preferable for all cultures to abandon these sorts of nonliberal practices in favour of liberal practices and values? Liberal theorists almost all answer in the affirmative, and believe the same holds true for nonliberal cultures within nonliberal states. They see little justification for nonconformity with liberal political principles, whether based in culture or not.

Can coercion of peoples by liberal states to put an end to such cultural practices be justified? The willingness of many liberalisms to impose coercively liberal forms of
democracy, individual freedom, or equality may be unacceptable even to members of the culture whom the liberal state would 'protect.' Even when those whom liberalism would protect are dissident members of a nonliberal culture, they may be even more opposed to a liberal solution than to the practice to which they are objecting.

Yet to tolerate nonliberal cultural practices would amount to tolerating intolerance if some affected by the practice opposed it. It would mean withholding liberal protection from some within the nonliberal culture, all of whom deserve protection and some of whom may be liberals now or in the future. Though some members of the culture, even among dissident liberals, may oppose the coercive intervention of a liberal state on their behalf, and some who are opposed to liberalism may attempt to take strategic advantage of liberal intervention to advance their nonliberal objectives, liberal states have the moral authority to undertake coercive intervention. Or such, at least, are the conclusions of many liberals with respect to nonliberal cultures both within and without their borders. Sir Karl Popper, for example, believes that "[w]e [liberals] need not tolerate even the threat of intolerance; and we must not tolerate it if the threat is getting serious."¹

Liberal opposition to nonliberal cultural practices is not based solely on protecting the liberal rights of all. Liberalism has also aimed at inculcating the desire to uphold these rights for all. Though often eschewing paternalism with regard to areas of life unconnected with liberal civic virtues, liberalism has been concerned to inculcate these virtues in people in order to spread or stabilize support for liberalism in a society. Liberal

advocacy of the use of coercive state sanctions, either domestically or internationally, to achieve this end is not uncommon. For example, Mill wrote that "[n]othing but foreign force would induce a tribe of North American Indians to submit to the restraints of a regular and civilized government."²

Must liberalism be committed to being intolerant of the intolerant, and paternalistic towards the paternalistic? Or can a coherent notion of tolerance towards cultures that have nonliberal practices be developed that is consistent with liberal political theory? Are there liberal principles that justify not coercively insisting on the application of liberal principles within cultures opposed to them? Due to the diversity of liberalisms, a general answer to these questions able to encompass all liberalisms may not be possible. Distinct answers grounded in particular liberalisms may nevertheless be worked out even in the absence of theoretical consistency among liberalisms. While working for justifications of cultural toleration within the confines of each liberalism may lead to the development of incompatible justifications for the same conclusion, this need not be troubling.³


This thesis focuses on showing that a particular form of cultural tolerance based on recognizing the political sovereignty of peoples, including nonliberal peoples, can be justified within John Rawls’s political liberalism. Because Rawls is a preeminent liberal theorist, and the conflicts over liberal coercion of nonliberal peoples strike to the core of a number of contemporary disputes, the project should interest both scholars and policy makers.

By nonliberal peoples I mean peoples with cultures including nonliberal practices, not peoples subjected to governments whose nonliberal actions contravene those peoples’ cultures. The core of the conception of state cultural coercion developed in Chapter 4 is state coercion strongly opposed in an all-things-considered manner by most members of the culture. Cultural toleration expressed through the recognition of peoples’ formal political autonomy rights to self-determination, secession, and independence allows peoples to avoid this cultural coercion by liberal states either domestically within a liberal state or in interstate relations.

Though Rawls claims inspiration from Kant’s foedus pacificum, my criticism of Rawls will spring from adhering somewhat more closely to this idea. Rawls grants to the Society of Peoples made up of liberal and decent (i.e., near liberal) peoples a right to go to war against other peoples for grave human rights violations in their internal affairs. By contrast, Kant held that his pacific federation was a non-coercive contract, and was at

necessary contradiction between Raz’s view that a variety of powerful arguments for toleration “shows the strength of the commitment in our culture to toleration” and Waldron’s claim that Ackerman’s notion of Neutrality needs to be univocal given its place in his theory.
most a "state of permanent and free association." His "irresistible veto: There shall be no war" included the stricture that "No state shall forcibly interfere in the constitution and government of another state." In cases where a people is all-things-considered in favour of a cultural practice, this thesis will claim that other peoples have no right to war to eliminate or reform that practice.

Kant believed that societies that were not liberal in their domestic affairs would eventually either collapse through internal disorder, or violate the rights of other peoples through external aggression. Yet this did not provide a justification for liberal states to initiate a war against them in order to impose a liberal constitution that would help the society conform to right in its internal or external affairs. Rawls narrows Kant's blanket proscription against war. I follow Rawls in allowing, for example, that wars of self-defence can be justifiable when kept within bounds in many instances. Yet I cleave to Kant's position regarding a people's protection of its cultural practices, practices that necessarily enjoy the support of most members of the cultures according to account of cultural practices I develop in §3.1.

Cultural practices, which concern relations among the members of a culture, are not at issue when one people sets out to expand into the territory of others, conquer them, or slaughter them. Mere acts by many members of a culture are not sufficient to indicate the presence of a cultural rule requiring that act. So neither the attempted extermination of

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5 *Kant: Political Writings*, 174, 96.
European Jews by Nazi Germany between 1941 and 1945 nor the Serbian repression of Kosovar Albanians qualify as cultural practices that merit protection from forceful intervention of liberal states.  

Many liberals are concerned to deny the autonomy of communities within liberal states to exempt themselves in myriad ways from the requirements of liberal justice. They believe, for example, that all individuals in the state should be educated into personal autonomy: parents have a duty to ensure that their children are not led through childhood in a way that prevents them from choosing a way of life different from their parents at the age of majority. This thesis does not engage directly with arguments that presume the legitimacy of a liberal state in advocating, in this case, a liberal education for all its citizens, and then seek to determine whether an exemption is merited. The form of its argument is more general and abstract: that the conditions for the legitimacy of the coercive vindication of liberal principles of justice do not extend to cultural coercion of peoples with nonliberal cultures, even if they are within a liberal state. While many of the arguments I advance may be relevant to discussions about, say, how to treat Amish or Hutterites within domestic liberalism, the thesis is not addressed to issues concerning such non-national cultures who do not form a nonliberal people within a liberal state.  

Rather, I argue that the simplifying assumption that a liberal state contains only a single

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6 There may be other reasons to oppose such wars, such as those expressed by Russia, India, and China against NATO's war in Kosovo without the approval of the United Nations.

7 See, for example, Karen Wendling, "Child Rearing in a Pluralistic Society," forthcoming in a volume to be published under the auspices of the *Journal of Philosophy of Education*, eds. Nigel Blake and James Tooley.
people produces a theory of domestic political liberalism that cannot be directly applied to the practice of multipeople liberal states without producing injustice in many actual cases. Taking proper account of the political autonomy of substate peoples leads to a more tolerant interpretation of political liberalism.

Though a faithful rendering of Rawls’s corpus is sought throughout, this thesis is not primarily interested in presenting how his thought should be understood. Rather, it seeks to develop the best version possible of a Rawlsian political theory to address its chosen issue. When there are incongruities between an interpretation of Rawls and Rawls’s own writing, what is ultimately sought is the best version of Rawlsian political liberalism from the standpoint of political philosophy, not an idea expressed in a particular passage or Rawls’s personal view. The merit of the reasons for one interpretation over another, how these reasons cohere with deliberations in the original position and the rest of political liberalism, and the endorsement of one interpretation over the other by the citizens of a liberal society (whatever that should turn out to be) upon due reflection are what ultimately matters.

Developing the best Rawlsian account of justice between liberal states and peoples with nonliberal cultures leads to interesting results of more general applicability. It will be seen that political liberalism needs to be more open to change in its basic principles than Rawls seems to grant. Accepting that current understandings and beliefs are fallible allows political liberalism to accept that insights from new political movements such as environmentalism and animal rights, feminism, and disability activism may justifiably lead to new political conceptions that overturn or displace important tenets within
political liberalism as formulated by Rawls. My analysis of what may be called the political epistemology of political liberalism also opens up avenues for more fundamental criticisms of Rawls's theory by communitarians and others.

§1.2 Aboriginal Opposition to Assimilation into a Liberal Regime

Not all instances of peoples with nonliberal practices are as extreme, exotic, and fanciful as Rawls's example of a people deserving forcible intervention due to human rights violations: an Aztec-like society with its lower classes kept as slaves and driven by the threat of human sacrifice (LP, 93 n–94 n). Though I shall deal with this example in §4.5.5 below, more immediate and practically relevant examples will focus my inquiry. The primary locus of attention will be substate peoples with nonliberal practices within liberal states. Colonized aboriginal peoples within Canada, the United States, Australia and New Zealand provide a number of the examples used in the thesis. Although it is conceivable that liberal states might coerce other states dominated by liberal peoples due to their refusing to culturally coerce a nonliberal substate people, a more plausible example would involve coercing a state whose dominant people participated in the nonliberal practice.

A Theory of Justice appeared in 1971, and led to the ascendancy and solidification of Rawls's reputation as a leading liberal theorist in the academies of the United States and some other liberal states. Its drafting and redrafting through the middle and late 1960's followed and theoretically articulated the successful efforts of the American Civil Rights movement towards eliminating discrimination against blacks and improving their social
integration just prior to this time. Yet a less noted practical rejection of a Rawlsian form of liberalism also occurred in this period. In contrast to the justice of including those who wished to be included but who suffered from unwanted racial discrimination, the latter case of aboriginals involved the attempted forced inclusion of those who wished to remain separate. While §4.5 will examine in more detail a few ways this liberal nation-building affects the cultural practices of these peoples, this section reviews the context of the relationship between liberal states and aboriginal peoples within them.

Both Canada and the United States had launched similar initiatives to give aboriginals status in law equal to other citizens in the years just prior to 1971, with similar results.\(^8\) Canadian Prime Minister Pierre Trudeau, an intellectual liberal individualist, claimed in 1969 that it was time to get rid of aboriginals' special status in law, which amounted to "bricks of discrimination around a ghetto." In a speech that cited US President John F. Kennedy's pledge of 'justice in our time' to Negroes in America in defence of the Canadian government's White Paper\(^9\) proposing "solutions" to "the Indian problem," Trudeau argued that Indians should choose to give up living as a race apart in Canada in order to become "total citizens . . . equal under the law." The White Paper was based on

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\(^8\) For a sample response of aboriginals in the United States to the federal policy of terminating bills for peoples like the Menominee, see American Indian Chicago Conference, *Declaration of Indian Purpose* (University of Chicago, June 13–20, 1961). For a selection of responses including this Declaration, see Virgil J. Vogel, *This Country was Ours: A Documentary History of the American Indian* (New York: Harper & Row, 1972), 206–44.

"the fundamental right of Indian people to full and equal participation in the cultural, social, economic and political life of Canada." This participation, following the common understanding of American jurisprudence on racial integration in education,\(^\text{10}\) was understood to be incompatible with "separate services from separate agencies, because separate but equal services do not provide truly equal treatment."\(^\text{11}\)

Although it would mean "they risk losing certain of their traditions, certain aspects of their culture and perhaps even certain of their basic rights," it was time for aboriginals to "become Canadians as all other Canadians." Trudeau proposed that claimed aboriginal rights not be recognized, that existing aboriginal treaty rights be phased out, and that references to aboriginals in the Constitution eventually be eliminated. "It's inconceivable . . . that in a given society one section of the society have a treaty with the other section of the society. We must be all equal under the laws and we must not sign treaties amongst ourselves."\(^\text{12}\)

"The brutal truth was that the series of consultations that had been carried out with Indian leaders never had any impact on the review of policy;" the Liberal government's White Paper "adopted government solutions and ignored Indian proposals."\(^\text{13}\)


\(^{13}\) J. R. Miller, Skyscrapers Hide the Heavens: A History of Indian-White Relations in Canada, rev. ed. (Toronto: University of Toronto Press, 1991), 228, 227. This point is
in Canada and the United States would benefit according to most measures of quality of life accepted by non-aboriginal public culture were they to become fully assimilated, including reduced rates of suicide, improved income, wealth, lifespan, education, employment, and arguably increased individual freedom and autonomy. Yet they rejected the prospect of being treated as citizens free and equal like all others in their states. Aboriginal opposition developed against these moves to extinguish aboriginals' positive liberties as separate peoples and to assimilate aboriginals into mainstream liberal culture. Instead of welcoming liberal moves to recognize aboriginals as free and equal citizens, massive, “bitter and occasionally violent,” and ultimately successful political mobilization occurred among aboriginals. The supposed beneficiaries of the policy fiercely resisted its implementation.

The day after the White Paper was released, ten aboriginal Chiefs from across Canada wrote “If we accept this policy and in the process lose our rights and our lands, we become willing partners in cultural genocide.” Opposition to personal property rights in land, not only because of their role in dividing and separating members of aboriginal cultural communities, but also because of the absence of a system of personal property in

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14 Miller, Skyscrapers Hide the Heavens, 232.

15 Kymlicka, Multicultural Citizenship, 144.

many aboriginal cultures, became an important part of the modern aboriginal political movement, a movement effectively founded in opposition to the White Paper.

Lest this snippet of history engender an unhistorical false impression of novelty or uniqueness, it is important to note that these non-aboriginal attempts to politically and culturally assimilate aboriginals and the opposition to this by aboriginals are both just chapters in a long history of similar interactions between these groups. It is true that the goal of making separate aboriginal peoples into a collection of free and equal citizens politically indistinguishable from others is a slight displacement and rearticulation of earlier non-aboriginal goals of Christianizing pagans and civilising savages and barbarians, and that the modern aboriginal political movement forged in this period has been arguably more successful in achieving its goals than its predecessors had been for many decades. But the attempted integration of aboriginals in non-aboriginal nation-building, and aboriginal opposition to this, are not new. While there was something new in the leader of a united coalition of aboriginal peoples in Canada espousing the idea of the decolonization of the fourth world of oppressed aboriginal peoples, it can also be seen as continuous with the efforts of the Six Nations to be recognized by the League of 

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18 Miller, *Skyscrapers Hide the Heavens*, 233.
Nations in the 1920’s (see §4.5), the military alliances of European powers with aboriginal peoples in the 17th, 18th, and 19th centuries, and treaties such as the Two Row Wampum (1664).  

The latter belt has, on a background of white wampum symbolising consent, two purple rows representing dialogue, separated by three rows representing peace, friendship, and respect. In 1983, the Canadian House of Commons Committee on Indian Self-Government recognized the principles of the treaty as interpreted by Chief Michael Mitchell of the Iroquois:

[the two purple rows] symbolize two paths or two vessels travelling down the same river together. One, a birch bark canoe, will be for the Indian people, their laws, their customs, their ways. The other, a ship, will be for the white people and their laws, their customs and their ways. We shall each travel the river together, side by side, but in our own boat. Neither of us will try to steer the other's vessel.  

Related histories are present in other Western democracies such as the United States, Australia, and New Zealand.

Kymlicka follows Gross in distinguishing the forced exclusion of blacks from the forced inclusion of aboriginals in liberal society, and argues that a proper appreciation both of the text and the principles of Brown v. Board of Education leads to a recognition of national rights of aboriginals. But the claim that justice for American blacks may

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19 Armitage, Comparing the Policy of Aboriginal Assimilation, 89.


require different measures than justice for American (or Canadian) aboriginals in liberal theory depends on showing how this different treatment is consistent with their treatment as equals.

The arguments in this thesis do not cover actions taken by members of one national culture against members of other national cultures, actions which may be termed intercultural practices when they are affirmed by the members of a culture in a manner similar to their affirmation of their cultural practices. So even if a national culture has an intercultural practice of oppressing other peoples, no justification for such oppressive intercultural practices will be found in this thesis.

§1.3 Outline of Thesis

The structure of this thesis justifying cultural toleration of nonliberal peoples within Rawlsian liberalism is as follows. To set the stage for the arguments that follow, I provide a brief overview of Rawls's theory of justice in Chapter 2. Chapter 3 lays out what is meant by a culture and a people, and shows there can be more than one people in a single state. Chapter 4 analyses and illustrates liberal state cultural coercion as cultural coercion by liberal states. Chapter 5 shows that the political autonomy rights of peoples that Rawls identifies—to self-determination, secession, and independence—could serve if suitably interpreted to protect peoples able to exercise separate jurisdictions from liberal cultural coercion.

The remaining chapters aim to justify such an interpretation within political liberalism. A purposive analysis of Rawls’s favouring of many states over one world state shows that these three political autonomy rights of peoples should be interpreted as providing peoples with political autonomy within states even in the absence of unjust treatment of them by those states. Chapter 6 shows that favouring political autonomy over political assimilation for substate nonliberal peoples within liberal states furthers the purposes of reducing civil unrest and despotism. Chapters 7 and 8 argue that the purpose of promoting more vigorous laws is furthered not by a fundamentalist willingness to use force within or against a sovereign group whenever that will feasibly lead it to implement and thereby possibly eventually affirm Rawls’s conception of domestic justice. Instead, the legitimacy of Rawls’s political liberalism depends on it requiring a certain minimum level of democratic support for fundamental changes in the political conception governing a people’s domestic affairs. Chapter 9 shows that these conclusions hold even with regard to the imposition of Rawls’s minimum human rights on a people with conflicting cultural practices. That interpeople justice needs to conform to two basic changes in international law regarding war and human rights since World War II provides evidence that the right to war on behalf of minimum human rights should be interpreted in a way that means no cultural practices constitute the ‘grave’ violations of human rights that would ground such a right to war. Since neither Rawls’s domestic liberalism nor his interpeople liberalism provide grounds for the cultural coercion of nonliberal peoples by liberal states, cultural toleration will have been justified within political liberalism.

Two important theoretical arguments underlying the thesis are worth highlighting at
the outset. First, fundamentalist interpretations of political liberalism would not allow it to conform to its own requirements for being a freestanding theory. That is, an insistence on the doctrines of political liberalism even to the point of using coercion to ensure their acceptance undermines its justification as a theory worthy of reasoned acceptance, the merit of which is independent of the views currently accepted by existing persons.

Second, a nonliberal people can have a reasonable conception of politically objective reasons to which their nonliberal cultural practices conform. Indeed, the analysis of cultural practices is used to show that they meet Rawls's criteria for the existence of politically objective reasons even though they do not match his political liberalism's specific liberal conception of politically objective reasons. The result is that liberal states would be unreasonable if they coercively interfered with those cultural practices when the people were strongly opposed to such intervention in an all-things-considered manner.
Chapter 2 The Structure of Rawls’s Theory of Justice

Justice as fairness is the name Rawls gave to the liberal theory of justice for domestic affairs he developed using Kantian ideas in order to oppose the then reigning orthodoxy of utilitarianism. It aims at fairness for each citizen. Political liberalism is the name he gave to the project, more fully articulated in his later work, of providing an acceptable basis for such a theory in the conditions of reasonable pluralism that exist in a liberal democracy.

In this chapter I sketch the architecture of the political liberalism of justice as fairness and its extension to interpeople relations. I follow Rawls’s own method of explicating his theory by explicating his various interrelated conceptions. Although the discussion provides a basic overview of Rawls’s thought, it focuses on those features of his political theory and how it is justified that will be relevant for justifying liberal toleration of national nonliberal cultures. Many aspects of the theory that do not bear on internal or external peoples with nonliberal cultures are downplayed or ignored.

Sections are devoted to the architectural overview of political liberalism, its fundamental ideas, reasonableness, the original position, stability and overlapping consensus, and interpeople liberalism. While convenient, these divisions are somewhat arbitrary. For example, fundamental ideas of political liberalism are introduced in several sections. Many of Rawls’s central terms carry multiple meanings. Though Rawls's
conception of reasonableness has a section devoted to it due to its importance, aspects of the notion appear in other sections as well. Given the interlocking nature of various ideas in Rawls's theory, some terms are perforce used before they are explicated.

The arguments in Chapters 6–9 justifying liberal cultural toleration focus on the conditions that determine when coercion is justified. They examine in detail the roles in interpeople liberalism of public culture, general facts, reasonableness and reasonable disagreement, political objectivity, freestanding theory, well-orderedness, and stability. While the interpeople original position is used, little attention is paid to the model of a person or the principles of justice present in domestic liberalism. These and other features of domestic liberalism are outlined here because they provide the basis for an understanding of analogous features in interpeople liberalism.

§2.1 Architectural Overview

Rawls employs a constructivist method to specify the principles of justice in his political theory. Inspired by Kant, the crucial claim of the view is that the principles of justice are whatever principles issue from an appropriate process of construction. The idea is not that the principles of justice exist in some independent order, with the philosophical problem being one of gaining knowledge of that order. Though conformable to the view that the process of construction is a (or the) method of gaining knowledge of the content of such an independent order, Rawls's political constructivism limits itself to the claim that the results of the construction are the principles of justice. This means that the theory cannot, within its own parameters, be evaluated against an
independent standard of justice, since it understands itself to constitute that standard. Pre-theoretic beliefs about what is or is not just have an important place within Rawls’s theorizing, but do not amount to such a standard.

Rawls’s political constructivism dovetails neatly with his account of when objective reasons exist (PL, 114f), politically speaking (PL, 119–25), which in turn meshes with his broader account of public reason (PL, 213ff) and the role of publicity (66f, 70f, 85f). Rawls provides an account of several essential elements of objectivity that he takes to be widely recognized. He argues that a few important conceptions of objectivity can overlap in their conclusions (PL, 110ff). Yet he also admits that different political conceptions may be reasonable for different societies even if they would be unreasonable for a liberal society (LP, 80, 78), and that varieties of liberalism similar to justice as fairness are also reasonably affirmed by citizens of liberal regimes.

Rawls develops his domestic liberalism in two stages: first, as a freestanding view that specifies justice as fairness as fair terms of cooperation among free and equal citizens; and second, in terms of how a society well-ordered by justice as fairness “may establish and preserve unity and stability given . . . reasonable pluralism” (PL, 133). The first stage determines the content of an ideal political conception of justice, while the second stage checks to make sure that the results of the first stage may possibly be realized. The first stage is intended to ensure that the content of the political conception is independent of the determinate conceptions of the good that exist in a society (PL, 141–2), while the second stage is intended to ensure that the results of the first stage are not unrealizable given the determinate conceptions of the good that may be expected
to arise in a liberal society (PL, 158).

Turning to the former, Rawls starts with a collection of settled convictions about what is just (e.g., religious toleration) and what is unjust (e.g., slavery) that are drawn from and implicit in the public political culture of a liberal society—in its main institutions and the public traditions of their interpretation. These provisional fixed points of theorizing implicitly contain a number of basic ideas and principles. He aims to formulate these ideas and principles clearly and organize them into a coherent system that will “accord with our considered convictions, at all levels of generality, on due reflection” (PL, 8). In order to do this he also introduces several new ideas with the intention of overcoming long-standing controversies. Deferring to due consideration is intended to reflect our interest in preferring alternatives that succeed in convincing us for good reason to change our initial starting ideas. But because our human limitations prevent us from considering all possible formulations, alternatives, and arguments, Rawls takes the review of the main alternatives in the Western political tradition to be duly reasonable for his purposes.

Once complete, Rawls takes his theory to represent a “wide reflective equilibrium” of the views of “you and me,” that is, the reasonable citizens of democratic societies. Nevertheless, minor disagreements on details are reasonable and inevitable. This claimed and sought after agreement of actual citizens underwrites the hypothetical agreement of Rawls’s social contract justification for his liberalism.

Though Rawls’s method reviews only the main strands of the Western political tradition found in its public culture, he concludes that his theory takes certain issues permanently off the political agenda (PL, 151–2).
 Besides having its content expressed in terms of ideas implicit in the public culture of liberal societies, two other features are essential to Rawls’s theory being a political conception of justice (PL, 11–4). These concern its topic and its relation to other theories. First, it is a moral theory about the ‘basic structure’ of society, that is, about “the framework of [society’s main political, social, and economic] institutions and the principles, standards, and precepts that apply to it, as well as how those norms are to be expressed in the character and attitudes of the members of society who realize its ideals” (PL, 11–2). Though wide-ranging, this topic does not include, and is not intended to cover, all values and areas of life. By contrast, comprehensive moral, religious, and philosophical doctrines deal with topics outside this political domain. Second, Rawls’s theory is a freestanding view since it is “neither presented as, nor as derived from, such a [comprehensive] doctrine,” being derived instead from liberal public culture and ideas that Rawls himself introduces. Nevertheless, a political conception such as justice as fairness “is a module, an essential constituent part, that fits into and can be supported by various reasonable comprehensive doctrines that endure in the society regulated by it” (PL, 12).

Rawls’s use of public culture is thus essential to his theory’s claim to be a freestanding view: political liberalism requires a source or basis independent of any and all comprehensive doctrines, which it finds in public culture. Otherwise, political liberalism would be political in the wrong way: sectarian, or an unprincipled compromise, rather than a regime based on principle within which reasonable comprehensive doctrines can fairly contest their political and other views (PL, 39–40).
§2.2 Fundamental Ideas

Political liberalism aims to provide a conception of society as a fair system of social cooperation from one generation to the next. Involving as it does the main institutions of the basic structure of society, this cooperation includes state sanctions or coercion of those who violate the agreement in various ways. This protects the interests of others in society by vindicating their rights, and other aspects of justice (e.g. the payment of taxes to support economic redistribution). In *A Theory of Justice*, Rawls emphasized that this state coercion makes it rational for people who are disposed to cooperate, providing others also do so, to participate in the cooperative enterprise of society. This conditional contractual attitude has evolved into *Political Liberalism*’s view of citizens from the perspective of the original position as having an overlapping consensus of belief in the entire scheme of cooperation including its necessarily coercive character.¹

The fundamental idea of society as a system of fair cooperation is not identical to the idea of a well-ordered society. In the latter, 1) “everyone accepts, and knows that everyone else accepts, the very same principles of justice,” 2) “its basic structure ... is publicly known, or with good reason believed, to satisfy these principles,” and 3) “its citizens have a normally effective sense of justice and so they generally comply with society’s basic institutions, which they regard as just” (*PL*, 35). The conditions of the possibility of a well-ordered liberal society, according to political liberalism, include citizens having the moral power of a capacity for justice, as well as the broader and more

¹ For early seeds of the idea of overlapping consensus, see the discussion of concept and conceptions *TJ*, 5–6.
stringent condition that they be reasonable.

Another fundamental idea of political liberalism is the political conception of the person as free and equal. The claim is that for the purposes of political theorizing, this is how persons should be conceived. Citizens are viewed as free because they are viewed as having "two moral powers" and the powers of reason (PL, 19). Citizens' equality consists in having these powers to the requisite minimum degree (PL, 19). Several aspects of the relationship between the moral powers and Rawls's sense of freedom are worth noting in this overview.

The first of the two moral powers is a capacity for a sense of justice: "the capacity to understand, to apply, and to act from the public conception of justice which characterizes the fair terms of social cooperation. [It] also expresses a willingness, if not the desire, to act in relation to others on terms that they can publicly endorse" (PL, 19). This is related to the idea from public culture that one is capable of taking responsibility for one's ends. That is, one is able both to adjust one's aims and aspirations to what one can reasonably expect under liberalism, and not to claim anything that the principles of justice do not allow (PL, 34). One is free in this respect inasmuch as one is viewed as able to act within limits set by justice as fairness. This sense of freedom being limited by others' freedom and other demands of justice is clearly not freedom as untrammelled licence.

The second moral power is a capacity for a conception of the good, which "is the capacity to form, to revise, and rationally to pursue a conception of one's rational advantage or good" (PL, 19). This posited capacity to act as a fully rational autonomous agent is distinct from the more or less determinate conception of the good that persons
have and are trying to realize at any given time. Indeed, the latter may deny or limit the capacity, or its value. For example, conceptions of the good may take marriage commitments to be un revisable, and the holding of other, heretical conceptions of the good to be immoral and valueless.

One way in which the moral power for a conception of the good is related to citizens’ freedom is that a citizen’s public identity as a free person is not affected by changes in his or her conception of the good (PL, 30). While Rawls concedes to the communitarian critique of liberalism that persons “may regard it as simply unthinkable to view themselves apart from certain religious, philosophical, and moral convictions, or from certain enduring attachments and loyalties” (PL, 31), this should be understood to refer to their noninstitutional or moral rather than their public identity. In a well-ordered society, citizens’ public identity is that of free persons: “As free persons, citizens claim the right to view their persons as independent from and not identified with any particular” conception of the good (PL, 30). Citizens are thus politically viewed as free to vary their private conceptions of the good, so long as their more general political values and commitments, a component of each citizen’s conception of the good, remain within the overlapping consensus of a society well-ordered by justice as fairness, and continue to be generally regulative of one’s nonpolitical good (PL, 31–32). Citizens’ actions must be generally regulated by the restraints that justice as fairness places on their pursuit of their private conceptions of the good. If not, they face coercive state sanctions. And while it is to be expected that the beliefs of some citizens will always remain outside the overlapping consensus, the proportion of such citizens cannot be so high as to threaten
the stability of the regulation of the society by justice as fairness.

Given this model of the person, a conflict is conceivable between persons’ public liberal persona and their constitutive nonpolitical commitments if these commitments are incompatible with the public liberal persona. Political liberalism tries to overcome the priority persons might give to constitutive nonpolitical commitments when these conflict with their public liberal persona by asserting that citizens have a higher-order interest in realizing and developing their moral power for a capacity of justice. This moral power is developed and embraces justice as fairness in the preponderance of citizens in a society well-ordered by justice as fairness. This requires the circumstances, favourable for liberalism, in which citizens do not have constitutive nonpolitical attachments inconsistent with liberalism. For then the assumption of a capacity for justice understood as the capacity to be regulated by a liberal conception of justice such as justice as fairness would not hold. More particularly, Rawls believes he can justify in justice as fairness a priority of a liberal conception of right over all conceptions of the good. Rawls grants that a society well-ordered by justice as fairness is itself a political good (PL, 201–6), and attempts to distinguish this type of good from non-political goods.

A third respect in which citizens “view themselves as free is that they regard themselves as self-authenticating sources of valid claims” intended to advance their conceptions of the good, so long as these conceptions are compatible with justice as fairness (PL, 32–3). The contrast is to other political conceptions in which the claims of individuals, in order to have weight, must be derived from ascribed social roles or from duties owed to society. While Rawls similarly holds that claims of any citizen that are
incompatible with their responsibility to cooperate according to the terms of justice as
citizens in a Rawlsian regime to make liberal citizens’ situation dissimilar to those living
under other political conceptions.

The importance of the value of freedom in comparison with other values differs
sharply between liberal and many nonliberal cultures. Rawls’s characterization of
political conceptions different from his own is somewhat invidious in the way it ignores
opportunities for individual initiative and freedom within roles, or in carrying out
responsibilities. From the perspective of justice as fairness, these opportunities fall far
short of appropriate political freedom, even if they may be more compatible than liberal
freedom with the realization of certain other social values. In his later work Rawls rightly
emphasizes Berlin’s point that there is no social world without loss, and that worthy
forms of life lose out in a liberal regime (PL 197ff, index entries for Berlin). He claims,
however, that

[p]olitical liberalism is unjustly biased against certain comprehensive conceptions only if, say,
individualistic ones alone can endure in a liberal society, or they so predominate that associations affirming
values of religion or community cannot flourish, and moreover the conditions leading to this outcome are
themselves unjust, in view of present and foreseeable circumstance (PL 199).

Rawls takes the ‘space’ within liberal society for comprehensive conceptions to be broad
enough to make it just.

§2.3 Reasonableness

Two other aspects of Rawls’s political conception of the person play prominent roles
in excluding comprehensive conceptions from the range that political liberalism aims to
protect. Persons are taken to be reasonable and rational. The distinction is not between
the broader judgement-based or inductive reasoning that is the most that is possible in
some domains and the tight deductive reasoning possible in others. Very roughly, in
Rawls's usage, the first has to do with getting along with others, the second with getting
what one wants. That is, the reasonable and the rational are connected with the moral
powers of the capacity for a sense of justice and the capacity for conception of the good,
respectively (PL 52). Some comprehensive conceptions do not accept Rawls's criteria
for acceptable relations with other persons. Other comprehensive conceptions do not
accept either Rawls's conception of how persons deliberate about their ends, or his list of
primary goods which he holds to be in the interests of all. In both cases, the
comprehensive conceptions fall outside the space Rawls aims to protect in his liberalism.

Rational persons are concerned with their own ends and interests. They may care
about others and take as ends the interests of others. They may also deliberate about
which ends are best for them, and how to balance their ends, in a way that goes beyond
instrumental reasoning about how best to attain their current ordering of ends. What
distinguishes the rational from the reasonable, then, is that in adopting, ranking, and
affirming ends, unreasonable rational agents lack the moral desire to engage in fair
cooperation as such (PL 50f).

Rawls does not try, like some others, to derive the reasonable from rational; for him
they are distinct and independent basic ideas (PL 51f). Two aspects of reasonable
persons are important for Rawls. First, reasonable people when among equals "are ready
to propose principles and standards as fair terms of cooperation and to abide by them
willingly, given the assurance that others will likewise do so. . . . and they are ready to discuss the fair terms that others propose" (PL, 49). They hold fair terms to be reasonable for and justifiable to everyone. This notion of reciprocity is thus less than impartial altruism but more than mutual advantage with respect to everyone's situation as things are. Reasonable persons "desire for its own sake a social world in which they, as free and equal, can cooperate with others on terms all can accept" (PL, 50). Reasonable but not rational people, however, would have no ends of their own to advance through fair cooperation (PL, 52). Rawls thus builds into political liberalism's idea of reasonableness ideas fundamental to justice as fairness but not a part of certain other political conceptions.

Second, reasonable persons are willing "to recognize the burdens of judgment and to accept their consequences for the use of public reason in directing the legitimate exercise of political power in a constitutional regime" (PL, 54). Rawls refers to the sources of reasonable disagreement as the burdens of judgement. Unreasonable sources of disagreement, according to Rawls, include "prejudice and bias, self- and group interest, blindness and willfulness" (PL, 58). There are many sources of reasonable disagreement: in theoretical as well as political areas, they include conflicting and complex evidence; disagreements about the weight of relevant considerations; interpretive disagreements about concepts at play; and the way our total experience shapes "the way we assess evidence and weigh moral and political values" (PL, 56f). Two sources are more specific to the reasonable and the rational. Different kinds of normative considerations are difficult to bring together into an overall assessment. And selecting a limited set of values
that are simultaneously possible within the limited social space of a single society from among all those that exist, or restricting some in order to accommodate others, causes "great difficulty in setting priorities and making adjustments. Many hard decisions may seem to have no clear answer" (PL, 57).

Rawls takes the recognition of the burdens of judgement as equivalent to recognizing the existence of reasonable disagreements with one's judgements. It is not clear how this amounts to a *burden* per se. One good way to interpret 'burdens of judgement' that is consonant with Rawls's thought though not expressed by him in so many words is to link reasonable disagreement to the burdensome consequences political liberalism draws from it. More specifically, in making a judgement about which there can be reasonable disagreement, the sources of this reasonable disagreement can be seen as weighing on the judgement (or judge) like a burden of responsibility.

This sense of responsibility is important to Rawls's conception of reasonableness:

reasonable persons will think it unreasonable to use political power, should they possess it, to repress comprehensive views that are not unreasonable, though different from their own. . . . because, given the fact of reasonable pluralism, a public and shared basis of justification . . . is lacking in the public culture of a democratic society (PL, 60).

Further,

reasonable persons see that the burdens of judgment set limits on what can be reasonably justified to others, and so they endorse some form of liberty of conscience and freedom of thought. It is unreasonable for us to use political power, should we possess it, or share it with others, to repress comprehensive views that are not unreasonable (PL, 61).

Note that in these passages, repressing comprehensive views may be taken either as attempting to coerce beliefs, or as preventing one from acting on those beliefs. Rawls suggests both—enforcing a view, and correcting or punishing people for their beliefs—when he writes that
a doctrine is unreasonable [that] proposes to use the public's power . . . to enforce a view bearing on constitutional essentials about which citizens as reasonable persons are bound to differ uncompromisingly. When there is a plurality of reasonable doctrines, it is unreasonable or worse to want to use the sanctions of state power to correct, or to punish, those who disagree with us (PL, 138).

These passages leave open the possibility that it is reasonable according to political liberalism to repress, punish, or correct unreasonable comprehensive views. This line of interpretation is given some support when Rawls writes that a "society may . . . contain unreasonable and irrational, and even mad, comprehensive doctrines. In their case the problem is to contain them so that they do not undermine the unity and justice of society" (PL, xvi—xvii). Elsewhere he writes, "[t]hat there are doctrines that reject one or more democratic freedoms is itself a permanent fact of life, or seems so. This gives us the practical task of containing them—like war and disease—so that they do not overturn political justice" (PL, 64). “Containing” in this context would certainly include the enforcement of the provisions of justice as fairness against those who differ uncompromisingly with them, apart from certain acceptable cases of conscientious objection (cf. TJ, 368–71, 377–82). “Containing” may also mean the use of state sanctions to correct, punish, or repress those who believe unreasonable doctrines. For example, requiring religious sects to include certain elements of liberal civics in the education provided to their children, and to "prepare them to be fully cooperating members of society" (PL, 199). I take these requirements to be backed by the coercive power of the state if not followed: “political power is always coercive power” (PL, 68).

The negative evaluative connotation of 'repress' in liberal thought means that term likely would not be used even if the behaviour of state agents were the same as that ruled out as unreasonable repression when directed toward those who affirm liberal-compatible
comprehensive doctrines.

The threat posed by unreasonable doctrines is not merely that persons may act on them in ways that violate the laws of a liberal regime, but also that people who believe them may change the laws or the constitution to make them nonliberal, possibly using procedures that Rawls considers illegitimate. The danger of these doctrines is thus not merely lawlessness, but that they may rival and even win against political liberalism in gaining the affirmation of members of a society. Of course, such actions would be deemed unreasonable according to political liberalism’s conception of reasonableness, though not necessarily according to one based solely on its analysis of political objectivity, as will be shown more clearly in §8.1. Were those who affirm unreasonable doctrines to number sufficiently to deprive political liberalism of an overlapping consensus, then it would not (yet) meet its own criteria for legitimacy in that society. Were these persons to be sufficiently numerous or powerful to ensure important aspects of liberal political justice were not upheld by the state, then even a modus vivendi based on liberal principles would not exist, and the actions of the regime would a fortiori not meet liberal conditions of legitimacy.

These remarks about the point of containing do not explain what state acts Rawls means to endorse under the guise of containing unreasonable comprehensive doctrines. A cautious interpretation is one that takes ‘containing’ to endorse no coercive acts by the

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2 See Rawls’s earlier argument that “an intolerant sect . . . should be restricted only when the tolerant sincerely and with reason believe that their own security and that of the institutions of liberty are in danger. The tolerant should curb the intolerant only in this case.” (TJ, 220).
state toward those who affirm unreasonable comprehensive doctrines other than those allowed or required elsewhere in Rawls's writings. As this interpretation minimizes the coercion that Rawls takes to be legitimate toward those who affirm unreasonable doctrines, it will serve as the basis for a discussion criticizing Rawls for advocating such coercion. If a more expansive interpretation that legitimizes other forms of state coercion in containing unreasonable comprehensive doctrines is later shown to be merited (see p. 205 below), then it should be expected that criticisms that are successful against the minimalist interpretation of the coercion involved would apply more pointedly to these additional forms of state coercion. 3

Although presented so far mainly as an attribute of persons, this sense of 'reasonable' can also be used to describe comprehensive doctrines, principles of justice, and institutions. (Rawls uses 'reasonable' as a term contrasting with 'true' as well as 'rational.' 4) An aspect of the reasonable that applies to principles of justice but not to individuals is publicity. Rawls distinguishes three levels of publicity, all of which are required by justice as fairness. The first, part of the definition of a well-ordered society, is that citizens accept as just and know that others similarly accept the principles of justice, and that the knowledge of this shared acceptance is also public knowledge. While the first level of publicity requires that citizens share ways of reasoning about justice, the

3 The same holds for the non-coercive state-subsidized advocacy of equality recommended in Andrew Kernohan's Liberty, Equality, and Cultural Oppression (Cambridge: Cambridge University Press, 1998).

second level specifies further that "the general beliefs [such as those] about human nature and the way political and social institutions generally work" that are used in justifying the principles of justice are also supported by shared ways of reasoning about such matters, and are publicly known. The third level of publicity concerns the full justification of a theory of justice such as justice as fairness in an actual society. All of this justification must be available "in the public culture, reflected in its system of law and political institutions, and in the main historical traditions of their interpretation" to any who want "to carry philosophic reflection about political life so far" (P. 66f, 70). Further, public culture is held to be able normally to create a desire to realize the liberal ideal of citizenship through education (P. 71, 85–6).

Reasonable pluralism is an idea Rawls introduced once he came to understand that his early account of a well-ordered society was unrealistic: under the best foreseeable conditions its principles were inconsistent with their own realization (P. xvii, xxxi, 25n). That is, citizens in a liberal regime will affirm various reasonable but incompatible comprehensive doctrines: not all will end up affirming justice as fairness as a comprehensive doctrine even if they lived under a political regime regulated according to the principles of justice as fairness. Only if the state used oppressive force in a way not sanctioned by justice as fairness might it create a consensus affirming justice as fairness as a comprehensive doctrine (P. 37). Reasonable pluralism is the pluralism of reasonable comprehensive doctrines, which are roughly the comprehensive doctrines affirmed by reasonable persons (P. 59). Pluralism as such, or simple pluralism, includes unreasonable and reasonable comprehensive doctrines (as well as a third, in-between
category of doctrines neither fully reasonable nor properly unreasonable, which Rawls calls the ‘not unreasonable’). In a well-ordered society, reasonable pluralism exists.

§2.4 The Original Position

Rawls makes the surprising claim that the parties in the original position select the same principles of justice whether they understand themselves to be representing the interests of citizens in a society marked either by pluralism or by reasonable pluralism. To see why he believes that the interests of those who affirm unreasonable comprehensive doctrines are served by an agreement that does not provide space for them to realize their comprehensive doctrine, one needs to look at the limitations on acceptable interests structured into the construction of the original position.

Rawls uses the idea of the original position as a heuristic device to help clarify “which traditional conception of justice . . . specifies the most appropriate principles for realizing liberty and equality once society is viewed as a fair system of cooperation between free and equal citizens” (PL, 22). He introduces this notion to mediate between the fundamental ideas drawn from liberal public culture of society as a fair scheme of cooperation and the person as free and equal. It articulates a form of pure procedural justice as described above: liberal justice is not an independent standard against which the agreement reached by the contracting parties in the original situation is measured; rather, whatever agreement is reached there defines justice. The device is intended to situate free and equal persons fairly as they make an agreement on the principles of justice for liberal society by eliminating “the bargaining advantages that inevitably arise within the
background institutions of any society from cumulative social, historical, and natural tendencies" (PL, 23). While the principles of justice are the result of a process of construction including the deliberation of the parties in the original situation, the original situation is conceived as merely laid out, rather than itself being the result of a process of construction (PL, 103).

Rawls does not hypothetically place actual persons into the original position. Rather, he starts with political liberalism's conception of persons as reasonable and rational and regarded as free and equal participants in a fair system of social cooperation, that is, as citizens in a well-ordered society (PL, 103). This conception is used to model the citizens for whom the contract is made, and to provide the ingredients for different parts of the original position. The contracting parties representing citizens and their interests are taken to be rational (but not necessarily reasonable) agents, while the conditions placed on them in the original situation are taken to model reasonable conditions for a fair contract. These conditions include being symmetrically situated, and having limits placed on the information they use in their deliberations by the veil of ignorance (PL, 79). The capacity for a sense of justice is modelled by the procedure as a whole (PL, 104), while the public nature of a political conception of justice is modelled by the parties being required to "take into account the consequences of those principles being mutually recognized and how this affects citizens' conceptions of themselves and their motivation to act from those principles" (PL, 104).

While the model of the person outlined above made the relatively uncontroversial claim that all relevant persons in a society that is (or would be) characterized by social
cooperation as specified by justice as fairness have the capacities specified by the two moral powers and a determinate conception of the good, Rawls introduces a more controversial claim regarding the rational interests to be modelled in the original situation. He ascribes to citizens higher-order interests in developing and exercising the two moral powers and advancing their determinate conception of the good (PL, 74), argues transcendentally⁵ that the sense of justice is the highest-order interest (PL, 75), and formulates the veil of ignorance so that the contracting parties can consider only these interests in their deliberations (PL, 75). Rawls claims that “We think [citizens in a democratic society] show a lack of self-respect and weakness of character in not” accepting these higher order interests as their instructions to their representatives in the original position (PL, 77).

The veil of ignorance is intended to exclude from the deliberations of the parties in the original situation either any information that would give unfair bargaining advantages to some of them over the others, or knowledge of “the contingencies that set them in opposition” (TJ, 137). It would be unfair for the strong, intelligent, wealthy, or well-born, for example, to use the knowledge of these advantages to procure a more favourable set of principles of justice for those similarly endowed. It would also be unreasonable to propose or to expect others to accept principles of justice merely because they would

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⁵ By a transcendental argument of practical reason, I mean one of the form: X is a practical end supposed by a practical theory such as justice as fairness (on the grounds perhaps of its formal nature, or of the considered convictions of liberal citizens); in order for X to be possible, Y must hold; therefore Y holds (perhaps until proven otherwise, such as the possibility in the early Rawls of a society agreeing on justice as fairness as a comprehensive doctrine). For a discussion of how Rawls’s work is practical, see LP, 86–8.
favour those who affirmed one’s own comprehensive doctrine (PL, 24). “Features relating to social position, native endowment, and historical accident, as well as to the content of persons’ determinate conceptions of the good, are irrelevant, politically speaking” (PL, 79, also cf. 272).

Realizing the higher-order interests requires, according to Rawls, certain primary goods. A list of these goods is identified by looking “to social background conditions and general all-purpose means normally needed for developing and exercising the two moral powers and for effectively pursuing conceptions of the good with widely different contents” (PL, 75–6). (This seems to be another case in which the public culture of liberal societies is the source for some fundamental ideas in political liberalism and justice as fairness.) Alternative principles of justice are to be evaluated by the parties in the original situation according to how well they secure such primary goods. The primary goods comprise a list including

such things as the basic rights and liberties covered by the first principle of justice, freedom of movement, and free choice of occupation protected by fair equality of opportunity of the first part of the second principle, and income and wealth and the social bases of self-respect (PL, 76).6

The list of primary goods and its use by Rawls is not intended to be fair to comprehensive doctrines that do, did, or might exist (PL, 307f). Rather, it is designed to be fair to free and equal citizens who have such comprehensive doctrines (PL, 40); the goods are to be used in liberal society by citizens to advance their higher order interests.7

Rawls chooses certain general facts to be relevant for the deliberations of the parties


in the original situation. He stipulates that the parties know these facts despite the veil of ignorance, which prevents other widely known facts from entering the original position. They articulate beliefs, some of which are controversial even among some liberals. This feature of the original position allows selected historical claims to enter Rawls’s ideal theory. The five general facts are 1) that reasonable pluralism permanently exists in a democracy; 2) that no comprehensive doctrine including Mill’s or Kant’s can be the shared basis of a system of justice without leading to oppression; 3) that “an enduring and secure democratic regime . . . must be willingly and freely supported by at least a substantial majority of its politically active citizens” (PL, 38); 4) that the public culture of a liberal regime that has existed for a considerable time contains the fundamental ideas used in political liberalism and justice as fairness; and 5) that many of the most important judgements leave room for reasonable disagreement.

While unfairness resulting from power advantages and unreasonableness in bargaining can be avoided in the original position by making the parties unaware of which particular individual each represents (TJ, 139f), the veil of ignorance is much thicker than this: it prevents knowledge of specific comprehensive doctrines that do or could exist. The parties are restricted to knowledge of the formal characteristics of the higher-order interests and the associated capacities of persons (PL, 75). The parties suppose that the primary goods help to advance all relevant interests of those they represent. Rawls admits that his veil of ignorance is intended to incorporate a Kantian ideal that goes beyond impartiality (PL, 273), and notes that the rationale of the veil of ignorance invokes the general fact of reasonable pluralism.
As a result of these limitations on the knowledge of the representatives in the original situation, the contracting parties are unable to represent the unreasonableness, according to justice as fairness, of actual citizens. The filtering of interests provided by the veil of ignorance, or more accurately, the specification of interests to be represented, explains why there is no difference in the outcome of the original position whether one assumed simple pluralism or reasonable pluralism. When first choosing the principles of justice, the deliberations turn out to be identical because the filtering out of unreasonable elements is complete.

Two stages of deliberations in the original position were mentioned above—determining the content of the fair scheme of cooperation, and determining if a society realizing that scheme would be stable. Rawls further divides the first stage into four more stages, call them substages for clarity, which determine successively for a liberal society its principles of justice (the same for all such societies), its constitution, its legislation, and its judicial decisions. At each substage, the veil of ignorance is progressively thinned, allowing the parties in the original position to use more information about their society in their deliberations, subject to the proviso that the deliberations of later stages are bound by the decisions of earlier stages.

The two principles of justice that Rawls takes to issue from the discussions in the original position are:

a. Each person has an equal claim to a fully adequate scheme of equal basic rights and liberties, which scheme is compatible with the same scheme for all; and in this scheme the equal political liberties, and only those liberties, are to be guaranteed their fair value.

b. Social and economic inequalities are to satisfy two conditions: first, they are to be attached to positions and offices open to all under conditions of fair equality of opportunity; and second, they are to be to the greatest benefit of the least advantaged members of society (PL, 5–6).
The first principle is understood to be ordinarily prior to the second, meaning that no infringement of basic rights and liberties can be justified through claims regarding the general good or perfectionist values. Further, the first principle presupposes that the basic needs required by "citizens to understand and to be able fruitfully to exercise those rights and liberties" are met (PL, 6–7). Rawls specifies justice as fairness somewhat more fully by listing and describing the grounds of the basic rights and liberties (PL, 291–2) and describing the conditions of fair equality of opportunity.

The priority of right over the good in political liberalism means that "the principles of political justice impose limits on permissible ways of life; and hence the claims citizens make to pursue ends that transgress those limits have no weight" (PL, 174).

§2.5 Stability and Overlapping Consensus

Developing and justifying these two principles of justice is the focus of the first stage of political liberalism. Political liberalism's second stage asks whether and how political liberalism is possible. Can the just institutions selected in the first stage when realized gain sufficient support to ensure society's stability (PL, 142, 133–4)? Rawls believes they can for two interrelated reasons. It is possible for political values normally to outweigh all other values in a comprehensive doctrine because the former are "very great values," and because history shows that there are a variety of not unreasonable comprehensive doctrines (PL, 139–40). Thus a society with institutions that are just according to justice as fairness can be stable when 1) people who grow up in it "acquire a normally sufficient sense of justice so that they generally comply with those institutions" and 2) justice as
fairness is the focus of an overlapping consensus "of reasonable comprehensive doctrines likely to persist and gain adherents over time within a just basic structure" as defined by justice as fairness (PL, 141).

Justice as fairness is liberal, in Rawls's view, because it is "expressly designed to gain the reasoned support of citizens who affirm reasonable although conflicting comprehensive doctrines," the very doctrines that liberal public culture encourages. As a result, the problem of stability is to bring others to affirm liberalism through addressing their reason, not to get them to conform to it or affirm it through coercion (PL, 143).

If one looks only to the relationship between 'reasonable' persons and justice as fairness, this claim is plausible. Justice as fairness does not aim to convince those who affirm comprehensive doctrines that it considers unreasonable of its own reasonableness through sanctions. Rather, it applies sanctions against citizens to regulate their behaviour in ways that the citizens, viewed as reasonable and rational and free and equal persons, would accept. While justice as fairness seeks to earn what it considers the reasoned support of reasonable persons, it is prepared to impose itself on those whom it considers to affirm unreasonable comprehensive doctrines. Indeed, it explicitly seeks to limit the effects on other citizens of these persons' unreasonable actions and to contain the number of people who affirm such doctrines.

Rawls distinguishes an overlapping consensus on a political conception such as justice as fairness from a mere *modus vivendi*. The latter exists when, in spite of an agreement that under current conditions is in the prudential interests of all sides,

*in general [all sides] are ready to pursue their goals at the expense of the other[s] . . . . [The social unity of a] social consensus founded on self- or group interests, or on the outcome of political bargaining . . . is only*
apparent, as its stability is contingent on circumstances remaining such as not to upset the fortunate convergence of interests (PL 147).

An overlapping consensus, by contrast, takes a moral conception as its object, is affirmed on moral grounds, and is stable despite changes in the relative strength of comprehensive doctrines in society. The last point holds because the various sides do not have interests that would lead them to abandon it (PL 147–8).

Rawls attempts to rebut the objection that “an overlapping consensus [on justice as fairness] is utopian: that is, there are not sufficient political, social, or psychological forces either to bring about [such] an overlapping consensus ... or to render one stable” (PL, 158). His response is to provide a narrative explanation of the development of an initial liberal modus vivendi into a liberal constitutional consensus such as arguably exists in the US today, and its plausible extension into a stable overlapping consensus on justice as fairness in the future.

He believes that the liberal form of toleration that emerged as a compromise among exhausted combatants of Europe’s Wars of Religion provided “the only workable alternative to endless and destructive civil strife” (PL, 159). While reluctantly accepted at first, experience under the principles of the modus vivendi led to an appreciation of their merit and allegiance to them. This allowed political basic rights and liberties to be assigned special priority, which came to be understood as meeting an urgent political requirement to decrease the stakes of political controversy and the insecurity and hostility of public life (PL, 161). Long experience with having these liberal principles applied according to a reason that is public helped to encourage the cooperative virtues of public life: reasonableness, fairness, “a readiness to meet others halfway ... and to cooperate
with others on political terms that everyone can publicly accept" (PL, 163). At this point, liberal principles are accepted by citizens' comprehensive doctrines, simple pluralism becomes reasonable pluralism, and a constitutional consensus exists.

Given a constitutional consensus, several forces tend to produce an overlapping consensus according to Rawls (PL, 164–7). Consider first the depth of the consensus. In order to gain majority support for their ideas, political groups develop political conceptions to gain wider support for their views, which in turn become a deeper basis for evaluating claims of justice. Consensus on principles is insufficient, according to Rawls, to guide how those principles should evolve to deal with problems. Political conceptions articulated in terms of fundamental ideas of society and citizen are required to provide the conceptual resources to respond to needs for change. Finally, judges engaged in judicial review of legislation will necessarily develop a political conception of justice in order to decide important cases. A similar dynamic extends the breadth of the conception. Rawls believes that the need to give due weight to the fundamental ideas of society and citizen present in a constitutional consensus requires the remainder of the constitutional essentials and basic matters of justice as specified by justice as fairness.

§2.6 Interpeople Liberalism

The extension of Rawls’s domestic liberalism to his Law of Peoples, which I term interpeople liberalism, involves reworking certain conceptions and introducing others. Rawls explicitly assigns different (sets of) meanings to some of them in the domestic and interpeople arenas. In these cases, the thesis keeps which meaning is at play clear through
the use of modifiers when the context leaves the meaning ambiguous, for example, interpeople original position, or domestic well-ordered society.

Once again Rawls claims to draw his fundamental ideas from public culture, in this case from the public culture of the interpeople system since World War II. For example, the eight principles of interpeople justice that he identifies are traditional ones in international law. Two aspects of this culture are that it eliminates rights of societies to (offensive) war and to internal autonomy (where this had been understood to allow domestic infringement of minimum human rights).

In place of the domestic idea of a well-ordered society, Rawls’s interpeople liberalism articulates an idea of a well-ordered society of societies. His interpeople liberalism holds among peoples, rather than among states. Each well-ordered people, which includes every liberal, and decent but nonliberal, people, is peaceful and not expansionist, has a rule of law “sincerely and not unreasonably believed to be guided by a common good conception of justice” (LP, 61), and therefore honours certain minimum human rights, including those to means of subsistence, liberty, personal property, emigration, and minimal freedom of religion. Disordered societies come in several forms. Some are ‘outlaw’ peoples that refuse to recognize the principles of interpeople justice, either by being aggressive towards other societies or by violating the human rights of their peoples (LP, 5, 90). ‘Burdened’ peoples fail to be well-ordered due to unfavourable circumstances such as a lack of material, technological, human, or social-political resources (LP, 106). Lastly, ‘benevolent absolutisms’ respect most human rights but deny their members a meaningful role in making political decisions (LP, 4, 63).
The interpeople original position models deliberations about interpeople justice among representatives of peoples, in contrast to the domestic original position which models deliberations among representatives of citizens of one society about domestic justice for themselves.\(^8\) Once again, those represented in the original position are conceived as reasonable and rational (\textit{LP}, 54; \textit{LP}, 28–9, 32–3), the parties are represented as rational, the framing of the parties' deliberative situation represents their reasonableness, and a veil of ignorance is used to withhold inappropriate and biasing information from them as they reach their agreement. Rawls also reuses in the interpeople context the idea of stability familiar from the domestic theory, and the notion of endorsement upon due reflection at all levels of generality, or wide reflective equilibrium.

His law of peoples contains familiar principles of interpeople justice, including that peoples (as organized by their governments) are free and equal, observe their treaties and undertakings, and honour human rights (\textit{LP}, 55). While peoples have a right to legitimate self-defence, international organizations like the UN ideally conceived have a right to war against grave human rights violators (\textit{LP}, 36).

\section*{§2.7 Possible Roles of Culture in Liberalism}

The role of culture in liberal theory depends on the particular theory of liberalism that is examined. This section starts by outlining how Kymlicka's comprehensive liberalism

\footnote{\footnotesize Although Rawls's exposition of interpeople liberalism proceeds by explaining first the reasoning and agreement of parties representing liberal peoples, and then the reasoning and agreement of parties representing decent peoples, I interpret this conceptually to be a single original position within which representatives of liberal and decent peoples could simultaneously agree on the same principles.}
would incorporate societal cultures into a comprehensive Rawlsian liberalism as a primary good. While this role can be accepted with minor modifications into a political Rawlsian liberalism, this thesis is more interested in examining how more fundamental ideas and arguments in Rawls's theory of justice are related to the public culture of different societal cultures. I show that liberal cultural coercion of an opposed nonliberal people cannot be justified within a reasonable and consistent Rawlsian framework.

Defining culture in terms of intergenerational communities that provide life options dovetails nicely with the basis of Kymlicka's liberalism in lifeplan autonomy. His approach reveals one ground upon which liberalism can recognize that cultures may in certain circumstances deserve protection. Individuals need a meaningful context within which to make choices about whom to be and become. They need meaningful roles to be available to them in order to be able to choose autonomously how they will live. Cultures can provide this and thus are worthy of protection according to Kymlicka. But to the extent that a culture inhibits liberal freedoms this approach holds that the culture should be reformed or eliminated if necessary, so long as this is done in an appropriately liberal manner.

While individuals can normally migrate from one culture to another, and cultures can change and provide new roles and eliminate existing roles, in rare circumstances individuals from one culture may be unable to adapt to another, and the culture into which they were born may be threatened by another. Kymlicka discusses the example of

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9 Kymlicka, Multicultural Citizenship. 34, 75, 80, 152–65.
aboriginal cultures in Canada and elsewhere.\textsuperscript{10} The extent of poverty, ill-health, alcoholism, and suicide present among aboriginals is greater than virtually any other major group in liberal societies. According to Kymlicka, this is due in part to an inability either to assimilate into the dominant non-aboriginal culture or to continue traditional aboriginal culture adequately in the face of economic and other external threats. These problems are due in part to the fact that aboriginals in Canada may be outbid for important resources (e.g. the land or means of production on which their community depends), or outvoted on crucial policy decisions (e.g. on what language will be used, or whether public works programmes will support or conflict with aboriginal work patterns).\textsuperscript{11}

Many aboriginal individuals have no viable, meaningful life options as a result. In such cases, protection of these individuals’ culture from external pressures even if they have nonliberal elements may be the only way a liberal state can preserve their autonomy.

Kymlicka thus views culture as a Rawlsian primary good necessary for individual liberty. Cultures have no value per se but only in so far as they provide a context of meaningful choice for individuals; only if the individuals of a culture cannot be autonomous without their culture does it deserve protection. And since a context for meaningful choice continues to exist even if the exact choices change, protecting a culture in this sense does not mean preserving the current character of the culture, or restoring some (real or imagined) prior character. So a liberal effort to eliminate nonliberal cultural practices of nonliberal peoples does not infringe the value of cultures

\textsuperscript{10} Cf., e.g., Kymlicka, \textit{Liberalism, Community and Culture}, 165–67, index entries.

\textsuperscript{11} Kymlicka, \textit{Liberalism, Community and Culture}, 183.
as Kymlicka construes it in liberal terms.

This leads to a difference between Kymlicka’s concept of culture and the one I will develop in Chapter 3. Kymlicka says that in a modern state a societal culture requires institutional embodiment in schools, media, economy, government, and so on, and explicitly limits such institutions to the context of a modern state.\textsuperscript{12} Parallel institutions which are under the control of the members of a culture, or, minimally, which adapt to their concerns, are indeed one way in which some cultures can survive and develop. However, other ways also exist: continued ineffective inclusion in the pervasive embrace of a modern liberal society’s institutions as sometimes occurs in geographically remote areas of such states, or formalized effective exemptions from the forced inclusion in standardized institutions of liberal societies such as education, or effective powers to institute practices allowing the influence of certain modern institutions to be excluded (for example, by banning certain media outlets).

As my characterization is intended to include cultures that are not modernized, institutionalization associated with modernism is not built into it. The peoples’ rights to political self-determination described in §5.4 can allow these peoples to escape modernization. By contrast, Kymlicka is interested in creating a theory of minority cultural rights that restricts as much as possible the scope for non-liberal cultural practices. In particular, Kymlicka believes liberalism is justifiable only if it morally requires that, barring a few exceptions due to unfortunate circumstances, all individuals in minority national cultures are brought up in such a way that they have an effective

\textsuperscript{12} Kymlicka, \textit{Multicultural Citizenship}, 76–7.
option to choose to leave their culture for another one, such as the modern cosmopolitan liberal one. Requiring non-liberal cultures to change so that they have institutions that will, for example, educate their children to make it viable for them to leave their culture for a liberal one and to enable them to make an informed choice about such exits from their culture articulates one type of liberal ground rule for the interaction between liberal states and non-liberal cultures.

Setting the priority of personal autonomy so high that it trumps competing values is a specifically liberal ordering of values. However, Kymlicka believes that a liberal state cannot legitimately impose such an ordering on nonliberal national cultures through force.\(^\text{13}\) Although he speaks of this as "a modus vivendi", he also writes that "[r]elations between majority and minority nations in a multi-nation state should be determined by peaceful negotiation, not force (as with international relations)." He goes on to stigmatize "coercively imposing liberalism" except in cases of "gross and systematic violation of human rights, such as slavery or genocide or mass torture and expulsions, just as these are grounds for intervening in foreign countries."\(^\text{14}\) Kymlicka does not draw this line around the legitimate use of force by a liberal state based solely on when it can or cannot effectively impose liberalism, though he does present extensive evidence that a great deal of such coercion is ineffective and often counterproductive. Rather, he seems to be articulating a moral sentiment that such coercion is wrong, rather than just a result of a modus vivendi. Unfortunately, he does not clarify the basis for such a claim. This


thesis aims to articulate in Rawls's liberalism a principled basis for the collection of moral judgements Kymlicka makes regarding intervention. While the conclusions it draws regarding legitimate liberal state coercion of societal cultures have similarities to Kymlicka's, the political theory that results provides a rationale for the judgements. As a result, it is able to draw a clearer line in practice and justify it more fully.

Kymlicka takes societal cultures, whether national minorities or not, to be important because they provide the options for life choices required for individual autonomy. While the ultimate basis of his liberalism can be found in the value of individual autonomy, Rawls's can be found in the public culture of liberal societies, in the beliefs of the members of these societies, and in the public culture of the international system. Societal cultures of peoples are important in different ways in Rawls's liberalism, as might be expected given its different structure. Cultural beliefs and practices dominant in these societies underwrite the initial intuitions and considered endorsements of individuals of what is included in Rawls's hypothetical social contract. The cultural practices of peoples can be seen as providing the epistemic community whose values and practices are systematized in and by a conception of politics such as political liberalism. Liberal cultures, in particular, embody the value of individual autonomy in public life in their public traditions and institutions.

For example, "[T]he exact point at which intervention in the internal affairs of a national minority is warranted is unclear, just as it is in the international context. I think a number of factors are potentially relevant here, including the severity of rights violations within the minority community, the degree of consensus within the community on the legitimacy of restricting individual rights, the ability of dissenting group members to leave the community if they so desire, and the existence of historical agreements with the national minority" (Kymlicka, Multicultural Citizenship, 169–70).
Like many other fundamental ideas and principles of Rawls's liberalism, such as the conceptions of the person and of well-ordered societies, the recognition of peoples as the holders of rights to self-determination and secession can be drawn from liberal or international public culture. Later chapters will examine how recognition of a right of peoples to political autonomy affects a number of Rawls's central ideas. Public culture is also one source of the senses of reasonableness and legitimacy that limit the use of force in attempts to stop practices that are accepted as legitimate by peoples with nonliberal cultures. So public culture first helps to determine the salience of national societal cultures over against other potential claimants of political sovereignty. Public culture then helps to justify toleration of the use of such sovereignty to protect or promote non-liberal cultural practices.
Chapter 3 Peoples and Cultures

Cultural coercion by liberal states of peoples with nonliberal cultural practices and the political autonomy of substate peoples were not central concerns of Rawls as he developed the theory of justice laid out in Chapter 2. As a first step in discussing whether toleration or coercion is the appropriate response of a liberal state to nonliberal cultural practices within and without its borders, I will lay out a meaning for several of these interrelated ideas. This chapter concentrates on conceptualizing cultures (§3.1) and peoples (§3.2), while Chapter 4 will sharpen the sense given to the thesis's primary topic: cultural coercion by a liberal state.

Quotidian interactions, particularly when it is widely accepted as important that something be done or not done, are more central to the concept of culture sketched in §3.1.1 than notions of refined tastes. Fleshing out this idea involves an analysis of social rules (§3.1.2), social institutions (§3.1.3), and societal cultures (§3.1.4).

How a theory of interpeople justice should distinguish one people from another is tackled in §3.2.1. Mill's work on nationalities is extended in a few key areas to provide a workable characterization of peoplehood. The idea of a societal culture helps to separate perspicuously substate groups which are eligible contenders for peoplehood from those which are not able to benefit from the arguments for political autonomy in the following chapters. The account of societal culture laid out in §3.1.4 accommodates the
complexities of multicultural peoples, and multipeople states. I follow Kymlicka and Rawls in believing that national groups within states have significantly different normative properties than non-national groups, even in cases like immigrant groups where the latter have certain similarities to the former.

A fair degree of care is devoted in this chapter to the characterization of peoples within states in order to forestall spurious counter-examples to the arguments of later chapters. Partly because a tight formal definition is not presented due to the nature of the topic, the chapter concludes (§3.2.2) with an extended set of examples of groups that are and are not peoples.

§3.1 Cultures

§3.1.1 Cultures

This thesis does not take culture to mean "the best which has been thought and said in the world,"¹ or an ideal of learning, accomplishment and sensitivity to which most in a society aspire and few even among those born with talents to a privileged elite can expect to attain. Instead, the thesis is concerned with almost the polar opposite of such "high" culture: culture as the ensemble of what people do and think, their attitudes and habitual practices, how they eat and go to a washroom, what they do at births, deaths and weddings, as well as at work on Tuesdays and for entertainment during leisure time, who

¹ Matthew Arnold, Culture and Anarchy, ed. J. Dover Wilson (Cambridge: Cambridge University Press, 1960), 6. Note that Arnold's belief in the power of mass education to diffuse culture distinguishes his position from the one following the quotation in the text.
they greet, and how and when they shun people. While styles of dress and how dances are choreographed are parts of culture, especially insofar as this marks insiders and outsiders and rank and prestige, my main concern is not with culture’s trappings, but with its inner life and the behaviour and practices related to this inner life. I take this inner life of culture to be the lived experiences of those trappings, what it means to live in a suburb or a barrio, a castle or a Buddhist forest monastery, to don a suit or a veil, to travel in a chauffeured limousine or alone by dogsled. Culture thus conceived embraces the complex interlocking behaviour, values, and ways of seeing the world of a group that has lived together and continues to do so. Such culture is not the pop culture of the entertainment industry, or even a broader notion of the product of ‘cultural industries’ including highbrow or avant garde visual and performing arts, print and new media productions.²

One must be able to be born, to live, and to die within a group in order for it to be a culture in the sense used here.

Believing this kind of culture may matter in political theory is not necessarily based on viewing it as an artefact that must be preserved from change. In 1957, Clifford Geertz claimed that the then reigning theoretical orthodoxies in anthropology were unable to deal with the pervasive facts of social change because they either derived culture “from the forms of social organization” or regarded the latter as “behavioural embodiments of cultural patterns.”³ In order to account more accurately for historical change, he


suggested that each be treated "as independently variable yet mutually interdependent factors." As neither is reducible to the other, a useful way

of distinguishing between culture and social system is to see the former as an ordered system of meaning and of symbols, in terms of which social interaction takes place; and to see the latter as the pattern of social interaction itself. On the one level there is the framework of beliefs, expressive symbols, and values in terms of which individuals define their world, express their feelings, and make their judgments; on the other level there is the ongoing process of interactive behavior, whose persistent form we call social structure. Culture is the fabric of meaning in terms of which human beings interpret their experience and guide their action; social structure is the form that action takes, the actually existing network of social relations. Culture and social structure are then but different abstractions from the same phenomena (Geertz 33–4).

Where the characteristic sort of integration of culture is the "logico-meaningful" integration of a Bach fugue or Catholic theology, that of a social system is the "causal-functional" integration of an organism. The disjunction between these two sorts of integration, and between them and the motivational integration of an individual, means that none of the three is reducible to either or both of the others, though all interpenetrate and are interdependent. Each can be the origin of changes in the other.

This schematic model of social action is useful in the way it identifies some internal sources of change in a culture. As this thesis is less concerned with analysing such processes, however, and more concerned with justifications for certain types of interactions between cultures, often within the same society,¹ I use a different terminology. My usage of "culture" encompasses both the culture and social system of a group in Geertz's terms.

§3.1.2 Social Rules

The independence of Geertz's three aspects of a complete system of social action

¹ By a society, I mean, roughly, the ensemble of persons living within a state's territory.
should not be overstated. I take it as a characteristic of cultures that they possess what H. L. A. Hart termed social rules for a wide range of activities.\(^5\) Hart specifies that social rules exist in a group when a) certain behaviour is generally performed by members of the group, b) the existence of a rule making such behaviour a standard is a justification members generally give for why they behave in this way, c) members who threaten to violate or who violate the rule are generally subjected to demands by other members for compliance, demands that are generally acknowledged as legitimate, and d) members who violate a rule are subjected by other members to negative consequences for the violation, such as criticism (as in c) or other forms of punishment (54–6, also 79–88, 169–76). While consequences visited upon those who breach serious social rules include many different forms of hostile social reaction, ranging from relatively informal expressions of contempt to severance of social relations or ostracism,\(^6\) emphatic reminders of what the rules demand, appeals to conscience, and reliance on the operation of guilt and remorse, are the characteristic and most prominent forms of pressure used for the support of social morality (175–6).

Evidently, Hart’s positivist social rules combine Geertz’s individual motivation, social system, and culture.

Some social rules, such as rules of grammar, are not serious, while others, such as those associated with sexual morality in most societies, are more serious. The latter “[s]ocial rules are conceived and spoken of as imposing obligations when the general demand for conformity is insistent and the social pressure brought to bear upon those

who deviate or threaten to deviate is great” (84). This suggests that the definition of an obligation-imposing social rule would be the same as above, except for the following italicized additions to d): members who violate a rule are insistently subjected by other members to serious negative consequences for the violation.

Important rules of this sort constitute the accepted social morality of a group for Hart, which he distinguishes from various forms of critical and personal moralities (177–80). While Hart’s concentration on obligation-imposing social rules picks out certain key forms of cultural practice, other forms also exist that relate to the social economy of various types of esteem and honour in a culture, the accumulation and proper use of the influence of a particular ‘cultural office-holder,’ such as a social critic or a religious prophet, and so on. As obligation-imposing rules do not account even for all aspects of social morality (177–8), it is unsurprising that aspects of non-moral cultural practices may also require the supplementation of these rules in order to be fully captured in a model.

Despite their limits, obligation-imposing social rules can be the basis of a model of a great deal of cultural practices. A range of other normative concepts, such as liberties and rights, and including higher order ones such as powers and immunities, can be developed out of the idea of a normative duty. For example, a social rule imposing an obligation on all others not to interfere with certain choices of an individual creates a liberty for that

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individual. As a result, obligation-imposing social rules can be a basic element of an
analysis of social institutions that, for example, confer on religious officials the power to
marry, and parliamentarians the power to enact laws.

The definitions above of obligation-imposing rules were formulated in universal
terms: they are applied by everyone in a group to everyone else in that group. Many
social rules are more finely articulated than this universal form of obligation-imposing
rules. In most social institutions, social rules require actions only from certain persons,
and similarly limit the persons allowed or required to apply sanctions for breaches. These
groups of persons are often identified by the role or office they hold in the institution.
Because cultural rules may be specific to one or a few persons, cultural coercion can
occur even if only one or a few members of a culture are directly coerced.

Indeed, certain specialized rules only need to be known and accepted by a subset of
the members of a culture or institution even though they may be integral to the whole
culture’s existence. For example, few in a parliamentary democracy need to know the
details of parliamentary procedure. The common acceptance by others in a culture of the
authoritative knowledge of the specialized group regarding social rules accepted among
the specialists can qualify those specialized rules as social rules of the broader culture.

§3.1.3 Social Institutions

Rawls uses Hart’s account of social rules in A Theory of Justice as the basis of his
account of the practices that compose social institutions (TJ, 55). Since the “primary
subject of the principles of social justice is the basic structure of society, the arrangement
of major social institutions into one scheme of cooperation” (TJ, 54), social rules provide
a convenient common conceptual model for both cultural practices and the institutions in
the basic structure that are the focus of a theory of justice. Analysis of the conflicts
between the social rules followed by state agents that comprise the coercive institutions
of the state and the social rules followed by members of cultures is a convenient way of
delineating the core of the conception of state cultural coercion used in this thesis. I will
focus more particularly on state cultural coercion of peoples with nonliberal societal
cultures.

Rawls may be wrong, and a more general and complex model of social rules than
Hart provides may be required to represent social institutions adequately (cf. TJ, 54–5).
The account of state cultural coercion developed in §4.3 relies on three basic modal
relationships, namely, prohibiting, requiring and allowing. These modal relationships can
be adequately modelled using obligation-imposing social rules. Admittedly, a greater
variety of such relations and more subtle gradations between, for example, contempt and
glorification, are present in cultures and even the coercive mechanisms of states.
Nevertheless, by showing how crucial aspects of many cultural practices that involve
these normative concepts figure in an account of state cultural coercion, this analysis
should provide at least a paradigm for understanding analogous conflicts with other
aspects of cultural practices.

That a social rule exists amongst the members of a group shows that the group
displays some minimal level of social organization. This is analytically useful since it can
be elaborated into the idea that the members of a culture are those who participate in its
practices, as specified by the roles and offices and rules of the culture.\textsuperscript{7} But many groups and organizations that have social rules do not qualify as cultures: for example, gangs, cliques of friends, workplaces, and voluntary civic associations. While an attenuated sense of culture can be attributed to some such groups, this thesis is concerned with peoples that are all-things-considered opposed to liberal state coercion of the cultural practices of some or all of their members. Typically, this involves a culturally defined people that asserts political sovereignty over the jurisdictional area involved in the clash between cultural practices and the laws of a liberal state. And typically, the cultural practices that the people desire to protect are those of its societal culture, a culture of the sort portrayed at the beginning of §3.1.1. In the next section I argue that having at least one societal culture is a characteristic of peoples that helps to distinguish them from other aspirants to political sovereignty, such as a police force that rejects civilian rule, or a college dormitory.

§3.1.4 Societal Cultures

What is a societal culture? Rawls tends to assume that a state is composed of a society made up of a single people that shares a common societal culture and inhabits a given territory. If one puts aside the problem of an adequate analysis of multipeople societies, and multicultural peoples and societies, the following passages from Rawls provide a helpful start for a model of societal culture:

\textsuperscript{7} Though this leaves important scope for dispute about urgent practical questions, disputes that often benefit from close attention to context beyond the scope of this work, a serviceable boundary line can be drawn in theory that marks some persons as definitely members of a culture and others as definitely not.
a democratic society, like any political society, is to be viewed as a complete and closed social system. It is complete in that it is self-sufficient and has a place for all the main purposes of human life. It is also closed . . . in that ['we assume until a conception of justice for a well-ordered society is on hand' (PL, 41) that] entry into it is only by birth and exit from it is only by death (PL, 40–1).

[Liberal societies’] members engage . . . in activities guided by publicly recognized rules and procedures that those cooperating accept and regard as properly regulating their conduct. [These] cooperative activities suffice for all the main purposes of life and its members inhabit a certain well-defined territory over generations (PL, 108).

Kymlicka provides a fuller description of a societal culture as "an intergenerational community, more or less institutionally complete, occupying a given territory or homeland [not necessarily to the exclusion of members of other cultures], sharing a distinct language [in most cases] and history." Such a community "provides its members with meaningful ways of life across the full range of human activities, including social, educational, religious, recreational, and economic life, encompassing both public and private spheres." As the existence of Catholic and Protestant societal cultures in Ireland since the mid-17th century indicates, groups can have a societal culture even if they are excluded in important ways from a society’s public sphere, formal educational institutions, etc. because they are beyond the pale to a dominant group.

Raz has articulated in sophisticated analytical detail a conception of culture, partly in cooperation with Margalit. For Raz, individual goals are formulated as variations of social forms. these social forms vary by culture, and there may be a central aspect such as autonomy in the character of the bulk of a culture’s social forms. He construes cultures

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9 Ibid., 76.

as "conglomerations of interlocking practices which constitute the range of life options open to one who is socialized in them."\textsuperscript{11} The encompassing nature of a culture that can constitute the range of one's life options is a key to its being a societal culture. Raz's work on culture provides further clarity to Rawls's statement about societies having "a place for all the main purposes of life," and Kymlicka's idea about "institutional completeness." Raz's conception of culture helps to distinguish what I am referring to as societal cultures from other 'cultures' like that of opera goers or members of a bureaucracy. The latter are inappropriate candidates for independent actors in the society of peoples (see LP, 23).

\textbf{§3.2 Peoples}

\textbf{§3.2.1 Peoples, States, Nations and Substate Peoples}

The main contrast Rawls draws when characterizing peoples is between them and his conception of states (LP, 23–30). Peoples have a moral character, while states are modelled as pursuing their prudential self-interest and lacking moral motives (PL, 17, 27–30). This distinction is partly a convenient rhetorical device for invidiously comparing the traditional Thucydidean 'realist' theory of international relations\textsuperscript{12} with Rawls's "realistic utopia" (LP, 4–7). Yet it can also be seen as a response to the frequent

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\textsuperscript{11} Raz, "Multiculturalism," 177.

use of the apparatus of a state to pursue wars in the self-interest of the state or its rulers without sufficient regard for the interests of others. The term 'people' should not be understood to refer to the population of a state to the exclusion of any governmental apparatus they may have set up, however, since Rawls does envision the realization of his realistic utopia through states (in the commonsense meaning of the word) whose motives for action have been transformed by the recognition of the moral constraints of his political interpeople liberalism. The theoretical derivation of these constraints depends on the moral character of peoples. Further, the way the moral character of peoples is conceived turns out to assist in identifying substate peoples.

While a 'society' is all the inhabitants of a state, a 'people' need not be. I follow Rawls in using 'people' as the term for a group that deserves to be recognized as a sovereign political actor in the society of peoples (LP, 23). The typical theoretical model is a single people within a single state, despite the fact that few, if any, pure nation-states exist. Many peoples choose to share part or all of their political jurisdictions with other peoples. Rawls notes in his Law of Peoples that one people can be wrongly subject to another (LP, 57), and acknowledges rights of peoples to secession and self-determination distinct from the right of peoples as organized by their state to independence (LP, 56; cf. LP, 38). The right of a people to secede from a state requires that a state can contain more

\[13\] This thesis generally uses 'state' to refer to entities like the full members of the United Nations, that comprise the population of a defined territory including the governing structure that politically represents it and the territory itself. Though context will reveal other uses, such as a use of 'state' as the governing apparatus in contrast to the population it governs, 'state' in this thesis is not used to mean immorally self-interested entities in international relations.
than one people, and the right of a people to self-determination (see TJ, 378) within a state suggests the same.

Once the simple model of a correspondence between states and peoples is let go, the vexing question of how to determine what constitutes a substate people arises. Some of these substate peoples may even be divided amongst several existing states, like the Kurds. Kymlicka notes that "it is the nearly universal conclusion of writers in the area that attempts to specify sufficient and necessary conditions [of a cultural nation or people] are hopeless."\(^{14}\) While a formal and determinate definition along these lines may be impossible to specify, definitions adequate for most purposes are possible given the agreement on some central cases, such as the Québécois and the Inuit, among disagreements over cases in the penumbra of the term. I agree with Kymlicka that the clear cases reveal that "[a]ny definition will contain two components: (1) an objective component dealing with such things as a common heritage and language; (2) a subjective component dealing with self-identification with the group."\(^{15}\)

Ostensibly pointing out other particular peoples, such as Sri Lankan Tamils, and the dominant people in each of France, the United States, and Mexico, can help to indicate the meaning of a 'people.' Better still would be to identify the family resemblances among such historically and pragmatically identified peoples, both those with and

\(^{14}\) Kymlicka, *Liberalism, Community and Culture*, 180 n. 2. Kymlicka notes that the difficulty in settling on a definition is due in part to states contesting definitions which would impose obligations on them regarding their treatment of national cultures in international law, whether they are termed 'national minorities', 'ethno-cultural nations' or 'minority cultural communities'.

\(^{15}\) Ibid., 179 n. 2.
without control of a state, and then to refine the conception by illustrating its use in some borderline cases. Given that the precision provided by a completely specified set of necessary and sufficient conditions is likely impossible, such an approach appears to provide the best hope for clarity. Mill provides a very good start in this endeavour.

Rawls cites Mill’s definition of nationality, particularly its idea of common sympathies, in a section of *The Law of Peoples* entitled “Why Peoples and Not States?” While Rawls identifies common sympathies as a basic feature of liberal peoples, the points Mill makes are general to other peoples as well:

A portion of mankind may be said to constitute a Nationality, if they are united among themselves by common sympathies, which do not exist between them and any others—which make them cooperate with each other more willingly than with other people, desire to be under the same government, and desire that it should be government by themselves, or a portion of themselves, exclusively. This feeling of nationality may have been generated by various causes. Sometimes it is the effect of identity of race and descent. Community of language, community of religion, greatly contribute to it. Geographical limits are one of its causes. But the strongest of all is identity of political antecedents; the possession of national history, and consequent community of recollections; collective pride and humiliation, pleasure and regret, connected with the same incidents in the past. None of these circumstances, however, are necessarily sufficient by themselves.  

The passage provides a good starting list of objective and subjective criteria for peoplehood, including reasonable evaluations of their influence or weight. When a large proportion of the criteria are satisfied in a particular case, then it is quite likely that the group in question is a people. Conversely, when few of the features are present, and only the less important ones at that, then it is less likely that the group is a people.

A few modifications and extensions of Mill’s criteria are in order. A simple one is

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that a group’s possession of national history may be more subjective and less objective than some of Mill’s phraseology suggests, yet still be adequate.\textsuperscript{17} When a group faces active opposition to its efforts to assert political autonomy, and especially repression of them, empirical evidence indicates this tends to increase its group identity and its mobilization in favour of political autonomy in the next few years and decades, as we will see more clearly in §6.5.2. A history of colonization and oppression is entirely consistent with the existence of a people: the success or failure of a group’s military campaigns to assert and maintain territorial control are not entirely determinative of their moral status as a people. However, the existence of an armed movement in favour of a group’s political autonomy does not necessarily indicate that all members of the putative people believe that the group is or should be a sovereign political actor.

Nothing in Mill’s definition requires that a people currently have their own government, so it allows substate peoples.\textsuperscript{18} Although the capacity to create its own government jurisdiction, either state or substate, is a factor helping to indicate that a group is a people, some groups may be peoples without this capacity. For example, some peoples may lack a valid claim to territory or may not have the experience to run an effective government. However, effective governance need not be construed as the current standards of international state recognition: small isolated Aboriginal peoples can


\textsuperscript{18} Although Rawls states that a basic feature of a liberal people is that it has “a reasonably just democratic government that serves their fundamental interests” (\textit{LP}, 23), it seems best to allow in non-ideal theory that a liberal people subjugated by another people may only aspire to such a government yet still be a people, and liberal at that.
effectively self-govern without diplomatic recognition as states, or the full panoply of institutions required in a liberal state.

A slight modification is required to accommodate peoples aspiring to self-determination but not a nineteenth century nation-state. Self-determination allows a people to choose to share some or all jurisdictional areas of their government with other peoples, retaining, if they remain a separate people through not having extended their common sympathies to the other peoples (cf. LP, 43 n), the 'political sovereignty' to later choose to (re-)establish their own (juridically sovereign) jurisdiction in part or all of these areas. National agency that aims at or is satisfied with the jurisdictions available within a multipeople state is sufficient.

When some substate groups not aspiring to independent statehood are accepted as peoples, the question of how they are to be distinguished from other somewhat similar substate groups becomes salient. A highly relevant feature here is whether the group contains a societal culture. Groups that do not meet this criteria, such as self-governing professional groups, or fraternity houses, are very poor candidates for peoplehood. Conversely, few additional criteria are needed in order for a group to be generally accepted as a people.

Societal cultures that have a history of colonization by the state currently controlling their territory, and particularly a history of oppression by that state, are highly likely to be peoples. These objective factors are likely sufficient for peoplehood when combined with some subjective factors that can be drawn from Mill, such as most members of the group self-identifying as a separate people; rejecting assimilation with the dominant people(s)
as a goal; desiring self-determination or other self-governance for themselves separate from others; and thinking that they, and not the existing state, should control the form of the institutions of self-governance, and the purposes they are to pursue.

To illustrate how cultures can become the focus of national identity, and thus how a societal culture can become a people, consider the case of a nonliberal culture within a liberal state.¹⁹ To qualify as such it must have central and valued practices that are incompatible with conforming to the laws of a liberal state, and not be ambivalent about these practices. That is, most members of the culture must firmly adhere to the practices even in the face of competing practices and values, such as liberal ones. The liberal state, if it enforced its laws, would take these practices as grounds for applying sanctions against the members of the culture. This would likely be perceived as unjust among the members of the nonliberal culture. One possible result is that nationalism, in the sense of a desire for sovereignty over their political governance, would be created, or strengthened if it already existed. (Another is that members of the culture would change their values and practices in the face of this coercion, perhaps due to an initial fear of those sanctions.) Once a strong and sustained belief in the political sovereignty of the culture developed generally among its members to make it a national culture, then the culturally defined group would have become a Rawlsian people, assuming an appropriate set of other indicia of peoplehood were present.

On rare occasions, a new people arises within an existing people, usually due to

¹⁹ For an argument that cultural nationalism can be liberal, see Kai Nielsen, “Cultural Nationalism, Neither Ethnic Nor Civic,” The Philosophical Forum 28 (Fall–Win 96–97), 42–52.
disaffection with its treatment as a regional or other grouping. Once a group meets the
criteria for peoplehood, it deserves equal treatment with other peoples, including equal
rights to political autonomy. As a new people, however, it may not have a valid claim to
some of the prerequisites such as territory required to make substantive use of some of its
political autonomy rights, as will become clearer in Chapter 5.

§3.2.2 Examples

Rawls mentions or implies that four specific substate groups are peoples. The first
three concern substate groups in the United States before its Civil War—northerners,
southern whites, and southern blacks (LP, 56, 222 n. 14)—while the fourth are European
Jews in the time of Hitler (LP, 20). I leave it to historians to determine whether one of
these groups—southern blacks—indeed manifested enough of the indicia laid out above
to qualify for peoplehood. The others all appear to qualify.

20 Although southern blacks in 1860 shared an experience of the oppressive institution
of slavery and were constructed as a single race by whites, many slaves, particularly first
generation ones, would have been close enough to their various African cultures of origin
to have perceived the physiognomy, language, religions and practices of slaves from
other peoples in Africa as an indication that they were as foreign as the white slave-
owners. As a group, neither they nor their ancestors had a history of self-government in
common with all other slaves but not with other persons, nor a desire for that despite the
foundying of Liberia. Indeed, a number surely desired self-government in common with
other residents of the US, or their state. Slaves were likely divided among those retaining
affiliation with their African people of origin, those affiliated with a Southern people or
with the North’s imagined pan-United States people, and some who may have been
peopleless in the manner of legally stateless persons. Determining the demands of justice
for the latter rare but interesting category of person—those who are not a member of any
people according to the existing social rules and other factors that determine the
boundaries of peoples—is unfortunately beyond the scope of this thesis.

21 The common sympathies, and attitudes with respect to slavery by 1860, of southern
US whites arguably distinguish them from northerners as a people, or perhaps set of
peoples by politically autonomous state interested in sharing some jurisdiction. A key
While individual societal cultures often have the national agency required to be Rawlsian peoples, other kinds of cultures are unsuitable for this role. Kymlicka notes a number of groups that are sometimes collected together, especially in the United States, under the rubric of multiculturalism lack the appropriate characteristics to benefit from his arguments for protection of certain national minority cultures. These groups include the new social movements such as women, gays and lesbians, the disabled, as well as other groups such as the poor and immigrant cultures. Although part of the reason for the distinction in Kymlicka’s eyes is that the latter groups are not as institutionally complete, it is also because the groups’ issues are of two different types. While societal cultures with national agency claim sovereignty over the jurisdiction(s) that determine how their internal affairs will be governed, other cultural groups lacking this agency do not. At most they demand that their existing state change its laws regarding their issues.

Two substate groups in this list that evince interest in some separation from liberal society still do not qualify on this account as peoples with the political autonomy rights of secession, self-determination, and independence justified in later chapters. Groups of separatist feminists\(^{22}\) neither seek self-government in the sense of group political autonomy used here, nor manifest yet the institutional completeness of societal peoples. Similarly, advocates of deaf culture have not created a consensus among the deaf on any claim that can be reasonably construed as a social rule among the deaf that they have

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sovereign jurisdiction over the issue of cochlear implants in deaf children.23

Certain long-existing religious groups as a whole have, or at least aim for, a group autonomy much closer to peoples' political autonomy, particularly self-determination. Doukhobors and various Anabaptist sects such as the Hutterites and Mennonites have experienced persecutions and migrations in search of a place to live as peaceable religious communities. They have a societal culture of their own. Their simple practices are often sharply distinct from those of surrounding persons, very conservative of their traditions, and insular to the point of making it difficult for members to cope outside the community. They display a strong desire to govern their communal life according to their understanding of Christianity even to the point of denying the authority of states to regulate many aspects of their affairs. But this denial flows more from how they interpret the doctrine of the separation of their church and a state that they accept in principle rather than from any desire to create a theocratic government of their own. Their desires to control and perpetuate their practices are probably best understood as dissent within a state rather than as a minimal form of the national agency characteristic of peoples. However, one aspect of these desires, that for control over the education of their children, may be better modelled as an assertion of sovereign jurisdiction over the education of their children. If so, then this would be a factor speaking in favour of accepting them as a substate people seeking self-determination over a narrow jurisdiction.

The development of the subjective factors required for an entirely new people is

theoretically simple but empirically quite rare, even in comparison with the frequency of assimilation of formerly separate peoples into one people. The few new peoples that do arise are generally the result of a renaissance in quiescent political autonomy interests of a group that has continued to have persons identify with it on other grounds. The Scots, Québécois, and Kosovar Albanians are examples. In cases where peoples have shared jurisdiction by consent over long periods, it may be difficult to determine whether separate people continue to exist. The existence of a majority in favour of increased separate political autonomy for themselves amongst a group is not necessary in order for them to be considered a people. The weaker belief that the group should be able to decide its own governance structure, even against the wishes of its current governance partners, is a strong indication that a separate people exists.

With this chapter's accounts of cultures and peoples on hand, it is now time to turn to what is meant by the coercion of a culture of a people.
Chapter 4 Liberal Cultural Coercion

Liberal cultural coercion is defined in this chapter as coercion by a state of the members of a people where that coercion conflicts with their nonliberal cultural practices and is opposed in an all-things-considered manner by the people. This account of liberal state cultural coercion is intended to capture the different forms of state cultural coercion, such as ones in which only a few members of a culture are coerced by a state regarding a few of their actions.

The chapter begins by specifying a general conception of coercion of one agent by another (§4.1). This is particularized to state coercion that uses threats of economic and physical force of the acts of many individual agents (§4.2), and then to the conflicts between state rules of coercion and social rules of a culture (§4.3). Weaving these strands together with liberal criteria for state coercion yields the account of a liberal state culturally coercing a people including a nonliberal culture used in the remainder of the thesis (§4.4). Several detailed examples of such liberal cultural coercion are provided to give a richer basis for the discussions that follow (§4.5).

§4.1 Coercion

While Rawls claims that all political power is coercive (PL 68), he does not closely examine the concept of coercion. At its simplest, coercion is the use of a threat of
unwanted consequences to make a person do one's bidding.\footnote{This analysis of state coercion draws heavily on both the fixed descriptive core of a single act of agent to agent coercion in Raz, The Morality of Freedom, 148–9, and its source, Robert Nozick, “Coercion,” in Philosophy, Politics, and Society, eds. P. Laslett, W. G. Runciman, and Q. Skinner, 4th series (Oxford: Blackwell Press, 1972), 101–35, especially 104–6.} By extension, coercion also exists in cases where the threat is carried out because the requested action was not done, and even where there is no intent to carry out the threat if the person does not do what is desired. The standing threat of coercion from a state law is enhanced when law-breakers are punished, and lessened when it is not enforced.

One's bidding may require that a number of other acts be done or omitted, such as those required by logical entailments or nomological truths, which any reasonable agent\footnote{For an explanation of common law negligence as a failure to follow a reasonable standard of care by imposing unreasonable risks on others, see Ernest J. Weinrib, The Idea of Private Law (Cambridge: Harvard University Press, 1995), 147ff.} in the coercer's position would know. These other acts are collaterally coerced during the primary act of coercion. Agents' reasonableness depends in certain circumstances on whether they had discharged a responsibility to determine whether their acts would (likely) create consequences unwanted by others. The conditions specifying when a state should have known are likely more complicated than those required to specify when an individual should have known. However, a major reason for introducing a reasonableness standard is to avoid the need to provide a complete definition of any such conditions in advance. More derivative forms of coercion occur when a coercive threat is intended, or is reasonably held to have been negligently made, even if it is not understood by the coerced.
In addition to this descriptive core, coercion has evaluative elements that arise from its place in a normative theory and the context of the act. Where the threatened negative consequence is the withholding of a benefit from a person to which they had no claim and which the threatener has a normative liberty to give or withhold at their pleasure, it is better to speak of inducement than coercion. For example, parents threatening not to give an unexpected treat to their five year old daughter if she does not pick up her toys is not coercion, though withholding all food or expelling her from the home is. The ability to make such normative judgements distinguishing threats from offers depends on the existence of a normative theory. I will take it that the claims and liberties of persons and peoples in a Rawlsian theory of justice are those that Rawls's writings specify except where I explicitly disagree. The exact contour of the conception of coercion in the theory is thus only clear after the rest of the theory has been constructed, yet still leaves the political power of states and the UN ideally conceived that is backed by threats to be coercive. The justifiability of this conception, like other elements of the theory, is conceived as standing or falling with the theory as a whole.

I follow Raz in holding coercion to be *prima facie* wrong in liberalism. The weak sense in which I attribute this *prima facie* wrongness to coercion is that knowing only that an act was coercive, and lacking any other knowledge of the context of the act, one would have weak and defeasible grounds for holding the act was wrong in liberalism. These grounds would stem from knowing only that a threat of negative consequences had

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3 See Raz, *The Morality of Freedom*, 148-151. Raz "concentrates on coercion by threats since this is the form of coercion relevant to political theory," though he notes five other modes of coercive influence. Extreme inducements may constitute coercive offers.
been made or carried out, and that someone other than the affected agent was deciding this for that agent. When no other knowledge is provided of the context or specific character of the coercive act, counterbalancing reasons for holding the act was not wrong are not known. Coercion's *prima facie* wrongness helps to explain how coercion may remove blame from the coerced for their actions.

Coercion is only *prima facie* wrong, since in certain circumstances, such as a state proscribing murder, coercion may be justifiable, and even sought by the person coerced. The claim to coercion being *prima facie* wrong is enhanced by the character of the unwanted consequences threatened by a liberal state that are the focus of this thesis, as discussed in §4.2. Alternative definitions of *prima facie* wrongness that encompassed greater knowledge of the act being coerced, the type of agents coercing and being coerced and their relationship, and the character of the threatened undesirable consequences could result in a different analysis of the *prima facie* wrongness of coercion, or of particular instances of coercion.

§4.2 State Coercion

Liberal states' coercive powers are primarily exercised through threatening the state use of physical and economic force. Physical force includes police enforcement and imprisonment of members of domestic populations, and military interventions in foreign states, such as the wars Rawls advocates against grave human rights abusing regimes. Economic force in this context includes fines levied against a regime's subjects, and the use of economic blockades and sanctions by a state against other states or foreign
individuals or groups. State coercion outlawing an act for a group of persons (say, all of its subjects) involves the state coercing each individual in the group.

Comprehensive economic sanctions work to change a state's course of action by harming its population. They can be more physically devastating than physical force. For example, UN statistics show that the economic sanctions against Iraq in the wake of the Gulf War and maintained at US and UK insistence have increased the infant mortality rate from 3.7 percent before the war to 12 percent. Approximately 40,000 children under 5 and 50,000 older Iraqis are dying annually as a result of the sanctions. As a result, "it would appear that . . . economic sanctions may well have been a necessary cause of the deaths of more people in Iraq than have been slain by all so-called weapons of mass destruction [including nuclear, chemical, and biological weapons and ballistic missiles] throughout history."  

Not all trade sanctions are coercive. Were one state to ban the export of a luxury consumer good to another state, this is not coercive even if no other sources of that good are available. Other trade sanctions that would so deprive a state of food, or the foreign exchange needed to purchase food, that sizable portions of its population would starve are clearly coercive given the Law of Peoples' duty of assistance in times of drought or famine (LP, 56). Less general trade sanctions or blockades can also be coercive, particularly given the current economic and military interdependence of peoples and states. Longstanding trading relations can create a reliance that makes an abrupt

imposition of sanctions coercive even though a gradual imposition of the same sanctions would be non-coercive. Even though states have large discretion over who they supply arms and munitions to, a blameless state threatened by an unlawful aggressor state may have a claim to military support that makes military supply sanctions coercive. As a rule of thumb, the more of a stick that a trade sanction is, the more likely it is to be coercive.

Some state laws are intended to enable subjects to carry out activities like marrying and creating valid contracts. They specify that if subjects do certain acts, then the state undertakes to act coercively on their behalf, by, for example, enforcing their will or contract. Any state coercion may be involved in state cultural coercion regardless of whether it is in the service of such enabling.

The focus of this thesis on coercion directly by a liberal state is not meant to downplay the importance of citizens’ private acts. Consumer boycotts, for example, can be more effective in applying economic coercion against a foreign state or members of a minority culture than certain economic sanctions applied by a state. Nevertheless, private legal acts of citizens raise different concerns in liberal theory than the coercive acts of a liberal state.

§4.3 State Cultural Coercion

Given Chapter 3’s claim that at least a core normative part of cultures is adequately modelled by obligation-imposing social rules, and more of the culture by other social rules, how should state cultural coercion be understood? A conflict between a state rule of coercion and a social rule of a culture parallels in some ways the conflict between a
state rule of coercion and acts of an individual threatened by the social rule. For my purposes, however, it is more convenient to require an all-things-considered opposition by a culture to a state rule coercing individuals before such conflicts are termed state cultural coercion. While a weaker notion of state cultural coercion would be more analogous, and perhaps useful for some purposes, it is convenient for my endeavour both to consider those cases where the strongest case can be made out for state cultural toleration and to avoid using a cumbersome, long term when doing so.

Conflicts between state rules of coercion and social rules can be specified more precisely. Both the rules of state coercion that create laws and the social rules of a culture that create its practices can be taken to involve two separate roles: that of an enforcer, and that of a person subject to the rule. An individual may be a subject of one rule and the enforcer of another at the same time. For example, holders of state offices of enforcement are typically coerced by the state into upholding at least the minimal obligations of their office. Both state rules of coercion and social rules specify conditions under which a coercer is required or allowed to apply a certain type of sanctions against a subject for having done an act prohibited by the rule or not having done an act required by the rule.

Conflicts between a state rule of coercion and a social rule of a culture create state cultural coercion when the acts specified for a subject of the state rule of coercion\(^5\)

\(^5\) This includes collateral coercion and negligent coercion as described in §4.1. James W. Nickel includes negligent actions in the scope of his right against ethnocide in “Ethnocide and Indigenous Peoples,” *Journal of Social Philosophy, 25th Anniversary Special Issue* (1994), 85–6. A moral duty to consult with national cultures regarding the impact of state decisions on those cultures has occasionally found partial expression in the positive laws of liberal states. See, for example, the decision of the Supreme Court of Canada in *Delgamuukw v. British Columbia*, [1997] 3 S.C.R. 1010. It provides some
intersect with the acts specified either for an enforcer or a subject of the social rule, and the two rules specify different modal relationships by those conflicted agents to those acts. Intersection occurs if some parts of the acts are the same. Modal conflict most clearly exists if the state rule of coercion prohibits doing what is required by a cultural practice or requires doing what it prohibits. If a cultural practice has rules that allow an individual to choose whether or not to do an act, then coercively constraining such a choice to either do or not do the act is also a modal conflict. The last type of modal conflict occurs when a state rule of coercion allows but not require a person to do an act; state cultural coercion then occurs when the state enforces this liberty against cultural practices that would require or prohibit the allowed act. State cultural coercion can thus occur through a state forcing members of a culture to give up or not give up an existing cultural practices, or to take up or not take up a new cultural practice.

In cultures as conceived in Chapter 3, individuals’ beliefs, values, and interactions, especially in the form of social rules, lead to cultures having emergent properties that individuals considered in isolation do not have. Although this section takes the conflict at the level of an individual’s actions between state rules of coercion and the social rules of protection against the Canadian state negligently overlooking how infringements of property interests would affect related cultural practices by requiring the Canadian Crown to involve aboriginal peoples “in decisions taken with respect to their lands” (para. 168 per Lamer C.J.).

Because the enforcer of a state rule of coercion is not generally subject to sanctions by that rule, no state coercion results if his or her act of enforcement is in conflict with an act he or she may be called upon to perform by a cultural rule. Of course, there may be a second state rule of coercion that requires the enforcer of the first rule of state coercion to perform the enforcement it calls for. This second rule may give rise to state cultural coercion through making its subject the enforcer of the first rule.
a culture to be a perspicuous focus for analysing state cultural coercion, it does not
presuppose that cultures are properly understood by focussing on individuals in isolation.
State cultural coercion of even one person can have broad cultural effects that concern
others.

Not all practices that are part of a culture are necessarily perceived by its members to
be of value: members of the culture may be somewhat indifferent to the existence of
something they regularly do, or even in favour of changing it. Although a state rule of
coercion and a social rule of a culture may conflict, other weightier social rules accepted
by the culture may empower the state or its agent(s) to institute new rules about that
topic. Such state coercion of the members of a cultural regarding one of their practices is
not opposed in an all-things-considered manner by the culture, and should generally be
considered as consented to or approved by the culture. All-things-considered acceptance
of a coercive state rule is consistent with the considerable initial opposition on narrow
grounds, so long as these grounds are outweighed in the duly considered view of the
preponderance of the members of the culture.

Social rules in cultures support and weaken each other when they partially overlap.7
Hierarchies of rules are created when some rules of obligation enforce the enforcement of
other rules of obligation. A conflict between social rules in a specific case interferes with
their enforcement, and propagates through the hierarchies and webs of social rules in a

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7 The power that a moral tragedy play like Antigone held for the ancient Greeks is due
in part to their experience of the conflicting demands of different social rules, an
experience shared even by those who are not subject to the same social rules as Antigone.
See Sophocles, Antigone, in The Complete Plays of Sophocles, trans. Sir Richard
culture. But as Rawls reminds us in analogous remarks concerning reflective equilibrium regarding moral beliefs, there is no logical or moral necessity that conflicts between rules of different orders will always be won by the rule of the highest level (cf. _PL_, 8, 28). Conflicts may also contribute to reshaping a social rule. New beliefs that have not been part of a social rule may similarly contribute. I will say that a conflict between a social rule of a culture and a state rule of coercion is only opposed by the culture when all related cultural rules, beliefs and behaviours taken together result in opposition, and all-things-considered opposed if the preponderance of the members of cultures are opposed after due consideration of the matter.

In recent decades Western liberal democracies have enacted laws that conflict with social rules enforcing discrimination against gay and lesbian sexual acts and relationships in their dominant ‘liberal’ cultures. Social rules ultimately allowing or even requiring the state to protect interests such as those served by human rights, including those that recognize a special authority of the courts or legislature to determine such matters, are winning the day against the social rules discriminating against gays and lesbians. The important point is that even though some social rules were serious and important enough to impose obligations to engage in discriminatory actions, these cultures had other social rules which interfered with this being the all-things-considered view of the culture.

In cases where the boundaries of a people are defined by membership in a single culture, the foregoing definition of state cultural coercion is adequate as a definition of state coercion of the culture of that people. The more general case of state coercion of the cultural practices of one of a people’s many societal cultures requires state cultural
coercion to be defined as the all-things-considered opposition of a people to a rule of state coercion that conflicts with a rule of a culture of the members of the people.

Given that the definition of a people normally means that the members of the culture accept its sovereignty, the all-things-considered view of the culture will normally be to accept the people's determination in this matter. However, not all members of a group are required to believe that it has sovereignty over the group's participation in political jurisdictions in order for it to be considered a people. Most of those in a coerced culture may disagree with the view of the people as a whole on the all-things-considered acceptability of the coercion. In such cases, despite the opposition of the members of the culture to the coercion, the people's acceptance of the legitimacy of the coercion means that it is not cultural coercion of a nonliberal people according to my definition.

One key factor prevents this situation from being a case of cultural coercion of a people. This is the acceptance by the culture of the sovereignty of the entire group that constitutes the people to make the decision to accept the authority of a state jurisdiction to use the coercion to which the culture objects. If this acceptance were to disappear—for example, if the coerced culture were to become a people in its own right through developing a national agency—then the same acts by the state could amount to cultural coercion of a people. Unless that happens, the members of the culture are likely best considered dissidents.

§4.4 Liberal Cultural Coercion

One of the key claims of Hart's positivist theory of law is that the laws of a state need
not be accepted as social rules by the majority of the population. To correctly claim that a legal system exists, it is sufficient if a) a social rule to recognize certain things as laws is accepted among the legal officials, and b) the laws that rule recognizes are generally complied with by most of the subjects of the legal system. Of course, the justice of a legal system that does not enjoy the consent of those it governs is, for Hart, a separate question. Cultural coercion of a people with a nonliberal culture by a liberal state can be understood as the projection of state coercive mechanisms onto those who do not consent to that rule. In Hartian terms, the members of a nonliberal people not only do not accept social rules embodying certain liberal laws, they accept a social rule or rules that conflict with those laws. In Rawlsian terms, the members of a nonliberal national culture are not part of an overlapping consensus on a political conception of liberalism. Indeed, the members of such a culture may threaten the existence of such an overlapping consensus long before they threaten the existence of the legal regime of the liberal state.

The state coercion involved in liberal cultural coercion may be directed domestically towards substate peoples that do not control the actions of the state, or internationally towards peoples within other states. Given that domestic coercion by a liberal state is generally according to general, determinate laws, it is best conceived not as an isolated act but as a continuing pattern to force the members of a culture to make or not to make a change in their cultural practices. Similarly, coercion by a liberal state outside its borders can for my purposes be assumed to be governed by a set of principles such as Rawls articulates in his interpeople justice.

These two cases do not exactly match the difference between the liberal cultural
coercion being due to Rawls's domestic or interpeople liberalism. Domestic liberalism might be thought to apply to substate peoples within states dominated by liberal peoples, leading to cultural coercion whenever one of these people's cultural practices conflicts with the relatively extensive requirements of domestic liberalism. The comparatively weaker demands that interpeople liberalism places on the conception of domestic justice of peoples who would be members of the society of liberal and decent peoples means that cultural coercion would only occur due to violations of Rawls's list of minimum human rights. This interpeople cultural coercion could be directed towards nonliberal substate peoples within a liberal state as well as towards peoples in other states.

Rawls's interpeople liberalism supports coercion in the form of war or economic sanctions towards disordered peoples, that is, peoples that 1) are expansionist, 2) have governments that are not legitimate in the eyes of their people, or 3) do not respect minimal human rights (LP, 60ff). The first two cases do not give rise to cultural coercion. Cultural practices are not at issue with respect to expansionism, since its effects on other peoples means that it amounts to intercultural practices. (The effects on other peoples of the actions of peoples with warlike, expansionist characters prevents their related intercultural practices from gaining protection under the overall argument advanced in this thesis.) And if a single cultural practice spanning peoples holds that they should be governed by a larger jurisdiction in common, and were this not to affect other cultures, then this cultural practice is a strong indicator that that culture should now be considered a single people, or at least that a voluntary federation of peoples is now feasible. In this case, it is more appropriate to speak of two peoples agreeing to merge, than of one people
being expansionist, since the latter implies a coercion of others. In the second case, coercion directed at a government in order to remedy its illegitimacy in the eyes of its people is not coercion aimed at modifying or eliminating a cultural practice of that people. While the state government may be engaged in cultural coercion, foreign intervention against the government because it was not legitimate in the eyes of its peoples does not constitute cultural coercion so long as this intervention does not itself interfere with cultural practices. My interest in possible cultural coercion in interpeople liberalism therefore focuses on cases of violations of what Rawls takes to be minimum human rights.

§4.5 Examples of Liberal Cultural Coercion

Cultural practices that a liberal state would coerce or perhaps tolerate conflict with one or more tenets of liberalism. Chandran Kukathas provides a good list of cultural practices that are candidates for liberal cultural coercion or liberal cultural toleration:

Some such practices would include group or community customs which restrict the opportunities of women (say, by denying them the right to hold property; or limiting their access to education, or “forcing” them into unequal marriages). Another kind of practice would include customs of childrearing which restrict the opportunities of the child to prepare for life outside the original community. A third example would be practices which reject conventional medical treatments (such as blood transfusions), even when the lives of children are at risk. A fourth example would be practices which mandate operations (performed with or without the fully informed consent of the subject) which are physically harmful: clitoridectomy and ritual scarring are two such operations. A fifth example would be practices which exposed members of the community to exceptionally high risks: some initiation rites might come into this category. A sixth example would be practices which involve the use or treatment of animals—in sport, in science, or for food—in ways which could be regarded as cruel or distasteful. A final example would be practices of punishment which might be regarded as cruel and inhumane, or as disproportionately severe for the offences in question.8

Some items on this list do not obviously conflict with Rawlsian liberalism, for example,

concerns about the treatment of animals. This section considers several examples in more
detail of cultural coercion of peoples by states which conform to Rawlsian liberalism that
will serve as reference points in the rest of the thesis. Some of the early examples concern
practices that some liberals may find acceptably liberal though they conflict with Rawls’s
own account of domestic liberalism. Other later examples are selected because they are
highly unlikely to elicit such a sympathetic response from liberals.

This thesis is not a work of anthropology. Although I try to indicate how the state
actions in the examples conflict with the cultural practices of peoples, my brief
descriptions do not provide a fully adequate account of these conflicts from the
perspective of those cultures, much less an account of those cultures as a whole. The
descriptions aim to be acceptable to members of these cultures and not perceived as
caricatures. Even if this aim is achieved, however, those without a broad and deep
knowledge of these cultures should not expect the brief descriptions to provide as good a
basis for an understanding of these cultures’ perspectives on the conflict as will be
provided to them for the liberal perspective. While significant benefits would likely result
if more persons of influence in liberal states were so knowledgeable—Rorty’s point that
progress results from the powerful coming to understand the plight of the weak through
the work of connoisseurs of difference—this thesis does not attempt to impart such a

9 Richard Rorty, “On Ethnocentrism: A Reply to Clifford Geertz,” in Objectivity, Relativism, and Truth, vol. 1 of Philosophical Papers (Cambridge: Cambridge University Press, 1991), 203–10. Where Rorty appears to believe that all relevant differences can be appropriately accommodated by Rawls’s domestic procedural justice, I will be arguing that certain types of diversity that do not deserve coercive elimination are collective and political, and cannot be incorporated into Rawls’s domestic liberalism except through changing its notion of citizenship to apply only to members of liberal peoples within a
rich intercultural comprehension of the many cultures of nonliberal peoples. Rather, working from within Rawlsian political liberalism, it makes occasional use of brief sketches of the cultures of nonliberal peoples to show why that theory is best interpreted as allowing these peoples to escape cultural coercion from liberal states.

§4.5.1 Representative Government of the Grand River Six Nations

Decades after responsible local governments were established through elections for neighbouring municipal governments, the chiefs of the Grand River Six Nations Reserve were still appointed from various clan lineages by their matriarchs. On October 7, 1924, the Canadian government dissolved the unelected council over its opposition, and thereafter treated an elected council as the official and legitimate local government of the members of the Reserve.\(^{10}\)

Holding elections for councillors was contrary to the Iroquois cultural practice of consultation and appointment by matrons, as mandated by the Great Law of the Six Nations Confederacy. This Law, descended from the founding of the Confederacy, combines what Europeans would consider religious elements and civil constitution, the state. In Rorty’s terms, the cultures of the ‘private clubs’ of peoples affect the justifiability of rules proposed for the public ‘bazaar’ as well as their affirmation.

sacred and the secular. It intimately links the Iroquois' form of governance with belief structures and institutions in other parts of their culture. For example, the belief in the reincarnation of a person upon the bestowal of their name on another individual was essential to the Condolence Ceremonies that mourned the death of an hereditary chief and celebrated his rebirth when another person from his clan segment took his name and chieftainship.\(^{11}\) The kinship requirements for many important Iroquois offices do not conform to the principles of Rawls's justice as fairness.

Although the imposition of elections created a representative democratic form of governance for about 4,700 persons within territory claimed by the Canadian state, the actions seem not to have been in accord with the democratic will of those persons. Insofar as the measure was intended to lead eventually to the Iroquois accepting and affirming the elected council as their legitimate government, low participation rates in elections and significant support for and deference to a still working traditional council indicate this has still not occurred after a few generations.\(^{12}\)

Even if using the force that backs up a liberal state's rule of law to help get members of a nonliberal culture to affirm a liberal political conception was one ostensible reason


\(^{12}\) Accounts of participation rates in these elections ranging from 0.6 percent to 20 - 40 percent can be found in Wright, *Stolen Continents*, 325; Sally Weaver, "The Iroquois: The Grand River Reserve in the Late Nineteenth and Early Twentieth Centuries, 1875–1945," in *Aboriginal Ontario: Historical Perspectives on the First Nations*, eds. Edward S. Rogers and Donald B. Smith, (Toronto: Dundurn Press, 1994), 213–57, 249; and Noon, *Law and Government of the Grand River Iroquois*, 65. All accounts agree that although the Canadian government deals exclusively with the elected band council, the traditional council retains strong allegiance and authority among many on the reserve.
for imposing elected band governance, this rationale may have served as a cover for other less elevated reasons. These include opposition to 1) international recognition of indigenous peoples’ governments throughout the British Empire implied by the Six Nations early successes at the League of Nations,\textsuperscript{13} 2) autonomy of the Six Nations Council from direction by a Canada state agent, 3) redress for allocating band lands to Christian missionary societies, 4) redress for allocating communal band lands to individual veterans of WW I, and 5) redress for longstanding allegations of Canadian government abuse of a Six Nations financial trust.\textsuperscript{14} The Canadian government’s hardening policy, especially in the xenophobic atmosphere following the First World War, can be summed up in the 1920 remark of the chief administrator of Indian Affairs in Canada, “I want to get rid of the Indian problem. . . . Our object is to continue until there is not a single Indian in Canada that has not been absorbed.”\textsuperscript{15} As is often the case, enlarging the context within which a seemingly legitimate or illegitimate act is viewed can not only change the justifiability of the character of the act, but also reveal considerations relevant to determining whether a rule allowing or requiring such an act is justified.

The Canadian government had repeatedly sought means prior to 1924 to replace

\textsuperscript{13} See Wright, Stolen Continents, 323–4.

\textsuperscript{14} See Noon, Law and Government of the Grand River Iroquois.

\textsuperscript{15} Michael Asch, Home and Native Land (Toronto: Methuen Press, 1984), 62–3, as cited in Wright, Stolen Continents, 321. Also, see E. Brian Titley, A Narrow Vision: Duncan Campbell Scott and the Administration of Indian Affairs (Vancouver: University of British Columbia Press, 1986).
aboriginal leaders who were opposed to its policies. The 1869 *Gradual Enfranchisement Act* was an early attack on the self-government of aboriginals. It restricted the jurisdiction of band councils to municipal matters, and allowed the Canadian cabinet to veto aboriginal legislation. It also allowed the Canadian government to remove aboriginal leaders 'for dishonesty, intemperance or immorality,' with the interpretation of these vague terms being left to Canadian government officials, and to replace them with elected officials.\(^{16}\) Protests at such interference in the political affairs of aboriginals led to the latter measure being made voluntary in 1876. In 1880, a revision of the *Indian Act* authorized the Department of Indian Affairs to impose an elected band council on aboriginals whether this was desired by the band or not. Aboriginals responded to this by electing their traditional, non-elected leaders, who often opposed assimilationist policies. In response, the 1884 *Indian Advancement Act* gave the Canadian government "the power to depose those considered to be immoral, incompetent, or intemperate and to prevent their re-election."\(^{17}\) This allowed "the superintendent general to depose chiefs whom he considered unfit or unable to discharge their duties."\(^{18}\) an evaluation filtered through opposing political agendas.

Ironically, the governance practice of the Iroquois which the Canadian government was trying to replace had egalitarian, direct democracy, and federalist elements that were among those that had inspired or influenced settler and European liberal democratic

\(^{16}\) Miller, *Skyscrapers Hide the Heavens*, 114, 153.

\(^{17}\) Armitage, *Comparing the Policy of Aboriginal Assimilation*, 78.

\(^{18}\) Miller, *Skyscrapers Hide the Heavens*, 189–90.
statespersons and theorists such as Benjamin Franklin.\(^{19}\)

The Canadian government action also restricted the electorate to males in a culture with strong matriarchal elements. The Iroquois, who had been consulted just before the start of the first women's rights conference by at least one of its planners,\(^{20}\) thus had some

\(^{19}\) The "noble savage" was an important concept in the thought of numerous modern European political theorists such as Rousseau. The Iroquois, as the most powerful aboriginals in military and diplomatic terms in North America throughout much of the 17th and 18th centuries, likely contributed heavily to this European conception. They had been travelling to Europe for a century before the grand visit of four Iroquois sachems (hereditary chiefs) to Queen Anne, who feted them in London in 1710; King George invited one of these sachems back in 1740; probably two or three more Iroquois visited England in the 1720's; Joseph Brant, another sachem, visited in 1776, 1785 and 1786. Some Iroquoian Cherokee also visited circa 1730 and 1770. Montaigne, who met three Cherokee, captures the theme of equality when he attributes to them the question, "Why are some French 'full-gorged with all sort of commodities,' while others are 'hunger starved, and bare with need and povertie?'" (Montaigne's Essays, trans. John Florio [New York: E. Dutton, 1965], 228, as cited in Grinde & Johansen, Exemplar of Liberty, 65.) For the possible importance of Iroquoian culture within the Carolinas, including its agricultural practices, on Locke's political thought, see James Tully, "Rediscovering America: The Two Treatises and Aboriginal Rights," in An Approach to Political Philosophy: Locke in Contexts (Cambridge: Cambridge University Press, 1993), 137–76. For a full-length discussion with many citations which are not always accorded a conservative interpretation, see Grinde and Johansen, Exemplars of Liberty. For a critical debate about the influence of Iroquois ideas on the American constitution, particularly through the influence of Franklin on the Articles of Confederation, see Elisabeth Tooker, "The United States Constitution and the Iroquois League," Ethnohistory 35 (Fall, 1988), 305–36; Bruce Johansen, "Native American Societies and the Evolution of Democracy in America, 1600–1800," Ethnohistory 37 (Summer, 1990), 279–90; and Elisabeth Tooker, "Reply to Johansen," Ethnohistory 37 (Summer, 1990), 291–7. Thomas More's influential Utopia, trans. Paul Turner (Harmondsworth: Penguin, 1965) was also affected by the discovery of peoples in the New World in 1492.

\(^{20}\) Grinde and Johansen cite the work of several early feminists such as Elizabeth Cady Stanton, and Lucretia Mott. The latter met with some Iroquois just days before planning the world's first conference on women's rights at Seneca Falls in 1848. Numerous more recent authors also refer to the Iroquois. See Grinde and Johansen, Exemplars of Liberty, 220–32, passim.

“regressive” measures imposed on them in the name of liberal “progress.” Only in 1951 was the Indian Act changed to expand the band electorate to include women. Still, in 1959 several thousand supporters of the traditional government occupied the Council House for a week demanding its restoration, until they were removed by the Royal Canadian Mounted Police using clubs.  

§4.5.2 Individual Liberty Rights Among the Coast Salish

A woman with marital difficulties and upset with her common-law husband’s drinking and other problems approached an old man who had never met her on February 13, 1988. At her behest, he arranged for about eight men to grab her common-law husband the next day and to confine her husband against his will for four days without food and with little water (though he was provided with his ulcer medication). During this period, he was blown on (or allegedly bitten) several times a day while being held up several feet above ground by the men, and underwent ritual cleansing which included being whipped with cedar branches. After the ordeal, a doctor noted superficial bruising on him and prescribed overnight rehydration. When the matter ended up in court, the common-law husband was awarded civil damages. Important for my purposes is that the court rejected a defence that such actions are allowed under Canadian law because they

York: Norton, 1978), 734–59, was based on extensive notes Marx made from Ancient Society, or Researches in the Lines of Human Progress from Savagery Through Barbarism to Civilization (1871), by the early American anthropologist, Lewis H. Morgan (see The Marx-Engels Reader, 734). Morgan’s work was based extensively on the Iroquois. about whom he had earlier published League of the Ho-dé-no-sau-nee or Iroquois (New York: Sage, 1851) (Grinde and Johansen, Exemplars of Liberty, 230).

21 Wright, Stolen Continents, 325.
are part of the culture of the aboriginal people involved in the incident.  

These people are the Coast Salish in British Columbia, and their cultural practice at issue is called Spirit Dancing. The court’s judgement described this practice in an admittedly inadequate way as intended to help a person by inducing a supernatural vision experience during which the initiate hears his or her guardian spirit’s song and sings while dancing. Initiates are grabbed and brought to the long house with either their own prior consent or that of a senior member of their family of origin. This consent can be sought at the behest of a spouse in order to help deal with marital or other problems, presumably including behaviour such as wife abuse or alcoholism.

The court’s judgement provides excellent statements of the paramountcy of the laws of a liberal state over the cultural practices of all peoples within such states. Despite recognizing Spirit Dancing as part of a religion, it receives no protection because liberal


23 In the particular case at trial, consent from a senior member of the plaintiff’s family as required by Coast Salish cultural traditions was not properly obtained, but the court’s judgement made clear that such culturally adequate consent would still be insufficient to protect the practice and justify the treatment if it had not been consented to by the initiate. A further complication in this particular case was the rejection by the plaintiff of membership in the cultural community despite his wife’s and the community’s belief that he was.

24 It reads: “If spirit dancing includes criminal conduct [such as force, assault, injury and confinement, all against the will of the initiate] as an integral part of it, it could not be said to be an aboriginal right which survived the introduction of English law into the colonies. . . . If such conduct [amounting to civil wrongs] cannot be separated from the spirit dancing, and thus is an integral part of it, then in my opinion spirit dancing is not . . . protected by the law” (Norris v. Thomas, 156).
freedom of religion requires individual consent for all religious acts. Despite a constitutional provision broad enough to be construed as protecting inherent rights of aboriginal peoples to self-governance, the traditions of interpretation of Canadian public culture led the court to conclude that these constitutional rights could only exist insofar as they did not conflict with the statutes and common law of the non-aboriginal Canadian state.  

So even though Spirit Dancing is a form of governance of social deviance somewhat analogous to the committal of persons for involuntary psychiatric treatment in a liberal society, and to forced imprisonment for rehabilitation through spiritual transformation, those who participate in this practice are liable to liberal state cultural coercion. By asserting its monopoly over the use of force within its territory, the modern liberal state debilitates the governance powers of peoples within it. Even were the practices of a culture generally to require members to behave in conformity with liberal laws, and to only allow or require forms of social enforcement used by a liberal state against similar types of offenders, cultural coercion would generally occur against those charged by the culture to enforce its practices. Protecting liberal rights can be an unwitting guise under

25 The relevant passage in the judgement reads: "Whatever the freedoms or rights guaranteed under s.35(1) [of the Canadian Constitution, a provision which recognizes and affirms the existing aboriginal rights of aboriginal peoples in Canada], they do not include freedom from compliance with the Criminal Code or provide civil immunity for these kinds of tortious conduct. In terms of civil rights, the guaranteed Aboriginal right, instead of being absolute, is the residue of the right remaining after the civil rights of the persons who may be injured by its exercise are recognized" (Norris v. Thomas, 161).

which other levels of governance within a liberal state are suppressed.

§4.5.3 Fusion of Sacred and Secular

Rawls writes that international organizations such as the UN ideally conceived (LP, 36) should have a right to go to war against or to apply economical sanctions against regimes that violate his conception of minimum human rights if these violations are 'grave,' a qualifying term Rawls does not define (LP, 36–8). One plausible interpretation that leads to liberal cultural coercion is that the systematic violation of any of these minimum human rights can be grave enough to justify war or economic sanctions.27 (An alternative interpretation of 'grave' that restricts it to the human right to be free from foreign occupation will be examined in Chapter 9.)

Rawls considers the following human rights to be minimal or basic: "rights to means of subsistence and security (the right to life), to liberty (freedom from slavery, serfdom, and forced occupations) and (personal) property, as well as to formal equality as expressed by the rules of natural justice (for example, that similar cases be treated similarly)" (LP, 62), rights to a circumscribed "liberty of conscience and freedom of thought" in the religious sphere, for example, and "the right of emigration" (LP, 63; see also LP, 68, 70).28

This list is intended to "express a minimum standard of well-ordered political

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27 An earlier version of the material in this subsection and the next appeared in Joe Murray, "Violence, Borders, and Liberal Toleration," Constitutional Forum 8 (Summer 1997), 133–8.

28 Although these rights tend to be recognized in international human rights instruments, Rawls explicitly rejects that many other human rights found in those documents are human rights in his view (LP, 227–8).
institutions (LP, 68). It includes at least two rights that appear to conflict with numerous aboriginal cultures: a right to religious freedom, and a right to "(personal) property."

Though Rawls writes that "systematic violation of these [minimum human] rights is a serious matter and troubling to the society of peoples as a whole," (LP, 68), he neither equates nor distinguishes systematic violations and grave violations.

Rawls allows that nonliberal societies may be well-ordered even if a state religion is "on some questions the ultimate authority within society and control[s] government policy on certain important matters." Although some inequality of religious freedom is acceptable, Rawls requires a human right to "a measure of liberty of conscience and freedom of thought" such that "no religions are persecuted, or denied civic and social conditions that permit their practice in peace and without fear" (LP, 63). In The Law of Peoples Rawls indicates that the inequality allowed may extend to exclusion of some from higher positions of political and judicial authority, but not to fear or loss of most civil rights (LP, 75–6, 65 n).

However, many aboriginal societies do not separate politics and religion. For example, the Iroquois’ traditional Great Law combines political constitution, moral code, and forms of religious worship. Similarly, politics and religion are not separated in "the traditions of the Ojibwa peoples and the Midewin spirituality." As Ovide Mercredi, the former National Chief of Canada’s Assembly of First Nations has written, "[t]hey incorporate both those ideas as part of their way of dealing with the needs of their people and their society."29 This goes beyond believers in other religions finding it impossible to

29 Ovide Mercredi and Mary Ellen Turpel, In the Rapids: Navigating the Future of
participate conscientiously in certain political and or social roles because of their religious aspects. For those who took up other religions were often ostracized or forced to leave Iroquois and other aboriginal communities. Such instances appear to violate Rawls’s limited human right to religious freedom, since even voluntary emigration does not render unjust institutions just (PL, 227), though a substantive right including assistance to emigrate may mitigate their injustice (cf. LP, 74). Certainly, the enforcement of domestic liberalism’s conception of freedom of conscience would lead to cultural coercion against many peoples that do not distinguish in their practices between the Western notions of the sacred and the secular.

§4.5.4 Personal Property

Rawls’s human right to personal property also seems to conflict with many aboriginal cultures since the whole notion of a property system with personal property rights is foreign to them. Rawls does not explain what a right to personal property is in


30 It should be noted that many Iroquois reserves currently have liberal freedom of religion, and the differences regarding traditional governance and traditional religion (or their revivals) are often refracted through other personal and political divisions. The capacity of the Iroquois to put into practice a division of the community became severely circumscribed with the loss of landbase and assertion of Crown title over unoccupied land that has taken place since the time of European colonization. “Traditional” is a convenient description which should not be misunderstood to imply that Iroquois communities that have been Christian for many centuries do not have Christian religious traditions.

31 See also Ronald Dworkin, “Liberalism,” in A Matter of Principle (Cambridge: Harvard University Press, 1985), 200: “The liberal will, for his own purposes, accept some right to property, because he will count some sovereignty over a range of personal possessions essential to dignity.”
“The Law of Peoples.” Liberal notions of a property right generally treat it as a bundle granting an individual rights to exclusive possession, exclusive use, consumption, and alienation of something.\textsuperscript{32} Liberal legal systems generally take ‘personal property’ to be all forms of property that are not real estate.\textsuperscript{33}

In \textit{Political Liberalism} Rawls explicitly accepts some and does not reject the rest of this characterization. The relevant passage links the right to personal property, which he takes to be a basic liberty, to its moral justification in his domestic theory of liberalism. He writes that the role of this right “to hold and to have the exclusive use of personal property . . . is to allow a sufficient material basis for a sense of personal independence and self-respect, both of which are essential for the development and exercise of the moral powers” (\textit{PL}, 298). Chapter 2 outlined how these two moral powers are capacities modelled by features of the reasonable and the rational in the domestic original position. As a result, a right to personal property is essential to his domestic liberalism in order to ensure that citizens will develop the moral nature required for liberal society. In this formulation, the right does not include or entail the rights required to implement either Marxist or libertarian schemes of social or individual ownership of the means of production respectively, since neither is specifically required for the development of the moral powers. (In liberal legal systems ‘personal property’ can refer to property not used


to produce income.\textsuperscript{34)}

The traditional culture of the Iroquois can again be used as an example of a nonliberal culture.\textsuperscript{35} Among them, the possession, acquisition, and accumulation of property played a very different role in the development of self-respect as well as personal independence in comparison with liberal cultures. Traditional Iroquois culture was duty-based rather than right-based; the allocation of the work of agricultural lands was generally determined by clan matriarchs often by consensus; food stores were communal; duties to the Creator and the animals, plants, waterways, earth and rocks in an area were at the basis of a non-instrumental relationship with non-human objects; and an accumulation of personal wealth (as opposed to its munificent distribution) caused a loss rather than a gain of status. Iroquois individuals had very little property which all others were excluded from using. While clothes and tools were generally not shared, another person's dreams could impose obligations to give them even these items of property.\textsuperscript{36} It is true this may be conceived as merely a non-liberal mechanism for the forced exchange of personal property to which one otherwise has a right, similar to income or wealth taxes in liberal regimes. Yet most of the personal property of the type that is at the basis of much personal independence and self-respect in liberal cultures was traditionally not subject to holding and exclusive use by one individual among the Iroquois. This includes food, lodgings, money or objects for exchange or trading, and more valued objects more tied to

\textsuperscript{34} Ibid.

\textsuperscript{35} For references to works on Iroquois cultural practices, see above, p. 13 n. 17.

\textsuperscript{36} Cf. Dean R. Snow, \textit{The Iroquois} (Oxford: Blackwell, 1994), 140.
self-respect and social recognition by others as cultured, powerful, or materially successful.\textsuperscript{37}

It seems instead that the material basis for the moral development of Iroquois was provided by a system of duties the cumulative normative effect of which is roughly equivalent to a set of communal or inclusive property rights incompatible with Rawls's conception of personal property as "exclusive use." Inclusive property rights are those which provide one with a normative claim on some property without excluding others, e.g. a right of access to a commons (use), or to take food from a common food store (consumption).\textsuperscript{38} However, duties of others in the community to provide material goods can provide as strong or stronger a material basis for personal independence within a community as being able to exclude other community members from one's own material goods (although it would be less in the case where one's community is poor and one is highly productive). Further, prestige leading to respect in one's own eyes and those of others can be derived from one's work (for example, hunting or farming) contributing much to the commons, rather than one's work having led to greater personal property.

Thus, far from being a universal requirement for self-respect and personal independence, a right to personal property may merely be sufficient for that purpose in

\textsuperscript{37} A major exception was the valuable objects associated with offices such as sachemships (i.e., chieftainships). This exception does not amount to a Rawlsian right to personal property since individuals were dispossessed of this property if removed from the office, not all individuals could simultaneously have such honorary property, and such property was generally not available until one's moral powers had been developed.

certain cultures such as Western liberal ones. Within the context of those cultures, it may be necessary for individuals to have a right to personal property in order to develop self-respect and personal independence. In other cultures, other normative practices may serve cognate purposes, though the cognates of self-respect and personal independence may vary both in their specific content and the specific role they play in the culture and its normative practices.

However, the kind of personal independence provided by the Iroquois system is not the same as the liberal one, since it does not foster an individual’s personal independence outside of their community. Cultural practices regarding property centred on the use of a commons do not provide persons with personal independence as self-sufficient individuals autonomous from the community. A dispute between a Hutterite community with common ownership of property and some dissenting members who were expelled illustrates this kind of difference and the tensions to which it gives rise. As Pigeon, J., remarked in his dissent to the Supreme Court of Canada decision in this case, the fact that dissenters would be left destitute makes it as nearly impossible as can be for those who are born in it [the Hutterite religion] to do otherwise than embrace its teachings and remain forever within it. . . . Hutterian children . . . have no right at any time in their life to leave the Colony where they are living unless they abandon literally everything. Even the clothes they are wearing belong to the Colony . . . and are to be returned to it as its property by anyone who ceases to be a member of the church.39

A property regime that includes Rawlsian personal property would not subject individuals to this degree of restraint in the development and exercise of their moral

powers (cf. PL, 298).

So some cultures have practices that conflict with a Rawlsian right to personal property. As a result, if these and the religious rights discussed above are taken as minimal human rights the systematic violation of which grounds rights to war or economic sanctions, then there is evidence in favour of interpreting interpeople liberalism as endorsing liberal cultural coercion.

§4.5.5 Aztec Human Rights Violations

"The Law of Peoples" does not indicate what makes human rights violations grave. Thus, Rawls may hold the systematic disregard of these two rights on his fairly short list—personal property and religious freedom—to be not grave in comparison with violations of other ones even when the latter rights violations are less frequent and less systematic. In a footnote Rawls endorses an argument that makes a right to economic subsistence conceptually more basic than other minimum human rights to liberties or property (LP, 225 n. 26). An argument that freedom and property rights cannot be enjoyed without economic means implies other central forms of a right to life and security are also more basic than liberty or property rights. One can imagine the core of a rationale for such doctrines to be that if one is dead, one can no longer enjoy other human rights. Elsewhere, however, Rawls writes that slavery is as severe a human rights violation as any (LP, 222), which seems to equate politically its violation of moral dignity (cf. PL, 122–5) to physical annihilation. Determining a consistent position that can be attributed to Rawls with confidence from this textual evidence is difficult.

The recently published The Law of Peoples repeats the same general claim about
grave violations of human rights justifying war or economic sanctions without restricting it to certain rights on Rawls’s list of minimum human rights. Rawls does provide an example in the new work of a people that is supposedly harmless to all law-abiding peoples but violates two human rights of its own members. Since Rawls views the example as clearly grave enough to be used for illustrative purposes, less serious violations of other rights he lists may also be grave. In the example, an imaginary people that Rawls takes to be similar to the Aztecs merits forcible intervention since “it holds its own lower class as slaves, keeping younger members available for human sacrifice in its temples. . . . A system driven by slavery and the threat of human sacrifice is not a system of cooperation” (LP, 94 n). Complicating the analysis of this example is the fact that amongst the historical Aztecs, as opposed to Rawls’s account of them, the systematic violation of these human rights was not a cultural practice as I am using that term. This is mostly because their involuntary victims seem to have been overwhelmingly members of other peoples rather than persons who were members of a people and culture that accepted them. Indeed, it is unlikely that any people has adopted cultural practices towards its own members quite this malignant, though actions towards outsiders along these lines is not rare in history.

Historically, human sacrifice, tributes from subjugated peoples, and military expansion were intimately interlinked in the Aztec Empire.40 From the perspective of the Aztecs, the sacrifices were necessary in order for Huitzilopochtli, the sun and war god

and chief god in their pantheon, to continue to rise every day. Notable for us non-Aztecs is that the vast majority of human sacrifice victims were war captives, and the need for more victims to sacrifice to Huitzilopochtli as well as other gods drove military campaigns. Economically, the Aztecs exacted tributes from the hundreds of city-states they had conquered, which helped support military expansion. This may have been what Rawls was referring to as their lower class of slaves. Further political and cultural integration was not attempted in the empire. Frequent rebellions by subjugated peoples seeking independence from the Aztecs provided opportunities for more military campaigns and thus sacrifice victims. Mass sacrifices seem also to have been designed to cow enemies into submission. The Aztec practices that liberals today find most morally offensive are thus better likened to the foreign policies of expansionist regimes of Spain, France and the Hapsburgs to which Rawls proposes a response of hegemonic war than to the domestic policies of a regime harmless to other peoples.41 Indeed, anthropologists liken Aztec human sacrifices to the slaughter of indigenous Central Americans by Spaniards documented by Bartolomé de Las Casas.42

While human sacrifice interlinked with slavery of the type and scale of Rawls's example empirically seems always to have been directed at members of other peoples.

41 For example, see Arthur Demarest, “Overview: Mesoamerican Human Sacrifice in Evolutionary Perspective,” in Boone, Ritual Sacrifice in Mesoamerica, 227–47, 235: “The original and unique adaptation of the [Aztecs] to their cultural environment was their modification and manipulation of traditional Mesoamerican religious ideology—particularly...of human sacrifice....to a role of actively motivating and eventually necessitating open-ended expansionism.”

slightly less grave versions of these institutions have been directed towards members of the same people and culture. Whole lower classes in societies have been slaves, as classical Athens illustrates, though not combined with regular mass ritual slaughtering of the members of these lower classes in order to keep them enslaved. Children, wives of deceased men, and retainers of deceased leaders are common victims of human sacrifice, while debtors or their relatives are common sources of new slaves.\textsuperscript{43} When such institutions are culturally affirmed, those that outsiders see as victims may see themselves and other members of the culture as, respectively, experiencing union with the divine, choosing rebirth with their true love and soulmate, continuing their loyal service in the afterlife, or coping as best as possible with unfortunate circumstances within an acceptable social system. Though a few instances of suttee, apparently voluntary rather than forced, have occurred in India in recent decades despite illegal status under a government legitimate in the eyes of Indians, no cultural practice involving human sacrifice apparently exists today. By contrast, indentured labour somewhat similar to more severe historical forms of slavery has not come as close to disappearance.

Care must be taken to distinguish a properly nonliberal cultural practice of human sacrifice, for good arguments can be made that many cultural practices of human sacrifice are compatible with liberalism. For example, many of these practices endorse only suicides or killings voluntarily accepted by its ‘victim;’ some prominent Aztec sacrifice

rituals had this form. Arguments that individual autonomy should extend to choosing when to end one’s life are not illiberal on their face, nor are arguments to allow assistance to one who has made such a choice. In the contemporary West, these issues are generally played out with respect to terminally ill individuals facing a great deal of pain and/or declining abilities and faculties. Rawls, Dworkin and other prominent American liberal philosophers endorsed physician assisted suicide in a brief submitted in a US court case. Conceptually, a choice to end one’s life for a non-medical reason, such as novelist Yokio Mishima’s ritual suicide in 1970, may be equally liberal. Plausible arguments might also be made in favour of the consistency of liberalism and some cultural practices of involuntary killing. Capital punishment might be one, though only for crimes acknowledged by liberalism. However, the widespread burning of alleged witches (and warlocks) in peoples that became liberal violates liberalism’s conception of freedom of conscience and religion. Likewise, although the killing of young human life will generally be considered a gross human rights violation, liberalism is conceptually able to endorse various forms of abortion and ‘lifeboat’ killings to save members of a group threatened by complete extinction unless certain members of the group are sacrificed. Other types of child sacrifice, and involuntary suttee if it existed as a cultural practice, can nevertheless serve as examples of the grossest forms of violations of Rawls’s list of human rights endorsed by cultural practices.

The amicus curiae brief submitted to the US Supreme Court argued for a constitutionally protected right of persons in certain circumstances to the assistance of willing physicians in terminating one’s life. The brief, with an introduction by Dworkin, is reprinted as “Assisted Suicide: The Philosopher's Brief,” New York Review of Books 44 (March 27, 1997), 41-47.
The first two subsections provided examples of cultural practices that arguably violate domestic liberalism, while the last three have provided examples of cultural practices that violate even the minimal human rights of interpeople liberalism. All of the cultural practices termed nonliberal in this section can serve as examples of cultural practices that may merit liberal cultural coercion. Rawls arguably endorses liberal cultural coercion for all these practices, at least when they are affirmed by peoples within a state dominated by a liberal people. This thesis, by contrast, argues that a more consistent Rawlsian liberalism would eschew such cultural coercion in favour of cultural toleration.
Chapter 5 Peoples' Political Autonomy Rights

§5.1 Introduction

If liberal states recognize the exclusive authority of a jurisdiction over the areas involved in a cultural practice, then they will not themselves use their coercive powers against that practice. As a result, the three main political autonomy rights of peoples named in “The Law of Peoples”—self-determination, secession, and independence (cf. LP, 55–6, chapter 2 above)—can, if suitably interpreted, protect peoples from cultural coercion by liberal states. Alternative interpretations of these rights, however, restrict the jurisdictions, or the right to a jurisdiction, in ways that legitimate liberal state cultural coercion of nonliberal peoples.

Rawls writes that the debate between the parties in the interpeople original position concerns “different interpretations” of the eight “familiar and traditional principles of justice” between peoples, from which these three political autonomy rights are drawn (LP 42, 37; cf. LP, 55). My main focus in the rest of the thesis will be on contrasting interpretations of these three political autonomy rights as formal rights, not as substantive rights. This chapter shows how these formal rights can protect peoples with the necessary resources from state cultural coercion if they are interpreted as primary rights. ¹

¹ See LP, 49 for a discussion of formal domestic rights, and §5.3 below for a discussion of primary versus remedial rights.
A liberal right of an individual to legal counsel can be taken as a formal right, in contrast to a substantive right to legal aid that provides the means necessary to make use of the right to counsel. Some peoples may not have the means necessary to exercise a jurisdiction able to encompass a cultural practice they value, means which may include territory, human resources, or economic resources. In such cases, possessing these formal political autonomy rights may not provide a viable substantive option for escaping cultural coercion. Since the formal political autonomy rights of self-determination, secession and independence are not interpreted to extend to all the resources necessary to realize a jurisdiction, some peoples may not be able to make use of these rights to avoid cultural coercion due to a lack of resources. Just as formal liberal rights to contract do not ensure that one has the money necessary to conclude contracts one would like, so too the formal political autonomy rights outlined in this chapter do not ensure that all peoples can achieve the political status they desire, and perhaps thereby avoid unwanted cultural coercion by liberal states. So just as some individuals suffer mental or physical infirmities such as a physical inability to communicate and move that prevent them from becoming fully autonomous agents despite formal rights designed to make that possible, so may some peoples suffer infirmities that prevent them from becoming fully politically autonomous.

Rawls endorses a duty of assistance with the aim of helping burdened societies

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2 Many aboriginal cultures have neither the means nor the interest in becoming recognized as states in international fora. At least one criterion for recognition as a state, the effective assertion of coercive laws over the residents of a territory, is itself in conflict with the governance practices emphasizing individual autonomy of some aboriginal cultures such as the traditional culture of the Iroquois.
"eventually to become members of the Society of well-ordered Peoples" (LP, 111). From this it might be possible to derive an argument making it a duty of peoples to assist those peoples who were lacking in some resources necessary to political independence, such as territory. However, even were it possible to guarantee enough territory somewhere to each people seeking independence to enable their independent statehood, no such argument could provide all geographically intermixed peoples with rights to exclusive jurisdiction over the territories they inhabit. Similarly, since some of the resources necessary to provide peoples with jurisdictions that protect their cultural practices are scarce (e.g., exclusive control of the Holy City of Jerusalem), such resources cannot be guaranteed to all. The existence of such conflicts means that social practices that could otherwise be cultural become ones with an intercultural dimension. Nevertheless, rights to such cultural resources can often be justified. Such rights combined with formal political autonomy rights effectively produce substantive political autonomy rights.

The distinction I am drawing between formal and substantive rights is related to the one Rawls draws between liberties and the worth of those liberties (e.g., PL, 325). While an account of primary goods could be drawn up for peoples in a way that mimicked that for individuals (cf. PL, 178–87), such an account would not be able to overcome the scarcity difficulties in the previous paragraph. Establishing the formal rights within whatever substantive political autonomy rights exist may be seen as a first step towards the larger enterprise of establishing the latter, more controversial rights.³

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Given adequate resources to make effective use of political autonomy rights to escape cultural coercion, a people's choice to remain subject to the authority of a liberal state means that it is not being culturally coerced by that state, assuming that the state is not coercively preventing the free exercise of their political autonomy rights. If there has been an all-things-considered acceptance of a liberal state's jurisdiction by a people, I argue that there is no illegitimate cultural coercion in the exercise of that jurisdiction. While a people opposed to liberalism's impact on their culture may sometimes be forced into hard choices by the high costs and relatively irreversible nature of using their sovereignty to claim some jurisdiction, the very presence of options allowing separate jurisdiction ensures a crucial element of free consent that generally legitimizes a liberal state's continuing rule over them.

A people strongly opposed in an all-things-considered manner to its cultural coercion by a liberal state which nevertheless did not make use of its political autonomy rights would seem to be suffering from a form of collective *akrasia*, assuming it was not lacking in means. The liberal state would not normally be responsible for such akrasia. Of course, a state's long-term colonial domination of a people may have come to interfere with its abilities to choose and to will effectively, for which the state can be held responsible. This may be due to many forms of oppression, including interference in the people's institutions of governance, personal or social anomie due to loss of autonomy, debilitating poverty, environmental contamination of the people's territory that severely ---

justifying claims required for the substantive political autonomy rights of aboriginal peoples in Canada. A history of unjust land acquisition and other sorts of oppression, as well as treaties can justify some of these claims.
affects human health, family breakdown due to the forced institutionalization of children, or abuse of children in those institutions. Though the people, collectively and possibly also as individuals, may necessarily need to take responsibility for themselves in order to overcome the akrasia, some remedy may still be due them from the colonizing state to aid in this process. Similarly, a people may lack means to make use of its political autonomy due to unjust actions of the liberal state for which remedy is due, for example, the state’s dispossession of the people of their territory.

Defining such remedies that allow a people to make use of its political autonomy rights is beyond the compass of this thesis. Interpreting, at least in general terms, the scope of formal political autonomy rights so that they can serve to exclude cultural coercion is the main focus of this chapter.

§5.2 The Right to Independence

Rawls writes that it is essential that his interpeople liberalism fit with two basic changes to international law since World War II, namely, limits on states’ external sovereignty due to the restriction of their right to war for policy purposes, and limits on states’ internal sovereignty due to the development of international human rights law (LP, 48–9). Both of these changes affect how his political autonomy rights should be interpreted. In explaining these changes he refers to “the state as traditionally conceived” in the context of Clausewitz’s characterization of war as the pursuit of politics by other means (LP, 48). Fleshing out this model of the state, even if only slightly, will provide a foil against which an interpretation of Rawls’s political autonomy rights can be more
easily explained.

In a simplified, somewhat caricatured, account of the interstate regime in the post-Westphalian, pre-World War II era, states (at least those European ones that mutually recognized each other's sovereignty) had jurisdiction over all governance functions over all the permanent residents in all of a specified territory. States had total independence in their internal affairs, and had a right to use war in pursuit of prudential interests. Rawls's rights to independence, secession, and self-determination each require revisions to this model.⁴

That a people has a right to independence in interpeople liberalism means at a minimum that it may conduct its internal and external affairs without being subjected to other peoples. An independent people may freely choose its course of action from among those allowed by interpeople liberalism without requiring the approval or consent of other peoples. For the sake of convenience I collect under the heading of this right the ability of a people to make treaties and agreements, and the requirement that such undertakings be observed (LP, 55).

The converse of each people's right to independence is its duty of non-intervention in the affairs of other peoples (LP, 55). Though no people has external political autonomy

⁴ Though these forms of political autonomy are not recognized in the simplified model of the post-Westphalian, pre-World War II state, they or cognate precedents of them were never entirely absent during this period. See, e.g., the US Supreme Court's recognition of dependent domestic nations in Johnson v. M'Intosh, 21 U.S. (8 Wheat.) 543 (1823); Cherokee Nation v. Georgia, 30 U.S. (5 Pet.) 1 (1831); and Worcester v. Georgia, 31 U.S. (6 Pet.) 515 (1832), particularly the citation of Vattel in the latter, stating that “[t]ributary and feudatory states do not thereby cease to be sovereign and independent states, so long as self government and sovereign and independent authority are left in the administration of the state.”
that includes the old Clausewitzian right to war merely to further a prudential pursuit of its political policy interests, all have a right to self-defence.

Such a right to independence clearly allows peoples to avoid at least some cultural coercion from states other than their own, including liberal ones. For the right allows a people to claim legitimately that their cultural practices are not legitimate grounds for a liberal state to intervene so long as those practices conform to interpeople liberalism. As many cultural practices are allowed by interpeople liberalism, including many that are not allowed by domestic liberalism, the right of peoples “as organized by their governments” to independence (LP, 55) excludes cultural coercion in a large number of cases.

However, the right to independence is limited according to Rawls by the right of states to intervene in a state in cases of violations of the rights he chooses to include on interpeople liberalism’s list of minimum human rights. This is a significant change to the classical model of the state system. As Chapter 4 discussed, this intervention can take the form of war if the rights on this list are gravely violated, or less drastic measures for lesser violations (LP, 55, 48).

Chapter 9 examines two interpretations of the right to forcibly intervene in peoples due to grave human rights violations. One interpretation, human rights fundamentalism, supports intervention in cases of grave violations of any of the human rights on Rawls’s list, and thus allows cultural coercion of peoples as organized by their governments in cases where cultural practices constitute such grave human rights violations. A second interpretation, humans rights democracy, argues that such interventions are only justified in cases of grave violations of peoples’ political autonomy rights. On this interpretation,
no cultural practices constitute the sort of grave human rights violation that would legitimate the coercion of forcible intervention or economic blockade.

§5.3 The Right to Secession

By providing a method, even if only a drastic one, by which substate peoples may escape the rule of a state, a people’s right of secession can be interpreted to allow peoples to escape cultural coercion by liberal states.\(^5\) For the right can be interpreted to allow any substate people to secede when it chooses. A people seceding from a state would then no longer be subject to cultural coercion due to its domestic policies. As an independent state, it would be able to exclude cultural coercion to the extent noted in the previous section.

When a people has a right to secede whenever it chooses, it enjoys what Buchanan has termed a primary right of secession. He contrasts this with a remedial right of secession, which takes secession to be justified only in response to the unjust treatment of a people by a state.\(^6\) This distinction provides part of the contrast between the two

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\(^5\) Seceding peoples need not set up their own independent state, since they may secede from one state to another if the latter accepts them and their territory. See Alan Buchanan, *Secesson* (Boulder: Westview Press, 1991), 10.

\(^6\) See Allen Buchanan, "Theories of Secession," *Philosophy and Public Affairs* 26 (Win 1997), 34–5. This terminology is potentially confusing, since if either type of right—primary or remedial—is violated, remedies may be due. For example, if a state attempts to prevent legitimate secession, whether this legitimacy is due to a prior injustice to a people or to a recognition of the interests of substate peoples in such political autonomy, then the seceding people may have remedies for the violation of their right to secede including rights to assistance from other states and to reparations for war damages.
interpretations of interpeople liberalism discussed below in Chapter 6. Political assimilationism claims that peoples have only remedial political autonomy rights, with the conception of domestic justice for all peoples within a state justly determined by the state, which may be dominated by a liberal people, rather than by each substate people. As a result, it allows the cultural coercion of non-dominant peoples in a state without providing them with formal rights to escape. By contrast, political autonomism interprets peoples' political autonomy rights as primary.

§5.4 The Right to Self-Determination

Rawls characterizes a right to self-determination as "the right of a people to settle its own affairs without the intervention of foreign powers" (TJ, 378). Just as a right to secession requires a definition of a people other than the classical one of the population of a state, once a separate right to self-determination distinct from both a right to independence and a right to secession is recognized, a new definition of sovereignty is required (LP, 56). Sovereignty as the full jurisdiction of a state over all of its peoples needs to be changed to allow for the sovereignty of a people to choose partial or shared jurisdiction over parts of their affairs within a multipeople state. A conception of sovereignty able to accommodate such divided, or confederal, authority within a single state over its jurisdictions is required even if the right to self-determination only provides a remedy of a choice of some separate substate jurisdiction to a people that has been treated unjustly by a state.

Jurisdiction has long been divided in liberal states for specific functional areas both
by territory and by population groups within a territory. For example, provinces and 
\textit{Länder} in federal systems have had jurisdiction for the whole population in their territory 
over certain governance functions not administered by the central government, and 
different school boards with overlapping territory have governed the educational needs of 
different segments of the population based on religion or language.

Mere administrative delegation of partial jurisdiction to a substate people by a 
classically sovereign state is not sufficient to constitute a Rawlsian right to self-
determination. For such a state would be within its classical rights to revoke the 
delegation in order to intervene in the affairs of the people in the area of previously 
delegated jurisdiction. Substate peoples need to have sovereignty over the jurisdiction(s) 
that govern their affairs in order to have a right powerful enough to exclude intervention 
in their affairs by other peoples.

When the right to self-determination is interpreted to include such sovereignty over 
jurisdiction, peoples can escape liberal cultural coercion by taking over the portions of a 
state’s jurisdiction that impinge upon the nonliberal cultural practice(s) at issue.\footnote{Peoples may politically self-determine without separate jurisdiction through sharing a jurisdiction with one or more other peoples, possibly including guarantees of minimum representation in legislative bodies or the allotment of government positions among substate peoples. Such approaches do not allow a liberal people to implement justice as fairness domestically while not culturally coercing an opposed nonliberal people in the same state. Such forms of self-determination are thus not germane to my enquiry. §5.5 discusses the more general issue of self-determination as separateness or inclusion.} The 
power to take over jurisdiction that had been used by a state to culturally coerce a people 
gives it the option of pre-empting the cultural coercion. It narrows secession’s blunt
solution to problems of the state cultural coercion of peoples to the specific jurisdiction and cultural practice in conflict. Self-determination thus provides a middle path for substate peoples between complete acceptance of the authority of a multipeople state and seceding.

Self-determination may be the only means of escaping cultural coercion by a multipeople state where resources for an independent state jurisdiction are lacking. Political autonomism's primary right to self-determination allows peoples in this circumstance to avoid cultural coercion, though resource constraints may prevent the use of even this circumscribed political autonomy right. By contrast, political assimilationism's remedial right to self-determination does not provide such protection except in cases of some distinct unjust treatment of a substate people.

Even when an area of jurisdiction such as education is divided for the purposes of religious instruction or language of instruction, a jurisdiction over that area need not necessarily extend to all aspects of the governance function. An example of a limited rather than full jurisdiction is education boards that are allowed to imbue their curriculum with some religious doctrines and values, but not to remove or replace core curriculum elements such as liberal democratic values (cf. PL, 199–200).

§5.5 Self-Determination as Separateness or as Inclusion

Though many peoples wish to affirm their political autonomy by separating some or all of their governance from other peoples ruled by the same state, others wish to affirm it through partially or totally integrating their governance with that of other peoples.
Political integration of various degrees, whether designed to be permanent or at the
continuing pleasure of the parties, can be accomplished through the powers of peoples to
enter into treaties and alliances with like-minded others (LP, 55, 73–4). Many aboriginal
peoples in Canada and elsewhere have entered into such treaties, as have the peoples of
the European Union. Alternatively, several peoples could jointly establish a constitution
for their governance in common, since a single juridical form of governance need not
entail that they then become a single people, given the social rather than juridical basis of
peoplehood (see §4.5 above). Such actions need to be negotiated and approved in a
manner fitting to their weighty constitutional import, since they are important, not easily
revocable, and liable to raise strong public passions. But while the specific procedure
adopted is largely a matter for the domestic political conception of a people to determine
(cf. PL, 228), the law of peoples can and should require that whatever the process, it
should conduce to the stable and peaceable execution and maintenance of the agreement.

Can a people wanting separate self-governance be under an obligation to integrate its
governance with other peoples who favour integrated self-determination? Rawls writes
that a people’s right to secession does not encompass acts of secession carried out in
order to subjugate another people unjustly (PL, 55), such as the attempted secession of
the slave-holding states at the start of the American Civil War. The principle underlying
this claim—that one people may not subject another unjustly to its rule—can be extended
to help deal with the issue at hand. If one people have subjugated another unjustly and
thereby unjustly dominated them, then this principle can justify a remedial right of the
wrongly subjugated people to integrate politically with their subjugators against the
latter's will in order to eliminate the unjust domination.

Apartheid in South Africa, which included limited self-government for non-whites in certain territories, was set up by the white government in order to perpetuate the unjust subjection of non-white peoples in South Africa to Afrikaner rule. The manner of this subjection under apartheid was different from the exclusion of all political rights⁸ for the preponderantly black slave population in the American South before the US Civil War. By retaining control over valuable territories and resources that had been obtained in an unjust historical process, and effective governance over many important everyday interactions between members of different peoples (e.g., over blacks in many of their places of employment), the Afrikaners eviscerated the self-rule powers instituted for non-Afrikaner peoples in South Africa.

A contrast between non-Afrikaner peoples in apartheid South Africa and aboriginal peoples in Canada should clarify the notion of a remedial right to political integration based on the unjust domination of peoples brought about through forced political separation. Both sets of peoples are disadvantaged by and subjected to the power of settlers from other lands. Their differences of opinion regarding the merits of separate self-determination versus integrated self-determination with other peoples within a single state are arguably grounded in differences between their contexts. In South Africa,

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⁸ Rawls endorses the view that slaves can make no self-authenticating claims such as those found at one root of his account of basic rights (PL, 33). Nevertheless, some slaves have been materially better off than some of the non-slaves in a society, for example, in the Roman empire in Claudius’s reign at the start of the Common Era (New Grolier Encyclopedia, s. v. “Slavery”), and slaves have in some instances controlled the military and political heights of societies for several centuries (New Grolier Encyclopedia, s. vv. “Mamelukes” and “History of the Middle East”).
numerically inferior white European colonizers used political, social, and physical exclusion of the indigenous black people (and to a lesser extent the non-white, non-European colonizers) as a means of implementing and continuing an unjust system. Forced separate self-government was a means to oppress the colonized somewhat analogous to the "separate but equal" mechanisms of racial discrimination in the US. Formal liberal equality in an integrated democratic regime alleviates this systematic injustice and provides an opportunity for the legacy of unjust historical territorial and resource appropriation to be redressed.

In Canada, by contrast, after European colonizers became numerically, economically, and militarily superior they attempted to extirpate the religious, cultural, and political differences of aboriginals by removing their remaining political autonomy as peoples and assimilating them into non-aboriginal settler society. This was accompanied by the progressive dispossession of aboriginals of control over their territory, usually through treaties, often as a result of power imbalances. Here forced integration oppressed the colonized, or at least was perceived as oppressive by the colonized despite what often seem to have been good intentions on the part of the colonizers. Recognition of aboriginals as independent self-governing peoples within Canada today holds more promise as a means of correcting unjust historical displacements and appropriations, and for resisting unwanted assimilation, than integration according to South Africa’s model.

Both a people’s right to self-determination as separate self-governance and its right to a remedy such as political inclusion when its right not to be oppressed has been violated exclude cultural coercion. Note that neither of these rights, nor the rights to independence
or secession, are premised on their correct use. None require that a people’s chosen
course of action optimize justice overall or be the best one suited to accomplishing the
people’s perceived purposes. Political autonomy, like individual autonomy under a liberal
regime, is about a people’s right to make its own decisions, even if they are mistaken.
The only constraint on the freedom provided by such rights is that they not violate other
aspects of interpeople justice.

The primary concern of black and coloured South Africans has not been the control of
laws governing the relations of white South Africans among themselves. More plausibly,
it has been about control over economic resources in the region, and sharing control over
relations between blacks, coloureds, and whites. So the principle that one people should
not be subjected to another can justify restricting certain particular forms and instances of
separate self-government that effectively result in the subjection of another people.

These concerns regarding the intermixed peoples of apartheid South Africa are not
equivalent to a generalized duty of peoples to implement domestic liberal equality
towards the members of other peoples. They hold, rather, between peoples whose
geography and history are linked in particular ways. So the justifications for a right of
non-Afrikaner peoples in South Africa to political integration with Afrikaners do not
apply in general to liberal peoples wishing to integrate their governance with nonliberal
peoples in order to put an end to the latter’s nonliberal cultural practices. First, the
cultural practices of a people concern relations among its members, rather than between
them and the members of other peoples. Cultural practices, in contrast to intercultural
practices, cannot amount to the subjugation of another people (though they may oppress
groups within a people like women and the poor according to the standards of domestic liberalism, as indicated in §4.5). Second, peoples have some political autonomy according to interpeople liberalism to implement forms of domestic governance that do not conform to domestic liberalism. So long as all the limits that interpeople liberalism can legitimately impose on domestic governance and interpeople relations are met, a people's affairs cannot be judged so unjust that political integration becomes a justified form of redress.

However, even if Rawls's interpeople liberalism can be consistently explained in a way that justifies toleration of some nonliberal cultural practices of peoples, some conflicts may arise between the doctrines of domestic liberalism and interpeople liberalism in the case of peoples with nonliberal cultural practices within liberal states. The next chapter turns to this matter.
Chapter 6 Political Assimilationism Versus Political Autonomism

§6.1 Introduction

In this chapter, I begin defending a political autonomist interpretation of justice within a multipeople liberal state against a political assimilationist interpretation. This position is based on the purposes of having a plurality of states: less civil unrest, less despotism, and more vigorous laws. I term a multipeople state ‘liberal’ if it governs in conformity with the principles of domestic liberalism within its jurisdiction proper, that is, considered apart from any substate jurisdiction operated separately by a people within the state.

A simplifying assumption in Rawls’s domestic liberalism is that a state contains only a single people. In interpeople liberalism, matters are complicated by distinguishing between a people and the population of a state: there may be more than one people within a state. Potential conflicts then arise between Rawls’s domestic and interpeople liberalisms in the case of multipeople liberal states. §6.2 describes some of these tensions.

§6.3 outlines two models of Rawlsian liberalism that resolve these conflicts in different ways. The first, political assimilationist model, holds that all within the borders of a multipeople state are subject to its principles of domestic justice. While peoples within a liberal state have rights to self-determination, secession and independence just like peoples in other states, these political autonomy rights exist only as remedies to
injustice. Since injustice does not exist in an ideal liberal state, peoples within such a state have no right to political autonomy from that state.

The second, political autonomist model, holds that every people, including any currently within a liberal state, is at liberty to govern itself according to any of the political conceptions allowed by interpeople liberalism, including those that are not liberal. Any people may use its rights to self-determination, secession and independence for this purpose.

The next section, 6.4, argues that a purposive approach to political jurisdictions should help to settle the issue between the two models of Rawlsian liberalism. The existence of separate political jurisdictions, and by extension the political autonomy rights that provide their normative basis, serve a number of purposes including reducing civil strife, reducing despotism, and promoting vigorous laws. While an analysis of the latter purpose and its relation to political liberalism is postponed until the next two chapters, §6.5 begins this chapter’s discussion of the first two purposes.

The following three sections fill in specific areas of Rawls’s sketch of interpeople liberalism that are relevant in determining whether political assimilation or political autonomism is a better conception of interpeople justice. These sections deal successively with general facts and stability, well-orderedness, and reasoning within the interpeople original position. The conclusion is that political autonomism is better than political assimilationism as an interpretation of political liberalism, at least in regard to reducing civil strife and despotism resulting from peoples trying to gain political autonomy.
§6.2 Domestic Liberalism versus Interpeople Liberalism

Rawls abstracted from relations with other societies when developing domestic liberalism by assuming a closed society that was a single people (LP, 48, PL, 12). When the principles of domestic justice are extended to deal with topics that arise only in relations between peoples, the conclusions reached on these topics may differ from those reached given the assumptions of a closed society of one people. For example, the principles of domestic justice allow a police force necessary to keep domestic order but not armed forces for use between states: “the government’s right to be prepared militarily does not arise, and would be denied if it did” (LP, 48–9). Yet in interpeople liberalism, governments have the right to be militarily prepared, because peoples as organized by their governments have a right to self-defence (LP, 55) and may intervene in other people’s internal affairs in cases of grave human rights offences (LP, 71, 73). The conclusions reached in the interpeople original position among representatives of peoples need to set out basic principles for topics such as the just arrangements within multipeople liberal states. These principles were outside the bounds of the deliberations in the domestic original position among representatives of citizens in a liberal regime. So given that the relations among peoples within multipeople states are beyond the scope of domestic liberalism, political autonomy’s variance of some aspects of domestic liberalism like equality does not by that fact count against political autonomy being more just or more in all-things-considered conformity with domestic liberalism than political assimilationism.

Recall that the right of a people to political independence recognized by interpeople
liberalism (LP, 55, 56) allows peoples to govern themselves in their domestic affairs according to a range of political conceptions some of which reject the two principles of justice of Rawls’s domestic liberalism (PL, 5–6). The reason is that the criteria of reasonableness are relaxed and the scope of toleration extended in the interpeople domain (LP, 78). I will use the term ‘domestically nonliberal’ as a shorthand to describe jurisdictions which do not conform to the principles of domestic liberalism in their operations, but which do conform to the principles set down by interpeople liberalism regarding the domestic principles of justice required to meet interpeople liberalism’s conception of a well-ordered people. These requirements include a common-good conception of justice, a reasonable consultation hierarchy, and the observation of minimum human rights.

Consider a few salient points about (1) domestic liberalism and (2) interpeople liberalism. Domestic liberalism holds that (1)(a) all citizens are equal and (1)(b) all citizens are bound by the agreement reached in the domestic original position. Interpeople liberalism holds that (2)(a) peoples have rights to self-determination, secession and independence within limits defined by the human rights of their members and the similar rights of other peoples (LP, 56), and (2)(b) a people’s conception of domestic justice may be nonliberal. Two types of tension apparently arise between these positions regarding multipeople liberal states. The first, between (1)(a) and (2)(a), is that the self-determination of a people may threaten the equality of citizens within a multipeople liberal state. The second, between (1)(b) and (2)(a), is that the self-determination or secession of a people in a multipeople liberal state threatens the doctrine that all of its
citizens are bound by the agreement reached in the domestic original position. The increased difference incorporated into (2)(b) creates exacerbated forms of each of these apparent tensions: both more marked inequalities within the state, and more marked departures from the agreement in the domestic original position. Interpreting political liberalism as either a political assimilationist or political autonomist doctrine allows these apparent tensions to be resolved, though in different ways.

The first tension arises because the political autonomy rights of interpeople liberalism can increase inequalities anathema to domestic liberalism. Four types of these inequalities concern us. The fair value of the political liberties, fair equality of opportunity, and the difference principle are three strong egalitarian features of domestic liberalism not demanded by interpeople liberalism from all peoples in their domestic affairs (PL, 6–7, LP, 51). A correlative type of inequality exists for each. The fourth inequality results from unequal treatment under the law. Legal rights, even those concerning matters not normally considered a part of basic justice, can give rise to a basic injustice if they are distributed according to invidious classes. Allocating, say, hunting licences according to eye colour may seem to conform to the principle of the rule of law that ‘like cases be treated alike,’ at least in this simplistic formulation. But it offends a more fully articulated enunciation of the same principle: ‘relevantly similar cases should be treated similarly, and relevantly different cases should receive relevantly different treatment.’

A people can use the liberty provided by the political autonomy rights described in the previous chapter to create and maintain a political jurisdiction able to exclude coercion by liberal states. The new jurisdiction’s principles for domestic justice may
conform to the standards of domestic liberalism or only to the weaker standards of interpeople liberalism. If either of these situations gives rise to a problematic inequality, then rights to create these jurisdictions, even if unexercised, create a liberty for a people that is also problematic.

To see this in more detail, consider a people within a multipeople liberal state that has a right to secede or a right to self-determination that allows it to claim partial separate sovereignty. So long as it 'exercises' these political autonomy rights by choosing to integrate fully into the political regime of the liberal state, then the existence of its political autonomy rights does not give rise to differences between its members and other subjects of the state regarding their other rights and statuses. However, as soon as such a people exercises its right to self-determination to claim some sovereignty from the liberal state over certain governance functions, or to secede and thus gain complete sovereignty, a difference in status arises between the members of the people and other subjects. These political autonomy rights provide a 'higher-order' normative power able to change the 'lower-order' rights and status of its members vis-à-vis other citizens. So their recognition means that states with more than one people do not have a citizenship with homogenous rights and status. Some of these differences in rights or statuses may be acceptable to or even required by domestic liberalism, but others may be problematic. If these differences are problematic according to domestic liberalism, then political autonomy rights would be giving peoples the normative capacity to create problematic

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1 Similarly, a right to comment on government policies may be 'exercised' by either praising or criticizing those policies, or in an extended sense by remaining silent about them.
inequalities, at least according to domestic liberalism.

Although the use of political autonomy rights to create or maintain a jurisdiction conforming to domestic liberalism would not be carried out by a people seeking to protect its nonliberal cultural practices from liberal coercion, analysing the simple case of the relations of equality and inequality that hold between members of different liberal jurisdictions helps to clarify issues that arise in more complex cases. It might seem in the abstract that creating two domestically liberal jurisdictions out of one would either have no effect or a deleterious effect on each type of equality. But this is not necessarily so.

The first conclusion may result from the observation that since all three jurisdictions—the old one and the two new ones—are assumed to conform to domestic liberalism, it follows that all four types of inequality are the same in each of the jurisdictions, and thus before and after the change in jurisdiction. However, even though equality may be realized to the same level within each jurisdiction, there may be discrepancies that arise between jurisdictions, due, for example, to the complement of natural or human resources each of the new jurisdictions acquires. Natural wealth such as Alberta’s petroleum reserves may be concentrated in one jurisdiction’s territory. Or the income and wealth of Anglicans may lead to a better denominational educational system for their children than for Catholics’.

These points might lead one to believe that the level of inequalities, if it changes at all, will change for the worse with more jurisdictions. As interpeople liberalism does not require redistributive measures across jurisdictional boundaries as strong as domestic liberalism does within a single jurisdiction (LP, 56; TJ, 277–80), inequalities may
develop between the members of different jurisdictions that are not present among the
members of the same jurisdiction. For example, in order to prevent wealth disparities
from widening over time in a way that would lead to the erosion of the fair value of the
basic liberties over generations, domestic liberalism calls for redistribution through “a
number of inheritance and gift taxes” in order to satisfy the difference principle (TJ,
277f). But if after, say, the creation of a self-determining substate jurisdiction for a
people, one of the resulting peoples was richer than the other, or had more means to
accumulate wealth, such a process could lead to discrepancies that would not be
alleviated by the redistribution called for by interpeople liberalism. Inequalities in the
value of the basic liberties in the areas of shared jurisdiction may thus arise in
multipeople states with some shared and some separate sovereignty depending on which
areas of sovereignty are shared.

However, bigger jurisdictions are not always better at alleviating disparities of
income and wealth, and thus of the equal worth of the basic liberties (see TJ, 96f). Work
by the Grameen Bank that began in the poorest sectors of a state as destitute as
Bangladesh has indicated that very small scale commercial self-help projects can be more
effective than massive transfers from the rich, both in alleviating the disparities addressed
by the difference principle and in providing more substantive equality of opportunity.\(^2\) A
distribution of basic liberties may be fair given certain circumstances even though their
value to each person is not exactly the same. If the members of a seceding people were

among those having a lesser value from the basic liberties, then the relative disparity in this value among the populations of the new jurisdictions may be reduced. Further, the value of democratic liberties are also often increased when exercised in a smaller jurisdiction, given the smaller number of votes and voices. So if the members of a seceding people were both among those having a lesser value from the basic liberties and constituted less than half the population, then the relative disparity in this value among the populations of the new jurisdictions may be reduced. Equality in the value of the basic liberties may thus be increased through a people's creation of a new political jurisdiction for themselves. So at least some factors can tend to increase the equalities more prized by domestic liberalism than by interpeople liberalism when peoples’ political autonomy rights are exercised. Nevertheless, some increased inequality should be expected in many cases.

The importance of the comparison class used in evaluating equality can be illustrated with regard to inequality under the law. The Québécois have certain rights as citizens of Quebec that are unavailable to citizens of other Canadian provinces: legal guarantees that at least 25 percent of the seats in the House of Commons will represent Quebec constituencies, and that at least three of the nine members of the Supreme Court of Canada will have been called to the bar in Quebec. Recently Quebec’s population has been less than 25 percent of Canada’s, so these provisions guarantee Québécois over-

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3 This legal guarantee distinguishes their situation from urban residents in Canada and other democracies who in practice are often placed in ridings that are much more populous than rural ones.

4 See Statistics Canada, CANSIM, Matrices 6367-79
representation in these institutions, and non-Québécois relative under-representation. (No similar guarantees are available to the citizens of other provinces or territories, though some have in practice been more heavily over-represented.) On this point, Canada does not appear to meet domestic liberalism's ideal of the equality of citizens. Those suffering from reduced political representation do not benefit from the inequality (cf. TJ, 230-2). Were Quebec to secede from Canada, then it is likely that neither the newly independent Quebec nor the rest of Canada would implement such inequalities in the basic rights of their citizens.

If these representation rights are compared only among citizens in the same state, then the two post-secession states are more equal than the pre-secession one. Before the secession, though there was no inequality of legal rights within each of the populations that make up the post-secession states, there was inequality between the representation of Québécois and non-Québécois. So a tension exists between taking all citizens of a state as the relevant class within which equality comparisons should be made, or all members of each people (assuming that the remainder of the population of Canada once the Québécois are removed constitutes a people). Equality of states' citizens is increased through Quebec's secession, but equality of peoples' members is not. A liberal commitment to the equality of all as individuals within a state without regard to membership in peoples seems to make a people's exercise of self-determination as separate self-government within a liberal state necessarily illegitimate in ideal theory because it creates an inequality between citizens based on their differing membership in

(http://www.statcan.ca/english/Pgdb/People/Population/demo02.htm).
peoples. Virtually any laws applying only to those subject to a substate jurisdiction would produce discrepancies in legal rights and status between them and other members of the state. So long as membership in a people within a state is taken as an invidious category for the differential distribution of rights and statuses within a state, political assimilation or secession become the only options for a people within that state choosing how to realize their political autonomy. Treating the membership in a people of a subject of a multipeople state as politically and legally irrelevant excludes a sense of equality that recognizes the relevance of membership in a people.

Consider again the Québécois. Taking account of their position as a minority people is at least arguably relevant in designing Canada’s multipeople democratic institutions. Canada’s model of democracy is historically indebted to Westminster’s, inasmuch as minority and individual rights were traditionally protected through the power of the ballot box, through the weight of precedent on parliamentarians, and through the royal prerogative. 5 Since 1869 this has been increasingly supplemented by protection through judicial review along the lines of the American model. 6 Within the Canadian model, some

5 See Gordon Bale, Chief Justice William Johnstone Ritchie: Responsible Government and Judicial Review (Ottawa: Carleton University Press, 1991), 173: “The king-in-council, or Privy Council, served as the basis of courts of royal prerogative,” but this prerogative could be extinguished by legislation. (See also 171–5, 97–138.) Until appeals of Canadian judicial decisions to the Judicial Committee of the Privy Council were abolished in 1949, Canadian subjects could appeal by leave of the Monarch to his or her council for an exercise of royal prerogative in their favour to, say, protect their minority rights from unjustly majoritarian interpretation.

6 R. v. Chandler (1869), 12 N.B.R. 556 was the first case of judicial review in Canada similar to that enunciated by U.S. Chief Justice Marshall in Marbury v. Madison, 5 U.S. (1 Cranch) 137 (1803). Judicial review was greatly expanded in Canada by the enactment of the Charter of Rights and Freedoms in 1982.
weak institutional protection of the Québécois's threatened linguistic and cultural interests could be justifiable, especially given their historical experience of disagreement with the British, and similar experiences of other conquered peoples. It is at least conceivable that an inequality in the formal representation of Québécois versus non-Québécois is consistent with a total system of liberties substantively equal for all (cf. *TJ*, 231–4). Also, given the reasonable expectation that appeals from Quebec's civil law court system to an appeal court with only common law experience would result in the degradation of its system of law, Quebec can be seen to have a relevant interest in ensuring its adequate representation on the Supreme Court of Canada.⁷ Considerations of this sort which arise within multipeople states, especially where the peoples do not "share a common conception of justice" (*TJ*, 231), find no expression in Rawls's domestic liberalism. However, they can likely find a place in his interpeople liberalism as the terms of an agreement between separate and independent peoples.

So peoples exercising the three political autonomy rights may create inequalities along all four axes of equality between members of different peoples even when each separate jurisdiction conforms internally to domestic liberalism. So much for equality in the context of several jurisdictions observing domestic liberalism. What of the situation when the equality measures of a new jurisdiction's principles of domestic justice lie below those required by domestic liberalism but above the minimum specified by interpeople liberalism? The same conclusion is warranted, though in this case the greater inequalities allowed within a people may be expected to exacerbate those that were

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⁷ See Bale, Ritchie, 260–3.
shown in the foregoing discussion to develop between domestically liberal peoples. As before, the justification for distributing legal rights that concern matters other than basic justice so that members of one people within a multipeople state gain different benefits and burdens than others depends on vindicating the relevance of distinguishing between peoples for the purpose of distributing those rights.

Even though new domestically nonliberal jurisdictions do not necessarily aspire to the goal of liberal equality, still, circumstances may lead to such equality increasing between members of different peoples. Many peoples aspiring to use political autonomy rights are disadvantaged within the state to which they are currently subject according to one or more of the four axes of Rawlsian inequality. Aboriginal peoples within Canada, the United States and Australia, for example, score poorly on most indicators of relative social and economic advantage and disadvantage. These indicators include income, wealth, adequate housing, educational attainment, unemployment, occupational success, incarceration, substance abuse, spousal abuse, suicide, infant mortality, and life expectancy. If such a disadvantaged people could improve its lot through setting up its own jurisdiction either within its existing state or independent of it, then this improvement may more than offset the effects of the deliberately implemented non-egalitarian principles of domestic self-government. These improvements could come from many sources: an agreement gaining more transfer funds for the new jurisdiction than were previously received by members of the people as individuals,8 improving the

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8 This might result from a state agreeing to pay the average per capita cost of certain services to an aboriginal people that had previously been under-serviced and unable as individuals to win more funds from an administration.
yield that accrues to them from economic rents on natural resources in their territories, more effective co-ordination of their activities under a smaller scale government, or even an increase in self-esteem that peripherally resulted from the attainment of self-government. Of course, some of these improvements are not dependent on the realization of separate political autonomy either within or without the antecedent state. Nevertheless, in many cases when disadvantaged peoples adopt a political strategy of seeking separate political autonomy achieving these improvements in equality becomes much more likely. Despite such possible exceptions, domestic liberalism’s conception of the equality of citizens is generally in tension with interpeople liberalism’s acceptance of a people’s right to self-determination.

Consider next the second tension mentioned above. One pole of this tension is domestic liberalism’s claim (1)(b) that all citizens of a liberal state are bound by the agreement reached in the original position. The other pole is interpeople liberalism’s recognition (2)(a) that any group of subjects of a state that constitute a people have political autonomy rights that allow them to set up and maintain political institutions to exclude the decisions of the overarching state from areas of jurisdiction. This ability of a people to unbind itself from the jurisdiction of a multipeople liberal state is taken to further lengths by the fact (2)(b) that interpeople liberalism allows peoples to implement domestically nonliberal principles of justice for their self-governance either after seceding or after realizing partial sovereignty under their right to self-determination. That is, these political autonomy rights allow peoples in multipeople liberal states to choose to escape the two principles of domestic liberalism, despite the fact that Rawlsian domestic
liberalism holds they have agreed to these principles in its original position. §4.5 provides examples of nonliberal practices that meet the minimum standards of interpeople liberalism but that are unacceptable within domestic liberalism.

So when more than one people is present within a state, potential conflicts arise between domestic and interpeople liberalism. Although this section has argued this point in terms of the equality of subjects and the extent to which they are bound by an original domestic contract, the implication with regard to the protection of individual rights and liberties should be obvious: by allowing inequality among the subjects of a state, domestic liberalism’s firm protection of individual civil and political rights need not extend under interpeople liberalism to the members of all peoples within a liberal multipeople state, particularly given the latter’s relaxed standards in these areas (cf. LP, 78, 60–3). The next section outlines two opposed interpretations of political liberalism for resolving these conflicts.

§6.3 Political Assimilationism versus Political Autonomism

My general topic is the justifiability of cultural coercion of peoples by liberal states. The question in this chapter is whether formal political autonomy rights of nonliberal peoples within multipeople liberal states that exclude cultural coercion of those peoples can be justified. As a result, it focuses on political autonomy rights of secession and self-determination to the exclusion of the right to independence, since the latter is relevant only to the cultural coercion of nonliberal peoples by liberal states outside their borders.

This section begins a comparison of two interpretations of Rawls’s interpeople
liberalism, political assimilationism and political autonomism. Each resolves the tensions in multipeople liberal states outlined in the previous section in its own way. While political assimilationism allows cultural coercion by a liberal state of peoples within it, political autonomism does not.\(^9\) Political assimilationism claims that peoples have remedial political autonomy rights, that is, only as remedies for injustices, while political autonomism claims that peoples have primary political autonomy rights, that is, rights that can be used by a people even if they have not suffered injustices (see p. 117 above).

The first takes the formal rights of peoples to self-determination, secession and independence to be remedial rights which do not exist in the conditions of an ideal liberal state. Remedial political autonomy rights would be enabled for a people in a state only if the state mistreated it according to the domestic principles of justice required by interpeople liberalism. As no people within an ideal liberal state is treated unjustly according to the principles of domestic liberalism, never mind the weaker ones of interpeople liberalism, no remediation of a people’s lot is required, and so none of them may make use of these rights.\(^{10}\) Such an interpretation may be termed a political assimilationist doctrine. The first tension, that the self-determination of a substate people may threaten the equality of citizens, dissolves since none of the citizens in a liberal state

\(^9\) Holding to an even-handed approach to domestically liberal and domestically nonliberal jurisdictions means that the first interpretation ends up allowing nonliberal states to coerce liberal peoples within them to conform to nonliberal principles of justice, while the second allows such liberal peoples political autonomy to realize domestic liberalism in their own jurisdiction should they so wish despite their state’s nonliberal conception of domestic justice.

\(^{10}\) See Buchanan, *Secession*; and Buchanan, “Theories of Secession.”
have a different status deriving from their people's right to self-determination. The potential for different status created by the political autonomy rights can never be legitimately actualized so long as the state remains liberal. The second tension, that peoples' political autonomy rights threaten the binding nature of the original agreement, is similarly dissolved: no citizen or group of citizens of an ideal liberal state ever has a right that currently enables separate self-determination or secession, and therefore all continue to be bound to recognize the authority of a state acting within the principles of justice arrived at in the domestic original position.\footnote{Political assimilationism would prevent the exercise of political autonomy of peoples within nonliberal multipople states unless they were subject to injustice. As a result, liberal peoples within nonliberal states would be prevented from using political autonomy rights to establish liberal governance in cases where they are not subject to injustice.}

Political assimilationism as specified here takes the injustice necessary to justify the expression of remedial political autonomy rights to secession and to self-determination to be the (significant) violation of interpeople liberalism's minimum standards of domestic justice. That is, although peoples have these rights at all times, they may only be exercised when a people has been subject to (significant) injustice according to interpeople liberalism. Since political assimilationism does not allow peoples within a multipople liberal state that meets its own conception of justice to make use of their political autonomy rights to claim separate jurisdiction as a remedy for injustice, no nonliberal peoples within an ideal liberal state would ever be enabled in the use of such rights. As a result, political assimilation allows liberal states to culturally coerce the nonliberal peoples within their borders.
Alternative formulations are possible but will not be pursued here. An interesting one allows peoples to use political autonomy rights to remedy situations in which the claim to injustice is weaker, namely, whenever a regime (significantly) violated its own principles of justice, even if those violations did not violate interpeople liberalism's minimum requirements for acceptable conceptions of domestic justice. This endorses an intermediate amount of liberal cultural coercion. It is difficult to see a plausible rationale for preventing a state which did not live up to its own political conception to prevent through the use of force its substate peoples from creating jurisdictions which met interpeople liberalism's minimum standards of domestic justice but not the proclaimed one of the state.

The second interpretation of political liberalism that will be discussed in this chapter is political autonomism. It holds that the rights of peoples to self-determination, secession and independence are rights that may be exercised at any time by peoples within multipeople liberal states. According to political autonomism, the notions of equality and of citizens being bound by the agreement in the original position in domestic liberalism only apply to liberal peoples, rather than to the whole population of a multipeople state. According to political autonomism, the original position is laid out to specify the fair terms of cooperation amongst the members of a people, rather than of a multipeople state. Instead of the domestic original position including contractors representing every subject of a multipeople state, they would represent every member of the liberal people.

Recall the tension between the equality of citizens in a liberal state and the differences in legal status among citizens that potentially arise as a result of the exercise
of peoples' rights to self-determination within a multipeople liberal state. According to
the political autonomist interpretation of Rawls, this tension is resolved by recognizing
that all peoples have rights to create and maintain jurisdictions so long as they are
governed according to the standards of interpeople liberalism. This recognizes an equality
among citizens first as members of different peoples, and only secondarily as subjects in
a particular state. A liberal people within a multipeople liberal state could realize
domestic liberalism's equality among its members. Should some or all of the peoples in a
multipeople liberal state choose to exercise their right to self-determination in a shared
liberal governance structure that makes no distinction between citizens based on their
membership in different peoples, then the form of equality specified by Rawls's domestic
liberalism would be present among the members of those peoples to the extent of that
shared jurisdiction. Otherwise, the equality that would be present is more like that
between persons subject to different states well-ordered according to interpeople
liberalism.

The second tension, that between the binding nature of the principles of justice that
are agreed to in the original position and the right of peoples in a multipeople liberal state
to self-determination and to secession, is resolved in a similar way according to this
political autonomist interpretation of Rawls. When the relationship between individual
and state is properly conceived in the setting of a multipeople liberal state, this conflict
does not arise, or at the least, it arises only in a different form.

Once again, subjects of a multipeople liberal state are not conceived as having an
original status as individual members of a single closed society with a single liberal
public culture. Instead, this interpretation holds that in a fully developed interpeople liberalism, persons are theorized as affiliating first with a people, rather than with a state that may be multipeople. The distinctions between peoples are those described in Chapter 3, even if one people in a multipeople state attempts to deny the existence of the other peoples by claiming that all subjects of the state are members of a single people. Though an overarching state governing more than one people may operate in its jurisdiction according to the principles of domestic liberalism, the abstract justification of domestic political liberalism and its historical narrative of the development of liberalism takes place at the level of peoples. Peoples whose political conception is domestically nonliberal would typically have ways of justifying their political conception other than that of domestic political liberalism (LP, 64). The use by such a people within a multipeople liberal state of their right to self-determination or to secession in order to implement their political conception is thus not to be understood as improperly treating the results of the domestic original position as non-binding. While such a people is bound by the agreement reached in the interpeople original position between representatives of peoples on the principles of interpeople justice, it is not violating any principle agreed to in that original position by exercising rights to self-determination or to secession. Neither, arguably, would such an action be a repudiation of a binding agreement reached by the representatives of the members of that people in a domestic original position. For, ex hypothesi, a domestically nonliberal people has not accepted domestic liberalism as its political conception. In ways more fully examined in the next chapter, the conditions which domestic political liberalism lays out as a basis for the binding nature of the
domestic original position are not met in such societies.\textsuperscript{12} The choice of a substate people to renounce domestic liberalism in order to adopt, say, a merely decent conception of justice (LP. 83, 71–8) would be similar to that of a people with its own state.

Rawls has written that “the principles for the subject of each later agreement are to be subordinate to those of subjects of all earlier agreements, or else co-ordinated with and adjusted to them by certain priority rules” (LP, 47). That is, a just law of peoples which issues from a later agreement is not intended to overturn the principles of domestic justice for a liberal people which issued from an earlier agreement. Both the political assimilationist and the political autonomist interpretations of Rawls meet this stipulation in their different ways, at least to the level illustrated by Rawls for the topic of military preparedness. The political assimilationist interpretation privileges the state as the unit in “The Law of Peoples” within which the conclusions of domestic political liberalism should continue to hold sway. The political autonomist interpretation, by contrast, privileges the people as the appropriate unit while including “principles for forming and regulating federations (associations) of peoples” (LP. 56) in interpeople liberalism.

A hybrid of political autonomism and political assimilationism that provided primary political autonomy rights to secession and independence but not to self-determination is imaginable. It would require all peoples within a multipeople state to conform to that state’s conception of domestic justice or to leave it (if they can). Considerations adduced

\textsuperscript{12} Although not directly related to liberal state coercion of nonliberal peoples, it is noteworthy that political autonomism would allow substate peoples within nonliberal multipeople states to use their political autonomy rights to set up domestically liberal jurisdictions.
below against political assimilationism's privileging of the state over a people will therefore tell against it as well as against political assimilationism and in favour of political autonomism.

Having laid out political assimilationism and political autonomism as competing interpretations of political liberalism with competing methods for resolving the tensions between domestic and interpeople liberalism, I will now turn to setting out the terms for evaluating the relative merits of each.

§6.4 A Purposive Approach to Political Boundaries

Political assimilationism and political autonomism have different conceptions of the character and importance of the boundaries between peoples and between states. As a result, they differ on acceptable methods for changing the boundaries of political jurisdictions. Since the character of the parties represented in the interpeople original position is different depending on which view is selected, the issue cannot be resolved simply by reasoning within that position. Just as Rawls argues for a number of the fundamental ideas that are used to construct the domestic original position, so are arguments outside the interpeople original position needed in the case at hand. This section argues for and lays out a purposive approach to political boundaries to help in deciding the issue between political assimilationism and political autonomism.

Political liberalism allows that laws can legitimately treat persons with different characteristics differently for certain purposes so long as there is a reasonable justification for the distinction. For example, a progressive income tax system may be
justifiable in domestic liberalism because it taxes persons earning different amounts at
different rates, so long as this is to the benefit of the least well-off (TJ, 279). As a result,
providing the members of different peoples in a multi-people state with political
autonomy rights could be legitimate so long as there is a reasoned basis for the different
distribution of rights and obligations of persons that result.

A purposive approach to the boundaries of political jurisdictions determines them by
the political values, or function and role, that are served by the existence of those
jurisdictions. In Rawlsian ideal political theory, just boundaries of political units are not
determined primarily by their historical location, but through a purposive analysis of the
boundaries of these units. Of course, historical boundaries may figure in the purposive
analysis, but they are fodder for it rather than independent standards against which the
results of the purposive analysis is to be judged. Questions about the appropriate
boundaries of a jurisdiction can be resolved by reference to the option that best serves the
agreed upon purpose. The historical position of a border, and attitudes towards it, are
merely possible factors in determining how a purpose is best served. Rawls endorses an
approach to political boundaries along these lines (PL, 223 n).

Rawls further holds that the existence of a whole historical level of jurisdiction, such
as the states in the US federal system, needs to be similarly justified against alternative
possibilities such as a centralized system, though he himself does not engage in that
particular exercise. Whether interpreted in a political assimilationist or political
autonomist manner, political autonomy rights concern the legitimate power to establish
borders of jurisdictions and by implication the legitimacy of existing jurisdictional
borders. Thus a purposive approach to these rights can be taken as encompassing a purposive approach to the boundaries of political jurisdictions. The goal is a reasonable justification for a relation between the purpose of a jurisdiction to the boundaries of its governance functions, territory and population, as well as to the character of its authority as sovereign or as delegated to its population.

The rationale for separate states that Rawls expresses when opposing a single world state sketches purposes served by having separate political jurisdictions. If these are valid purposes, and if these purposes would be better served by one of my two contending interpretations of political liberalism, then they would be reasons for favouring that interpretation.

Rawls writes that separate territorial states serve the purpose of assigning agents, namely, state governments, to be each responsible for a territory, its resources, and the size of the population the territory can sustain (LP, 56–7, LP, 8, 39). Although this point is directed towards rejecting the legitimacy of threats to interpeople peace arising from unsustainable economic and environmental practices, it can be generalized. Jurisdictions serve the purposes of providing specific governance functions to specific populations in specific territories. By having these matters settled, or at least the means for settling them settled, conflicts between jurisdictions which may lead to violence can be avoided, and the benefits of social cooperation within and among accepted jurisdictions realized. So having accepted borders, or more particularly, having accepted means for navigating changes to them, such as those incorporated into peoples' political autonomy rights however interpreted, helps to advance these purposes.
Rawls does not relate these purposes served by states to the relative advantages he outlines of having a single jurisdiction for a multipople state versus a potential one for each of its peoples. The question arises: why not have just one such jurisdiction for the whole world, a single world state? Although a world state might be able to serve Rawls's sustainability purposes as well as a collection of separate states, some of the general purposes may be better served by the latter. Three purposes found in Rawls's work are served by having many states rather than one. I argue these purposes, purposes related to those generalized above from his remarks on sustainability, support a preference for political autonomism over political assimilationism.

Rawls writes that "[a] world government—by which I mean a unified political regime with the legal powers normally exercised by central governments—would be either a global despotism or else a fragile empire torn by frequent civil strife as various regions and peoples try to gain political autonomy" (LP, 54–5; LP, 36). This chapter will show that separate governments serve the purposes of (1) reducing civil strife caused by regions and peoples trying to gain political autonomy and (2) reducing the despotism of a central world government.

Another purpose (3) of having many states can be ferreted out of a passage from Kant that Rawls quotes with approval:

[although] the separate existence of independent neighbouring states . . . is itself a state of war (unless federative union prevents the outbreak of hostilities), this is rationally preferable to the amalgamation of states under one superior power, as this would end in one universal monarchy, and laws always lose in vigor what government gains in extent; hence a condition of soulless despotism falls into anarchy after stifling seeds of good (LP, 222 n, quoting Ak: VIII:367).

This third purpose is the promotion of more vigorous laws. This purpose, interpreted as the promotion of more liberal laws, will be examined in the next two chapters. The
remainder of this chapter, however, focuses on the first two purposes explicitly found in Rawls.

Recall that a people is defined in part by a group accepting a social rule that that group reserves to itself, rather than to another group, the right to determine what its unit of self-governance will be. This belief in the sovereignty of a people to determine its form of self-governance is not the same as the more familiar juridical notion of sovereign jurisdiction as a jurisdiction that no other jurisdiction can revoke or overrule. If vesting sovereignty in peoples rather than states to control the creation and continuation of jurisdictions in multipeople states is the best means for serving the purposes advanced by such jurisdictions, then political autonomism should be favoured over political assimilationism as part of a conception of ideal justice. However, political assimilationism should be favoured if sovereignty over the determination of jurisdictions should vest in states, so long as they do not oppress peoples within them.

What of the stewardship purposes mentioned above? No doubt, they provide grounds for preferring some jurisdictional boundaries over others. For example, internalising environmental costs of economic processes within a single jurisdiction would tend to facilitate sustainability in comparison to the situation where one jurisdiction gets the pollution while another disproportionately reaps the corresponding benefits of increased profits or jobs. Smaller jurisdictions would tend up to a certain point to facilitate better attention to the specific environmental pressures faced in a particular locality (e.g., threats to ocean fish stocks from overfishing; threats to wetlands from industrial wastewater emissions). Without going far into economic and environmental policy, however, it is
difficult to determine if political assimilationism or political autonomism would lead to political boundaries that better serve these stewardship purposes, given that all jurisdictions can be assumed in ideal theory to affirm these purposes in their political conceptions. Since these matters are beyond the scope of this work, I will assume that even if these purposes are relevant in determining the optimal boundaries for liberal or domestically nonliberal jurisdictions, their effect on the decision of whether political assimilationism or political autonomism is more justified in the general case for a multipeople liberal jurisdiction is negligible in comparison with the three purposes just outlined, namely, (1) reducing civil strife, (2) reducing despotism, and (3) promoting more vigorous laws. This point conforms with Rawls's stress on matters of right rather than utility.

The two possibilities that Rawls outlines for a world government with the powers normally associated with states are "a fragile empire torn by frequent civil strife" or "a global despotism" (LP, 55). Purposes (1) and (2) amount to avoiding both of these undesirable possibilities. But they cannot be taken as independent and unrelated purposes, for in order for this dichotomy to hold, there needs to be an underlying rationale for why no middle way is possible. In fact, purposes (1) and (2) are correlates of a purpose that can be positively stated.

Rawls explicitly attributes the civil unrest currently at issue to regions and peoples trying to gain political autonomy.\(^1\) Recall that Rawls attributes natural political virtue to

\(^1\) Civil unrest may arise in a state due to other causes; for example, the oppressive position of women, poor people, or racial or ethnic groups that are not peoples. Remedies other than political autonomy for a people may be necessary to deal with these forms of
persons: only if persons' "social position in the basic structure is seriously unjust and this condition has persisted over some period of time and seems to be removable by no other means" will they "engage in resistance and revolution" (PL, 347). So the characterization of the world state as a strife-ridden fragile empire presupposes that it must be seriously unjust to certain regions and peoples. That is, all regions and peoples have a just claim to some political autonomy.

The alternative characterization of a world state as despotic similarly implies great injustice. Governments can fall into despotism in many ways, including when they respond to legitimate efforts by peoples within their borders to gain political autonomy by illegitimately attempting to block this autonomy through force. The continued assertion of effective sovereignty over another people legitimately claiming some of that jurisdiction for themselves would be a form of despotism. It is reasonable to suppose the underlying injustice is the same in both cases, with the despotic variant of the world state merely being less fragile and more able to assert effectively its authority to prevent civil strife. The injustice is the denial of political autonomy to various regions and peoples seeking it, and the results that flow from that denial. Rawls's dichotomy rules out the possibility that a world state with a normal state's powers could be both effective and just, since a world state's exercise of those powers denies adequate separate political autonomy to regions and peoples.

Rawls's understanding of "the legal powers normally exercised by central governments" (LP, 55) notably includes their having an effective scheme of sanctions oppression. These considerations do not affect the argument of this paragraph.
(LP, 51). This holds as well for the substate jurisdictions that Chapter 5 associated with
the right of self-determination. Control of such schemes of coercive sanctions by smaller,
more appropriate groups is important in favouring a conception of interpeople justice
with many states and no state-like world government on the grounds of reduced civil
unrest and despotism. Political assimilationism and political autonomism are both
compatible with favouring multiple states over a single world state in order to advance
the political autonomy of smaller groups of persons than the whole world and thereby
avoid civil unrest and despotism. The remainder of this chapter argues that only political
autonomism avoids having a world state’s dichotomy of civil unrest or despotism due to
its denial of adequate political autonomy for regions and peoples develop within
multipeople states due to these states denying their substate peoples’ political autonomy.

While Rawls’s sketch of interpeople liberalism presumes that political autonomy for
regions and peoples is just and the search for it inevitable, a fuller articulation of his
theory requires discussion of these points. As this investigation continues into whether
political autonomy rights of peoples should be primary or remedial in an ideal conception
of justice, the denial of such primary rights will not itself be assumed to constitute an
injustice meriting the remedy, on pain of collapsing political assimilationism into political
autonomism. But while assuming the denial of primary political autonomy rights is unjust
would beg the question at issue, showing this to be so is a valid line of argument pursued
below.
§6.5 Civil Unrest, Despotism and Political Autonomy

Given the somewhat correlative nature of a) avoiding civil unrest and despotism arising from the suppression of peoples' or regions' legitimate autonomy and b) advancing political autonomy, rationales for the former also lend support to the latter. §6.5.1 discusses general relations between peoples' views about their political autonomy, and civil unrest and despotism when those views are frustrated. §§6.5.2 and 6.5.3 look more closely at primary rights to secession and self-determination, respectively. §6.5.4 examines a possible objection to the first three subsections based on the differences between gradualist and more abrupt approaches to changing the political conception accepted by a people. The overall conclusion of the section is that denying substate peoples primary political autonomy rights to secession and self-determination leads to civil unrest and despotism in multipeople states.

§6.5.1 Civil Unrest and Despotism over Jurisdictions

Political assimilationism situates the locus of sovereignty over political autonomy, at least in ideal theory, in the state, even if it is multipeople, while political autonomism situates it in peoples. This section argues that more civil unrest or despotism would occur

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14 Rawls's reference to regions in this regard suggests that separate political jurisdictions serve the same purposes for large areas even in the absence of an explicit demand for separate jurisdiction characteristic of peoples, or differences of public culture or political conception likely to be found between peoples. As this thesis is concerned with liberal state cultural coercion of nonliberal peoples, its argument for separate jurisdiction is developed for peoples.

15 Recall that rights to secession and self-determination are remedial in political assimilationism, and that as a result of ideal theory's assumption of compliance, these remedies will not be available to be exercised.
if the former theory of justice were implemented than the latter.

Political autonomy to prevent the irruption of civil unrest and despotism, in the absence of unrest, can be given two types of rationales. The first, which may be termed objective given its relative independence from the preferences of persons, is that many governance functions can be provided more effectively by certain sizes and types of jurisdictions: a jurisdiction with the normal functions of a state covering the whole world would be ineffective, as would one for each person. The second, which may be termed subjective given its relative dependence on the preferences of persons, is that whether or not a jurisdiction or potential jurisdiction is well-placed to deliver some governance services effectively, its subjects may prefer that it be the provider of those services. The two types of rationales can be simultaneously implicated: many governance functions can be more effectively provided by a unit of government that reflects the preferences of those whom it governs for that particular unit of government. And persons’ concern for effective governance means that often their perceptions regarding objective rationales for particular boundaries for a jurisdiction also will figure in subjective rationales for it.

The continued unresponsiveness of a jurisdiction to the perceived interests of a segment of its populace can undermine the sense of attachment or affiliation felt by this group not only to the current governors or type of system of governance, but also to a unit of governance. This is particularly the case when that segment of the population believes that their interests are being illegitimately sacrificed to the interests of another segment, regardless of the theoretical merit of those beliefs. For example, a brief separatist movement arose in Alberta in the wake of federal policies that benefited central
Canadians at Alberta’s expense in energy policy and Francophone Canadians (primarily located in Quebec) in language policies.\textsuperscript{16} When the institutional structure suggests many such biases or important such biases are likely to continue, a fertile seed is planted for the growth of separatist movements. Political assimilationism’s claim that substate peoples should neither have the jurisdictions they want nor implement acceptable conceptions of domestic justice other than justice as fairness is just such a seed of potential civil unrest when a substate people exists.\textsuperscript{17}

Part of what determines these perceived interests are the background assumptions that inform judgements about which government actions are fair. In the case of Albertan separatism, the slightly more individualistic political culture of that province, possibly due to the influence of a higher percentage of American immigrants in Alberta in comparison to other parts of Canada, probably contributed to the movement and was in turn strengthened by it. Historical experience also shapes the political culture of different segments of a state’s population. Ontario, a long-time net beneficiary of federal trade and monetary policies, has historically been more willing than Alberta to support


redistributive policies designed to benefit poorer regions of the Canadian federation. Alberta, long a beneficiary of such redistributive policies, found their application uncomfortable when Alberta’s status shifted from a ‘have-not’ to a ‘have’ province in the wake of windfall oil money. Such minor variations within a political culture in support for its practices are common, even if some groups’ beliefs end up being unjustified according to particular conceptions of domestic justice such as justice as fairness. Larger differences in background assumptions should be expected to occur more often between peoples with widely diverging cultures and political conceptions, and between a people in a multitude state and that state when it is dominated by another people with a very different culture and political conception.

Given my ultimate concern with the justifiability of primary political autonomy rights for domestically nonliberal peoples, three types of subjective preferences particularly concern us: a) of a group to be accepted as a people, b) of a people to have primary political autonomy rights, and c) of a people to implement a domestically nonliberal political conception. These preferences are often interdependent. The very fact that a group shares a different political conception than surrounding peoples may contribute to the group’s conception of itself as needing and deserving political autonomy. All of these preferences are involved in the claim that political assimilation is more likely to produce more civil unrest in multipeople states than political autonomism when substate peoples want in an all-things-considered manner to implement acceptable conceptions of domestic justice different than the state’s, where ‘acceptable’ indicates conceptions of domestic justice that meet the minimum standards of interpeople liberalism. In the case
of central interest to us—a nonliberal people strongly opposed in an all-things-considered fashion to the continued exercise of a multipeople liberal state over some area of jurisdiction in conflict with one or more of its cultural practices—objective and subjective factors combine to undermine the effectiveness of that liberal governance. Separate jurisdictions on the scale of such a people would provide more effective governance than that of the multipeople state.

The existence of a social rule of a group to the effect that the group should be able to determine for itself the jurisdiction(s) to govern its internal affairs was found in Chapter 4 to be a crucial factor in groups containing a societal culture gaining recognition as a people in Rawlsian liberalism. Providing such groups with primary political autonomy rights means that such beliefs will not normally cause serious civil unrest or despotism as these rights are exercised, unless some other group attempts to interfere with their exercise. For a social rule would not exist among a group if following it led to widespread unrest among the members of that group, and the dissent of a minority opposed to the rule that is congruent with its existence cannot be serious. It is true that other social rules may exist which conflict with the use of the group's political autonomy, but this would not be true when the jurisdiction is used to support a cultural practice in a way affirmed by the people in an all-things-considered manner. When a political jurisdiction is accepted as legitimate by most of those it rules, and when actions taken by that jurisdiction are likewise accepted as legitimate by most of those it rules, this democratic support undercuts criticism that its power is being exercised abusively, oppressively or tyrannically, at least from the perspective of most of those subject to that
rule. That democratic legitimacy successfully counters a pejorative description of a regime as morally despotic is a large topic addressed below in Chapters 7 and 8, particularly in §8.1.3. At this point I make only the lesser claim that the jurisdictions of peoples with democratic legitimacy will not be despotic in the grosser outward manifestations of that term. They will not be regimes that, in the face of widespread opposition, prevent civil unrest from developing merely through the oppressive use of the coercive apparatus of the state.

Assuming there are no problems regarding the material conditions for political autonomy, were a people’s attempted exercise of political autonomy over its internal affairs to be interfered with by other peoples, these peoples would be acting on their external preferences about the former’s internal preferences. Acting on such external preferences does not seem to be on the same order of inevitability as peoples and regions acting in pursuit of political autonomy over their own affairs. That is, serious civil unrest due to some people interfering in the internal affairs of other people when political autonomism has been institutionalized as a conception of interpeople justice does not seem inevitably widespread and problematic. By contrast, civil unrest due to peoples seeking to exercise political autonomy over their own affairs would be were political

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18 See Ronald Dworkin, “Reverse Discrimination,” in *Taking Rights Seriously* (Cambridge, MA: Harvard University Press, 1978), 234–5, for a discussion of individual external preferences. Not all concerns with the domestic conception of justice adopted by another people need be external: for example, in multipeople states with shared jurisdictions the ‘domestic’ conception of justice must be shared in areas of shared jurisdiction; and the principles of domestic justice of one people may affect the legitimate ‘internal’ interests of other peoples, as when one people’s unrestricted industrial development pollutes another people’s territory.
assimilationism to be institutionalized. Little distinguishes the harm that such peoples experience due to the frustration of their political autonomy from that of peoples subject to a world state. Effective multipeople regimes such as the millet system of the Ottoman Empire illustrate the feasibility of long-term peaceful coexistence of peoples institutionalizing quite varied conceptions of domestic justice for different peoples within a single state. Furthermore, on the reasonable assumption that there is an analogue in the theory of interpeople justice of domestic liberalism’s assumption of mutually disinterested motivation (TJ, 127, 583), such external preferences would be unjust because, among other things, they would be arbitrary restrictions on freedom (TJ, 254).

Significant unrest has historically occurred when one people denies the existence of one or more other peoples that it claims to subsume. Most violent struggles for political autonomy today result from such nation-building, often the legacy of expansionist ‘successes.’ Were an interpeople political conception recognizing the political autonomy rights of societal cultures that self-identified as peoples and encouraging political autonomy of intermixed peoples within federal states to be institutionalized, then it may reasonably be expected that such unrest would decline.

The foregoing arguments support the claim that political assimilation would lead to more civil unrest as a result of its denial of peoples’ political autonomy than political autonomism would. Some counterarguments deserve examination. It could be argued that even if a world state would have to be despotic or a fragile empire, it does not follow that the same is true of states as political assimilationism conceives them. Two lines of counterargument in support of this conclusion will be considered in the next two
subsections, the first having to with the primary right of secession, the second with the primary right of self-determination.

§6.5.2 The Right to Secession

The first of these lines of counterargument claims that existing states—which political assimilationism’s jurisdictional conservatism favours—are not so large as to engender the undesirable alternative of civil unrest or despotism. Far from reducing civil unrest as claimed above, political autonomism would lead to more civil unrest than a conservative approach to the preservation of sovereignty of existing states and their borders. Indeed, by making the preference of the members of a group for governance by that group a key subjective factor for the existence of a people (see Chapter 4), Rawls’s theory would lead to virtually unlimited civil unrest as secessionist peoples multiplied virtually without constraint.

Ted Gurr, in his fairly comprehensive study of the world’s post-World War II ethnopolitical civil unrest, found empirical evidence strongly correlating significant groups demanding increased political autonomy with groups that believe they historically governed themselves.¹⁹ So in practice, the fairly unconstrained nature of this factor, which theoretically allows any collection of people to claim political autonomy rights, is for the most part constrained to either historically formed political identities or groups

¹⁹ In Minorities at Risk: A Global View of Ethnopolitical Conflict (Washington: Institute of Peace Press, 1993), Gurr writes that “The common denominator in almost all autonomy demands is the historical fact of belief that the group once governed its own affairs” (76). Note that not all groups that believe they governed themselves in the past are the same as the historical group they take as their ancestors, and those ancestors may in some cases not have exercised all of the powers of self-government that the group attributes to them.
suffering what they perceive to be maltreatment. Groups agitating for more political autonomy often fall into both categories (e.g., Canadian aboriginal peoples). Both types of groups are likely recognized in the state’s public culture through differing traditions of interpretation either of the legitimacy of the extinguishment of separate sovereignty or of the just treatment of the group, respectively. As noted above (p. 66), in 1999 Rawls endorsed Mill’s empirical claim that the strongest cause creating the common sympathies required for peoplehood is “identity of political antecedents; the possession of national history, and consequent community of recollections; collective pride and humiliation, pleasure and regret, connected with the same incidents in the past.”

Nevertheless, one could maintain that there are 600 living language groups, and 3,000 to 5,000 nations, “defined as communities whose shared identity is based on common ancestry, institutions, beliefs, language, and territory,” but only 184 states.20 Nielsson and Jones, using more stringent criteria for forming modern states from ethnic groups, still estimate 575 qualify as potential or actual nation-states. However, only 45 of these are actual states such as Iceland and the Koreas with less than 10 percent of their population being comprised of minority ethnic groups.21 The birth of new states through secession is generally accompanied by great civil unrest. By granting each people a right to secession, political autonomism guarantees, so the argument goes, each people an independent state.

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21 Gunnar Nielsson and Ralph Jones, “From Ethnic Category to Nation: Patterns of Political Modernization” (Paper presented to the International Studies Association, St. Louis, March 1988), as cited in Gurr, Minorities at Risk, 368 n. 9.
But since the creation of between 530 and 5,000 new states is not possible, or if possible, would involve more civil unrest than continuing the subjection of peoples to multipeople states, political autonomism is discredited. It must therefore be rejected in favour of political assimilationism.

There are several problems with this revised argument. Trivially, there is enough space for more states since most existing states could be broken into smaller viable state territories. Less trivial is the fact that many identified peoples do not want to use their political autonomy to have a separate state, especially not if substate jurisdiction from political autonomism’s primary right of self-determination is available to them. Peoples’ acceptance of or desire for some form of shared sovereignty with others, including as equal subjects within the same jurisdiction(s), may reflect a recognition of the applicability of this section’s points to their own situation. It may also reflect their good relations with other peoples in a multipeople state, the shared or mixed identities of peoples (e.g., Scots and Britons), and the benefits of governance shared between peoples (e.g., lower costs of maintaining borders, heavier geopolitical weight).

Empirically, only 120 of the groups identified by Gurr were seeking greater political autonomy in the 1980’s.\textsuperscript{22} Included in this are some populations that are not peoples but merely unrepresentative movements favouring peoplehood, though many peoples as defined in this thesis were excluded or lumped together.\textsuperscript{23} Though the criteria Gurr used

\textsuperscript{22} Gurr, Minorities at Risk, 76.

\textsuperscript{23} Gurr’s methodology lumps together the struggles of some disparate groups in a state (such as all of Canada’s hundreds of First Nations), excludes groups that comprise less than 1 percent of their state’s population and less than 100,000 people (such as
excluded many smaller peoples, not all of these 120 groups seeking greater political autonomy were seeking secession. Though the differing criteria for identifying groups makes comparisons difficult, it appears the number of peoples seeking any form of increased political autonomy is much lower than the claimed number of possible secessionist conflicts, with only a small portion of these peoples seeking complete separate autonomy.

Among the peoples seeking complete separate political autonomy from the state (or states) currently governing them, civil war should not be expected in all cases. For peaceful state break-ups like the dissolution of Czechoslovakia in 1993, or of Sweden and Norway in 1905 should be expected to occur.

Even if there is a risk that some peoples’ campaigns for greater political autonomy may erupt into violence, it is not clear that denying the legitimacy of such political autonomy will lead to fewer such campaigns, or reductions in the amount of political autonomy they seek. For not only can peoples in multipeople states enjoy a primary right of secession under political autonomism without using it to claim separate sovereignty, but political assimilationism’s denial of such a right may cause it to be sought all the more fervently.\(^{24}\) That is, providing peaceful means to gain sought after sovereignty may

Western Canada’s brief separatist movement in the early 1980’s), and also excludes groups that experience cultural discrimination “in the form of pressures or incentives to adopt a dominant culture, or denial of cultural self-expression,” but which were not politicized or also experiencing political or economic discrimination during the study period, on the grounds that these groups were not “at risk” (Minorities at Risk, 369 n. 10, 6).

both reduce the civil strife involved in such transitions, and the number of such transitions. Far from reducing the amount of violence due to secessionary struggles, political assimilationism's policy of denying the justice of such aims may inadvertently increase it. In general, Gurr found that increased civil unrest was correlated with denials of such political autonomy, and often enlarged the scope of political autonomy demanded.

The foregoing should not be taken as a claim that no civil unrest would occur were political autonomy to be institutionalized. After all, Rawls claims in his domestic liberalism both that it would be unjust and unfeasible to attempt to institutionalize a comprehensive liberalism, and that there will inevitably be those who do not affirm political liberalism's principles of domestic justice. Just as domestic liberalism must recognize a need for coercive penal powers in the domestic state because not all will follow the law, so interpeople liberalism must recognize that not all peoples will follow the principles laid out by interpeople justice.

So even if the emergence of new states often involves unjustifiable violence, this may be the responsibility of irresponsible multipeople states seeking to preserve through illegitimate means their existing statehood and borders. There will be times when opportunities for peoples to resist their state, perhaps violently in some cases, are justifiably taken. Rawls and Locke endorse this general line of reasoning for revolutions even if they do not specifically discuss the legitimacy of violent secessionary struggles (cf. PL, 347).

The last chapter showed that if political autonomism grants all peoples a primary right
to secession, it does not follow that it grants every people a valid claim to all that is required for them to be able to make legitimately a unilateral decision to secede. Some of the historical conflicts associated with secessions may be due to violations of the legitimate claims of others to, e.g., territory, associated with such break-ups, and not to primary political autonomy rights per se. To take a familiar, though prospective, example, suppose that Quebec has legitimate claims to the economic benefits flowing from the James Bay and Northern Quebec hydroelectric projects deriving from its resource investment in them, and the consent, such as it was, of the Cree residents in the area. A sovereign Quebec’s opposition to the Cree people of the area seceding in order to rejoin Canada would likely have more to do with the need to protect its control over this economic asset essential to its development and balance of payments than to a belief that the Cree did not constitute a people or did not have a justifiable claim to political autonomy over their internal affairs.

§6.5.3 The Right to Self-Determination

One reason for the rise of many movements seeking independent statehood is that only such statehood has provided formal recognition and some practical assurance for a people’s right to self-governance under the current regime of international relations and law. Some peoples have taken separate political autonomy to be crucial in one or a few areas, but unnecessary or burdensome in others. For example, mainstream Québécois nationalists’ combined a desire for jurisdiction over language and culture with desires not to lose their Canadian passports and the Canadian dollar as their currency. When a people is denied self-determination over a few crucial areas within their existing state, secession
comes to be the most feasible means for achieving the desired self-government, even if it requires, say, fighting for sovereign control over territories that a people would have no claim to or need for under political autonomism. Further, though secession may start as a necessary means under a particular type of international regime to achieve self-government over certain functions, full state sovereignty may become a symbol and end sought independently of the original reasons for desiring self-governance. So the denial of primary rights of self-determination contributes to civil unrest associated with secessionist struggles in several ways.

Consider the following situation. A people is a numerical minority of the residents in all the territories it occupies. The other residents in those territories cannot be justly removed on the grounds, of, say, being an illegitimate occupying army. The people has no claim to another territory in which it could be sovereign without oppressing other peoples. Nor is it able to bargain for such a territory. In these circumstances, the people may not have, or be able to create, a valid claim to territory necessary to take advantage of their formal right to secede. However, they may have all the means required to support a substate jurisdiction. Such circumstances illustrate that a primary right to separate self-determination could provide political autonomy to a people otherwise bereft of legitimate access to it.

Reducing the civil unrest due to secession through a primary right to self-determination would not serve the purpose of reducing civil unrest, however, if the exercise of separate self-determination of a people within a state itself caused civil unrest. The second line of counterargument mentioned above for political assimilationism
focuses on such civil unrest. Its main claim is that less civil unrest will result from
multiple people states implementing the same conception of domestic justice for all than if
different peoples within the same state are allowed to implement different conceptions of
domestic justice within their own separate substate jurisdictions. Primary rights to self-
determination cause more civil unrest, it claims, than secondary rights to self-
determination.

Such a conclusion, if established, would be important in its own right. In addition, it
would help to establish that civil unrest due to secessions would not be mitigated through
self-determination within a state. For all plausible conceptions of interpeople justice have
to allow that some states will have an intermixture of different peoples. Forcibly
separating peoples that are currently territorially intermixed would involve huge
disruptions in peoples lives that would be hard to justify. That transborder migrants do
not always or quickly assimilate into a people in their new state of residence, and that
different peoples have ties to the same territory, especially when one people has been
forcibly displaced or their territory colonized, also suggests that future migration will
tend to undo some of the ‘purifying’ intended by forcible displacements. So the only
legitimate political autonomy some peoples have under political autonomism comes
through their right of self-determination.

It is difficult to prove causal relations from historical analyses such as Gurr’s that
establish mere correlations between civil unrest and the denial of sought after increases in
political autonomy. Still, it seems reasonable to suppose that where a state grants more
autonomy to a people seeking it, that people is much less likely to create civil unrest. But
backlashes by other subjects of the state seeking to prevent this can often be expected to cause civil unrest in these situations. These backlashes may stem from sources as diverse as a desire to continue to benefit from the unjust subjection of another people to a desire to uphold valid property claims against a people illegitimately claiming exclusive control over natural resource extraction as part of their right to self-determination.

Although conflicts regarding the creation of jurisdictions similar to those that arise in the cases of secession also occur in the exercise of rights of self-determination, these do not require a repeated analysis. This second argument focuses instead on a cause of civil unrest more prominent with primary self-determination rights than with primary secession rights: the desire of some subjects of a state that other subjects who constitute a people desiring separate self-governance should be subject not only to the same jurisdiction but also to the same conception of justice as they are. This desire that other peoples follow one's own people's conception of domestic justice is a collective form of external preference. Questions of resentment, or legitimate envy, do not arise, since they concern the possession by others of an unjustly greater amount of primary goods that one would prefer for oneself (TJ, 533). One may suppose that the 'primary goods' at issue are things like the "liberty and opportunity, income and wealth," of the people as a whole, or some similar correlate in the interpeople domain (TJ, 533).

Rawls notes that a philosophically interesting type of "outlaw regimes" have rulers who

affirm comprehensive doctrines that recognize no geographic limits to the legitimate authority of their established religious or philosophical views. Spain, France and the Hapsburgs all tried at some time . . . to

spread true religion and culture, sought dominion and glory, not to mention wealth and territory. Such
societies are checked only by a balance of powers... (LP, 72–3)

I believe Rawls is right to class such "historically more respectable" (LP, 72) conceptions
of justice as unjust. But the important point for this section is that the view is widely
shared. It is their sense of injustice at having their political autonomy denied that leads
peoples to cause civil unrest. The size of the state denying the political autonomy is not
the point: world state or European power is not the issue. The civil unrest is directed at
any state that attempts to impose its conception of justice on peoples with other
conceptions of justice, whether through one or more jurisdictions. Yet this is exactly what
political assimilationism proposes, and what political autonomism allows peoples to
escape. If one accepts Locke's and Rawls's views about the circumstances under which
peoples will take up arms against their government, then political assimilationism should
be expected to produce more civil unrest.

§6.5.4 Gradualist Objection

A possible counterargument to the conclusions of this section needs to be developed.
It has to be admitted that the strategies adopted by a regime to impose a political
conception on its own people or on other peoples within its state will affect not only how
successful it is but also how much civil unrest arises. Outcomes of successful acceptance
or continuing civil unrest will depend on variables such as the manner in which the
regime came to power, and the extent of the support for the new political jurisdiction or
conception and the regime imposing it of the different peoples in the state and the
factions within each people. Without analysing these and similar factors in detail,26 it still

seems safe to observe that generally, gradualist approaches to changing peoples’ political affiliation and character will provoke less civil unrest than more abrupt or radical attempts. Does this phenomenon weaken the arguments of this section?

Several considerations suggest that this gradualist objection raises no decisive obstacles. Much of the plausibility of the objection derives from cases in which gradual assimilation occurs without cultural coercion, while processes of gradual coercive assimilation often have been highly unstable and led to many cases of severe civil unrest. Although state cultural coercion is only one aspect of the more general phenomena of coercive imposition of a state’s political conception on a substate people, it provides a useful focus for this discussion.

State cultural coercion occurs only if a people is in all-things-considered opposition to a rule of state coercion. If a people has gradually accepted either the substance of a state rule, or the authoritative jurisdiction of the state over the topic covered by a state rule, then this all-things-considered opposition is much less likely. For example, men and women in traditionally patriarchal aboriginal cultures in Canada were exposed to many of the influences that led to women’s liberation movements in non-aboriginal Canadian culture. It is likely that in at least some of these First Peoples’ cultures there was all-things-considered support for the Canadian government’s removal in the 1980’s of gender-biased provisions in the Indian Act, even if there was all-things-considered opposition to the way in which this increased the economic and housing responsibilities of aboriginal Band Councils without a commensurate increase in their resources.

work in this area.
Likewise, before a nationalist movement developed in India late in the nineteenth century and became widely supported, many culturally coercive state rules of the British in India seem to have escaped all-things-considered opposition by Indians. In cases such as these, where there is no all-things-considered opposition to a state rule, cultural coercion, even of a gradual kind, is not occurring. As a result, these cases in which gradual acceptance of state jurisdiction or cultural norms undercut apparent cultural coercion do not address the issue of the link between state cultural coercion and civil unrest. The important point for my purposes is that where a people either has accepted the legitimacy of a regime's jurisdiction or has changed sufficiently regarding one of its cultural practices, no conflict arises between political autonomism and political assimilationism with regard to the actions of the regime.

Many instances of gradual coercive cultural assimilation have flared into civil unrest and communal violence. The violent independence movement in Quebec in the 1960's and 1970's is one of many examples of relatively dormant national groups under gradualist regimes suddenly springing to life. The British colony of Ceylon was a generally peaceable dominion, but the gradually increased privileging of Sinhalese interests in language policy, education and other areas at the expense of Tamils' interests after independence in 1948 led to the riots of 1958 and 1983 and Sri Lanka's civil war.27 Several former Soviet republics, and the former Republic of Yugoslavia provide other examples of states in which one people dominated others in a state over a long period

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with relatively little unrest and some gradual political assimilation, yet suddenly exploded into violence. So despite the fact that gradualist practices of political assimilationism may lessen civil unrest somewhat, political assimilationism can still be expected to produce more civil unrest than political autonomism.

Buttressing this conclusion is the fact that gradualist approaches that avoid civil unrest in internal affairs often manage this at the expense of increased wars and unrest in external affairs. A common process of nation-building that has crucially assisted in creating acceptance of various states' jurisdiction has been conflict with external enemies. Conflicts amongst European states contributed to many of these states' consolidation of their own status as nations, including the Hundred Years War as well as the conflict between Germany and France over Alsace-Lorraine in 1870.  

§6.6 General Facts and Stability

The previous section showed that in comparison to political autonomism, political assimilationism's denial of primary political autonomy rights to peoples within multipeople states should be expected to lead to more civil unrest or despotism in those states when substate peoples decide to claim more separate political autonomy than the state is willing to provide. I now turn to showing why this conclusion should be reflected in a general fact available to the parties in the interpeople original position.

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Political Liberalism lays out five general facts that the parties in the domestic original position are allowed to know behind the veil of ignorance as they deliberate on which of the proposed conceptions of justice proposed to them best advances the interests of the citizens they represent. Three of these general facts provide reasons for why an adequate political conception of domestic justice must be able to gain the support of a reasonable overlapping consensus among citizens (PL, 36). They are, first, that the diversity of reasonable comprehensive . . . doctrines found in modern democratic societies . . . is a permanent feature of the public culture of democracy. . . . [Second,] a continuing shared understanding on one comprehensive . . . doctrine can be maintained only by the oppressive use of state power. . . . [And third,] an enduring and secure democratic regime . . . must be willingly and freely supported by at least a substantial majority of its politically active citizens (PL, 36–8).

The fourth general fact is that the public culture of successful long established democracies “normally contains, at least implicitly, certain fundamental intuitive ideas from which it is possible to work up a political conception of justice suitable for a constitutional regime” (PL, 38), while the fifth, which Rawls terms the “burdens of judgment,” is “that many of our most important judgments are made under conditions where it is not to be expected that conscientious persons with full powers of reason, even after free discussion, will all arrive at the same conclusion” (PL, 58).

Rawls’s sketch of interpeople liberalism does not formally state any general facts available to the parties in the interpeople original position. Formalising them along the lines of general facts in the domestic case yields the following: 1) The diversity of reasonable domestic conceptions of justice found in contemporary societies is a permanent feature of the public culture of the relations between peoples. 2) A continuing shared understanding on one conception of domestic justice for all peoples can be maintained only by the oppressive use of interstate power. 3) An enduring and secure
interpeople regime must be willingly and freely supported by at least a substantial
majority of those peoples who are active participants in interpeople affairs. 4) Interpeople
public culture normally contains, at least implicitly, certain fundamental intuitive ideas
from which it is possible to work up a political conception of interpeople justice suitable
for interpeople affairs. 5) Many of the most important judgements made by peoples are
made under conditions where it is not to be expected that conscientious peoples with full
powers of reason, even after free discussion with representatives of other peoples, will all
arrive at the same conclusion.

I will not try here to show that these interpeople general facts are consistent with or
required by the results that Rawls states will flow from the interpeople original position,
though I believe that to be the case except for the differences regarding cultural coercion.
Rather, I want to look at additional general facts that provide reasons for why an adequate
political conception of interpeople justice must be able to gain the support of a reasonable
overlapping consensus of peoples. These additional general facts spring from differences
between the agents represented in the two original positions, namely, peoples and
citizens.

Although it is so obvious as not to need articulation, citizens are individual persons
who are each autonomous agents. By contrast, which groups or collectivities should be
recognized as autonomous collective agencies for political purposes is less obvious.
Rawls's point about a world state leading to either civil unrest or despotism implies that if
the group of all persons in the world is accepted as legitimately representing the
collective political agency of these persons, then no adequate political conception of
interpeople justice is possible. Three additional general facts needed in the interpeople
domain are that (1) the existence of more than one people within at least some states is a
permanent feature of the culture of the relations among peoples, (2) a continuing shared
understanding among peoples that denies substate peoples political autonomy over their
jurisdictional boundaries cannot be maintained in general without the oppressive use of
state power, and (3) a stable and secure set of jurisdictional boundaries between two
peoples must be willingly and freely supported by at least a substantial majority of the
politically active persons in both peoples.

The general facts in Rawls's domestic theory state conditions that must be met for a
just and feasible theory. One can understand them as tracing out various boundaries
outside of which solutions to the problem of a domestic theory of justice would be
impossible. As the parties in the domestic original position take note of these general
facts in their deliberations, the agreement they reach should not be unfeasible on the
grounds incorporated in the general facts. Rawls's phase two, nonideal theory discussions
take this agreement reached in ideal theory and verify that it is possible for a society
institutionalizing that theory of justice to come into existence and continue on stably. The
same grounds arise in this discussion, but from the alternative perspective of showing that
the agreed upon conception of domestic justice is indeed possibly realizable. The same

29 Other parts of my argument allow nonliberal peoples to have conceptions of
reasonable disagreement that are evident in practice but not necessarily theorized
abstractly. To accommodate this, the "continuing shared understanding" in the text
should be taken to include a continued shared relationship on the basis of behaviour that
does not betray a modus vivendi's characteristic willingness to abandon the shared
standards of behaviour as a result of changes in power between the parties.
result should be expected with regard to the general facts in interpeople liberalism.

§6.7 Well-orderedness

In domestic liberalism, Rawls includes four of his five general facts (PL, 36–8) in his discussion of the fundamental idea of a well-ordered society as a society effectively regulated by a political conception of justice (PL, 35–40). The previous section showed how the peculiarities of distinguishing peoples as the appropriate collective agents in interpeople justice requires certain general facts to be available in the original position in order to exclude some conceptions of interpeople justice as unjust or unfeasible. The current section shows how the idea of a well-ordered society bears some relation to the same matter.

Political liberalism has three standards of the well-orderedness of a society: one for the internal affairs of a liberal people according to domestic liberalism, one for the internal affairs of peoples according to interpeople liberalism, and one for the external affairs of peoples according to interpeople liberalism. This section argues that a state fails to meet these standards when it denies a significant group’s demands for primary autonomy rights.

Rawls does not explicitly include a generally shared belief that the boundaries of a state are legitimate in the conditions that domestic liberalism specifies for a well-ordered society (PL, 35–40). But these conditions are best taken as presupposing such a condition, a condition which needs to be made explicit once domestic liberalism’s simplifying assumption of a single closed society is relaxed. Otherwise the
preponderance of citizens may not regard the system of cooperation as just (cf. PL, 35).
Recall that it is a normal though not sufficient characteristic of a population that is a
people that it has a consensus strong enough to support the existence of a Hartian social
rule that that population should have the right to govern itself, or minimally to determine
separately from others the jurisdiction that should govern it.

Interpeople liberalism's much weaker requirements for societies to be well-ordered
(LP, 60-3) in their domestic affairs require a reasonable good faith response on the part
of officials to objections from their subjects on any matter of domestic governance (see
LP, 61-2 regarding the second requirement). This minimal response would have to be
provided to individuals claiming to be a separate people with political autonomy rights
enabling their own separate jurisdiction. When such a response cannot be reasonably
withheld by a state, or its officials cannot withhold it in good faith, then a denial of the
requested political autonomy rights means the state is disordered.

However, there may be reasonable good faith disagreements about whether a group
within a state's population that claims to be a people is indeed a people. In these cases,
the second category of well-orderedness does not ensure that these peoples' political
autonomy rights are protected. Yet this matter is not one that necessarily fits into the
category of the domestic affairs of a people. It potentially touches on the relations
between peoples, since the discontented individuals are potentially a people. It turns out
that additional protection is provided by the third category of well-orderedness, namely,
that concerning the external affairs of peoples. For a good argument can be made that it
offends the principle of natural justice that one should not be judge in a case to which one
is a party (*nemo judex in re sua*) if the state can act as a judge in this matter (cf. *TJ*, 239). The argument depends on the greater disinterestedness of other peoples with respect to the outcome of a contention between a people and a group claiming separate peoplehood from that people.

Interpeople liberalism opposes in principle the subjection of one people by another, which includes the denial of peoplehood to a people by a state with effective rule over it. Such subjection arguably violates all three requirements for a people to be well-ordered: it violates the civic order or at least independence of other peoples (*LP*, 61); at a certain point it cannot be reasonably defended in a just consultation hierarchy (*LP*, 61–3); and it violates a human right to freedom by being a forced occupation (*LP*, 62–3). Instead of being a disagreement between some members of a people and their government, this disagreement is between peoples. This changes the extent to which reasonable good faith beliefs of a state’s officials justify its actions, for the background assumption of official authority is unwarranted. In a reasonable good faith disagreement among different peoples, no side enjoys the presumption of authority in the event of a unresolved disagreement similar to that of a state with respect to its subjects.\(^\text{30}\)

As peoples’ right to make war as recognized by interpeople liberalism no longer includes a right to use force in cases of mere disagreement with other peoples, some other means of dispute resolution is called for, such as resort to an independent arbitrator. If one or both sides in a dispute between peoples uses force to get its way, other peoples

\(^{30}\) See Raz, *The Morality of Freedom*, 23–105, on the authority of the state. Political assimilationism’s recognition of remedial political autonomy rights concedes that peoples exist distinct from states.
have interests at stake that can legitimize their intervention. If one people claims that another is illegitimately using force, other peoples' interests are engaged at least to the extent of determining if the law of peoples has indeed been violated. Similarly, if a complaint arises that a state is illegitimately using force to deny a purported people's political autonomy rights on the grounds that the alleged people is not a people, other peoples have an interest in determining whether the alleged oppressor is in fact violating interpeople liberalism. In order to be well-ordered, states must allow such intrusions into their affairs. If the allegations are not upheld by other peoples (as opposed to the good faith beliefs of some officials in one state regarding this standard), then continued rule over the autonomy-seekers is justified.

Interpeople liberalism's standards of well-orderedness thus provide significant protection of peoples that are critical of another people's governance over them. This protection is as strong as Rawls's claims for those suffering (other kinds of) human rights abuses from their government (LP, 62–3), and stronger than that afforded to members of a people critical of their own people's self-governance regarding domestic matters that are not human rights abuses.

Political autonomism interprets political liberalism so that it meets interpeople liberalism's requirements for well-ordered societies in their internal and external affairs as well as domestic liberalism's requirements for a well-ordered society. However, the results of the previous section suggest that political assimilation fails to meet all three of these standards of well-orderedness.

Political autonomism's provision of primary political autonomy rights to peoples in
multipeople liberal states ensures that the condition of a generally shared belief that the boundaries of a state are legitimate is not violated due to peoples desiring separate political autonomy, assuming for the moment that peoples are not lacking in the resources necessary to set up jurisdictions that they desire. Insofar as peoples in multipeople states choose to share an area of jurisdiction under political autonomism, they would need to hold that it was not all-things-considered better for them to have separate jurisdiction over that area. Assuming that a liberal people is committed to Rawlsian domestic liberalism in all areas of domestic jurisdiction, it would only choose to participate in such shared jurisdictions when they were compatible with domestic liberalism (or perhaps its development). As a result, political autonomism ensures that an overlapping consensus on liberal principles can develop within the shared areas of jurisdiction of multipeople states that include peoples whose political conceptions are nonliberal in some areas.

One might attempt to argue on behalf of political assimilationism that all peoples in multipeople states believe that the boundaries of the state's jurisdictions are legitimate. However, the previous two sections showed it is implausible to suppose that each people in multipeople states will believe that their political autonomy is only legitimately exercised through a jurisdiction shared with all other peoples in their state, except in cases of injustice to a people. It is especially unlikely when, as a people, they affirm in an all-things-considered manner a domestic political conception allowable according to interpeople liberalism but which is at odds with the one the multipeople state is using to regulate their affairs. General facts available to all representatives of peoples in the interpeople original position suggest the same. Insofar as the parties in the domestic
original position are called to affirm the principles of interpeople liberalism as an extension of their domestic contract that is appropriate to the demands of the interpeople domain, they would endorse primary political autonomy rights for peoples, rather than an acquiescence to the purported legitimacy of a state's existing jurisdiction over all of its substate peoples.

§6.8 Fairness Among Peoples

Although the arguments adduced so far in this chapter in favour of political autonomism are Rawlsian in character, it is the original position that "serves as a mediating idea by which all our considered convictions, whatever their level of generality . . . can be brought to bear on one another" (PL, 26). It allows arguments to be stated "more rigorously" (PL, 137 n). Political liberalism uses the conception of an 'original position' to formalize, make explicit, and help balance the competing claims of our considered judgements of fairness in fundamental matters concerning a system of social cooperation (cf. PL, 22–8). Even the judgements and arguments used in laying out the original position itself need to be endorsed by its contractors. This section presents the reasoning in the interpeople original position that favours political autonomism over political assimilationism as an ideal theory of interpeople justice.

Many concerns enunciated so far have been phrased in terms of a people's opposition to a state's boundaries or its conception of justice, without the merit of those beliefs having been evaluated fully. On its own, this information can help establish that a liberal state is domestically disordered in the sense of having too many opposed to its principles
of justice. But a state can fail to be well-ordered either because too significant a proportion of its subjects are opposed to its political conception, or because its actions do not conform to political liberalism.

I take Rawls's statements regarding a world state to claim that it would not be well-ordered on both grounds independently: too many peoples (and regions) would be opposed to its operation, and it would fail to conform to an ideal theory of justice. These grounds are independent in the sense that even were it possible for the overwhelming majority of peoples to come to accept a world state without there being any civil unrest or overt acts of state despotism, peoples' lack of separate political autonomy would still be unjust according to political liberalism. Rawls claims that his domestic theory has the same content whether simple or reasonable pluralism is supposed to exist, and thus that his ideal theory is unaffected by the existence of unreason in the world (PL, 65). Ideal interpeople theory should likewise conceive of its content as independent of the existence of unreason. Let us see whether this is so.

In the sketch of interpeople justice that Rawls provides, he does not specify the character of peoples as exactly as he does the nature of citizens in domestic liberalism. These citizens are regarded as free and equal, as having highest order interests in developing their two moral powers of capacities for a sense of justice and for a conception of the good, and to have realized them enough to be reasonable and rational (PL, 103f, 19). To parallel this approach in the interpeople domain, peoples are to be regarded as free and equal (LP, 55), and as having capacities for a sense of interpeople justice and for a conception of their people's good, and to have realized these capacities
enough to be considered reasonable and rational peoples. Of course, the differences in the
topics of justice as the fair terms of co-operation between citizens conceived as free and
equal, and the fair terms of co-operation between peoples conceived as free and equal,
are partly traceable to differences in the character of agency displayed by persons and
peoples.

Rawls’s use for both individuals and peoples of the same terms of free and equal, and
the same model of parties in an original position, allows differences to be recognized
among the more important similarities. Likewise, treating peoples as having two moral
capacities that have been realized to a requisite minimal extent allows differences to be
recognized between persons and peoples among the more important similarities in these
characteristics. What are these similarities and differences?

A people’s capacity for a sense of interpeople justice is similar to a person’s in that it
requires that the people be able to conform to any law of peoples that is adopted in the
interpeople original position, just as a person must be able to conform to any domestic
conception of justice adopted in the domestic original position. What may lead to
confusion is that although a people’s capacity for a conception of the good is similar in
many ways to a person’s similarly named capacity, it is also related to the content of a
person’s sense of justice.

From the perspective of citizens of a liberal people, the claims of domestic liberal
justice are those of right that have priority over personal conceptions of good. However,
from the perspective of interpeople justice all of the various allowable conceptions of
domestic justice, including domestic liberalism, have the character of allowable parts of
conceptions of good for a people (cf. PL, 201–6). Domestic conceptions of justice are allowable so long as they include the minimum required by interpeople right. Rawls does not use this exact terminology: he characterizes the “interests” or “fundamental interests” of societies as “being in accordance with or as presupposed by its conception of justice” (LP, 64, 54). A people’s conception of its good will typically contain, in addition to the pursuit of its conception of domestic justice, other elements including the development of advantageous trade relations with other peoples (LP, 64), or perhaps the pursuit of supererogatory acts such as accepting a great number of refugees. Elements in some nonliberal conceptions of domestic justice include men’s right to rule over women, or the right of persons born into a certain family or castes to rule over others. (The next chapter considers whether the content of a domestic conception of justice should invalidate or constrain the political autonomy of a people that affirms it.)

The veil of ignorance in the interpeople original position represents liberal public culture and interpeople public culture’s sense of fairness by preventing the hypothetical representatives of peoples from knowing the relative position of their people. “They do not know, for example, the size of the territory, or the population, or the relative strength of the people whose fundamental interest they represent” (LP, 54). Relevant positions for deciding whether political assimilationism or political autonomism is more fair include being 1) a dominant people in a multipeople state, 2) a non-dominant people in a multipeople state, and 3) an independent people with its own nation-state. By a dominant people in a multipeople state I mean a people, or one of a group of peoples, that is able to choose the domestic conception of justice for jurisdictions of the state that apply to other
peoples in the state despite their opposition to that conception of justice.

Under political assimilationism, both dominant peoples and independent peoples could be assured that their position would allow them to implement their conception of justice. Non-dominant peoples, however, would have no guarantee of an equal political autonomy (cf. *TJ*, 231). By contrast, the primary political autonomy rights of political autonomism provide normative tools to each people, even weak newly formed peoples, that allow them to implement the conception of justice that they choose. Rational parties in the interpeople original position would therefore agree on political autonomism as a better conception of justice than political assimilationism, since the former ensures that the peoples they represent will not be prevented from pursuing their allowable conceptions of justice. In Rawls’s terminology, these conceptions of justice are interests of the peoples they represent. Since it is the preferred alternative when reasoning behind the veil of ignorance, political autonomism is more fair than the alternative of political assimilationism. When the representatives in the interpeople original position consider the general facts derived in §6.5 above, this conclusion that political autonomism is rationally preferred is only strengthened.

Even among liberals who accept that invading a separate state to coercively put an end to a nonliberal cultural practice is an illegitimate infringement of political autonomy, some tend to think that substate peoples, particularly new ones, do not merit the same political autonomy. But treating peoples as equal implies that dominant peoples in states, whether liberal or not, do not get to impose their political conception on weaker substate peoples. If some segment of a liberal people comes to meet the criteria of interpeople
liberalism for separate peoplehood, then interpeople liberalism holds that the new people has the political autonomy to pursue any conception of domestic justice allowable under interpeople justice.

It might be thought, however, that as a matter of domestic but not interpeople justice the new people should be considered to be bound still by the original contract to conform their behaviour to domestic liberalism. The justifiability of one people imposing domestic liberalism on another, whether newly formed or not, will be considered in the next two chapters. Part of that discussion will examine whether Rawls’s claim to have permanently taken certain issues off the table is reasonable. If, as I will argue, it is not, then there may be scope even for a people bound by domestic liberalism to evolve its conception of domestic justice in significant ways.

§6.9 Conclusion

So the same dynamics of conflict that apply at the level of a world state apply at the level of a state that has many peoples, even if they are not as inevitable given the smaller scale. The injustice of political assimilationism’s denial of the legitimate interests of peoples in pursuing their allowable political conceptions of domestic justice would lead autonomy-seeking peoples to engage in civil unrest and/or the state to use despotic means to prevent and control such unrest. So the rationale for having more than just one world government due to difficulties with civil unrest or despotism given a single government also supports primary political autonomy rights for peoples.

Yet even if political autonomism comes out ahead on these criteria, political
assimilation or some similar interpretation of political liberalism may prove to be more effective at serving the purpose of promoting more vigorous laws. If this third purpose is construed to embrace liberals' concern with the promotion and protection of individual civil and political rights, then the autonomy of substate peoples to violate liberal rights might count against a view like political autonomism. The next chapter begins to assess the value of peoples being allowed to pursue their conceptions of justice against the value of protecting individual rights.
Chapter 7 Liberal Fundamentalism versus Liberal Democracy I

§7.1 Introduction

Chapter 6 adjudicated between two competing interpretations of political liberalism as to whether states or peoples were more appropriate groups for sovereignty over domestic jurisdictions. Political assimilationism claims states have sovereign authority to determine the legitimate domestic conception of justice from among all those that are well-ordered, in contrast to political autonomism which recognizes peoples’ sovereignty in this matter. Both allow the body that they privilege, whether state or people, to choose any domestic conception of justice accepted by interpeople liberalism as well-ordered, including nonliberal ones. Chapters 7 and 8 similarly adjudicate between two competing interpretations of political liberalism’s doctrines regarding domestic justice, namely liberal fundamentalism and liberal democracy.

A willingness to assert the supremacy of its own values uncompromisingly in the face of any that oppose their operation, the attempt to regenerate comprehensively societies and their members if necessary, and a willingness to use “the institutions of the state to enforce the programme” are notable similarities between Bhikhu Parekh’s concept of fundamentalism derived from recent Mideastern forms of Muslim political activism and the one developed in this chapter.1

1 Bhikhu Parekh, “The Concept of Fundamentalism,” in The End of “Isms”?
§7.2 sets out what is meant by these interpretations. The dispute between them concerns the acceptability of the use of force within or against a sovereign group in order to get it to implement and thereby eventually to affirm political liberalism, in particular in its domestic affairs. Liberal fundamentalism holds that whenever this is feasible, it is just. Liberal democracy, by contrast, holds that the legitimacy of political liberalism depends on it requiring a certain minimum level of democratic support for fundamental changes in the political conception governing a people's domestic affairs. (The use of force to make peoples conform to the interpeople justice part of political liberalism is taken up in Chapter 9.) Although other conceptions of the legitimacy of imposing affirmation of domestic liberalism are possible, I believe these two interpretations are the two most plausible alternatives.

§7.3 shows how each provides different interpretations of the purpose of promoting more vigorous laws. It also relates the dispute between liberal fundamentalism and liberal democracy to that between political assimilationism and political autonomism.

A key cleavage line between liberal fundamentalism and liberal democracy concerns the reasonableness of the use of force in order to inculcate an affirmation of political liberalism in a people. §7.4 lays out Rawls's justificatory scheme. All idealized citizens modelled using Rawls's concept of reasonableness must find such coercion reasonable. Rawls, however, does not turn his attention towards the question of how many actual

Reflections on the Fate of Ideological Politics after Communism's Collapse, ed. Aleksandras Shtromas (Oxford: Blackwell Press, 1994), 106–7. My conception of fundamentalism can be seen as applying a usage similar to the one at LP, 126–7 to a doctrine similar to that rejected by Rawls at LP, 82–3.
citizens need to affirm political liberalism in order to make its forceful imposition reasonable. Though the minimum level of actual support entailed by his inconclusive remarks is low enough to be consistent with liberal fundamentalism, higher requirements are by no means excluded.

Showing that the reasoned acceptance by individuals of political liberalism meets its own principle of legitimacy while the intent to impose it coercively does not is the task of §7.5. Even though an historical coercive imposition of a regime of political liberalism that is now accepted may not undermine its current justice, any political conception that proposed prospectively to use such a strategy to induce its own popular acceptance is illegitimate. That coercion may possibly change the beliefs of enough citizens so that an overlapping constitutional consensus on liberalism may develop is not enough to justify a non-democratic despotic, though otherwise liberal, regime.

The next section operates slightly below the level of whether liberal fundamentalism or liberal democracy would be more justified according to the criteria set out by domestic liberalism, at least when these are conceived narrowly. §7.6 shows that even if liberal fundamentalism were justified according to its own lights, it would not be able to bind or have weight with nonliberal peoples according to its own account of how its conclusions engage with the beliefs of actual persons. Chapter 8 will complete the relative evaluation of liberal fundamentalism and liberal democracy as interpretations of Rawlsian political liberalism by examining which one better meets the higher level requirements of political objectivity and of a freestanding political theory.

The practical issue between liberal democracy and liberal fundamentalism concerns
cases where the coercive implementation of domestic liberalism on peoples may be feasible but would not meet political liberalism's criteria of legitimacy. Liberal democracy extends primary political autonomy rights to such peoples while liberal fundamentalism does not. Perhaps surprisingly, even the purpose of the promotion of vigorous laws construed as the promotion of domestic liberalism supports primary political autonomy rights and opposes liberal cultural coercion.

Primary political autonomy rights provide substate peoples with the liberty to affirm any conception of domestic justice that conforms to the minimum requirements of interpeople justice. While on Rawls's view, this liberty does not extend to the protection of cultural practices that violate his list of minimum human rights, on my view a Rawlsian conception of interpeople justice cannot support such a limitation on the acceptable range of domestic conceptions of justice. In order to provide support for the full range of political autonomy peoples have on my view, this chapter considers the reasonableness of cultural practices that constitute grave violations of minimum human rights. If I turn out to be wrong about the acceptability of this sense of reasonableness in interpeople liberalism, then the arguments in this chapter and the next still show that substate peoples within liberal states should have the autonomy to realize whatever nonliberal conceptions of domestic justice are acceptable within interpeople liberalism.

One final introductory note. Rawls's sketch of interpeople liberalism is much less detailed than his presentation of domestic liberalism upon which it is modelled. Arguments that work against the more finely articulated justification for domestic liberalism should be expected to also work against analogous features of interpeople
liberalism in the absence of relevant differences. In addressing my arguments to the
strongest version of political liberalism that can be drawn from Rawls's work, the
remaining chapters often rely on discussions he makes regarding domestic political
liberalism to develop the strongest possible version of interpeople political liberalism.

§7.2 Liberal Fundamentalism versus Liberal Democracy

By liberal fundamentalism I mean a version of political liberalism that endorses the
use of state coercion in order not only to make a people's domestic behaviour conform to
political liberalism, but also to make the population and/or their descendants affirm
political liberalism. Coercing belief in liberalism proceeds by way of coercively ensuring
a people's behaviour conforms to the principles of political liberalism. Liberal
fundamentalism approves of such coercion whenever it can feasibly achieve its aims,
even against an opposed people. By an opposed people I mean a people that is
predominantly and strongly opposed in an all-things-considered manner not only to
political liberalism as a political conception for their domestic affairs but also to the
envisaged use of state force to impose it on them. A people with a nonliberal culture as
that was defined in Chapter 4 is an opposed people.

In the development of the second phase of his theory, regarding the development and
maintenance of a stable liberal society, Rawls writes that "the main question [is]:
consistent with plausibly realistic assumptions, what is the deepest and widest feasible
conception of political justice" (PL, 149)? This quotation is consistent with a liberal
fundamentalist interpretation. But he also writes that
the problem of stability is not that of bringing others who reject a conception to share it, or to act in accordance with it, by workable sanctions. If necessary, as if the task were to find ways to impose that conception once we are convinced it is sound. Rather, justice as fairness is not reasonable ... unless ... it can win its support by addressing each citizen's reason. ... Only so is it an account of the legitimacy of political authority (PL, 143).

So Rawls's notion of legitimacy, based on citizens' affirmation of justice as fairness through their reason, has a role above and beyond that of feasibility. Liberal democracy is distinguished from liberal fundamentalism using this idea. While it might appear that doing so renders liberal fundamentalism incapable of meeting political liberalism's standard of legitimacy, a detailed interpretation of this passage will be presented later in this section to show how liberal fundamentalism could be considered legitimate.

Liberal democracy holds liberalism to higher democratic standards of legitimacy than will be found in the fundamentalist interpretation. Liberal democracy adds additional requirements of moral permissibility to the means adopted for this promotion of liberalism (LP, 71) beyond the feasibility of implementing effective liberal rule. It holds that political liberalism must meet its own standards of domestic legitimacy with regard to the use of coercion and reason during its coming to be accepted by a people for their domestic affairs, and not only after. Political conceptions proposing an institutionalization process for political liberalism that depends at some stage on coercively imposing beliefs in themselves are illegitimate. The prospect of a retrospective majority affirmation of the legitimacy of the process is an insufficient justification for undertaking state coercion. If a majority, especially an overwhelming majority, of a people strongly oppose a standard of objectivity and its political consequences in an all-things-considered manner, then liberals take it to be unreasonable for a small minority of a people who affirm it to use it as a basis for wielding the coercive apparatus of the state,
or some partial substate jurisdiction of the people, as they see fit. Insofar as elements of political liberalism cannot meet these standards, they must be revised or eliminated.

Some of the difficulty discussed in this chapter in determining which interpretation more accurately reflects Rawls's thought is due to Rawls's focus on rearticulating and justifying liberalism in existing liberal societies rather than on articulating and justifying a process for converting nonliberal, including partially liberal, peoples to liberalism, or to a more full and consistent version of liberalism. I believe each interpretation articulates a strong impulse in Rawls's theory.

If it were never feasible to impose political liberalism in illegitimate ways, then no practical conflict would arise between the fundamentalist and democratic impulses in his theory. Only when there are cases where the fundamentalist interpretation advocates actions not allowed by liberal democracy is there a live practical issue between them. That such cases do exist will become clear as each interpretation is characterized more fully.

The liberal fundamentalist takes the reasonableness of political liberalism to legitimate coercion in creating the conditions under which political liberalism will be affirmed as ideal. The liberal democrat, by contrast, requires a legitimate democratic affirmation of political liberalism, that is, an uncoerced, reasoned one of most of the members of a people, for it to be reasonable. Liberal democracy takes a coerced affirmation to be illegitimate and politically unreasonable, and to undercut the justification for political liberalism. This requires, at a minimum, that there not be an all-things-considered social rule opposed to liberalism.
Liberal fundamentalism requires persons in non-liberal societies, even very nonliberal ones such as existed millennia ago in the West, to determine that a course of action institutionalizing some domestic conception of justice other than justice as fairness will lead to the institutionalization of justice as fairness in order for that course of action to be considered justified. By contrast, liberal democracy takes such a standard to be unrealistic in some settings, and unreasonable in many others. Liberal fundamentalism advocates state coercion wherever it feasibly advances the implementation of liberalism. Liberal democracy, in contrast, tolerates regimes implementing nonliberal domestic political conceptions where the conditions that would legitimate domestic liberalism's acceptance are lacking.

Though Rawls's discussion of paternalism is not addressed to the legitimacy of forcibly inculcating affirmation of political liberalism, it does review the justice of forcibly inculcating other beliefs\(^2\) once justice as fairness has been accepted as the best conception of domestic justice (\textit{TJ}, 248–50):

Imagine two persons in full possession of their reason and will who affirm different religious or philosophical beliefs; and suppose that there is some psychological process that will convert each to the other's view, despite the fact that the process is imposed on them against their wishes. In due course, let us suppose, both will come to accept conscientiously their new beliefs. We are still not permitted to submit them to this treatment. . . . [P]aternalistic intervention must be justified by the evident failure or absence of reason and will. . . . The parties want to guarantee the integrity of their person and their final ends and beliefs whatever these are. Paternalistic principles are a protection against our own irrationality, and must not be interpreted to license assaults on one's convictions and character by any means so long as these offer the prospect of securing consent later on. More generally, methods of education must likewise honor these

\(^2\) Though persons' affirmations may refer to behaviour from which they withhold belief (allowing for the possibility of perjury, for example), I understand persons' affirmation of comprehensive doctrines and political conceptions in ideal theory to involve belief in what is affirmed. Further, I take liberal concerns with freedom of thought, conscience, and expression to underwrite equally an opposition to paternalistic inculcations of beliefs and inculcations of affirmations with the performative consequences considered here.
constraints (*TJ, 249–50*).

While nonliberal views may be regarded as irrational or unreasonable according to political liberalism, it seems distinctly inappropriate to stretch remarks allowing paternalism towards children, the seriously injured and the mentally disturbed to allow them to cover all nonliberals, especially members of peoples who have not affirmed political liberalism. Not all nonliberals are plausibly represented as evidently displaying a “failure or absence of reason and will,” though liberal fundamentalism would need to establish this claim. So liberal democracy’s opposition to a paternalistic imposition of liberal beliefs is a plausible interpretation of political liberalism. Let us now turn to characterizing and motivating the liberal fundamentalist interpretation, before returning to reasons favouring liberal democracy at the end of the section.

It is not clear that the form of political liberalism’s justificatory strategy could by itself exclude its use by zealous fundamentalist liberals interested in using force of arms to institute liberalism around the world, either through a world state or in all political jurisdictions, despite virtually unanimous opposition. The potential problem is that a single person’s or a small group’s due reflection may end up endorsing a notion of reasonableness that both provides the criteria for determining, say, whether proposed terms are fair, and simultaneously allows the concerns which lead others to reject that sense of fairness to be ignored or rejected as unreasonable. Because Rawls takes it as reasonable to use state force both to prevent unreasonable behaviour and to contain unreasonable doctrines, small changes in his sense of reasonableness can thus underwrite dramatically different and possibly illegitimate instances of state coercion.
Let us briefly expand on these ideas to better appreciate liberal fundamentalism. In domestic liberalism, Rawls combines a political imperative to implement his ideal theory as fully as possible with a justification strategy that theoretically creates a loop from a "reasonable" person, to an idealized society filled with similarly "reasonable" persons, to a "reasonable" political theory that every "reasonable" person can and should accept.\(^3\) This strategy is potentially hermetic in that it can easily exclude points of view or elements of political conceptions that are or could be problematic to it from its perspective merely by deeming them to be "unreasonable." For the "unreasonable" interests of any person affirming any comprehensive doctrine that takes such a point of view or includes such elements in its political conception will not be represented in the original position, as §6.4 below makes clear, and the agreement reached there will include provisions for containing the number and acts of these persons.

Rawls claims "militant acts of disruption and resistance to attack the prevalent view of justice" of the majority or those having effective political power "in certain circumstances . . . are surely justified" (\(TJ\), 367, 368). Elsewhere he supports organized forcible resistance (\(PL\), 347f). So it is plausible that he might support the use of state coercion by a few believers in liberalism in order to make a whole people come to affirm political liberalism. Liberal fundamentalism cannot be dismissed out of hand as a viable interpretation of political liberalism. Indeed, if the theory were to have been available to persons acting at the dawn of modern liberalism or even long before, as Rawls projects in

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\(^3\) See Leif Wenar, "Political Liberalism: An Internal Critique," \(Ethics\) 106 (Oct 1995), 34, for a list of 35 uses of 'reasonable' in \(Political Liberalism\).
several passages to be discussed shortly, then it can be understood to call for actions by an arbitrarily small group who are "reasonable," actions that would be equivalent to "enlightened" despotism.\(^4\)

Domestic liberalism interpreted in this fundamentalist fashion has a vanguardist aspect reminiscent of Leninism. It holds that history, in the form of a possible future consensus of society in favour of domestic liberalism, vindicates the actions taken by a small vanguard to bring domestic liberalism about against the actual will of the benighted masses. As the fundamental ideas and freestanding character of political liberalism’s first stage ideal theory depend on the existence of a liberal public culture, liberal fundamentalism’s justification as an ideal for nonliberal peoples\(^5\) depends on such a public culture coming into being to justify the coercive actions it endorses in order to bring that public culture into existence. So long as some persons endorse this theory in the first (ideal) stage, and the second stage shows that a stable such society is possibly realizable, liberal fundamentalism takes itself to have met its own criteria for political objectivity and legitimacy. Criticisms of liberal state coercion of persons acting on "unreasonable" political conceptions are interpreted as unfounded since this coercion is "reasonable," or at least can be taken to be "reasonable" so long as there is a prospect of convincing most in a society to affirm liberal fundamentalism’s conception of

\(^4\) Kant defends an enlightened autocratic monarch as the best system of republicanism in "Perpetual Peace," in *Kant: Political Writings*, 100–2.

\(^5\) This contrasts with its use in existing Western societies that arguably have a constitutional consensus on liberalism and a liberal public culture.
"reasonableness."⁶

Speaking in favour of a fundamentalist interpretation of political liberalism is the fact that domestic liberalism disregards contrary views in society about, for example, the proper conception of a person for political purposes, or comprehensive doctrines that domestic liberalism takes to be unreasonable, except insofar as they would make domestic liberalism unfeasible. For Rawls also believes that "[w]here issues of justice are involved, the intensity of desires should not be taken into account. . . . The force of opposing attitudes has no bearing on the question of right but only on the feasibility of arrangements of liberty" (TJ, 231). As a result, he holds, for example, that "[i]f a bill of rights guaranteeing liberty of conscience and freedom of thought and assembly would be effective, then it should be adopted. Whatever the depth of feeling against them, these rights should if possible be adopted" (TJ, 231).

Given that the adoption of such a bill would mean that the state would then coercively enforce these rights, this passage endorses, at least in the domestic domain, state coercion to protect core liberal rights despite any amount of opposition short of that which would prevent the state from effectively upholding them. As nondemocratic states have often successfully imposed for decades and generations legal regimes that were opposed by most of their populations, a strong reading of Rawls's anti-majoritarianism would take

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⁶ Such coercion in the process of bringing about the conditions which allow liberalism to demonstrate actually and not merely hypothetically its legitimacy in its own eyes is somewhat like the early Wittgenstein's ladder, which had to be dispensed with once the theory was constructed. This point was arguably the aporia that led to the development of the later Wittgenstein out of the earlier. See Ludwig Wittgenstein, Tractatus Logico-Philosophicus, (Atlantic Highlands, NJ: Humanities Press International, 1961), s. 6.54, p. 74.
him as supporting the imposition of such a bill even if strongly opposed in an all-things-
considered manner by an overwhelming majority of a people.

In order for political liberalism to be fully justified within a jurisdiction, it needs to be
supported by an overlapping consensus. Rawls narrates how such beliefs may develop
among a population governed initially by the core principles of political liberalism that
are embodied in such a bill of rights but accepted only as a *modus vivendi* (cf. *PL*,
133–72). Because Rawls's system is oriented towards the realization of a society
governed by justice as fairness and enjoying an overlapping consensus on this political
conception, and because he aims to make all parts of his theory mutually supportive, it is
logical to take one intent of imposing such rights on a people to be the eventual
affirmation of political liberalism by that people. This would mean the state would be
coercing affirmation of beliefs required for political liberalism. So Rawls's endorsement
of the forcible imposition of a bill protecting core liberal rights to freedom and liberty is
inconsistent with liberal democracy.

This endorsement is not anomalous on account of the importance of the rights at issue
to liberalism. A separate discussion on the same topic broadens and clarifies the principle
at issue. This second passage repeats the claim that the conception of justice specified by
the ideal part of Rawls's theory is to be achieved "if we can" (*TJ*, 246). Once again it
appears that, so long as they do not affect feasibility, the all-things-considered beliefs of
an overwhelming majority of a population are not a relevant factor. A democratic
interpretation of political liberalism would obviously not agree.

The passage goes on to specify how courses of action are to be prioritized when
immediately institutionalizing ideal justice is not feasible: "as far as circumstances permit, we have a natural duty to remove any injustices, beginning with the most grievous" (TJ, 246). For example, slavery for war captives could perhaps be justified as an advance for those worst off over an existing practice of putting them to death (TJ, 248), even though it is not itself just. Historical conditions that cannot at the time be removed may justify departures from ideal theory, but only if institutionalizing a deficient conception of justice (like slavery for war captives among warring city-states) has been shown to lead to the overcoming of those unfortunate circumstances (e.g., those conditions that might make such slavery the best currently realizable conception of justice (TJ, 248)). In this way a proper conception of justice will eventually be implemented and accepted. This principle is illustrated as follows:

in the context of eighteenth century society . . . unequal political liberty might conceivably have been a permissible adjustment to historical limitations, [though] serfdom and slavery, and religious intolerance, certainly were not. . . . [I]t may be reasonable to forgo part of these freedoms [of certain political liberties and the rights of fair equality of opportunity] when the long-run benefits are great enough to transform a less fortunate society into one where the equal liberties can be fully enjoyed. . . . But it does have to be shown that as the general conception of justice is followed social conditions are eventually brought about under which a lesser than equal liberty would no longer be accepted (TJ, 247).

In A Theory of Justice, the early Rawls makes the affirmation of justice as fairness depend on its being stable enough (TJ, 504). Its stability is dependent not only on the operation of the moral psychology he lays out leading citizens over time to affirm justice as fairness (TJ, 498–504), but also on the coercive vindication of the principles of justice that makes it rational to comply with those principles (TJ, 497). So Rawls sets out a conception of justice that allows the coercive institutionalization of a political conception opposed by a people so long as it has been shown that eventually this will lead enough of them to change their political beliefs and affirm justice as fairness to make it stable, or at
least "not so unstable that some other conception [of justice] would be preferable" 
(TJ, 576). To develop an implicit suggestion of Rawls's, another conception might be 
preferable not only if it were more stable, but also if it did not suffer from the "much 
larger role" that penal devices would play if many people were to end up affirming 
comprehensive doctrines with senses of good incompatible with justice as fairness's 
sense of justice (cf. TJ, 576), the content of which is defined by its conception of right. 
Of course, Rawls believes that in a just society as conceived by justice as fairness, "these 
[penal] mechanisms will seldom be invoked and will comprise but a minor part of the 
social scheme" (TJ, 577), since the sense of justice citizens will tend to develop under its 
institutions will normally be stronger than the propensities to injustice citizens will tend 
to develop (TJ, 454). So in the earlier as well as the later Rawls, domestic liberalism 
allows the coercive institutionalizing of a political conception opposed by a people on the 
condition that it has been shown that this will lead to the preponderance of them 
eventually changing their political beliefs and affirming political liberalism.7 One's 
affirmation of political liberalism and its attendant coercion is dependent on it plausibly 
leading to an overlapping consensus on justice as fairness. This is consistent with 
political liberalism being institutionalized coercively when it is opposed by a people, 

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7 It might be objected that these passages supporting a fundamentalist reading are all 
drawn from Rawls's early work and would not be endorsed by the later Rawls. However, 
the form of Political Liberalism's justificatory strategy does nothing structurally to 
prevent these manifestations of liberal fundamentalism explicitly advocated in A Theory 
of Justice. Indeed, Political Liberalism's endorsement of the "clear and present danger" 
test as the appropriate constitutional bounds on subversive advocacy (PL, 348–56) is 
consistent with the infringements on the normal rule of law that I will shortly note that 
the earlier work advocates in the face of imminent organized armed insurrection (TJ, 
242).
either domestically by a liberal despot, or by an overwhelming external power in the interpeople sphere.

In cases where liberal justice has been established but in which new circumstances arise that threaten it, the same underlying principle takes departures from liberal justice in the form of abridgement of rights to be prudent in order to remove the threat to the liberal regime. For example, if the formation of armed paramilitary groups is apprehended, reasoning at the legislative stage in the domestic original position can show these departures to be a lesser danger to the freedom of the average citizen (cf. *TJ*, 242). Similarly, Rawls argues the freedom of intolerant nonliberals “should be restricted . . . when the tolerant sincerely and with reason believe that their own security and that of the institutions of liberty are in danger” (*TJ*, 220). The “drastic interference with the basic liberties” and even abridged security of the person involved in conscription can be justified for a war that is just because it has “the end of preserving just institutions. Conscription is permissible only if it is demanded for the defense of liberty itself” (*TJ*, 380). This view that preventing greater injustices can justify lesser injustices is similar to Sir Karl Popper’s truculent view, mentioned in Chapter 1, that “[w]e need not tolerate even the threat of intolerance; and we must not tolerate it if the threat is getting serious.”

One type of threat to a liberal regime is the development of a democratic consensus favouring a basic change in its liberal constitution. The fact that a Hitler came to power democratically in a politically malfunctioning Weimar republic is not a sufficient

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8 Popper, “Toleration and Intellectual Responsibility,” 20. Note that Popper writes of “the threat of intolerance,” not merely the existence of intolerant views that may not be widespread or about to be put into action.
argument for liberals to retreat into a bunker and prevent any further evolution of the fundamental tenets of the Western tradition. Liberal fundamentalism's opposition, violent if necessary, to departures from liberalism reveal its practical assumption of infallibility, which I discuss further in §8.1.

While democratic notes can be heard in the following passage from the later Rawls, a close reading reveals such a contrapuntal line that it does not necessarily depart from an overarching tune of fundamentalism.

The point, then, is that the problem of stability is not that of bringing others who reject a conception to share it, or to act in accordance with it, by workable sanctions, if necessary, as if the task were to find ways to impose that conception once we are convinced it is sound. Rather, justice as fairness is not reasonable in the first place unless in a suitable way it can win its support by addressing each citizen's reason, as explained within its own framework. Only so is it an account of the legitimacy of political authority as opposed to an account of how those who hold political power can satisfy themselves, and not citizens generally, that they are acting properly (PL. 143–4, emphasis added).

Prima facie, the first sentence rejects liberal fundamentalism. But the denial that "the problem of stability" is that of imposing a political conception taken to be sound does not necessarily imply that such an imposition is not a part of the problem: it is consistent with this passage that it can be part of the problem so long as the problem also encompasses the idea captured in the second quoted sentence. And although the second sentence states a criterion of legitimacy that seems to provide strong evidence in favour of liberal democracy—the conception must in a suitable way win its support by addressing each citizen's reason—this criterion is itself susceptible of a liberal fundamentalist interpretation. For a footnote to the second sentence clarifies that the framework at issue is not that of each actual citizen's reason, but political liberalism's account of the framework of each citizen's reason as this is conceptualized within the original position. This ideal construction includes political liberalism's account of
reasonableness used in modelling citizens and in the construction of the original position.

Thus, what appears to be a liberal democratic criterion that would restrict liberal fundamentalism turns out to allow actual opposition to be ignored while attention is paid to support by hypothetical citizens whose reasonableness is characterized by and attributed to them by the political theory itself. This liberal fundamentalist interpretation explains how hypothetical, idealized citizens can satisfy themselves that those who hold political power are acting properly, and how actual citizens currently opposed to political liberalism possibly can be similarly 'satisfied.'

So a consistent liberal fundamentalist reading of the passage above is possible. Unfortunately for political fundamentalism, however, such a reading risks violating core liberal concerns about legitimacy. The problem is that this reading violates a standard of legitimacy that both interpretations must meet in order to be properly liberal. Here is Dworkin's gloss of Isaiah Berlin's diagnosis of a closely related problem:

Berlin described the historical corruption of the idea of positive liberty... that began in the idea that someone's true liberty lies in control by his rational self rather than his empirical self, that is, in control that aims at securing goals other than those the person himself recognizes. Freedom, on that conception, is possible only when people are governed, ruthlessly if necessary, by rulers who know their true, metaphysical will. Only then are people truly free, albeit against their will. That deeply confused and dangerous, but nevertheless potent, chain of argument had in many parts of the world turned positive liberty into the most terrible tyranny.9

The conviction of rulers that their subjects will eventually affirm the rulers' principles of justice if they experience them long enough is not enough to remove the taint of illegitimacy of coercively imposing that experience. I assume that it is a duly considered view of liberals within societies with liberal public cultures that political conceptions that

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have to rely on a chain of argument like that quoted above are illegitimate. As argued more fully later in this chapter, liberal public culture takes it to be a necessary condition for the legitimacy of a regime that it enjoy substantial support from the actual selves it rules; arguments about idealizations of those selves are insufficient. Without specifying an exact form for this substantial actual support, one can allow it to be less than continuous majoritarian support for each governance policy and decision. ‘Higher-order’ preferences of majorities can be found in liberal peoples for anti-majoritarian liberal rights and their supporting institutions, such as courts with powers of judicial review. Liberals would be unreasonable to require this form of actual legitimacy of nonliberal political conceptions but not of liberal ones (PL, 49).

Rawls rightly wants to distinguish the merit of his theory from whether a poll shows persons currently subscribe to it. Submitting to that sort of a test could mean that the incorporation into his theory of currently popular principles that are unjust on due reflection would make it more ‘just’ overall. Such compromise or accommodation with existing popular but unreasonable political conceptions would make his theory political in the wrong way, and would mean that he was bending his theory to existing unreason (PL, 144). But admitting the theoretical reasonableness of a possibly small minority of persons affirming and asserting the political objectivity of a political conception in the face of opposition or unbelief is quite different from admitting that this minority can legitimately coerce others into affirming that conception (cf. LP, 81).

Making actual legitimacy necessary and purely idealized legitimacy insufficient to establish legitimacy in practice does not entail bending political liberalism’s conception
of justice to unreason. Rawls's ideal conception of justice can float free of the existing unreason in the world (say, everyone's reason but Rawls's own) and simultaneously accept that a sufficient level of actual support must be present before it can be legitimately put into practice as the basis for state coercion. In this way, only nonideal concerns about institutionalizing political liberalism are affected by unreason.

The democratic interpretation of political liberalism does not rely on a chain of argument like that just criticized because it adds a link incorporating the uncoerced, reasoned affirmation of political liberalism by actual selves. I hope to show that the fundamentalist interpretation of political liberalism has to employ such an illegitimate chain of reasoning, and as a result that political liberalism is best interpreted as democratic.

It might be thought that the Kantian element supporting the liberal fundamentalist interpretation in Rawls's theory—its consistent use of a (contentious) theory of reasonableness or moral rationality—has sufficient limits placed on it by Rawls's conception of wide reflective equilibrium in the thought of actual citizens to avoid failing the test of legitimacy drawn from Berlin. If that were so, then there would be no need to examine the details of the process leading to an overlapping consensus. But the elements in political liberalism's self-justification explicitly concerned with actual selves are not necessarily sufficient to meet the test of legitimacy. Appreciating why requires an understanding of the various levels of justification in Rawls's theory, and the types of selves that exist within each level, a topic taken up in §6.4.
§7.3 More Vigorous Laws

Having explained liberal fundamentalism and liberal democracy, I am now in a position to relate these concepts to the argument in the last chapter. In that chapter, I noted Rawls’s endorsement of a passage from Kant suggesting a third purpose for having many states—the promotion of vigorous laws. Kant claimed in this brief passage that there is an inverse proportionality between the extent of a state and the vigour of its laws. This chapter is primarily interested in determining reasons based in justice for this inverse proportionality that go beyond reasons of feasibility, though the latter will be noted in passing.

The inverse proportionality may be due to diseconomies of scale in the administration of justice. For example, laws are sometimes not as vigorously enforced when enforcement across a large territory or a large population requires a large bureaucracy. A more interesting cause for my purposes springs from the fact that larger states are correlated with populations that are more diverse in their political interests and conceptions. As states become larger, differences tend to increase in interests due to region, in political conceptions due to cultural variations across the state, and in the political jurisdictions desired by persons due to variations in the people with which they identify. This leads either to weak laws, i.e. undemanding ones, based on the lowest common denominator among these differences, or to laws that are weak because they are not adequately supported throughout the state due to persons’ differing political conception or differing conception of legitimate political jurisdiction. Laws lacking legitimacy for these reasons in the eyes of those to whom they apply lead either to
despotic governance if the state is able to effectively enforce the laws despite this lack of legitimacy, or to their weak enforcement, or to civil unrest. The brittleness of laws strongly enforced but lacking legitimacy in the eyes of the public means they also merit being called weak. But vigorous public support for laws is not the same as vigorous laws.

Promoting vigorous laws as a matter of justice to overcome these weaknesses can be interpreted in different ways. Suppose one views the point of political autonomy as a collective correlate of Mill’s view of the point of individual autonomy. A collective correlate of the optimum promotion of the full flowering of each person’s individuality limited only by the harm principle would be something like the optimum promotion of the fullest opportunity for each person to realize whatever political conception it wishes, so long as harm to peoples such as that due to expansionist states did not result. Requiring peoples to select only from political conceptions well-ordered according to interpeople liberalism can be seen as a way of requiring no harm to peoples. Realizing this objective of political autonomy can be interpreted as dovetailing nicely both with promoting vigorous laws and promoting vigorous support for laws. This is so because primary political autonomy rights enable each person with the necessary resources to put in place a jurisdiction that allows it to implement its chosen conception of justice. So under this conception of interpeople justice, promoting vigorous laws is interpreted to mean promoting the full expression and flowering of each people’s unique conception of domestic justice, within the limits just noted. Such laws may be expected to receive vigorous support.

It can plausibly be argued that for both Kant and Rawls, promoting vigorous laws in
interpeople justice should be interpreted very differently, since for them, laws become more vigorous as they come closer to resembling those allowable under a liberal conception of domestic justice. Both thinkers believe the two types of vigour are related: in states with a modicum of both democracy and of liberal rights, both domestic liberalism and citizens' support for laws will tend to mature and flower together. In this alternative reading, having many states serves the purpose of promoting vigorous laws in the sense of promoting laws everywhere that are in conformity with the principles of domestic liberalism.

Rawls endorses value pluralism at a social as well as individual level, which suggests a ground for him to support the Mill-inspired diversity of well-ordered political conceptions of domestic justice in the interpeople domain mentioned above. But he also believes that an internal dynamic of progress towards domestic liberalism exists in societies similar to European ones at the close of the wars of religion (PL, 131–72). Societies that are well-ordered according to interpeople liberalism appear to meet this threshold through their protection of core liberty rights. Thus interpeople liberalism's long-run aim of bringing all societies to honour and to be guided by its principles (LP, 73) means that, if the arguments of Political Liberalism hold, its even longer term effect would be to make all societies affirm the principles of domestic liberalism in their internal governance. As a result, for those societies whose internal dynamic is not already launched towards the principles of domestic liberalism, the Mill-inspired interpretation

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10 That is, Berlin's claim that not all values can be realized within a single set of social arrangements such as political liberalism or in a single life. See, e.g., PL, 197.
above of the purpose of promoting vigorous laws through primary political autonomy. Rights fades into the second interpretation of promoting domestic liberalism everywhere. Letting each society’s own flower of domestic justice bloom will eventually lead to an earthly garden where all the blossoms will be similar. As long as some weeds are pulled, all remaining blossoms of domestic justice will transform into domestic liberalism. So the second, Kantian conception of vigorous laws may be Rawls’s fundamental view, encompassing the Mill-inspired conception as a special case for not-yet-liberal societies. It may reflect a reason acceptable in the political conceptions of liberal societies but not suitable for the public interpeople sphere.

It would appear that the first, Mill-inspired, sense of vigorous laws would easily support liberal democracy over liberal fundamentalism, while the second, Kantian, sense would tend to support the latter over the former. If even a sense of vigorous laws oriented towards the institutionalization of domestic liberalism supported liberal democracy, then that would provide strong support for that interpretation of political liberalism. So for the purposes of this chapter, I will therefore assume the second sense of vigorous laws, and attempt to show that even it leads to liberal democracy being preferred to liberal fundamentalism.

A word can now be said about the relation between the interpretations of political liberalism in this chapter and the last. Though there are many similarities when the dominant people in a state is liberal between political assimilationism and liberal fundamentalism, on the one hand, and between political autonomism and liberal democratism on the other, important differences remain. If the purpose of having more
states is the better promotion of domestic liberalism, as liberal fundamentalism supposes, then political assimilationism, with its equal treatment of all allowable domestic political conceptions, does not properly express this purpose. For whatever conception of domestic justice a dominant people in a multipeople state affirms, whether liberal or nonliberal, this conception can be legitimately imposed on the other peoples in that state according to political assimilationism, a point that liberal fundamentalism denies regarding nonliberal conceptions.

Liberal democracy holds that even in cases where effective liberal rule could be maintained or created through state force, certain conditions for the legitimacy of liberal rule may be lacking, and this lack makes political liberalism's imposition or enforcement unjustified. Liberal democracy views this result as holding generally, including within a single people, between nation-states when a liberal one can overpower a nonliberal one, and also when a dominant liberal people or peoples within a mutipeople state confront weak substitute nonliberal peoples within their borders. Political autonomism reaches the same result for the single case of non-dominant nonliberal peoples within a liberal state. Both interpretations in this chapter—liberal fundamentalism and liberal democracy—accept the conclusions of the last chapter's arguments regarding the feasibility of imposing a conception of domestic justice on a people. But having accepted the same conclusions regarding feasibility, a live practical difference remains between them regarding the justice of feasible impositions.

The parallels between political assimilation and liberal fundamentalism on the one hand and political autonomism and liberal democracy on the other spring from their
similar treatment of many substate nonliberal peoples by liberal states. The first two interpretations would tend to impose domestic liberalism on nonliberal peoples within a liberal state, with one excepting cases where this is not feasible. The latter two interpretations would both support primary political autonomy rights for peoples, though I have yet to establish that this is so for liberal democracy.

§7.4 Justification in and of Political Liberalism

§7.2 argued that both liberal fundamentalism and liberal democracy provide plausible interpretations of political liberalism. A key dispute between them concerned the role of actual selves in determining the legitimacy of state coercion. This section lays out the structure of justification within political liberalism, in order to show that Rawls does not directly address this issue.

There is a tension between liberal fundamentalism's willingness to impose a particular liberal legal regime of rights—a necessarily coercive system—on a population strongly opposed to it, and its requirement that any adequate such system must be able to garner the universal support of that population in principle. This tension could be resolved by way of the hypothetical reasoning that occurs in the domestic original position about the interests of idealized citizens. Once anyone enters, in thought, that hypothetical place and reasons according to its dictates, he or she can see that all those currently opposed to political liberalism's principles of justice (or in this case, their constitutional or legislative implications) could support them, at least in some idealized fashion.
A key to this trick by which any amount of actual opposition, save that which prevents effective governance, can be conjured into unanimous support in the domestic sphere is the use of a liberal standard of reasonableness, particularly in the laying out of the original situation and its representatives of citizens (cf. PL, 137 n). Although the purely rational but not reasonable representatives occupying the original position are not conceived as necessarily realizable, it is important to Rawls's theory of justice that the idealized citizens they represent be models that the citizens of actual liberal regimes could feasibly become. This "reasonable" group of idealized citizens could "reasonably" be expected to endorse unanimously a "reasonable" political liberalism despite the existence of actual persons dead set against its application in their jurisdiction.

This picture is complicated by the three levels of reasoning (PL, 28) used in the justification of political liberalism. The core of the justification, as noted above, is conceived as occurring via the reasoning that occurs in the original position. Having concluded that one of the conceptions of justice they are considering, such as justice as fairness, will best advance the rational interests of those they represent, the hypothetical contractors then check to make sure that a society well-ordered by that political conception can both come about in practice and continue on stably. This requires that it have the capacity to engender an appropriate and effective sense of justice in all its citizens. The contractors thus have to convince themselves, given the carefully restricted information and types of arguments available to them, that the idealized citizens have the potential to become actualized, or more straightforwardly, that actual citizens may come in time to resemble the idealized model.
Another part of the process of justification of the agreement reached in the original position involves an argument by its rationally autonomous contractors that the idealized citizens of a liberal regime would endorse their reasoning. The reasoning of such idealized citizens with full autonomy is the second level of justificatory reasoning. It is the level within which Rawls is arguing when he claims, first, that one of the fundamental ideas of justice as fairness is that of a well-ordered society “in which everyone accepts, and knows that everyone else accepts, the very same principles of justice . . . which they regard as just” \(PL, 35, \text{cf. } TJ, 453f\);\(^\text{11}\) and second, that “any conception of justice that cannot well order a constitutional democracy is inadequate as a democratic conception” \(PL, 35\). This aspect of well-orderedness reflects the liberal principle of legitimacy:

> our exercise of political power is fully proper only when it is exercised in accordance with a constitution the essentials of which all citizens as free and equal may reasonably be expected to endorse in the light of principles and ideals acceptable to their common human reason. . . . Only a political conception of justice that all citizens might be reasonably expected to endorse can serve as a basis of public reason and justification \(PL, 137\).

Finally, a separate process of justification occurs among the actual citizens of actual regimes with public cultures that are more-or-less liberal. These citizens are supposed by Rawls, or at least called by him, to endorse political liberalism as the best articulation up to now of their “more firm considered convictions of political justice, at all levels of generality, after due examination, once all adjustments and revisions that seem compelling have been made” \(PL, 28\). At this third level, Rawls argues that the domestic

\(^{11}\) I ignore here as not directly to point the other elements of a well-ordered society: that society’s basic structure is publicly known to satisfy these principles, and that its citizens generally comply with society’s basic institutions. In cases where cultural practices conflict with liberalism, the latter condition of well-orderedness does not generally hold.
original position has to be laid out in a way that embodies 'our' best sense of fairness, where 'you and I'—Rawls and his reader—are the citizens of societies with liberal public cultures. So this level of justification in domestic liberalism, which is the only one carried out directly by actual persons, instead of by actual persons imaginatively putting themselves into a hypothetical party's position, endorses all the assumptions, reasoning and conclusions of the first two levels of justification in a judgement that they are in a wide reflective equilibrium. Supposing that political liberalism meets this third level standard, it is the most reasonable conception of justice for these citizens and therefore their society according to political liberalism.

Rawls's requirement in the second stage of his theory that a political conception be able to be the focus of an overlapping consensus (PL, 141) does not require that it be supported by an existing consensus of actual persons at the third level of justification. Rather, it requires that actual persons—Rawls and his reader—at the third level of justification accept as part of a wide reflective equilibrium an argument that a liberal regime will be able to develop and endure. This wide reflective equilibrium requires as well that actual persons endorse not just the consistent use but also the suitability of Rawls's idealized model of the person for the purposes of domestic justice, and political liberalism's account of political objectivity, and all the other matters in his theory.

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12 Kierkegaard's remark that the knight of infinity is "able to come down [from a leap into infinity] in such a way that instantaneously [he] seems to stand and to walk, to change the leap into life into walking [without wavering], absolutely to express the sublime in the pedestrian," marks a similar point in his thought. The question at issue is how to interpret political liberalism so that its landing in practice does not involve a wavering or fall. See Søren Kierkegaard, Fear and Trembling; Repetition, eds. and trans. Howard V. Hong and Edna H. Hong (Princeton: Princeton University Press, 1983), 41.
However, so far as I am aware, Rawls makes no claims about the proportion of actual persons in a society that need to endorse political liberalism in wide reflective equilibrium in order for it to be able to underwrite legitimately the use of political coercion. This is not part of his official account of what his theory must provide or accomplish in order for it to be justified. It is clear that only if the support at the third level of justification—actual persons in an actual society—approaches that of the support at the second level of justification—idealized citizens in an ideal liberal society—can a society approach ideal justice. Unfortunately, the fact that a state with a population including significant elements opposed in an all-things-considered manner to political liberalism falls short of ideal justice does not speak directly to whether that state may legitimately use coercion to impose belief in political liberalism on them.

Even without explicit statements from Rawls detailing how actual persons’ beliefs relate to the legitimacy of state coercion, his position on several related topics can be used to show that liberal democracy’s take on legitimacy is superior to that of liberal fundamentalism. The remaining sections in this chapter deal with two of these topics, namely, the legitimacy for liberals of reasoned versus coerced beliefs, and the considered convictions of actual persons. Chapter 8 will in turn consider the unreasonableness of coercing actual persons with reasonable disagreements with domestic political liberalism, and the dependency of the freestanding nature of political liberalism on not coercively imposing a liberal public culture on persons who are actually opposed to it.
§7.5 Reasoned Compromise versus Coerced Imposition

Rawls argues that the historical development after the European Wars of Religion of a constitutional consensus on liberalism within Western European states was based on the reasoned acceptance of liberal principles rather than caused by a process in which such reasoned acceptance was lacking. This might suggest that an historical process of reasoned acceptance is necessary for the current legitimacy of liberalism. I will argue, however, that such reasoned acceptance is not strictly necessary to establish political liberalism's reasonableness. Nevertheless, reasoned acceptance is necessary for prospective projects aiming to create a constitutional consensus on liberalism and eventually a liberal overlapping consensus. Where cultural coercion has been used to force compliance with and acceptance of liberalism, various forms of compensation may be due despite a mitigating factor of good intentions towards the coerced.

In general, if a person is coerced long enough that he or she eventually accepts beliefs as desired by the coercer, liberal theory holds that the resulting belief is in an important sense not that person's own, and the manner of its inculcation illegitimate. An analogous argument would seem to hold for the coercive imposition of a political conception onto a people. The problem with coerced belief is both the wrong that is suspected in the act of coercion, and that the belief's provenance makes its reliability more suspect. Even if it is possible to inculcate in a people through force the beliefs necessary to justify domestic liberalism, it would be prima facie unjust to do this, and the use of such coerced beliefs to legitimate a liberal regime for this people would be prima facie unacceptable. Similarly, even if it were possible to convince, through an inappropriate use of force, a people that
they are appropriately subject to a state controlled by another people, it would be *prima facie* unjust to do this, and the use of such coerced beliefs to legitimate a liberal regime for this people would be *prima facie* unacceptable.

*Political Liberalism's* narrative of the development of a constitutional consensus (*PL*, 158–64) that forms part of the narrative of the development of an overlapping consensus does not advocate workable sanctions to bring about a shared conception. It does, however, talk about how the experience of living under a liberal regime, even if only accepted on a *modus vivendi* basis, leads to *reasoned* support for liberalism based on that experience (cf. *PL* 163). This may mark a significant point against a fundamentalist interpretation of Rawls's liberalism. For if one's experience of living under a liberal regime is due to one's own *modus vivendi* acceptance of circumstances that are an historical circumstance like a force of nature, then one has not been coerced by another into accepting liberalism. No liberal fundamentalist intent to use state force in order to induce liberal beliefs in unbelievers is present here, so there is no liberal cultural coercion.

If this characterization of this process is not accurate, however, there is a possibility that it incorporates a very different account of liberal legitimacy. In an alternative scenario, a party able to control the state coercive apparatus chooses to subject a nonliberal population under its control to a coercive experience from which the population, or perhaps only its descendants, will emerge as a group united in its affirmation of liberalism. In this case, there is some question about whether those beliefs are properly affirmed, and whether that affirmation is sufficient to legitimate the actions
of the officials, for the citizens change their conception of reasonableness and possibly of political objectivity as a result of this experience of force. The situation is one of coerced belief according the definition provided in Chapter 4. As this casts a pall over the claim that "citizens generally" are satisfied that the officials are acting properly (PL, 144), the legitimacy of the liberal regime is threatened, but not necessarily undermined.

It is not enough for liberal principles to become accepted by a population merely because the population inures itself to the permanence of a liberal regime given foreseeable circumstances. As Rawls makes clear, giving up an active struggle for an alternative is not to complete the shift from a modus vivendi acceptance to a constitutional consensus. Many political conceptions of justice besides liberalism, having successfully installed themselves in power in a regime for a long enough period of time, have been able to create correlates in their political traditions of political liberalism's conception of a constitutional consensus. Though details may differ, these conceptions also arguably enjoy both an appropriate endorsement of their legitimacy according to their political conception's self-understanding, and an absence of significant threats to their effective rule. It is important to the liberal democratic interpretation of political liberalism, however, that the acceptance of a liberal conception of justice be due to reasoned and not coerced belief. One party's imposition of liberal principles of justice on other parties undermines that legitimacy.

It might be thought, however, that even if a belief is coerced, it may be correct, or at least legitimately held in another sense of legitimate. Suppose a person is initially unwilling to assent that a true or reasonable statement is true or reasonable, but after
being subjected to some form of brainwashing or long-term compulsion, comes to assent to the belief at issue. But, the objection goes, the belief is illegitimate because it not supported by the person for the right reasons. Though the brainwashing worked to the extent that the person now has the belief at issue, he or she is unable to give adequate reasons for why they hold that belief. But those reasons could equally have been coerced as beliefs. Following this line of reasoning, one might be led to conclude that the cause of a person’s beliefs cannot undermine the political legitimacy of that person’s holding them, so long as they do so for the right reasons even if those reasons are themselves coerced. This does not fully meet the promise of Rawls’s claim that liberal legitimacy would “win its support by addressing each citizen’s reason” (PL, 143). Rather than addressing a person’s reason, it suggests the person’s reason has been subversively reconstructed.

Still, the objection may continue, the bar is being set too high if the fact that one’s experiences were accumulated under a coercive public regime is held to invalidate one’s beliefs. Virtually everyone lives subject to some such state authority today. It would be unreasonable to propose a standard of reasonableness that meant it was virtually impossible to be reasonable. Unless one was willing to defend anarchism, and claim that coercion would not occur under anarchy so often as to significantly affect the reasonableness of one’s beliefs, and was able to show that the beliefs used in these arguments were not themselves the product of experiences of a coercive public regime, then one would have few prospects for a reasonable political theory.

Conceding that beliefs acquired through living under a coercive public regime may be
reasonable also means that standards of objectivity which have come to be accepted
under other types of states cannot be dismissed as illegitimate or misguided merely
because of their coercion-soaked provenance. However, even once one accepts that
beliefs acquired under a coercive public regime can be reasonable, it is still possible to
distinguish a normative difference between coercion intended to protect individual
citizens, which may be acceptable, and coercion intended to inculcate beliefs, which is
generally unacceptable to liberals.

From the inability of peoples to remove themselves from the coercive effects of state
rule, a justification for liberal fundamentalism’s willingness to use such rule to impose
domestic liberalism’s conception of justice, and its moral merit over other political
conceptions, does not follow. It would violate political liberalism’s requirements for the
publicity of reasons (PL, 66–71) were political liberalism to claim that it was imposing a
bill of core liberal rights only in order to protect individual citizens and not to coerce their
belief in political liberalism, while simultaneously depending on their experience of that
protection to lead them to affirm political liberalism, and thus vindicate the justifiability
of the original protection. For a condition of a legitimate liberal order is that “nothing
need be hidden” (PL, 68). Yet once political liberalism openly states that it is (also)
coercing in order to change their beliefs which will then allow it to be vindicated
according to its own standards, it would be openly announcing its violation of its own
standards of liberal behaviour. So liberalism would be inconsistent were it to depend on
the use of coercion opposed by the duly considered will of a people in order to get them
to affirm liberalism.
A separate type of reply might attempt to distinguish beliefs that were illegitimately acquired due to coercion from those that were legitimately acquired based on some objective standard. Take Orwell’s most blatant example of coerced belief in Nineteen Eighty-Four. When Winston is subject to torture, he comes to believe that truth in history is whatever the state says it is, that rats eating his face is the most terrifying thing in the world for him, and that he can betray the one he loves.\textsuperscript{13} Although the coercion is the cause of all three beliefs, it only undermines the legitimacy of the first belief, not that of the second or third. Without needing to specify exactly what the problem of legitimacy is for the purposes of this argument, one can indicate that it is related to the belief not conforming to the standards accepted by the victim for acquiring and holding beliefs before the coercion occurred. The problem is that O’Brien is able to break Winston by making him betray the one he loves through using his fear of hungry rats. Once Winston is broken, O’Brien is then able to lead him to discard his normal standards for holding beliefs about historical subjects. But even though he is being tortured, normal standards may be adequately applied during his acceptance of new beliefs about terrifying experiences and his capacity for betrayal. Is the affirmation of belief in a liberal political conception, including its conception of reasonableness, while living under a liberal regime a case of an acceptable or an unacceptable acquisition of new beliefs?

A major difficulty with presupposing an account of acceptable coerced belief that could justify coercing acceptance of the relevant reasons supporting Rawlsian liberalism

is that under Rawls's approach, such an independent standard of legitimacy cannot be assumed. No matter where it figured in Rawls's political constructivism, it would have to be endorsed in the coherentist manner of Rawls's reflective equilibrium (PL, 28). But then, the reasonableness of rulers coercively imposing their political conception, including its conception of reasonableness, on their unwilling subjects is problematical. How is this to be distinguished from rulers merely satisfying themselves that their rule is just, as they are coercively imposing beliefs on their subjects regarding the standard for when such coercive imposition of beliefs is justified? The requirement of citizens' support for the conception of justice institutionalized by rulers would thereby be emptied of its ability to provide independent support of the legitimacy of the regime. Or rather, by filtering out only those political conceptions the affirmation of which cannot feasibly be imposed, it contradicts Rawls's implication that legitimacy is a requirement over and above feasibility.

Given the value of legitimate reasoned democratic support for a political conception in liberal public culture and the duly considered opinion of liberals, I assert, in the fashion of Rawls, that liberal public culture and the duly considered opinion of liberals takes reasoned acceptance but not imposed acceptance of a political conception on a people to be justified. Or more precisely, a prospective intent to impose liberalism through coercion is illegitimate, but the embracing by a people of a political settlement should not be gainsaid ex post facto. One should not gainsay the current views of a people because it would be just as illegitimate to impose an exit from liberalism as it was to impose an entry. A people can only ever start on their politically autonomous projects from where
they are.

It is one thing to say that, given a person's or a people's position of having been subjected to the effects of force, it is reasonable for them to accept a doctrine. Undoing those effects, reestablishing the *status quo ante*, may be impossible in some circumstances and undesirable in others given that it may involve more of the same sort of infringement of autonomy. It is another, very different, proposition, to say that it is reasonable to subject a person or people to the original force that violates their autonomy in order to coerce them to accept that doctrine.

Rawls clearly wants to be able to make sense of our reasoning in conditions of long-term subjecthood to a coercive state. In fact, his account of the historical development of liberalism through the gradual affirmation of liberal principles drains it entirely of the coercive elements due to power imbalances that were arguably in operation (see especially *PL*, 158–64). Political liberalism's affirmation of reasonableness under the conditions of coercion in the first sense above—acquiring new beliefs in coercive circumstances—does not commit it to the second proposition—that it is reasonable to coerce people in order to get them to accept political liberalism. Liberal democracy as an interpretation of political liberalism rejects the latter proposition. However, though the latter proposition is unjustified according to liberal public culture and the duly considered opinions of liberals, it is indeed required to justify liberal fundamentalism. For liberal fundamentalism proposes to use state coercion in a way that it sees as involved in producing the beliefs in a people that are required in order for it to be fully justified. Committed to seeing itself as reasonable, liberal fundamentalism must take its intent to
use coercion in inculcating the beliefs necessary for its own full justification to be reasonable. But since this crucial defining claim is unjustified according to the standards of political liberalism as we have just seen, liberal fundamentalism is itself unjustified.

This lack of justification for liberal fundamentalism, due to its unjustified reliance on coercing belief in itself, means that there is no justification for its liberal cultural coercion of the nonliberal behaviour involved in opposed peoples' nonliberal cultural practices. For this is the very method it uses to coerce belief in liberalism that distinguishes it from liberal democracy. To put the matter a different way, the fact that liberal fundamentalism has to rely for its justification on the effectiveness of its coercive vindication of liberal rights and principles to induce general affirmation of political liberalism illegitimately in an opposed people means that it cannot claim that that coercion is justified merely by the merit of vindicating those rights and principles. Since coercing belief in liberalism is illegitimate, the coercion of behaviour that is the manner through which this coercing of belief occurs is also illegitimate. And since it is illegitimate to use the physical and economic force involved in state coercion in ways that are not justified, in the absence of sufficient actual persons in a people affirming political liberalism, the use of state coercion to vindicate all and only the full panoply of liberal rights and principles is illegitimate. Claiming that the primary intent of liberal state coercion is to protect the interests of persons conceived as free and equal citizens, with the secondary, but not intended, effect of inducing them to believe in the merit of that conception, is thus not defensible. As a result, political liberalism is best interpreted as democratic, not fundamentalist.
Just as liberals view the often well-intentioned attempts of rival Christian sects in the European Wars of Religion to save each other from perdition as understandable though not necessarily excusable, so should they view the often well-intentioned attempts of liberal states to culturally coerce nonliberal peoples as understandable but not necessarily excusable. Conceding that persons or peoples who have been subject to liberal cultural coercion may become committed to belief in liberalism and unwilling to be coerced out of it is not equivalent to conceding that all successful past impositions of liberalism need to be forgiven without recompense. Even though a person or a people may now be committed to remaining who they have become through an act of successful brainwashing or cultural coercion, they may still have a valid claim to damages based on the ‘harm’ to their former selves. While the ‘harm’ seems less severe if they currently accept its effects as good, the wrong of an act is not necessarily determined solely by its effects in a particular instance. That wrongs are not necessarily dependent on the views of their victims is illustrated by the ability of legal systems to convict spouses of documented sexual assault even if the victim says she deserved the abuse or wants her partner to be found not guilty. More relevant to my concerns is that the means used by liberal states to culturally coerce peoples have often contributed to widespread social and personal breakdowns in the coerced populations today. For example, compulsory attendance of aboriginals in educational institutions that forbade use of mother tongues, and separated children from their parents, community, and training opportunities in the skills needed for occupations present in the community has often led to community breakdowns without general success in assimilating the younger generations into the
workforce or social life of the non-aboriginal, liberal community.\textsuperscript{14}

So regardless of whether a people that has experienced liberal cultural coercion has given up nonliberal cultural practices or adopted liberal values and practices, some compensation may be due that people. Myriad factors may influence the extent and form of appropriate compensation, such as the form of current injuries and recommended and desired ways of healing them; whether the cultural coercion was partly effected through dispossession of land; the benefits accruing to the coercing people, both intended and actualized, from the cultural coercion; and the extent to which the paternalistic coercive actions were unreasonable given the context of the time when they occurred and the contemporaneous views and reactions of the coercers and the coerced. Peaceable and just neighbourly relations in the future between liberal and nonliberal, or formerly nonliberal, peoples may be best advanced in some circumstances by reconciliation based on symbolic apologies for historical wrongs, payment of monetary damage claims for direct and vicarious responsibility for sexual and other abuse in state supported residential schools, and tangible support for such things as alcohol and drug treatment centres, family violence remediation, settlement of land claims, recognition of self-government claims, and institutional and individual capacity building to re-establish effective self-governance. The exact basis of reconciliation will vary with the circumstances of each case. A process of dialogue involving the liberal state and relevant parties over the way in which the members of the nonliberal culture experienced the wrong and the practices that its descendants use to right such wrongs can often be helpful.

\textsuperscript{14} See Armitage, \textit{Comparing the Policy of Aboriginal Assimilation}. 
Policies and actions to right historical wrongs by compensating surviving direct victims, families of identifiable individual deceased victims, and groups whose current relatively depressed socio-economic status can plausibly be related to those historical injustices need to take account of the possible wrongs of these new policies and actions on third parties, and even on those who continue to indirectly benefit from the wrongs of their ancestors and others. As with attempts to alleviate suspect patterns of differential success correlated with race and gender, the sources of which can plausibly be traced to unjust historical institutions of patriarchy, slavery, and overt discrimination, affirmative action policies to right the wrongs of historical cultural coercion need to take proper account of the interests of individuals who are not members of the historically wronged group.\textsuperscript{15} The passage of time and the reliance on the results of unjust historical acts and settlements, especially over generations, often result in the tragedy of conflicting meritorious claims that prevent idealized justice from being rendered today to all parties.

\textbf{§7.6 Considered Convictions and Actual Obligation}

The absence of consensus support for political liberalism, or at least its presuppositions, causes problems with the way Rawls shows that his hypothetical agreement is relevant to actual persons. This is so even if it is not an explicit feature of Rawls's theory that a certain proportion of actual persons in a society must affirm it in order for it to be justified.

Rawls writes that

\textsuperscript{15} Cf. Dworkin, \textit{Taking Rights Seriously}, 223-239.
So the hypothetical agreement reached in the original situation binds actual people because it convinces them through reasons based on shared premisses, or possibly through agreeing on common conclusions: “[p]roofs become justifications once the starting points are mutually recognized, or the conclusions so comprehensive and compelling as to persuade us of the soundness of the conceptions expressed by their premisses” (*TJ*, 581). Indeed, Rawls claims that “[n]o political conception could have weight with us unless it helped to put in order our considered judgments of justice at all levels of generality, from the most general to the most particular” (*PL*, 45).

Unfortunately, if most in a society do not share political liberalism’s considered convictions or conclusions, that is, if their all-things-considered view is opposed to Rawls’s, then Rawls has not shown they should take an interest in these principles, and political liberalism as such has no weight with these persons. Though some of Rawls considered political convictions may be shared by nonliberals, and parts of political liberalism based on these convictions may have weight with these persons, differences regarding other considered convictions required to justify political liberalism would mean that political liberalism as a whole does not have weight with them. Rawls recognizes the possibility of a difficulty along these lines:

Perhaps the judgments from which we begin [trying to reach a reflective equilibrium], or the course of reflection itself (or both), affect the resting point, if any, that we eventually achieve [and as a result there
may not be one unique set of principles of justice. It would be useless, however, to speculate about these matters here. . . . I shall take for granted that these principles [that characterize one person’s considered judgements] are either approximately the same for persons whose judgments are in reflective equilibrium, or if not, that their judgements divide along a few main lines represented by the family of traditional doctrines that I shall discuss (TJ, 50).

Given that this passage occurs in the context of theorizing within a society with a liberal public culture about a conception of justice for its domestic affairs, it is a plausible assumption that all in that society share considered convictions, at least to the extent of sharing convictions leading to one of the traditional doctrines for which Rawls offers theoretical reflection.16 Given this starting point, and assuming Rawls’s reasoning is sound, political liberalism’s affirmation and thus its actual realization in a society is to be expected:

Aristotle remarks that . . . men . . . sharing a common understanding of justice makes a polis. Analogously one might say, in view of our discussion, that a common understanding of justice as fairness makes a constitutional democracy. . . . My aim has been to indicate . . . that the principles of justice fit our considered judgments . . . . And since the theory of justice relies on weak and widely held presumptions, it may win quite general acceptance (TJ, 243–4).

However, once this context is removed, as when peoples whose public culture is nonliberal must also be considered, then it becomes unreasonable to assume such a commonality of considered convictions, or such a convergence of beliefs regarding justice.17 In a multipeople state that includes a nonliberal people, such commonality and

16 I use ‘theoretical reflection’ here in preference to the term ‘philosophical reflection’ in the passage quoted from TJ, 21 in order to reflect the later Rawls’s concern that philosophy itself can be an unnecessary source of division in political theorizing.

17 Migration of individuals from nonliberal peoples into liberal states challenges domestic liberalism to come up with arguments addressed to non-Western political traditions on pain of losing its ability to justify itself to all of its citizens. A just liberal immigration policy would need to take account of the arguably less coercive posture of a liberal state to new immigrants, even those forced to immigrate through dire circumstances not caused by the liberal state, as well as the interest of a liberal people in preserving its political culture with respect to claims of nonliberal persons to be admitted as immigrants. See Kymlicka, *Multicultural Citizenship*, index entries.
convergence cannot be assumed to exist. And when a common understanding of justice is missing, when a society is "partitioned with respect to the mutual recognition of its first principles... the binding action of the conception of justice [does not] take place" (TJ 582).

Care needs to be taken to avoid overstating this conclusion. If there are peoples whose members share enough considered convictions with Rawls, and the nonliberal political conceptions they currently affirm are modelled accurately enough by Rawls, then conceivably they would be convinced by Rawls's arguments, assuming the latter are cogent. By nonliberal peoples, I have meant peoples who, in an all-things-considered manner, have not accepted political liberalism, or some major aspect of it. But 'all-things-considered' cannot plausibly be taken to mean that all things that may possibly be relevant to take into account have already been taken into account, since this would require superhuman powers. Yet once 'all-things-considered' is construed more circumspectly, it becomes plausible that an 'all-things-considered' opposition to liberal doctrines in the absence of Rawls's arguments may turn into an 'all-things-considered' affirmation of political liberalism once Rawls's theory has been examined.

Nevertheless, many, perhaps the great majority, of peoples opposed to political liberalism in an all-things-considered manner before exposure to Rawls's work should be expected to remain so afterwards. For many do not share enough considered convictions with his account of liberal public culture, and many affirm political conceptions that they would not recognize in any of Rawls's characterizations of traditional Western political doctrines. Even if all peoples were to grant that Rawls's arguments live up to his own
characterization of their strength, that many of these are non-deductive and rely on judgements about which reasonable people may disagree means it is quite possible that some peoples will not find them convincing. Further, even if Rawls's arguments succeed against current articulations of the traditional alternative doctrines in the Western political tradition, these doctrines can be expected to rearticulate themselves in a manner similar to Rawls's rearticulation of the Kantian strain of the social contract tradition of liberalism.

Given that Rawls's work is available, it is reasonable to suppose in a discussion about the legitimacy of imposing political liberalism on opposed peoples that their all-things-considered view is one that has taken it into account. That is, it is fair for my purposes to take nonliberal peoples as peoples that are opposed to political liberalism in an all-things-considered manner, where that signifies opposition if political liberalism's arguments were themselves to be considered or to have been considered. And for nonliberal peoples so construed, political liberalism does not bind them according to Rawls's characterization of binding.

There may be senses in which a principle could be legitimate and obligate persons even when it did not bind them or have weight for them. But given Rawls's political approach to questions of justice, it is hard to see how political liberalism can make sense of a claim that a principle of justice obligated a person even though they were not bound by it and it had no weight for them. Even if persons in such a situation were obligated, still it would be illegitimate for the state to enforce coercively those obligations. For if "the application of substantive principles [cannot] be guided by judgments and inference, reasons and evidence that the persons they [the parties in the original position] represent
can reasonably be expected to endorse," then coercively applying these principles against these persons is illegitimate (PL, 225, see also PL, 217). But if some persons are not bound by a principle, and it has no weight for them, then it would be unreasonable to expect them to endorse any coercive application of it to themselves. Consequently, it would be illegitimate for a multipeople state including a nonliberal people to enforce coercively domestic liberalism’s principles of justice. Hence, liberal fundamentalism is not a good interpretation of political liberalism, and liberal democracy should be preferred to it.

This section has concentrated on showing that the dissensus in a multipeople liberal state including a nonliberal people regarding the considered convictions that Rawls uses in his theory of justice means that it would be illegitimate to enforce coercively justice as fairness against all of the subjects of that state. But it is worth noting that the problem identified by this dissensus does not remain on the edge of Rawls’s theory, that is, only where its implications are made manifest in the coercive actions of a state. Rather, it goes right to heart of his theory of justice, right to the original position, at least when his approach to political theorizing is given precedence over his substantive political judgements.

Consider that, for Rawls,

the question of justification is settled, as far as it can be, by showing that there is one interpretation of the initial situation which best expresses the conditions that are widely thought reasonable to impose on the choice of principles yet which, at the same time, leads to a conception that characterizes our considered judgments in reflective equilibrium. This most favored, or standard, interpretation I shall refer to as the original position (TJ, 121).

Were a people to have a nonliberal public culture, in other words, were its members’ considered judgements in reflective equilibrium not those of justice as fairness, then,
supposing they could be framed into an original position of some sort, that original
position would be unlike Rawls’s. As a result, such an original position can be expected
to yield a political conception other than justice as fairness. And in cases of dissensus
regarding considered judgements in reflective equilibrium, such as in multipople liberal
states including nonliberal peoples, one should expect that the effort to construct a unique
political conception of justice able to characterize all these judgements will fail. So only
when there is a common set of considered judgements on political topics, such as Rawls
assumes to exist in peoples with liberal public cultures, does Rawls’s political approach
to questions of justice yield determinate results for a society. These considerations
provide a different rationale for multipople liberal states not to impose coercively
domestic liberalism on a nonliberal substate people and thus to reject liberal
fundamentalism.

While liberal fundamentalism and liberal democracy both provide plausible
interpretations of the various levels of justification in Rawlsian liberalism, this chapter
has shown the importance of the reasoned acceptance of political liberalism by actual
people in a society to the legitimacy of any interpretation of political liberalism. In
addition, it has shown that having insufficient liberal considered convictions in a people
undermines political assimilationism’s ability to create actual obligations in nonliberal
peoples. Chapter 8 continues the argument that liberal democracy is a better
interpretation of political liberalism with a detailed examination of political objectivity in
the context of reasonable disagreements between peoples, and the dependency of a
freestanding political theory like political liberalism on a public culture that has not been
imposed.
Chapter 8 Liberal Fundamentalism versus Liberal Democracy II

Evaluating liberal fundamentalism and liberal democracy as interpretations of political liberalism involves determining which of them is better able to bring all relevant considerations and judgements into a wide reflective equilibrium. This chapter considers the relatively more abstract issues in this comparison of political objectivity and of the freestanding character of a political theory of justice.

§8.1 argues that even if liberal fundamentalism was justified according to its own lights, the political convictions it encompasses would not meet the criteria for political objectivity laid out in Political Liberalism, particularly regarding limits on the use of force in cases of reasonable disagreement. It addresses the question of the reasonableness that can be ascribed to peoples with cultures that violate minimum human rights or merely the standards of domestic liberalism.

§8.2 suggests that without higher levels of democratic support for fundamental changes in a society, that society’s public culture becomes merely the result of partisan victories due to coercion. Existing liberal public culture, and the due reflections of liberals, do not accept the legitimacy of plans to forcefully make partisan changes to public culture that are seen as illegitimate by the duly considered views of the preponderance of contemporaneous subjects of a regime. Political liberalism has a self-imposed requirement that it not be a mere partisan doctrine, which it aims to meet by
developing itself as a freestanding theory based on fundamental ideas present in the nonpartisan elements of public culture rather than from the elements of comprehensive doctrines. In cases where the fundamental ideas of political liberalism are not (yet) in a society’s public culture, political liberalism would abandon its freestanding character, and thus its legitimacy in its own eyes, were it to advocate such coercive partisan measures to establish the basis of its freestanding nature.

§8.1 Interpeople Political Objectivity and Reasonable Disagreements

§7.6 showed that even if liberal fundamentalism could be justified according to its own terms, according to its own account it would have no weight and would not be binding on peoples whose public culture was nonliberal. This section similarly shows that given political liberalism’s conception of reasonableness, liberal fundamentalism would not meet its own requirements for the existence of objective political reasons.

The first subsection shows how domestic liberalism’s conception of political objectivity relies on its conception of reasonableness, and how there can be reasonable disagreements about the appropriate conception of reasonableness for political matters. The next subsection argues that a difference between the contexts of domestic and interpeople justice allows a greater diversity of comprehensive doctrines to be reasonable in the latter than in the former. §8.1.3 uses Taoism to illustrate that the different life experiences of members of peoples with various liberal and nonliberal public cultures show that differences among peoples regarding conceptions of reasonableness, political conceptions, and political objectivity for domestic justice are reasonable. But since a
consequence of the burdens of judgement is that it is unreasonable “to use political power . . . to repress comprehensive views that are not unreasonable,” (PL, 61), §8.1.4 concludes that it is illegitimate for domestic liberalism to endorse its coercive imposition on other peoples. §8.1.5 argues against Rawls’s claim that political liberalism’s core doctrines are settled once and for all, and contends that peoples with nonliberal cultures provide benefits to interpeople liberalism similar to that which eccentric individuals provide in Mill’s domestic liberalism. The final subsection considers the reasonableness of liberal fundamentalism from the perspective of liberal legitimacy, and draws out the implication that liberal democracy is more justified than liberal fundamentalism.

§8.1.1 Political Objectivity and Reasonable Disagreement

Rawls’s account of when objective reasons exist (PL, 114f), politically speaking (PL, 119–25), meshes with his broader account of public reason (PL, 213ff) and the role of publicity (PL, 66f, 70f, 85f), and dovetails neatly with the political constructivism of his political liberalism (PL, 94). It provides an important basis for his practical attempt to side-step long-standing controversies not only in philosophy, but also morals and religion.

Several essential elements of objectivity are widely recognized, according to Rawls. First, “a conception of objectivity must establish a public framework of thought sufficient for the concept of judgment to apply and for conclusions to be reached on the basis of reasons and evidence after discussion and due reflection” (PL, 110). Second, since judgement “aims at being reasonable, or true, as the case may be . . . a conception of objectivity must specify a concept of correct judgment made from its point of view”
a conception of objectivity must specify an order of reasons as given by its principles and criteria, and it must assign these reasons to agents... as reasons they are to weigh and be guided by in certain circumstances. They are to act from these reasons, whether moved by them or not; and so these assigned reasons may override the reasons agents have, or think they have, from their own point of view (PL 111).

Fourth, a conception of objectivity must distinguish between the objective point of view and that of some particular agent or agents, at any particular time (PL 111). Fifth, a conception of objectivity must have "an account of agreement in judgment among reasonable agents" (PL 112). The sixth essential in Rawls's account is that disagreements in judgement among reasonable agents must be explicable. Political liberalism, for example, explains them through its account of the burdens of judgement (PL 121).

Clearly, different conceptions of objectivity that exhibit all six essential features exist. Rawls discusses three such conceptions that apply to political matters: his own political constructivism's, rational intuitionism's, and Kant's moral constructivism's (PL 110ff).

According to domestic liberalism's particular account of political objectivity,

[political convictions... are objective—actually founded on an order of reasons—if reasonable and rational persons, who are sufficiently intelligent and conscientious in exercising their powers of practical reason, and whose reasoning exhibits none of the familiar defects of reasoning, would eventually endorse those convictions, or significantly narrow their differences about them, provided that these persons know the relevant facts and have sufficiently surveyed the grounds that bear on the matter under conditions favorable to due reflection (PL 119).

I focus below on reasonable disagreement in which no narrowing of differences occurs, rather than other elements of political liberalism's conception of political objectivity for two reasons. First, it is more basic in the sense that there may be reasonable disagreement about what the other elements of political objectivity are.

Second, it is the element of political objectivity most directly associated with demarcating
the region in which coercion is legitimate.

It might appear on first glance that if intelligent, informed, conscientious reasoners under favourable reasoning conditions not making familiar mistakes of reasoning did not eventually endorse political liberalism's convictions, or significantly narrow their differences about the topics it addresses, then Rawls's political convictions would not meet his own criteria of political objectivity. A continuing undiminished dissensus on the principles of domestic justice among such reasoners in an actual society would seem to show that justice as fairness was not objectively correct, politically speaking. But this overlooks the importance of 'reasonable and rational' in qualifying the persons who are doing the reasoning: if the dissensus was caused by those who did not meet this qualification, then politically objective reasons could still exist according to domestic liberalism.

Domestic liberalism's detailed account of a 'reasonable and rational person' excludes persons who subscribe in an all-things-considered manner to nonliberal political doctrines. For example, anyone who rejects in the political domain that the basic liberal freedoms of conscience and thought have priority over conflicting conceptions of the good will not fit into this account, since it would see them as failing to properly recognize the burdens of judgement (cf. PL, 54–61). More generally, persons as agents who affirm comprehensive doctrines with political modules (PL, 12) that cannot support a balance of political values regarding constitutional essentials and matters of basic justice that political liberalism would take as reasonable (PL, 240–3) are taken to be unreasonable (PL, 247).
This exclusion of nonliberals from the account of reasonable and rational persons does not exclude persons whose comprehensive doctrines include political modules other than justice as fairness. Persons who refuse to affirm political liberalism, or justice as fairness, yet who affirm comprehensive doctrines with political modules that do not significantly depart from the doctrines of justice as fairness, can still be characterized as reasonable and rational by political liberalism (LP, 37). Millian comprehensive liberals would be an example. However, if a comprehensive doctrine advocates the use of state sanctions to create or maintain a social unity based on general affirmation of itself, persons affirming such doctrines would not be considered reasonable and rational by political liberalism (cf. PL, 37n).

The crucial point is that significant disagreement with justice as fairness after due consideration over constitutional essentials and matters of basic justice means that a person is not reasonable and rational according to political liberalism. So no reason that would lead a person to reject, say, domestic liberalism’s conception of the burdens of judgement for disagreements among citizens of the same jurisdiction, could meet domestic liberalism’s criterion of political objectivity.

In this way, Rawls makes it possible to claim that a small number of persons who accepted his account of persons as reasonable and rational could determine objective political convictions for a society in which they were greatly outnumbered, at least according to political liberalism’s own account of political objectivity. As a result, conflicting sets of political convictions may be simultaneously objective in the same society, at least according to their own lights, if they have different accounts of objective
political error and its causes. This would arise, for example, if two groups in society each
agreed among themselves on conceptions of reasonableness or reasonable disagreement,
but these conceptions differed between the groups, and each group held the other's
differences to be objectively erroneous.

The notion of reasonableness is a significant component of Rawls's account of
objectivity. We should expect that reasonable disagreements regarding the
characterization of reasonable disagreement will often lead to differences over the
classification of some disagreements as reasonable or unreasonable. That is, though some
reasonable disagreements about the characterization of reasonable disagreement will not
make a difference in the ostension of the class, others often will.

Suppose that each of a group of comprehensive doctrines has an associated
conception of reasonableness which it meets that is part of its conception of objectivity.
Suppose too that A affirms one of these comprehensive doctrines, including its set of
fundamental principles of justice, as the best available, and that B disagrees in favour of
some other. And suppose that the conceptions of reasonableness of the comprehensive
doctrines affirmed by A and B are X and Y respectively, and that A and B properly apply
these conceptions of reasonableness. If X and Y are the same, then both A and B will see
their disagreement over fundamental principles of justice as reasonable, or will not
disagree on this topic, depending on whether the conception of reasonableness allows for
reasonable disagreement in this area. Even if X and Y differ on the appropriate or best
conception of reasonable disagreement, both may lead to the same conclusions about the
reasonableness of many or perhaps all concrete cases of disagreements over fundamental
principles of justice. However, X and Y may differ in ways that lead A or B to see the other's disagreement over fundamental principles of justice as unreasonable, despite the other's view that his or her comprehensive doctrine is reasonable.

What this shows is that even if a comprehensive doctrine is classified as unreasonable by political liberalism, it may have a conception of reasonableness that reasonably disagrees with political liberalism's conception of reasonableness according to political liberalism's conception of reasonableness. Recall that reasonable grounds of disagreement include differences in the "whole course of life" and "total experience" of persons that shape "the way we assess evidence and weigh moral and political ideas," as well as differences which exacerbate the different judgements persons make when there are "different kinds of normative considerations of different force on both sides of an issue" (PL, 57). There may also be reasonable disagreements due to "conflicting and complex" evidence (PL, 56). All of these types of reasonable disagreement may come into play when determining a conception of reasonable disagreement. All of these reasonable grounds of disagreement are part of Rawls's burdens of judgement.

§8.1.2 Interpeople Political Objectivity

Differences in the contexts of interpeople justice and domestic justice may mean that a conception of political objectivity developed for domestic justice for a liberal people may not reasonably be applied unchanged for interpeople justice. Insofar as political liberalism's conception of political objectivity incorporates elements that are required in the domestic context but are not appropriate for the interpeople context, some adaptations are necessary if it is to be applied in the latter context.
Domestic liberalism's strategy for dealing with many issues of great import about which people are likely to be uncompromising is to privatize them in the manner of individual liberty of religious belief: "[f]aced with the fact of reasonable pluralism, a liberal view removes from the political agenda the most divisive issues, serious contention about which must undermine the bases of social cooperation" (PL, 157). But as the term 'reasonable pluralism' signals, this strategy assumes an underlying consensus about those things which political liberalism takes to be the basis of liberal social cooperation in the midst of a plurality of views about others (Rawls mentions religion, morals and certain political topics). Though this justification for 'privatization' can be applied to many topics, some issues at the basis of political liberalism for which a consensus is needed are every bit as divisive, but are not susceptible of the same treatment by political liberalism. Two such issues are the borders of a state's jurisdiction and the conception of justice according to which a jurisdiction arranges its affairs. Each person cannot make their own decisions on these matters.

In his domestic liberalism, Rawls is primarily interested in cases where different conceptions of objectivity overlap in their conclusions (e.g., variants of rational intuitionism can grant a kind of objectivity to the conclusions of political constructivism (PL, 114)). For this allows the comprehensive doctrines including these conceptions affirmed by different citizens of a single regime conceivably to be part of the overlapping consensus needed for it to be well-ordered by a conception of domestic justice. But while those within a single jurisdiction necessarily are subject to the same set of laws, different peoples can be subject to the laws of different jurisdictions.
Rawls's work on domestic liberalism emphasizes the differences in experience leading to differences in judgement between individuals that underwrite liberalism's protection of a private sphere for individuals regarding nonpolitical issues. The fact that not all political judgements about the basic structure can be simultaneously realized by a jurisdiction with its single basic structure implies that strategies like domestic liberalism's that treat a class of incompatible political judgements as unreasonable and deserving of containment may be reasonable within a single jurisdiction but not beyond. For in the interpeople sphere, more than one jurisdiction exists, and so what Rawls terms the basic structure can be arranged in more than one way at the same time by the populations of different jurisdictions. Each jurisdiction could institutionalize a different political conception without leading to the incompatibilities and impossibilities that would result from simultaneously institutionalizing all of these conceptions in one jurisdiction. Just because some political judgements are unreasonable and require containment within a liberal jurisdiction because they are incompatible with it does not imply that a similar containment of these political judgements is required in the interpeople situation, since different jurisdictions can simultaneously institutionalize different political conceptions, some nonliberal, for each of these jurisdiction's basic structures. So long as all jurisdictions meet the minimum requirements of interpeople justice, including those it places on acceptable domestic conceptions of justice, then there should be no difficulty with more than one conception of domestic justice being institutionalized simultaneously.

These are "relevant facts . . . that bear on the matter" (PL, 119) of interpeople justice. It follows, then, that when domestic liberalism is extended to deal with topics in the
interpeople domain, these facts need to be “surveyed . . . under conditions favorable to due reflection” (PL, 119) in order for political liberalism’s conclusions to meet its own account of politically objective reasons. Given that the subjects of different jurisdictions can implement different conceptions of domestic justice, it is reasonable to ‘privatize’ (in the manner of a private club or park) or localize the conception of justice for a jurisdiction to that whole jurisdiction. And if it is established that peoples have a right to jurisdiction over their own affairs, then it is reasonable to ‘privatize’ or localize decisions over conceptions of domestic justice to peoples.

Rawls himself points out in “The Law of Peoples” that different conceptions of domestic justice may be reasonable for different peoples even if they would be unreasonable for a liberal society (LP, 80, 78), so long as they can be part of an overlapping consensus on matters laid out by interpeople liberalism.\(^1\) As conceptions of domestic justice embody, implicitly or explicitly, conceptions of objectivity for political reasons, sometimes different conceptions of domestic justice may be expected to incorporate different conceptions of political objectivity. Conceivably some political conceptions may have an account of the essential features of objectivity that differs from Rawls’s, or provides a variant interpretation of some of its elements.\(^2\) Yet as most peoples

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\(^1\) Legal systems help explain how reasons about a topic can be both objective and conflicting. Different legal systems have varying views about whether a particular act occurring in their jurisdictions is a crime, yet often recognize the objectivity of other legal systems’ reasoning by adjudicating and enforcing their foreign laws in special cases.

\(^2\) For example, some might hold that when particular conditions are met, the point of view of a particular agent or group of agents just is the objective point of view on a political matter. Rawls’s own account of reasonable and rational persons whose thought is in wide reflective equilibrium comes close to this, at least when the matters under
have a record of a successful practice of shared reasoning, the conceptions of political objectivity in their political conceptions can be expected to meet the six essentials of objectivity mentioned above.

The conclusion of this subsection is that before Political Liberalism's account of political objectivity can be applied in the interpeople domain, it needs to accommodate the fact that different jurisdictions can simultaneously implement different conceptions of domestic justice. Yet if all peoples had a liberal public culture, then there would be few causes for reasonable disagreement among them regarding the best conception of reasonableness, domestic justice, or political objectivity if Rawls's arguments are all cogent. The next subsection show why, given the actual diversity of public cultures, reasonable disagreement among peoples on these matters is generally to be expected.

§8.1.3 Taoist Cognate of Reasonable Disagreement

Although a conception of reasonable disagreement is not the only element required for a conception of political objectivity, continuing disagreement that does not narrow under appropriate conditions of reasoning is one indication that politically objective reasons may not exist. An account of error due to unreasonableness is one way to show that politically objective reasons exist even in cases of such continuing disagreement, because it allows the disagreement to be attributed to that unreasonableness. Having dealt with how reasonableness should be construed in political liberalism, I will now turn to consideration are within the domain of the political. Similarly, orthodox Roman Catholics take the Pope's views to be infallible when he proclaims "by a definitive act a doctrine pertaining to faith or morals" (Lumen gentium, Vatican II [21 November 1964], 25, as cited in Catechism of the Catholic Church [London: Geoffrey Chapman, 1994], §891, 207).
showing that reasonable disagreements exist in the relevant cases. If successful, this will show that liberal fundamentalism’s principles endorsing liberal cultural coercion are not politically objective in the necessary instances.

It might be objected that showing the mere possibility of reasonable disagreements over what constitutes reasonable disagreement, as in §8.1.1, does not establish that any such reasonable disagreements actually exist. This subsection uses a Taoist contrast to a central aspect of Rawls’s conception of political objectivity to illustrate in detail that the possibility of reasonable disagreement regarding reasonable disagreement is not merely chimerical. Note that I am not seeking to show in this subsection that the Taoist conception is more reasonable for liberals whose life experience is formed in a non-Taoist public and background culture, but just that liberals in a Western liberal culture can see that they could have reasonable disagreements over this topic with those whose life experience is that of a Taoist culture. §8.1.4 then argues that relevantly similar disputes over conceptions of reasonable disagreement can be credited to many peoples with nonliberal cultures such as those described in §4.5.

In illustrating this reasonable disagreement over conceptions of reasonableness held by political conceptions, no attempt is made to articulate an exact analogue within Taoism of liberalism’s distinctive view regarding reasonable disagreements among citizens. Indeed, to insist on too close an analogue is to deny the possibility of reasonable disagreement about the character and role of reasonable disagreement in a political conception. Arguably, reasonable disagreement among individuals does not figure so centrally in Taoism’s political conception.
Nonliberal conceptions of objectivity regarding political matters have been practised in numerous societies with success. Their guidelines of public inquiry and rules for assessing evidence are very different from those Rawls outlines as governing public reason in domestic liberalism, and sometimes even the reduced standards of just consultation in interpeople liberalism. For example, in medieval Europe, disputes could proceed using Christian theological arguments, and after the Reformation disputes in Protestant countries like England could still proceed using specifically Protestant theological arguments such as those Rawls cites from Locke (*PL*, 145n). Other traditions have other ways of amassing and assessing support for political positions that depart more significantly from Rawls' liberal public reason, which articulates what may be granted to be the common sense of persons in contemporary liberal peoples. Despite such departures, I take as given that many traditions of objective reasoning about political matters meet Rawls' conditions for objective reasoning in political matters discussed in the previous chapter.

Consider, for example, the contrast between part of Rawls' second fundamental requirement of well-orderedness in interpeople liberalism and teachings of Lao Tzu in the *Tao Teh Ching*.\(^3\) perhaps the most important work of Taoism. Rawls says it is necessary in order for a regime to be well-ordered and legitimate in the eyes of its people that its officials be willing to demonstrate the sincerity of their belief that the state's injunctions are justified by a law guided by a common good conception of justice, which requires

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that they publicly defend this position in some minimal way. Taoism, by contrast, presents a philosophy of “pragmatic mysticism” (62–3, 97). Without pretending to present the subtlety, complexity, and internal coherence of Lao Tzu’s Taoism, one can still indicate three relevant points. First, far from being necessarily representable in an abstract rational theory such as political liberalism, Tao is inexpressible (37, 49, 62–3, passim). Second, rulers cannot justify a proper rule (which is inexpressible), and will end up hurting themselves and those ruled if they try to justify their ways (32, 36, 83, 85). By trying to justify themselves, rulers turn away from the path of Tao and induce those they rule to do the same. Third, sages help others by living according to Tao rather than accumulating learning, or showing others wisdom, knowledge or cleverness (56–7, 62–3, 96, 104). “He who knows does not speak. He who speaks does not know” (82). “Good men are not argumentative. The argumentative are not good” (115).

Interpeople liberalism’s just consultation hierarchy, which Rawls draws from Philip Soper’s work, would clearly require at least Soper’s minimal response from officials, namely, that officials respond at least to a specific normative challenge regarding the absence of normative justifications responding to other normative challenges. Yet in a Taoist culture the response would be at least as well known in the implicit background political ‘theory’ as rationales for individual rights are in a liberal state. Children of the

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Western Enlightenment⁷ can imagine such responses being expressed in action rather than argument. Whereas modernist liberal political theorists prize the efficacy of rational demonstration in convincing all well-intentioned others of what is right, Taoist political theorists prize the efficacy of right action in inducing right action among individuals more and less powerful than oneself, and similarly, among polities more and less powerful than one's polity. One respects others morally by acting rightly towards them, rather than justifying those actions to them.

Despite these important differences, there are also important similarities. Self-interested rule is not in conformity with the Tao. Rawls and Soper are opposed to it as well. Their requirement of just consultation is designed in part to prevent it. Interpeople liberalism's opposition to state expansion is also present in Taoism. And although self-effacing Taoist rulers would not mimic Soper's brusque admonition to radical dissidents to take an elementary civics course, any who passed a correlate of such a course in a Taoist regime would appreciate that Soper's response is improper according to Taoism.⁸

Even where there seem to be such uncrossable chasms between elements of political liberalism and nonliberal cultures, liberal public cultures may sometimes include analogous concepts to those stigmatized in non-liberal cultures.⁹ For example, the model

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⁷ See Immanuel Kant, "What is Enlightenment?" in Kant: Political Writings, 59: "[O]nly a ruler who is himself enlightened . . . would dare to say: Argue as much as you like and about whatever you like, but obey!"

⁸ Soper, A Theory of Law, 115.

⁹ See Ruiping Fan, "Confucian and Rawlsian Views of Justice: A Comparison," Journal of Chinese Philosophy 24 (1997), 427-56, for an analysis of how central liberal terms such justice have no single exact, or perhaps even adequate, correlate in the
of moral reasoning as universalistic and unconcerned with particular contingencies that Rawls incorporates into the original position in the form of the thick veil of ignorance is not the only one in liberal traditions. Although opposed in some ways to the Kantian programme central to Rawls's work, Western public culture incorporates a notion in its conception of justice that is necessarily uncapturable in rules with a universal form. This conception is present in the notion of equity and courts of equity in common law jurisdictions.\textsuperscript{10} It is found in Locke's defence of royal prerogative.\textsuperscript{11} And it can be traced back to Aristotle, who considers justice from the particular judgements of the equitable person to be superior to that from the application of a just law which, due to its universal form, may necessarily be over-simple due to the nature of practical affairs.\textsuperscript{12} Under Aristotle's model of "absolute justice" that incorporates the equitable,\textsuperscript{13} it is not necessary to exclude from consideration all particularities of circumstances in order to determine the normative basis for decisions of justice; indeed, such particularities are held to be able

Confucian tradition.

\textsuperscript{10} See e.g., George W. Keeton and L. A. Sheridan, \textit{Equity} (London: Barry Rose, 1987).

\textsuperscript{11} See John Locke, \textit{The Second Treatise of Government}, ed. Thomas Peardon (New York: Macmillan, 1986), ch. XIV, 91–6, where he defends "the power to act according to discretion for the public good, without the prescription of law and sometimes even against it" (92), which "is nothing but the power of doing public good without a rule" (95, italics removed).

\textsuperscript{12} See "The Nicomachean Ethics," in \textit{The Complete Works of Aristotle}, ed. Jonathan Barnes (Princeton: Princeton University Press, 1984), 2:1729–867, 1137a32-1138a2: "the equitable is just, but not the legally just but a correction of legal justice. The reason is that all law is universal but about some things it is not possible to make a universal statement which will be correct" (1137b11–1137b13).

\textsuperscript{13} Ibid., 1137b25.
to trump in practical reasoning whatever principles in universal form lead to inequity. This notion of equity is more general than an executive prerogative to pardon convicts, since it could also require the use of state force in cases not prescribed by existing law.

Rawls also recognizes the priority of equity in cases "when an exception is to be made when the established rule works an unexpected hardship" (TJ, 238). While this treats equity as a special case, something superadded to an otherwise adequate theory of justice, it is possible to imagine it being given pride of place. If one were to accept that all rules of law, however carefully specified, could not be guaranteed to be immune from equitable exceptions, then it might be reasonable to conceive of justice as requiring an evaluation of the equity of each case before a law could justly be applied to it. Suppose, in addition, that it is held that equity itself cannot be given an adequate verbal expression, because by its nature it deals with particular cases rather than universals that can be abstracted into a generally applicable verbal form from such particulars, or for some other reason. In this case, a view approaching Taoism's pragmatic mysticism begins to take shape in Western garb.

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14 It can be argued that equity is not adequately put into an verbal form if it is characterized as the actions of an equitable person, since determining that a person is equitable requires evaluating his or her actions to be equitable, which cannot itself be put into verbal form in the general case.

15 Dworkin's denial of Hart's claim that there is a fixed core of meaning to legal rules in addition to less certain penumbral cases could be pushed in this direction (see H. L. A. Hart, "Positivism and the Separation of Law and Morals," Harvard Law Review 71 (1958), 593, and Ronald Dworkin, Law's Empire [Cambridge: Belknap, 1986], 39–43, 419 n. 34). If one were to grant that legal, political or moral progress would lead to different legal results from an ideal Herculean interpretative effort at different stages in the life of a community for the same case, and that words had a constant meaning through these stages, or had meanings that changed in ways that could not be reliably correlated
Cultures other than Taoist ones may also respect their correlate of moral autonomy of subjects without engaging in rational moral discourse with them, and allow for adequate correction and innovation in the normative practices of the state in the eyes of subjects without explicit reasoned discourse between officials and subjects on those topics. Thus, rulers' excesses may lead to loss of honour, such as an Iroquois chief in centuries past being unable to find anyone to volunteer for his hunting or war party. Expressive dialogues and moral traditions come in many forms that do not accept political liberalism's reliance on and preference for abstract rational discourse to overcome deep divisions. Though establishing the superior coherence of Rawls's political theory may require the use of words, in some cultures actions may speak more loudly than such words. So nonliberal cultures may embody non-Rawlsian conceptions of political objectivity that reasonably disagree with Rawls's conception of reasonable disagreement. If so, then it would be unreasonable for political liberalism to use force in these instances.

§8.1.4 Non-Rawlsian Cognates of Reasonable Disagreement

However, perhaps not all nonliberal cultures have a sense of reasonable disagreement that would justify claiming they have a reasonable disagreement with political liberalism over Rawls's conception of reasonable disagreement. What can be reasonable about any conception of reasonable disagreement that allows involuntary human sacrifice or slavery, or undemocratic, theocratic governance? Two objections that might be made with the varying ideal interpretative results, then an analogue of Taoism's view of Tao's inexpressibility comes into view.

16 Though this culture also prized oratory in rightly defending one's honour and shaming those who failed to uphold the Great Law.
along these lines need to be distinguished. The first claims that any nonliberal culture that has not articulated a conception of reasonable disagreement that can be shown to disagree reasonably with Rawls's should not be held to disagree reasonably on this matter. The second claims that some alternative conceptions of reasonable disagreement, however articulately held by nonliberal people, are just unreasonable. Significant versions of it claim that all conceptions of reasonable disagreement that allow the minimum human rights on political liberalism's list to be violated unreasonably disagree with political liberalism's, or, more radically, all conceptions of reasonable disagreement that would grant primary political autonomy rights to substate peoples within liberal states likewise unreasonably disagree. Initial responses to these objections are developed in this subsection, some of which are developed in greater depth in the remainder of this section.

Consider the first objection. Many nonliberal cultures, such as Taoist and Islamic ones, have sophisticated theoretical accounts, linguistically expressed to a great degree even if they have inexpressible elements, of cognates of liberalism's conception of reasonable disagreement. Others do not, yet their stable systems of social cooperation over generations must be credited with at least a performatively affirmed cognate conception. These conceptions are successful at coordinating social behaviour, at least minimally, and their affirmation over generations undoubtedly arises from the experiences of the members of those cultures with those conceptions, experiences that differ from those of liberals living within liberal public cultures. Such differences in experience are a ground of reasonable disagreement according to political liberalism (see p. 246 above). So nonliberal cultures whose conceptions of cognates of reasonable
disagreement are not linguistically articulated should still be credited as reasonably disagreeing with liberalism’s conception of reasonable disagreement.

Further, in cases of liberal cultural coercion, arguments to conclude that the nonliberal people should accept political liberalism’s conception of reasonable disagreement, based on assumptions and reasoning moves acceptable to them, or that they could be imaginatively inspired to accept in an extension of their current horizons, have not (yet) been made to them. For a people facing liberal state coercion rejects that coercion in an all-things-considered manner. This implies that they are not unreasonable in the sense of obstinately refusing to draw a plain conclusion.

A number of arguments can be developed based on reasonable disagreements over the ordering of values (see p. 246 above) to show that disagreements between political liberalism’s conception of reasonable disagreement, on one hand, and nonliberal peoples’ cognate conceptions, on the other, are reasonable. In order for a cultural rule to exist, most members have to believe some normative standard calls for the behaviour required by the rule. A people’s all-things-considered opposition to liberal state coercion interfering with that behaviour also presupposes a normative background for such a judgement. This may include a cognate of the democratic legitimacy that liberal public culture views as significant that is necessarily present both for the existence of the cultural rule and the people’s opposition to liberal state coercion of it. As a result, even if some values recognized by political liberalism are articulated by the protection of human rights, the conflict between these values and the different values expressed in and protective of the cultural practice can lead to reasonable disagreement over their proper
ordering.

Surely, an objector could rejoin, the mere need to balance different types of values does not make any proposed balancing reasonable, and in the cases at hand human rights violators (and perhaps nonliberal substate peoples in liberal states) are being unreasonable. This underestimates the difficulty of determining which standards of reasonableness are reasonable for disagreements between incommensurable values\(^{17}\) in the absence of a consensus. And although it presumes it is obvious that human sacrifice, slavery, and other violations of political liberalism’s list of minimum human rights justify forcible intervention, §9.2 below shows that the consensus among peoples on this topic is exactly the opposite: to the extent that human rights can justify forcible intervention, peoples believe only political autonomy human rights qualify. And even if it is unreasonable to oppose forcible intervention in cases of grave human rights violations, and reasonable to support such intervention, it would be illegitimate to impose forcibly such a conception of interpeople justice according to its own liberal standards of legitimacy.

Charles Taylor’s paper “The Politics of Recognition” can be made to speak to both objections raised at the beginning of this section. While addressing whether every culture had produced cultural works worthy of inclusion in the academic canon, he endorsed “a presumption . . . that all human cultures that have animated whole societies over some

\(^{17}\) For a subtle and useful account of incommensurability, see Joseph Raz, *The Morality of Freedom*, index entries. For another fine account, and its deployment against Ronald Dworkin’s theory of law, see John Finnis, “Natural Law and Legal Reasoning,” in *Law and Morality*, eds. Dyzenhaus and Ripstein, 174–91.
considerable stretch of time have something important to say to all human beings."\textsuperscript{18}

Taylor believes

it is reasonable to suppose that cultures that have provided the horizon of meaning for large numbers of human beings, of diverse characters and temperaments, over a long period of time—that have, in other words, articulated their sense of the good, the holy, the admirable—are almost certain to have something that deserves our admiration and respect, even if it is accompanied by much that we have to abhor and reject. Perhaps one could put it another way: it would take a supreme arrogance to discount this possibility \textit{a priori}.\textsuperscript{19}

The presumption needs to be made good in each particular case, since there is no \textit{a priori} reason it must hold. Yet the determination of whether a culture has something of value for others requires, for sufficiently different cultures, a study of that culture sufficiently intensive to allow a hermeneutic fusing of horizons of meaning to take place. Such fusings of horizons can reshape the very concepts we use to make the evaluation, such as worth and importance and admirableness.\textsuperscript{20} This is true even when the fusing is understood in the weak sense of appreciating the other from their point of view, rather than the much stronger sense of necessarily coming to full agreement on all issues.

Peoples with societal cultures whose practices constitute grave human rights violations fall into this class of sufficiently different cultures with respect to political evaluations.

One of Taylor’s points is that amongst the achievements created by a variety of cultures, not all should be expected to be similar to liberal cultures’. To deny that Zulu culture has anything of value for European civilizations until Zulus have produced a


\textsuperscript{20} Taylor cites the German edition of Hans Georg Gadamer, Truth and Method, 2\textsuperscript{nd} ed. (New York: Continuum, 1975) on this point.
Tolstoy is to illegitimately require non-European cultures to measure up to specifically
Eurocentric standards of achievement. Whether one endorses or rejects it, liberalism’s
conception of reasonable disagreement, and its theoretical articulation by philosophers
such as Rawls, are undoubtably cultural achievements.

What is admirable in a culture may be intimately linked with what is abhorrent to
liberals in it. For example, the cultural achievements of classical Athens and Rome
depended on their systems of slavery. Tradeoffs between different values can easily lead
on Rawls’s view to reasonable disagreements. Even if disagreements over some value
tradeoffs are never reasonable within some communities sharing a conception of
reasonable disagreement for the question in dispute, nevertheless the cognates of
reasonable disagreement of many societies like ancient Greece and Rome can be classed
among those that reasonably disagree with political liberalism’s.

Accepting Taylor’s assumption that some standard of intercultural evaluation of
cultural achievements is possible, his presumption leaves open the possibility that there
may be nothing worthwhile or admirable for liberals in a nonliberal societal culture,
particularly the practices in one of its particular periods. It is also possible that nonliberal
cultural practices are ‘severable’ from what is admirable in a culture, in the sense that the
achievement may be preserved while the nonliberal practices, such as those involving
human rights violations, are eliminated. Taylor’s presumption would still hold in this
case. That is, until adequate investigations of the culture had taken place, one would risk
damaging or eliminating an achievement about which reasonable disagreement exists by
subjecting even a people with a human rights violating culture to war on the part of
liberal and decent peoples acting through a United Nations, ideally conceived.

Perhaps it is possible that even after an adequate fusing of horizons has taken place with all nonliberal societal cultures within nonliberal peoples, no cognate of political liberalism's conception of reasonable disagreement based in the human rights violating culture would be found in any. One may suppose that in no case where cultural practices are nonliberal or violate political liberalism's list of minimum human rights would a worthwhile cultural achievement be imperilled, or at least not one that would lead to reasonable disagreement over whether the threat to it undermined the rationale for forcible intervention to eliminate the culture's nonliberal, or minimum human rights violating, practices. Still, political liberalism would be unreasonable according to its own standards of reasonableness if it insisted on forcible intervention in cases of human rights violations. Admirable cultural achievements are not necessary to make it unreasonable to forcibly intervene in a people, as the arguments canvassed above before Taylor was introduced illustrate.

A possible objection to this line of thought is the following. Suppose black slaves and white slave owners in the American South before its Civil War were a single people, and suppose that this people had a cultural practice of slavery despite the fact that this was not historically the case. The objection is that the theory being advanced would not have supported Lincoln's war to prevent the South from seceding in order to maintain its institution of slavery. My reply is that I grant this is true in the hypothetical case. While the belief in the merit of slavery on the part of many slaves that would have been required for it to have been a cultural practice in this case mitigates slightly this difficult result, a
different light can be thrown on the case based on the experiences of other peoples that had practices of slavery. Violent civil war has not generally been necessary for peoples to put an end to their institutions of slavery, either before or after the American Civil War. It is not clear that even if the South had seceded that it would not have abandoned slavery later, possibly much sooner than the end of the Jim Crow era over a century after the war, and with less of a legacy of sharecropping. If there had been better statespersons in the years and decades before the war, the war might not have become inevitable, and slavery might have ended in some other manner less humiliating for Southern whites than the way it did, since the South had the majority of anti-slavery societies in the early 1830’s. If the South had of its own accord chosen to end slavery rather than been forced into it through a scarring experience, then the segregation and discrimination that has been the lot of Southern blacks for so long might not have been as bad or lasted as long. Some of the 4,742 US lynchings of coloured people between 1882 and 1968, mainly in Southern states,21 might not have occurred. In other words, even when one accepts that slavery is an abhorrent practice, it does not necessarily follow that war to put an end to it is the right policy.

§8.1.5 Reasonable Disagreements Between Peoples

Just as domestic liberalism’s account of political objectivity needed to be adapted to the interpeople sphere, a related modification needs to be made to domestic liberalism’s conception of reasonable disagreement to reflect the interpeople context. Given that

different jurisdictions can implement various conceptions of domestic justice, certain disagreements that are unreasonable in the domestic context become reasonable in the interpeople context. As domestic liberalism dealt only with reasonable disagreements between individuals subject to the same political conception, as is appropriate for a theory of domestic justice, its conception of reasonableness needs to be modified to account for this change in the interpeople context. Moreover, within the space provided by this change in reasonableness, differences in culture and public culture that lead to disagreements between peoples over the best conception of domestic justice can be shown to meet Rawls's criteria for the burdens of judgement. Given the differences in personal experience between members of different cultures, especially when these are due to differences in public culture, such as those that result from different conceptions of domestic justice having been institutionalized over long periods, the conditions of reasonable disagreement that Rawls identifies as the basis of the burdens of judgement may be satisfied for many disagreements between peoples over domestic conceptions of justice.

One of the burdens of judgement that leads to reasonable disagreement is that one's total life experience shapes how one assesses evidence and weighs moral and political values. This is linked to the general fact of reasonable disagreement in the peoples that are Rawls's concern:

in a modern society with its numerous offices and positions, its various divisions of labour, its many social groups and their ethnic variety, citizens' total experiences are disparate enough for their judgments to diverge, at least to some degree, on many if not most cases of any significant complexity (PL, 57).

While the scale and complexity of one's people can be important factors in determining the areas and extent of reasonable disagreement in that society, all aspects of culture have
an impact on one’s total experiences, and many may be politically relevant.

Consider disagreements about values in the public sphere, their relative weight, and the feasibility of social arrangements as these are reflected in disagreements over conceptions of domestic justice (PL, 57). When such disagreements are between members of different peoples and are rooted in their different experiences due to living in different cultures, and especially different public cultures, they can be reasonable even if a similar disagreement between members of the same people would not be. If one supposes merely that persons who have lived all of their lives in a nonliberal public culture might, other things being equal, find it a hard decision to choose the values realizable under liberalism in place of those realizable in their own ways of life, say, under the Ottoman millet system, then one of Rawls’s sources of reasonable disagreement has been illustrated.

But how, it might be asked, can it be reasonable to accept that the conclusions of persons in a society with a liberal public culture, whose reasoning is in wide reflective equilibrium, and who are reasonable and rational, are not also valid for individuals in other peoples? Persons are persons everywhere goes the objection, regardless of the people of which they are members. Is it not unreasonable, perhaps even inconsistent, to hold that different conceptions of domestic justice may be reasonable and even

\[22\] Regarding merely the feasibility of alternative arrangements, much less their desirability, Amartya Sen observes in Development as Freedom (New York: Knopf, 1999), 287, that “in societies in which antifemale bias has flourished and been taken for granted, the understanding that this is not inevitable may itself require empirical knowledge as well as analytical arguments, and in many cases, this can be a laborious and challenging process.”
objectively valid for different peoples, given persons’ common humanity?

It is entirely possible that Rawls would not want to grant that some differences of opinion based on the grounds he identifies as leading to reasonable disagreement are indeed reasonable. The possibly arbitrary nature of his sense of reasonableness can be seen from his discussion of abortion (PL, 243–4 n). While I would agree with him if he limited his conclusion to the claim that the most reasonable balance of the considerations at issue “will give a woman a duly qualified right to decide whether or not end her pregnancy during the first trimester,” he goes on to claim that any comprehensive doctrines that deny such a right except in cases of rape and incest are unreasonable and also cruel and oppressive. “[A]ssuming that this question is either a constitutional essential or a matter of basic justice, we would go against the ideal of public reason if we voted from a comprehensive doctrine that denied this right.” But some comprehensive doctrines that order the value of “due respect for human life” and interpret “the equality of women as equal citizens” in a way that only allows abortions in cases of incest or rape would seem to be reasonable even if they are not the most reasonable. On the policy continuum from allowing abortion on demand up until birth to outlawing any intentional death of the child from the moment of conception, even by IUDs, Rawls evaluates virtually contiguous places to be reasonable on the one hand, and unreasonable, cruel, and oppressive on the other. Unfortunately, he has not published the argument that leads him to these conclusions.

I suspect that part of Rawls's rationale may spring directly from a judgement that women's autonomy takes precedence over respecting human life that has yet to quicken: rationales for this judgement may not account for the full weight of the support it enjoys. Conclusions are, after all, allowed to provide support for their premisses in wide reflective equilibrium. Yet Rawls's approach to political and moral reasoning holds that the ability to give a coherent account that meshes with other related judgements renders a position more worthy of endorsement. So, likewise, I will advance reasons to justify persons who take domestic liberalism to be the most justified conception of domestic justice for themselves to also agree that other political conceptions may be reasonable for other peoples.

The later Rawls accepts as an insight drawn from Berlin that nonliberal ways of life can embody values recognisable by liberals but not realizable under liberalism \( PL, 197f \). I agree with Rawls and Berlin that there can be no social world without some losses of this type. I further grant to Rawls that "there is no criterion for what counts as sufficient space [for various forms of life] except that of a reasonable and defensible political conception of justice itself" \( PL, 198n \). Yet there may be reasonable disagreements about these matters: which space is 'bigger,' or whether 'more space' is better if it is 'less valuable space.' And in the interpeople situation, there are opportunities to expand the space available to individuals that are not present within a purely domestic setting.

The forms of life allowable under liberalism differ from those allowable under other political conceptions, and different allowable forms of life flourish and fail under each
political conception. As a result, providing peoples with the political autonomy to realize the conception of domestic justice they find most reasonable will tend, given the existing variation in political cultures between peoples, to produce a variety of "spaces" with a variety of collections of forms of life in each.

The political conceptions of different peoples may understand this variety in different ways. Some, like the Mill-inspired doctrine described in §6.3 above, may celebrate this collective diversity as a good in itself. Others, as the related Kant-inspired doctrine revealed, may view the divergence of some people's political conception from their ideal as regrettable, but recognize that the political autonomy of peoples implies that they must be allowed to make such mistakes. A third type might treat the principles concerning interpeople justice as a relatively independent module in its political conception. So, just as Rawls is able to show that a variety of the comprehensive doctrines of persons may affirm his domestic liberalism in different ways, so may representatives in the interpeople original position understand the peoples they represent as affirming any of a number of such reasonable political conceptions, all compatible with the acceptance of interpeople liberalism.

Arguments for endorsing such diversity in interpeople justice that are inspired by Mill's arguments for individual autonomy could be endorsed by a people with an overlapping consensus on domestic liberalism. Consider that some practices of non-liberal peoples that had not been part of liberal practice and had not been seen by liberal theorists as worthwhile up to a certain time nevertheless were incorporated into liberalism and later became part of its core. This arguably was partly as a result of the example of
non-liberal peoples, even if the practices as understood and as adopted by liberals were not exactly like the originals. For example, the lack of relative individual material poverty among Iroquois and other New World aboriginal peoples seems to have contributed to liberal concern for minimal material equality, and Iroquois equality of the sexes seems to have contributed to liberal feminism and equality between the sexes.\textsuperscript{24}

This suggests that some of the values of other peoples that liberalism is not accommodating now may turn out to be important for liberalism later, either in furthering an ideal of liberal progress or merely in accommodating to changing circumstances.\textsuperscript{25} Currently Western societies are, as a possible example, taking some traditional aboriginal peoples' practices as paragons of environmental virtue in contrast to the consumerist practices with their associated environmental costs of contemporary liberal societies. A concern to politically protect non-human elements of the environment from harms caused by humans may eventually become a core part of liberalism, even if Rawls is right in his belief that his contract theory cannot be extended plausibly to cover this matter.\textsuperscript{26}

Rawls believes the basic rights and liberties “can be specified in but one way, modulo relatively small variations” (\textit{PL}, 228). Yet when a political tradition comes to include new values in its core, other core elements generally have to be reshaped or jettisoned.

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\textsuperscript{24} For references, see above pp. 13 n. 17, 89 n. 10, 93 n. 19, 93 n. 20.
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\textsuperscript{26} The fourth problem of extending domestic liberalism to topics it does not address is “what is owed to animals and the rest of nature. . . . [T]hese ideas of justice . . . At best . . . yield reasonable answers to the first three problems of extension” \textit{CP}, 531. See also \textit{TJ}, 512: “it does not seem possible to extend the contract doctrine so as to include [considered beliefs regarding animals and the rest of nature] in a natural way.”
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depending on the case and how core elements are interpreted. For example, when labour
rights developed they impinged on the traditional liberal right to freely contract; when
concern for minorities developed in the wake of World War II, laws developed banning
hate speech against them; and recent concern for the interests of women who have
suffered sexual assault has led to changes in the traditional conception of the right to a
fair trial.\textsuperscript{27} There is little reason to suspect that would not be the case with environmental
values. If their expression supports just animal rights against cruelty, as one small
example, then the freedom of conscience of Orthodox Jews would arguably be affected.\textsuperscript{28}
Variations required by new circumstances, and especially by other new values that may
arise in the distant future, are impossible to foresee.

It might be objected that this assumes, inaccurately, that political liberalism may stand
in need of basic changes. Rawls, for example, holds it to be reasonable for certain matters
to be taken off the political agenda "once and for all." By questioning whether there is
"any real chance of a mistake" with regard to core issues like equal freedom of
conscience and slavery, and asserting that "we surely don't want to say: we take certain

\textsuperscript{27} Regarding labour rights, see \textit{Lochner v. New York} 198 US 45 (1905). Regarding
hate speech, see \textit{R. v. Keegstra} [1990] 3 SCR 697 (cf. \textit{RAV v. City of St Paul} 112 S Ct
2538 (1992) for US jurisprudence that differs from most liberal states on this matter).
Regarding the protection of therapeutic records even when they would be of use in
establishing the innocence of the accused in a sexual assault trial, see \textit{R. v. Mills} [1999] 3
SCR 668.

\textsuperscript{28} Kosher slaughtering requires a conscious, unblemished animal. While Orthodox
Judaism allows vegetarianism based on aesthetic or health reasons, it is opposed to
accepting it as a doctrine that those with a desire and appetite for meat have an obligation
to obey. See Rabbi J. David Bleich, "Vegetarianism and Judaism,"
http://www.innernet.org.il/archives/vegie.htm, reprinted from \textit{Contemporary Halakhic
matters off the agenda for the time being," he seems to imply that for political purposes his theory can be assumed to be infallible in its core doctrines (PL, 151–2 n).\(^\text{29}\) The "provisional fixed points" at the start of Rawls's theorizing (PL, 8) thus become entrenched in his domestic liberalism by its conclusion. Liberal fundamentalism expresses this in a broader form in its willingness to use force to prevent departures from itself, even in cases where it has lost the reasoned support of the preponderance of its population yet might possibly regain it.

When reshaping ceases to be a minor variation and becomes the displacement of one doctrine by another is a question that may have no clear answer. Still, one may suggest evidence that undermines the assumption of infallibility without advocating today on behalf of a specific possible future political doctrine that directly and completely contradicted one of these sample core doctrines. In this regard, it is worth emphasizing that slavery has had many institutional forms, not all of which included the most odious features that were salient in US slavery and the fight against it, and some forms of which included features advantageous to the slaves.\(^\text{30}\) Further, new property forms emerging in liberal states allow the knowledge, thoughts, and creative processes of individuals, central parts of Kantian and certain other conceptions of the self, to be owned by others. These

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\(^\text{29}\) Unless Rawls admits that these topics may be discussed as live issues in the public domain in addition to the background culture, then the "firm commitment" he envisions of citizens "about their common status" amounts to Mill's assumption of infallibility. See Mill, *On Liberty*, 19, 23.

\(^\text{30}\) Slaves in Islamic countries were often honoured, rich, and powerful. In places they established ruling dynasties. See *The 1999 Canadian Encyclopedia*, s. vv. "Mamluk or Mameluke," "Janissaries."
property rights over parts of selves allow owners to restrict liberties of those they partly own, including basic freedoms of expression and of association (in the form of future employers). While these forms of property owe most to the economic strand of liberalism best exemplified by Adam Smith\textsuperscript{31} though less prominent in Rawls, it is conceivable that they could be extended to form the basis of a new political theory including what many today would regard as an institution of slavery. Innovation might be said to require it, those worst off might be said to benefit, and the control by corporations over technological, literary, and artistic matters might be said not to affect the worth of individual’s core civil and political liberties ‘properly understood.’ It seems plausible that such a theory would merit public debate.

J. S. Mill thought that “Even progress, which ought to superadd, for the most part only substitutes, one partial and incomplete truth for another; improvement consisting chiefly in this, that the new fragment of truth is more wanted, more adapted to the needs of the time, than that which it displaces.”\textsuperscript{32} It is unreasonable to suppose that one can foresee all possible future circumstances well enough to determine that revisions to core elements of liberalism will never be necessary. Without denying that liberalism has many internal resources to respond to changed circumstances, and that individuals in liberal societies may generate new political ideas, the fact remains that nonliberal political traditions might now and in the future prove to be valuable resources for ideas that could alter domestic liberalism’s account of basic justice for the better.


\textsuperscript{32} Mill, \textit{On Liberty}, 46.
According to Mill, "to do justice to the arguments [for untrue doctrines one] must be able to hear them from persons who actually believe them, who defend them in earnest and do their very utmost for them." Even if they are wrong, confronting them would allow those holding truer doctrines to gain a proper understanding and livelier appreciation of the merit of their own views (cf. LP, 102). Similarly, those who affirm political liberalism may benefit from confronting nonliberals. When other societies have nonliberal practices that they affirm, this provides societal experience to draw on in advocating their beliefs that is different from, and likely more relevant than, the experiences of nonliberal individuals living within liberal social institutions. Nonliberal peoples may also pursue their own experiments in social living, and possibly prove through their experiences what liberals would otherwise not accept through mere argument. Rawls argues that the development of liberal religious toleration was a discovery of a new and worthwhile social form of this type: before the Reformation the possibility of social harmony among persons of different faiths was not known, and would have been improbable if posited.

Even if this argument is valid, it has not conclusively shown that the benefits of improvements to liberalism outweigh the drawbacks of allowing nonliberal practices to continue. The analogy between letting individuals pursue any action or lifeplan so long as others are not harmed, and letting nonliberal peoples maintain and develop nonliberal

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33 Mill, On Liberty, 36.

34 For a discussion of Rawls's historical inaccuracy on this point, see Kymlicka, Multicultural Citizenship, 162, 156–8.
cultural practices so long as they do not harm other peoples only goes so far. Mill condemned individual actions that would harm other individuals. This view can be extended to hold that the harm to individuals from nonliberal practices of nonliberal peoples is more important than the analogies between the autonomy of individuals and peoples. Without claiming to have proven that view is false, however, one can reasonably disagree with it.

Part of this disagreement could be based on a parallel between those who do not accept political liberalism and are coercively prevented by it from realizing their nonliberal conception of the good, and those who oppose and are harmed by nonliberal cultural practices, when the disagreements in rankings of values of liberty, equality, nonliberal religious beliefs and even life between liberals and nonliberals are recognized as growing out of their different life experiences. In both cases a majority believes it has sufficient reason to treat a minority in ways that may be violating the minority’s most basic and/or precious values without providing reasons acceptable to them. The unreasonableness of denying a liberal version of the value of life cannot be established legitimately to a societal culture with cultural practices of human sacrifice by coercively eliminating those who believe in those practices.

Given such reasonable disagreement by the preponderance of a people, the use of force to make the people affirm political liberalism is unreasonable because it does not accept the burdens of judgement. To put the matter in pragmatic terms, it is unreasonable to support a political conception that coercively attempts to (1) eliminate the practice of rival political conceptions, or (2) eliminate the cultural practices of peoples that may be
uniquely able to give rise to a political conception that could prove truer, or more useful, or that could be accepted as best at the end of inquiry into the question of the most appropriate political conception.

The claim that there is a single best answer to this question is not necessarily reasonable. Mill argues that individuals have a unique nature, and also that the political conceptions of different peoples ("stages of civilization" in his terms) provide contexts that are more and less conducive to different types of characters. Many nonliberal peoples are unopposed to the entry of new members. A diverse set of nonliberal peoples would allow some nonliberal individuals to better realize their individuality than if there were no non-liberal cultures. Given that Rawls recognizes that his liberalism does not allow all individuals to realize their conception of the good, emigration from Rawlsian liberal states to jurisdictions institutionalizing other conceptions of domestic justice more amenable to those persons' good may improve the justice of Rawlsian liberal states. While Rawlsian liberal states allow emigration to other kinds of liberal and hierarchical states, Rawlsian interpeople liberalism aims to eliminate states that do not conform to its minimum standards. Constraining all states to abide by liberalism's conception of acceptable principles of domestic justice can thus end up limiting the freedom of citizens of liberal states to realize their conception of the good.

Domestic liberalism is intended to address questions of political justice within liberal peoples (PL, 3). It aims to provide reasons acceptable to citizens of liberal regimes for affirming a political theory of justice. Yet even if Rawls's ideal of a people well-ordered by justice as fairness were realized, its citizens can reasonably hold at the same time that
other conceptions of justice are appropriate and provide objective reasons for political action for the members of other peoples. This might be due to variations in the circumstances of different peoples that can be shown to be politically relevant. For example, Rawls writes that experiences grounded in the history of one’s people may play a role at later stages of discussions in the original position: whether political precedent under the Westminster model of parliamentary supremacy, or judicial review on the American model of amendable constitutional rights, or judicial review on the German model of constitutional rights entrenched beyond amendment, are better schemes to protect basic rights and liberties depends to some extent on the public culture of a people (PL, 235 n).

An example more relevant to my purposes is that aboriginal peoples in Canada typically have a population ranging from hundreds to thousands in which personal knowledge of and interaction with a large proportion of the population is common, in contrast to the modern liberal regimes that Rawls focuses on which have populations several orders of magnitude larger, and greater anonymity. Smaller scale may allow more participatory and responsive political institutions than are possible in a large state, and preclude institutions that are bureaucratically over-burdensome at a small scale. Collateral differences would appear elsewhere in their basic structure. Smaller societies may also allow for the development and maintenance of a greater range of common beliefs, and even their evolution, with less coercion than is necessary at larger scales. So domestic liberalism’s proposed arrangement of the basic structure may not be appropriate for all peoples.
It is conceivable that divisions in a liberal people over the merit of views not included in Rawls's account of political liberalism might coincide with the division of that people into two. Were one of the rare births of a new people to occur within a liberal people, the considerations adduced in this section would still apply regarding the possible merit of a new political conception inconsistent with political liberalism. Domestic liberalism can properly justify the authority of a people to use the state to educate citizens and new immigrants, especially non-refugees, into the liberal virtues. But when the state has been unsuccessful to the extent of a new people developing that challenges its general authority to govern them, then this general authority has expired just as effectively in the case of a nonliberal new people as if the people had developed without disputing any aspect of liberalism but merely the unit of governance. Regarding either new people, the arguments in this section about the possible merits of evolutions in political liberalism not currently accepted would apply. True, the real possibility would exist in both cases that the new people was just adopting an illiberal political conception that it mistakenly thought was more justified. But political liberalism’s commitment to the equal political autonomy of peoples prevents the 'remainder' of the original people from coercing the new break-away people in ways that would be unacceptable towards other peoples for reasons already canvassed.

It is now time to sum up the last several subsections. How can the examples above be generalized and linked to the conclusion of §8.7.1 regarding reasonable disagreements over conceptions of reasonableness? The existence of a culture, which requires the achievement of successful co-ordination about normatively important matters in its
practices and beliefs, and the persistence of these practices and beliefs (allowing for their evolution) through a considerable period of time, illustrates that it has conceptions of reasonableness and objectivity (cf. *PL*, 120), even if they may be merely implicit, and possibly nonliberal. (Given the difference between cultures, it may be more accurate to speak of an analogue or cognate to political liberalism's conception of reasonableness.) Similarly, building on the discussions in §8.7.1 and §8.7.3 above, a political conception that has been stably practised over a significant period can be credited with a conception of reasonableness: some conception of what differences are allowable and desirable between individuals, how to deal with disagreements, what sort of differences deserve punishment, and how those punishments are determined and meted out can be attributed to every scheme of social cooperation. There may be inconsistencies between what the members of a group claim is reasonable and what their actions reveal they take to be reasonable in practice. Even within a single proclaimed conception there may be inconsistencies: for example, this thesis is aimed at removing some that may exist within the highly articulated political conception of political liberalism. Similarly, an actual political practice often reveals inconsistent treatment of relevant similarly cases. Nevertheless, from the more concretely manifested or articulated practices of social coordination in a group, such as the interrelated set of social rules that make up a culture, the constitution and laws of a jurisdiction, or the principles and methods of applying them specified by a theoretical account of a conception of justice, a more abstract notion of reasonableness (or an analogue of it) can be assigned to the group even if the group does
not itself explicitly articulate such a conception.\textsuperscript{35}

The examples identify states of affairs about which peoples with differing public cultures are taken to disagree. These disagreements over issues such as the political consequences to be drawn from a social goal of a clean environment, or the merit of adopting rules designed for persons in an anonymous society for a people that is a community, are not themselves disagreements over conceptions of reasonableness. Yet typically disagreements between liberals and nonliberals, or different sorts of liberals, will be related to disagreements over conceptions of reasonableness. Whether some persons’ concern for animal welfare trumps other persons’ concern for their relationship to God is a question that can divide conceptions of reasonableness (though persons agreeing on one conception of reasonableness may end up disagreeing over what it calls for in this case). The differences many nonliberal peoples have with domestic liberalism are similarly related not merely to disagreements over how to apply the same conception of reasonableness but over what conception of reasonableness is most appropriate for a domestic conception of justice.

Differences in experience due to different cultures, and more particularly to different public cultures, can provide grounds for reasonable disagreement among peoples not only over the best conception of domestic justice, but also over the appropriate standards of reasonableness for use in domestic politics, and even over the best conception of political objectivity. Differences in experiences between liberal peoples similar to those Rawls

\textsuperscript{35} Rawls mentions that a liberalism need not have its own explicit “reasonable idea of toleration” if all comprehensive doctrines in a society “provided such a view” (\textit{LP}, 16, emphasis added).
recognizes in the later stages of the domestic original position can thus affect the
reasonableness for nonliberal peoples of the general facts, model of a person, and other
aspects of the domestic original position that determine the principles accepted at its first
stage. The next subsection shows that coercion to eliminate such disagreements is
unreasonable according to political liberalism.

§8.1.6 Unreasonable Coercion

These reasonable disagreements among peoples affect when liberal state coercion is
legitimate. In order to show how, Rawls's conception of liberal legitimacy, developed for
the domestic situation, needs to be extended to handle interpeople interaction. While
legitimacy in domestic liberalism concerns the use of force by a liberal state against its
citizens, all of whom enjoy a liberal public culture, in the interpeople domain, liberal
states deal with other peoples, some of whom do not have a liberal public culture.

As noted above, domestic liberalism’s principle of liberal legitimacy is that

our exercise of political power is fully proper only when it is exercised in accordance with a constitution
the essentials of which all citizens as free and equal may reasonably be expected to endorse in the light of
principles and ideals acceptable to their common human reason. . . . Only a political conception of justice
that all citizens might be reasonably expected to endorse can serve as a basis of public reason and
justification (PL 137).

The first sentence of this quotation—domestic liberal’s principle of legitimacy as
such—incorporates domestic liberalism’s conceptions of reasonableness and political
objectivity. These conceptions are included not only in the word ‘reasonably,’ but more
fully in Rawls’s complex conception of ‘citizens as free and equal.’ Were this principle
of legitimacy to be imposed on a nonliberal people in a multipeople state, it would not
meet the condition set out in the second sentence. What is reasonable within a
multipeople state is not necessarily the same as what is reasonable for a single-people
state with a liberal public culture. Not all subjects of multipeople states can reasonably be expected to endorse justice as fairness. More generally, a political conception that builds premisses of domestic liberalism into its particular conception of political objectivity, is unreasonable when applied against other peoples who reasonably disagree with that political conception. An example would be the inclusion of Rawls's specifically liberal account of the burdens of judgement, interpreted as holding only between individuals in a domestic sphere. "Common human reason" (cf. PL, 137) suggests that peoples may reasonably disagree about conceptions of reasonableness and political objectivity, as well as the political conceptions of which they form a part.

Liberals hold that the use of state coercion to eliminate such reasonable differences among peoples is illegitimate. What Rawls writes with regard to citizens and their comprehensive doctrines in the domestic sphere applies equally to peoples and their political conceptions in the interpeople sphere:

Since many doctrines are seen to be reasonable, those who insist, when fundamental political questions are at stake, on what they take as true but others do not, seem to others simply to insist on their own beliefs when they have the political power to do so. Of course, those who do insist on their beliefs also insist that their beliefs alone are true: they impose their beliefs because, they say, their beliefs are true and not because they are their beliefs. But this is a claim that all equally could make; it is also a claim that cannot be made good by anyone to citizens generally. So, when we make such claims others, who are themselves reasonable, must count us unreasonable. And indeed we are, as we want to use state power, the collective power of equal citizens, to prevent the rest from affirming their not unreasonable views (PL, 61; see also LP, 16 n).

Liberal democracy provides the mechanism of primary political autonomy rights that can alleviate difficulties regarding disagreements over political conceptions and conceptions of political objectivity when these disagreements coincide with the boundaries of peoples, as they often will. While it may be reasonable to suppose, as domestic liberalism does, that all those living under a single political jurisdiction have to
find some common way of resolving their differences over the use of that jurisdiction’s coercive powers, this is not true of populations that do not form a single people.

Liberal fundamentalism holds that multipeople liberal states can use force to inculcate an affirmation of domestic liberalism in a people. Thus it holds that disagreements of substate nonliberal peoples with their multipeople liberal states over political conceptions and conceptions of political objectivity can be ignored when determining whether politically objective reasons able to justify such state coercion exist. Rather than acknowledging that it is unreasonable to expect all members of different peoples to accept a political conception and its conception of political objectivity that are derived from liberal peoples’ public culture despite any experiences they may have supporting other conceptions, liberal fundamentalism must hold that it is reasonable to disregard such views of nonliberal peoples and the experiences upon which they are based. This makes liberal fundamentalism unreasonable.

Rawls overstates his case when he claims that those who “insist on their beliefs also insist that their beliefs alone are true,” since some may only make the lesser claim that their beliefs alone are reasonable. Liberal fundamentalists could use this chink to object that they are reasonable on the narrow grounds that they do not make assertions of truth for their views, but only of their reasonableness for political matters. Rawls himself makes this lesser claim on behalf of all who affirm conceptions that are part of his overlapping consensus on political liberalism. Yet persons and peoples affirming political conceptions that cannot join in an overlapping consensus of domestic or interpeople liberalism may also make the same claim using their own conceptions of reasonableness.
But arbitrary conceptions of reasonableness are not reasonable for political matters; all
could equally make a claim denying others' reasonableness, that is, all citizens in the
domestic sphere, and all peoples in the interpeople sphere. Reasonable liberal
conceptions of reasonableness must recognize the sources of reasonable disagreement
that Rawls lists, and the political consequence that it is unreasonable to use force against
peoples who reasonably disagree on such grounds to prevent them from affirming their
not unreasonable views.

That political conceptions and their associated conceptions of reasonableness and
political objectivity differ between peoples thus provides a strong rationale for the
increased toleration that Rawls includes in his interpeople liberalism in comparison to his
domestic liberalism (PL, 78). This increased tolerance in domestic liberalism's extension
into the interpeople domain is supported by the fact that it reflects features of the public
culture of both liberal regimes and the current interstate system. It is also likely that
ineliminable reasonable differences regarding conceptions of reasonableness for domestic
politics contribute to Rawls's view that a world state is either unworkable or unjust.

I think it is plausible that the cultural practices for which I am advocating
toleration—ones which are held to be important to a national culture by its members and
which do not involve harming the members of other cultures—are all suitably linked to
values about which there can be reasonable disagreement, even when liberal political
conceptions view them as causing unjustifiable harm to individuals.

A summary answer may be given now to this subsection's animating question
regarding the justifiability in political liberalism for using force against peoples who
affirm nonliberal political conceptions, the unreasonableness of which does not "go all the way down" from the point of view of Rawls's theory of justice. Reasonableness requires respect for the burdens of judgement, and the burdens of judgement require no use of force against those who reasonably disagree. Yet differences in political conceptions among peoples that are rooted in cultural differences are reasonable differences according to Rawls's account of the burdens of judgement, so the use of force against those who reasonably disagree in these circumstances is unreasonable. Liability to state sanctions is limited by political liberalism to those who are acting unreasonably. Therefore it would not meet its own standards of reasonableness if it used force against other peoples' institutionalization of political conceptions that are not unreasonable. As a result, liberal fundamentalism must be rejected, while liberal democracy remains acceptable.

§8.2 Freestanding Liberalism and Partisan Public Culture

§8.2.1 Freestanding Theory and Fairness of Political Approach

A separate type of rationale for primary political autonomy rights for peoples springs from the harm that an imposition of political liberalism on a nonliberal people would pose to the freestanding character of political liberalism within that people. Domestic liberalism needs to forestall the criticism that it merely represents the views of a coalition of persons who affirm mutually compatible comprehensive doctrines, and who are willing to enforce coercively the coalition's view about political right against all comers. In order to claim, with justification, political authority over all persons in a liberal people, including those affirming comprehensive doctrines that it seeks to 'contain' or that it will
disadvantage. Domestic liberalism presents itself as a freestanding theory, not dependent on or derived from existing comprehensive doctrines affirmed by the members of the people, their forebears or successors. Were a single consistent theory to be derivable from the disparate ideas of some of those doctrines, and were it to attempt to base its legitimacy on their popular support, the theory would lack legitimate political authority in Rawls's view. For example, trying to secure an overlapping consensus by providing legal rights that would be "a kind of average" of what persons in the society needed to advance their current comprehensive doctrines would make the theory political in the wrong way (PL, 39).

Political liberalism, by contrast, attempts to rise above the fray of partisan, even if reasoned, debate among existing comprehensive doctrines in a people by eschewing them as sources for its political theorizing. It draws its fundamental ideas from liberal public culture (PL, 175; see also 8–9, 13–4, 25, 43). It is true that a political conception of justice does not merely replicate liberal public political culture, but organizes its elements "in a somewhat different way than before" (LP, 9). While public culture is "the shared fund of implicitly recognized basic ideas and principles" that provides the starting point for the development of a political conception of justice (PL, 8), a political conception systematically organizes, connects, and relates the basic ideas and principles with the object of finding a shared basis for settling on the most appropriate family of institutions to secure democratic liberty and equality.

Working from ideas in public culture and arguments addressed to all strands of its traditions allows Rawls's political liberalism to have a basis independent of any
comprehensive doctrines for the fundamental notions of his political conception of justice. In this way it aims to avoid dependence on the shifting fortunes of comprehensive doctrines in the popular mind, as well as unfair discrimination against some comprehensive doctrines, or those who affirm them (see p. 38 above). A result is that it puts "no doctrinal obstacles to its winning allegiance to itself, so that it can be supported by a reasonable and enduring overlapping consensus" (PL, 40).

§7.6 indicated how political liberalism’s strategy of drawing its fundamental ideas from liberal public culture and addressing arguments to all of the major traditions of public thought in that public culture ensured that political liberalism provided a reasoned basis for all to accept the political obligations that it recognizes. This section, by contrast, examines the character that liberal public culture needs to have to play this role (§8.2.3), and the legitimacy of coercively changing that public culture in order to give it the necessary character (§8.2.4).

In order to assess how the requirement that political liberalism be freestanding affects the legitimacy of attempts to coercively change cultural practices of societal cultures, it is necessary to investigate, as the next subsection does, the connections between such cultures and the public culture underwriting the freestanding character of political liberalism.

§8.2.2 Societal, Public, and Background Cultures

What exactly is the relation between a societal culture (see §3.2) and Rawls’s notion of public culture (§2.1)? Rawls contrasts the ‘public culture’ with the ‘background culture’ of a liberal society as follows:
public culture comprises the political institutions of a constitutional regime and the public traditions of their interpretation (including those of the judiciary), as well as historic texts and documents that are common knowledge. Comprehensive doctrines of all kinds—religious, philosophical, and moral—belong to what we may call the "background culture" of civil society. This is the culture of the social, not of the political. It is the culture of daily life, of its many associations: churches and universities, learned and scientific societies, and clubs and teams, to mention a few (PL, 13–4, italics added).

So drawing fundamental ideas from public culture rather than comprehensive doctrines means that they are drawn from the public political institutions and the public traditions of their interpretation, rather than from theories or practices that may have been present in the societal culture but were not a part of its public traditions. The political modules of comprehensive doctrines (of which political liberalism may be one), though not the rest of those doctrines, appears to be part of public culture. 36 This is consistent with Rawls's claim elsewhere that the development of his political conception is accomplished by abstracting from comprehensive doctrines to the common ground that can be the basis of an overlapping consensus (PL, 192).

Presumably non-liberal cultures may each also have a public political culture. Groups of them, for example, fundamentalist Islamic ones, may share a public culture in the same

36 This characterization, particularly the italicized phrase, leaves the impression that the political is excluded from the background culture. One problem with this impression is that a political conception is taken to be "a module, an essential constituent part, that fits into and can be supported by various reasonable comprehensive doctrines that endure in the society regulated by it" (PL, 12). But because comprehensive doctrines "belong to" (PL, 14) the background culture, the conclusion seems to follow that Rawls's political conception, for example, belongs to the background culture of any society which accepts it. But how can political conceptions belong to background culture if the latter is "not of the political"? One way to avoid ascribing such a contradiction to Rawls is to interpret the passage as referring to the non-political aspects of comprehensive doctrines. Rawls sometimes refers to comprehensive doctrines in this way (e.g., PL, 38). Another interprets it so that the contradiction dissolves: the political may be included in the background culture of a society because its non-political elements mean that it is "not of the political," that is, not purely political.
way that liberal societies share theirs, though the relationships between public and
background culture likely differ.

Rawls does not deny that the political and non-political are ever in tension (see PL,
30–1 for a discussion of the tension within an individual). Rather, he intends to assert the
relative independence of the political from the non-political, an independence which
allows a single political conception to be affirmed by people who relate it in various ways
to whichever comprehensive doctrine they accept from among the variety of reasonable
ones in the background culture.

Although Rawls specifically mentions only political institutions as part of public
culture when contrasting it with background culture, institutions in other spheres of
society are also part of public culture (cf. PL, 14). For example, though the idea of the
‘basic structure’ of society is drawn from the public political culture (PL, 43) and is the
initial focus of a political conception of justice (PL, 11), it refers to

- a society’s main political, social, and economic institutions, and how they fit together into one unified
  system of social cooperation from one generation to the next [that is,] the framework of basic institutions
  and the principles, standards and precepts that apply to it, as well as how those norms are expressed in the
  character and attitudes of members of society who realize its ideals (PL, 11–2).

So public political culture is not entirely independent of the social and economic
institutions and other parts of the background culture. Indeed, it is regulative of the latter
in important ways. As §4.5 showed, only a subset of all possible social and economic
institutions are conformable to a liberal political conception.

For example, while Rawls focuses on the standard questions of social justice in the
Western European tradition, he holds that a general theory of justice would determine the
“allocation among persons of certain rights and values” to deal with less standard cases,
such as cultural rituals like the "sacrifice of the first-born or of prisoners of war" (TJ, 58).

To the extent that the principles of justice of Rawlsian liberalism and its basic rights and liberties legitimate state coercion, those principles trump nonliberal cultural practices within a liberal people. Just as the social sphere provides the background culture of the public political culture, the "just background of that social world is given by the content of the political conception" (PL, 43).

So political liberalism conceptually divides a societal culture into two interpenetrating parts: a public (political) culture and a background culture. By drawing only on the public part of liberal societies in developing his political conception of justice, political liberalism admits that it starts from within a particular political tradition—the liberal one—yet it does not align itself to any of the strands of this tradition.

§8.2.3 Political Liberalism and Nonliberal Public Cultures

Domestic political liberalism can use liberal public culture as the basis of a freestanding theory able to arbitrate only among partisan positions within liberal society. For fundamental ideas drawn from liberal public culture and arguments addressed to the main traditions in liberal public culture only create a theory that provides reasons for those encultured into it. Liberal public culture does not provide a neutral, shared ground among political conceptions in liberal societies and those that are prominent in nonliberal cultures.

An example of a procedural bias in political liberalism is that it limits the contending political conceptions presented to the contractors in the original position to those that have been prominent in the public culture of Western liberal cultures (TJ, 122–3). While
one can imagine Rawls’s work being extended to show that rational contractors as he has
characterized them within what he characterizes as a reasonably laid out original position
would not favour political conceptions drawn from non-western political traditions, it is
not clear that such a piecemeal approach is fair to peoples with nonliberal cultures. For
both of these characterizations also derive in part from a conception of the person rooted
in Western liberal public cultures and not shared by the cultures all nonliberal peoples.
Any theory based on them would not stand free from the partisans in a contest between
liberalism and the political conceptions in nonliberal cultures. It would be analogous to
claiming a freestanding theory could be derived by explicitly drawing its fundamental
ideas from the political module of a single comprehensive conception.

One can imagine a theoretical program aiming to justify domestic liberalism
universally through the wholesale expansion of the supporting arguments of every aspect
of domestic liberalism so that they addressed all traditions in all societal cultures.
Whether such a program is realizable, and its results compelling to all peoples, including
those lacking traditions of political theorizing, is perhaps best seen in its result, as Rawls
says about political liberalism itself. If such a theory is ever presented, then it can be
examined to see whether political autonomy rights allowing other political conceptions
could be justified within it.

Lacking such a theory, or conceding its likely lack of success, one might think
Rawls’s theory could be saved by putting the onus on peoples with nonliberal cultures to
explain why they should not be bound by the results of domestic liberalism. But this is no
mere detail, since the structure of the theory, and its claim to bind peoples by its
principles of justice, is then no longer neo-Kantian but dialogical. Even if a theory with a form similar to Ackerman's that gives voice to actual humans, or a methodology similar to Friere's, is ultimately preferable to Rawls's political constructivism, the internal consistency and overall justifiability of political liberalism is not improved by stitching their work onto Rawls's like an appendage. 37 Similarly, it would be a mistake to try to avoid making political liberalism dependent on dialogues with all nonliberal cultures, including those that may develop, by analysing in a Habermasian way the performative restrictions on what these peoples could say. 38 Whatever the merit of such alternative theories, and despite their being echoed by elements such as public reason within political liberalism, the distinctive way that Rawls develops and justifies his theory is not amenable to quick and easy modifications along these lines.

This is not to criticize the usefulness of Rawls's theory of domestic liberalism in addressing the aim he set for it: "In justice as fairness the aim is to work out a conception of political and social justice which is congenial to the most deep-seated convictions and traditions of a modern democratic state [in order to] resolve the impasse in our recent political history" (PL, 300). His focus is on developing principles to cover the basic structure of such a society. "In justice as fairness the principles of justice are not suitable as fully general principles: They do not apply to all subjects, not to churches and


universities, or to the basic structures of all societies, or to the law of peoples” (LP, 46).

As §4.5 illustrated, the cultures of some of substate peoples within liberal states reject important elements of political liberalism’s principles of justice. It is likely that these cultures do not contain the fundamental ideas that political liberalism draws from liberal public culture. In this circumstance, the arguments that support applying domestic liberalism’s principles to peoples with liberal public cultures do not justify these states applying domestic liberalism against all their substate peoples. Domestic liberalism’s arguments justifying coercion only legitimate state force within liberal peoples’ domestic affairs. The relations among the peoples in each of these states therefore need to be governed by interpeople liberalism, with its greater tolerance for variations in the principles of justice governing a people’s domestic affairs.

It might be thought that a subset of the elements that political liberalism draws from liberal public culture exists in all domestic public cultures, and that this subset is able to function as a bootstrap by which the rest of the theory could be developed and justified. (This treats Rawls’s statements that he draws from liberal public culture fundamental ideas such as that of a citizen as a free and equal person (PL, 14) as extraneous to the justifiability of the theory.) Plausible candidates for these core claims of political liberalism from which its fundamental ideas could be developed are the general facts that are allowed into the original position, especially the fact of reasonable pluralism. It holds that “a plurality of conflicting reasonable comprehensive doctrines, both religious and nonreligious . . . is the normal result of the culture of . . . free institutions” in liberal democracies (LP, 124; cf. PL, 36). Combined with “the fact of oppression” that “a
continuing shared understanding on one comprehensive religious, philosophical, or moral doctrine can be maintained only by the oppressive use of state power" (PL 37), and the fact "that an enduring and secure democratic regime . . . must be willingly and freely supported by at least a substantial majority of its politically active citizens" (PL 38), one might seem to have the basis of an argument for liberalism. Or at least the beginnings of such a basis, since the notion that citizens should be equal is not yet available.

It is not clear that any of these general facts are available to be drawn from all nonliberal public cultures. To the extent that they are, the traditions of interpretation may lead to the first being taken as a reason for rejecting free institutions, or the second to lack a pejorative meaning for 'oppression.' In other words, the project of using Rawls's theory to provide a reasoned basis for social cooperation acceptable to an overlapping consensus of citizens has difficulty getting off the ground for peoples lacking a liberal public culture even minimally construed. At the least, further arguments are required than those it supplies in order for it to have any reasonable prospect of convincing all nonliberal peoples to adopt liberalism.

Similar arguments can be made with respect to an extension to substate peoples of the arguments Wendling makes regarding non-national cultures.39 Wendling's argument is based on the ideas "that some form of state neutrality is a good thing for competent adults [and that] citizens in a pluralist society must practice at least nominal tolerance toward each other." These are complex, high-level ideas solidly present in liberal public culture that bear the form of 'conclusions' in Rawls's theory rather than of 'assumptions.' For

39 Karen Wendling, "Child Rearing in a Pluralist Society."
example, state neutrality is derived from arguments based partly on the fundamental ideas of citizens as free and equal and society as a system of cooperation drawn from liberal culture. Nevertheless, these ideas provide warrant for Rawls's theory in liberal cultures due to liberals' attachment to these practices. They are not present, however, in the public culture of nonliberal substate peoples, at least in the sense of claims that can provide warrant to an argument. This makes them unsuitable for binding persons, or providing the basis of a freestanding political theory, especially in the absence of additional arguments that address the nonliberal conceptions of reasonableness accepted by these peoples. Given the way that political liberalism's conception of reasonableness reflects these ideas, my arguments regarding reasonable disagreement over conceptions of reasonableness would be quite relevant in addressing such an extension of Wendling's arguments for domestic liberalism to nonliberal substate peoples.

While liberal fundamentalism would take solutions to recent problems regarding the basic structure in modern liberal states that are designed to be congenial to their liberal cultures and impose them on unwilling peoples with nonliberal cultures, liberal democracy would respect the different conceptions of political objectivity and their basis in the cultures of different peoples. The latter is a better interpretation of political liberalism, since it more appropriately incorporates factors regarding differences between peoples, when extending domestic political liberalism to the interpeople domain.

§8.2.4 Partisan Imposition of Public Culture

But perhaps a liberal fundamentalist would respond by saying that it is possible through the use of force to make the public culture of any people into a liberal public
culture. In order for public culture to be able to play its role as the fount from which a freestanding liberal theory may draw its fundamental ideas, however, it cannot itself merely embody a partisan position representing a coalition of mutually compatible comprehensive doctrines and their associated goods. If, for example, the public institutions of a people have been imposed on them through a military victory, and those institutions have not consolidated support for themselves among the vanquished portions of the populations, then the public culture in its institutional embodiment itself represents an issue in an existing partisan struggle. Opposition to liberal public institutions in this case—say, opposition to rule by an imposed democratic government rather than by a religious leader—is qualitatively different from the struggles Rawls characterizes as between different traditions of interpretation of liberal institutions. Struggles over the best interpretation and future evolution of liberal institutions when all agree upon liberal fundamentals are not the same as struggles over whether such institutions should exist. The former but not the latter can presuppose a broad fundamental agreement on and support for the public institutions of a society enjoying a constitutional consensus on liberalism.

Public culture may not represent a neutral or non-partisan source of fundamental ideas. Ideally, the latter should be beliefs that came to be accepted by all through reason (see §8.5), and which as a result ceased to be the foci of partisan struggle and thus joined the public culture shared by all. At a minimum, however, these beliefs need to be shared widely now whatever their causal origins. For it is unreasonable to suppose that an intent to impose a new public culture on a people would, so long as it might succeed in
becoming established, provide the nonpartisan, neutral basis upon which the very legitimacy of that intent and its goal were judged. Were a partisan position, such as a political conception unshared by all, to attempt to win its struggle against its rivals by deliberately setting out to change the public culture through force against the will of its opponents, then no resulting changes in public culture could be considered as independent bases from which to arbitrate the original dispute. The freestanding nature of political liberalism depends on the public culture from which it draws its fundamental ideas being the actual public culture of a people, not a possible future public culture that is composed of elements of doctrines that have only been institutionalized and accepted because of anticipated partisan victories due to coercion. To rely on partisan coercion possibly being successful in order to create the conditions in which that coercion would be freestanding and nonpartisan is to be inconsistent and unreasonable.

To summarize, an intent to coercively impose a new public culture in the absence of having established such a reasoned basis for that intent in the existing public culture is incompatible with political liberalism's conception of itself as a legitimate, freestanding theory based on reason. Even though the new public culture, when and if established, could play such a supporting role for the freestanding nature of a fundamentalist liberalism, lacking a current basis in the actual public culture means that it would not be freestanding now, nor consistent with its own standards of legitimacy.

As liberal fundamentalism endorses such an action, it is inconsistent and does not partake of the political authority enjoyed by a freestanding theory. Because liberal democracy does not advocate such partisan imposed changes in public culture, it is a
better interpretation of political liberalism on these grounds. So political liberalism should not be interpreted as specified by liberal fundamentalism, but rather by liberal democracy. It therefore requires a preponderance of actual persons in a people to accept the basic elements from which the theory of domestic liberalism is elaborated before state force can legitimately be used to uphold its liberal principles. Yet liberal cultural coercion of a strongly opposed nonliberal people would entail violating this requirement of legitimacy. But if liberal democracy takes liberal cultural coercion of peoples to be illegitimate, then it supports primary political autonomy rights for peoples. Thus even the promotion of vigorous laws, interpreted as the institutionalization of domestic liberalism wherever legitimate, leads to support for primary political autonomy rights for peoples.

Chapters 7 and 8 have focussed on the conditions required to justify a liberal state culturally coercing a nonliberal people in order to evaluate whether liberal fundamentalism or liberal democracy was a better interpretation of political liberalism. At each step, liberal democracy was supported over liberal fundamentalism. It was concluded that political liberalism requires most actual members of a people to be actually amenable to accepting the premisses and arguments of each step in the evolution of a society’s public institutions towards an overlapping consensus on liberalism. Reasoned acceptance of political liberalism is incompatible with an intent to coercively impose the beliefs necessary to claim that the acceptance is reasoned. Without such reasoned acceptance, the hypothetical contract in the original position would not bind the members of people to conform with its principles. Indeed, in cases where a liberal state has an opportunity to culturally coerce a people with nonliberal cultural practices, no
decision to undertake such coercion meets political liberalism's standards of political objectivity because of the reasonable disagreement that exists between peoples. Finally, when an interpretation of political liberalism advocates the coercive creation of a public culture to suit its partisan purposes for justifying itself to itself, it ceases to be a freestanding theory worthy of affirmation by free and equal liberal citizens seeking a fair theory of justice. Even in cases of cultural practices of nonliberal peoples that liberals find abhorrent, cultural tolerance is justified.

So the purpose of promoting vigorous laws in the sense of domestic liberalism's vigorous laws leads to the conclusion that primary political autonomy rights are justified for peoples within nonliberal cultures within liberal states. Chapter 6 concluded that the purposes of reducing civil unrest and despotism caused by peoples seeking political autonomy also supported such primary political autonomy rights. So all three purposes drawn from Rawls for having many states rather than a single world state support primary political autonomy rights even for peoples with nonliberal cultures.
Chapter 9 Cultural Coercion in Interpeople Liberalism

§9.1 Introduction

The previous two chapters used the willingness to coerce a people in order to instill belief in domestic liberalism as the basis for a distinction between liberal fundamentalist and liberal democratic interpretations of political liberalism. However, even among liberal democrats who accept that coercing peoples for this purpose is unreasonable, some may believe that state cultural coercion may be justified for a more circumscribed purpose, namely, the protection of Rawls’s minimum human rights. Coercion to vindicate minimum human rights everywhere can arguably be more easily justified than coercion to vindicate domestic liberalism everywhere.

Rawls specifies that these human rights are part of the minimum content of domestic justice affirmed by all well-ordered peoples in interpeople liberalism. The willingness to coerce a people in order to instill belief in such human rights is the basis of this chapter’s distinction between two forms of liberal democracy, namely, human rights fundamentalism and human rights democracy. I choose these terms, rather than, say, interpeople liberal fundamentalism and interpeople liberal democracy, since I am not discussing the use of force to impose belief in all of the doctrines of interpeople liberalism. Only the use of force to protect human rights (and inculcate an affirmation of their value), and not, say, the prohibition on the use of force to acquire more territories
and peoples for a state, is at issue.

Recall that Rawls claims in "The Law of Peoples" that grave violations of his list of minimum human rights justify rights of liberal and other well-ordered states, when acting through a multilateral body like the UN (ideally conceived), to go to war and to apply economic sanctions (LP 73, 55; LP, 36). This claim can be quite plausibly interpreted as endorsing some liberal cultural coercion in interstate relations in order to vindicate any of the rights on Rawls's list of minimum human rights that are being gravely violated. Hence, human rights fundamentalism has some textual plausibility as an interpretation of Rawls's thought.

The arguments of Chapters 7 and 8 were framed broadly enough to support liberal states culturally tolerating substate peoples that violated minimum human rights. But those general arguments would not apply if there was a consensus among all peoples on Rawls's specification for the minimum content of a Law of Peoples, and its coercive enforcement. For example, the presumption that peoples with nonliberal cultures opposed in an all-things-considered fashion the coercive enforcement of minimum human rights standards would be false. More generally, there would be no need to impose a conception of reasonableness or public culture, and so no threats would arise to the political objectivity or freestanding character of political liberalism. In other words, an argument that imposing belief in a specific coercive human rights enforcement regime is wrong gains no foothold in conditions where all already believe in that regime.

This chapter rebuts the suggestion that a consensus exists among peoples favouring coercive enforcement of all the minimum human rights on Rawls's list. Shifting from
philosophy to provide an empirical premiss for philosophical arguments. §9.2 shows that interpeople public culture in the form of international law and the practice of states holds that actual peoples are beginning to favour the coercive enforcement of peoples' human rights to political autonomy, but not of individual human rights outside of this context. This shows that peoples' actual conceptions of reasonableness do not for the most part allow such coercive enforcement of human rights in other contexts. Arguments in the previous chapter regarding the reasonableness of other conceptions of reasonableness, reasonable disagreement, and the need for a freestanding theory to be independent of an imposed partisan public culture, can thus show that liberal cultural coercion to get rid of human rights violations is unjustified in a Rawlsian framework. As a result, interpeople liberalism is best interpreted as human rights democracy rather than human rights fundamentalism.

§9.3 approaches the question of the desirable and allowable diversity of domestic conceptions of justice countenanced by a conception of interpeople justice from a more theoretical and less empirical perspective. It suggests a ground for domestic liberalism's general "fact of oppression" in other aspects of Rawls's theory of domestic justice (PL, 37). This result is then used to develop an analogue in the interpeople domain of the domestic general fact of oppression. Human rights fundamentalism would be rejected by the parties in the interpeople original position as a result of this interpeople general fact of oppression.

§9.4 provides some concluding reflections on the thesis.
§9.2 Interpeople Public Culture

Although Rawls relies on empirical evidence that liberal states loosely defined do not go to war against each other in order to justify his theory of interpeople liberalism, he does not provide empirical justification for the idea that wars and economic sanctions are generally effective means of ensuring compliance with his list of minimum human rights (LP, 51–4). While wars are relatively well-suited instruments for establishing new states or state boundaries, or for toppling a foreign government unpopular with its subjects, they are less suited to changing a people’s cultural practices. Indeed, given the killing, maiming, terror, food and water shortages, and destruction of property involved in wars, wars to stop human rights abuses may achieve the opposite of their intended effect on innocent parties, at least in the short run.

If violations of Rawls’s minimum human rights by noncompliant regimes are ‘grave,’ a qualifying term Rawls does not define, then he believes international organizations such as the UN ideally conceived should have a right to go to war against or to apply economic sanctions against the violator regime. Depending on how ‘grave’ is interpreted, this provision of interpeople liberalism may allow sanctions to be applied.

\footnote{Rawls’s suggestion that one can pick out certain articles as identifying human rights for coercive enforcement while rejecting others in the same UN instruments (LP, 227–8) belies the extent to which international agreement on those documents is dependent both on them being compromise documents, and on them not being used as the basis of military intervention. The General Assembly resolution, \textit{Strengthening of United Nations Action in the Field of Human Rights} (3 Mar. 1997), UN A/RES/51/105, condemns such a selective approach to human rights enforcement, and specifically denounces using one kind of human rights violation (economic sanctions which violate, \textit{inter alia}, a human right to development) to respond to other purported violations of other kinds. Upping the ante from economic sanctions to war, as Rawls proposes, would likely meet with even stiffer interpeople opposition.}
against non-liberal cultural practices (see §§4.5.3–5). A fundamentalist interpretation regarding human rights is that violations of any of these minimum human rights can be grave enough to justify war or economic sanctions. If some cultural practices systematically violate these rights, then human rights fundamentalism supports cultural coercion against peoples containing those cultures. A democratic interpretation regarding human rights, by contrast, is that only one of these human rights, namely, the right to be free from forced occupations, independently meets the requirements for giving rise to a right to a war, and thus is the only one whose violation should be taken as grave on Rawls’s use of this term in “The Law of Peoples.” This section will show why this right does not give rise to cultural coercion, and should be interpreted democratically.

Rawls writes that the role of human rights in his theory “connects most obviously” with international law’s tendency since World War II to define limits on a state’s right to internal sovereignty, “though it is not unconnected” with restrictions on a state’s right to wage war, the other major change in international law in this period (LP, 49; cf. LP, 27). Though he leaves “aside the many difficulties of interpreting these rights and limits,” he believes it “is essential that our elaboration of the law of peoples should fit—as it turns out to do—these two basic changes, and give them a suitable rationale” (LP, 49, emphasis added; cf. LP, 27). Despite appearances to the contrary, if it is essential that political liberalism fit the changes in international public culture in these two areas, then it is best interpreted as human rights democracy. For human rights fundamentalism does not accurately fit the actual changes that have occurred. The focus of this section is thus on the content of international law as a proxy for international public culture and the
views of actual agents in the interpeople domain. By showing that the preponderance of actual peoples do not subscribe to state cultural coercion to vindicate the minimum human rights that Rawls defines, the arguments against the forcible imposition of political liberalism developed in Chapters 7 and 8 for the domestic sphere can then be applied mutatis mutandis in the international sphere.

While there has been a great expansion in the extent to which international law since World War II has allowed states' internal sovereignty to be pierced by concerns about their violations of their subjects' human rights, the grounds in international law for a right to war based on human rights violations remain extremely limited. It is true that human rights violations allow a state's previous internal sovereignty to be pierced in various ways by outsiders ranging from criticism to war, according to international law as it has developed since World War II. Although international law and other institutionalized forms of international public culture (for example, bodies like United Nations organs and the International Labour Organization) may accept the legitimacy of criticisms of states' actions that involve violations of the whole gamut of human rights, this reduction in the internal sovereignty of states is not equivalent to providing rights to war or to economic sanctions based on any of those violations.² Not all human rights, not even all of Rawls's

² In its preliminary judgements denying Yugoslavia injunctive relief from ten states participating in NATO's bombing campaign, the International Court of Justice strongly hinted that even if Yugoslavia had broken international humanitarian law, states participating in NATO's forcible action were violating international law by not referring their dispute with Yugoslavia to the Security Council. For the relevant paragraphs repeated verbatim in the majority judgements of all ten orders, see Case Concerning Legality of Use of Force (Yugoslavia v. Canada), Order of 2 June 1999, I.C.J. General List No. 106 (http://www.icj.icj-cij.org/ICJEn/idocket/iyca/iycaframe.htm), paras. 15–18, 44–46.
minimum human rights, ground the stronger forms of incursions on state sovereignty in international law when they are violated.

A few points about international law relevant to my task at hand can be made in this section without attempting a thorough evaluation of the character and status of international law. I will argue that there is a general ban in international law since 1945 on the use of force, that no exception is made in the UN Charter for war to vindicate individual human rights, and that no customary right to humanitarian intervention outside of the written UN Charter exists that would allow an exception in the relevant cases. Although my concern is ultimately with cultural practices, much of the discussion about international human rights law concerns actions such as genocide that are not cultural practices. Though the legal source material thus covers a broad range of behaviour outside the primary topic of this thesis, the ultimate conclusion of the section returns to the actions involved in cultural practices. The review will show that international public culture does not support the coercive intervention advocated by human rights fundamentalism.

In the post-World War II UN Charter era, it is generally agreed that the requirement of the peaceful settlement of disputes and the prohibition on the use of force by states specified in Articles 2(3) and 2(4) of the UN Charter are such that only two broad types of legal uses of force remain. The first is forceful actions authorized by the UN Security Council under the Charter's "Chapter VII: Action with Respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression," to deal with existing use of force between states or threats to international peace. The second is states acting in individual
or collective self-defence under Art. 51.³ Neither ground a right to war in cases of grave violations of all of Rawls's minimum human rights. However, a more nuanced view of this general characterization of the international law on the use of force reveals one area where one human right has had some effect.

Rawls is right to highlight the important change in public international culture regarding human rights since 1945. A pioneering statement of this change holds that

the obligations of a State towards the international community as a whole . . . are the concern of all States [who thus] can be held to have a legal interest in their protection; they are obligations erga omnes. Such obligations derive, for example, in contemporary international law, from the outlawing of acts of aggression, and of genocide, as also from the principles and rules concerning basic rights of the human person including protection from slavery and racial discrimination. Some of the corresponding rights of protection have entered into the body of general international law . . . others are conferred by international instruments of a universal or quasi-universal character.⁴

However, this recognition of some human rights as jus cogens, or peremptory norms, in


international law is not the same as a recognition of a right to war in the case of their violation. Though some human rights have attained the status of *jus cogens*, the strong penalties Rawls advocates for violators have not been recognized by international law for any of the human rights on his list, except perhaps one. This right—the right to liberty from forced occupation—is a part of the human right of peoples to self-determination, although it does not exhaust it. And the right to self-determination has come to condition or modify international legal doctrines on the use of force. Ian Brownlie, Chichele Professor of Public International Law at Oxford, states carefully that the principle of self-determination in international law

appears to have corollaries which may include the following: (1) if force be used to seize territory and the object is the implementation of the principle, then title may accrue by general acquiescence and recognition more readily than in other cases of unlawful seizure of territory; (2) the principle may compensate for a partial lack of certain *desiderata* in the fields of statehood and recognition; (3) intervention against a liberation movement may be unlawful and assistance to the movement may be lawful; (4) territory inhabited by peoples not organized as a state cannot be regarded as *terra nullius* susceptible to appropriation by individual states in case of abandonment by the existing sovereign.

None of these amount to an explicit and complete exemption from the prohibition on the use of force amounting to an independent right to war of the UN Security Council or third party states in support of a people denied self-determination. The third point comes closest to providing such a right to war, and is supported by state practice, including the evidence provided by UN General Assembly declarations and resolutions which, though lacking legislative effect, still provide evidence of state practice regarding norms they

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accept. The right to self-determination is most accepted in cases of liberation movements opposed to oppressive, colonial and racial regimes.

The violation of other human rights has not led to changes in the legal doctrines governing the use of force. Even legal instruments regarding the most serious of these, such as genocide and war crimes, only go beyond hortative, promotional, and programmatic implementation measures to the extent of enforcement provisions that require a state to either prosecute or extradite accused individuals. Although the Genocide Convention makes provision for the jurisdiction of international courts and tribunals such as those at Nuremberg and more recently for portions of the former Yugoslavia, there is very little evidence that states have any legal power to use force to compel a state harboring an alleged international criminal to hand over such individuals. And although it provides for individual responsibility, the Genocide Convention does not make states responsible for such acts, eliminating such legal responsibility as a possible

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6 Declaration on Principles of International Law Concerning Friendly Relations and Co-operation Among States in Accordance with the Charter of the United Nations (24 Oct. 1970), UN A/RES/2625 (XXV), states that “subjection of peoples to alien subjugation, domination and exploitation constitutes a violation of the principle [of self-determination] and is contrary to the Charter. . . . In their actions against, and resistance to, such forcible action [depriving peoples of self-determination] in pursuit of the exercise of their right to self-determination, such peoples are entitled to seek and to receive support in accordance with the purposes and principles of the Charter.” See Antonio Tanca, “The Prohibition of Force in the U.N. Declaration on Friendly Relations.” in Cassese, The Current Legal Regulation of the Use of Force, 404–8; and Definition of Aggression (14 Dec. 1974), UN A/RES/3314 (XXIX), Art. 7.


ground for a right to war were such a right still to exist. The same holds for the "Statute of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia Since 1991," adopted by the Security Council in 1993, and the analogous one for Rwanda.⁹

A claimed exception to the ban on the use of force which is relevant for my purposes is a right of humanitarian intervention, either in the form of an action by the Security Council using the armed forces of various member states, or by a regional organization such the Organization of American States or the North Atlantic Treaty Organization. It will also be necessary to consider whether states, acting either singly or in a coalition, still have a customary right of international law to intervene for humanitarian purposes. Were either of these propositions in international law to hold, international public culture would be such that the forms of arguments in Chapters 7 and 8 opposing the coercive imposition of a political conception would not be relevant regarding human rights fundamentalism.

Let us begin with the possibility that the Security Council has a legal right to authorize humanitarian interventions in cases of grave human rights violations. The legal authority of the Security Council to authorize the use of force is found in Chapter VII of the UN Charter. This authority, however, is circumscribed to conditions where a "threat to the peace, breach of the peace, or act of aggression" exists.

Until the end of the Cold War, only acts of state along the lines of threats of military incursions had been found by the Security Council or International Court of Justice to constitute such conditions. But since the Security Council’s authority to determine what constitutes these conditions is not prejudiced by the sovereignty of states over “matters which are essentially within the domestic jurisdiction of any State” (UN Charter, Art. 2(7)), it has had since its inception the legal competence to determine these conditions were due to human rights violations.¹⁰ In a controversial shift in the period just prior to the appearance of Rawls’s “The Law of Peoples” from a state-centred paradigm toward one that gives more power to the UN, the UN, and more particularly, the Security Council, signalled they would be willing to recognize for the first time that severe and widespread human rights violations could cause effects that threatened peace, such as massive refugee flows.¹¹

It does not appear to be the case, however, that human rights violations per se can legitimize such determinations. All seven states commonly cited as possible forcible humanitarian interventions by the UN to protect human rights (Rwanda, Somalia, Bosnia, 


¹¹ See the declaration of the heads of government of the Security Council (UN Doc. S/PV. 3046, 143), Jan 31, 1992: “The non-military sources of instability in the economic, social, humanitarian and ecological fields have become threats to peace and security;” and UN Secretary General Boutros Boutros-Ghali, who envisaged in June, 1992 in Agenda for Peace, the UN moving into peacemaking and peace enforcement operations from peacekeeping operations that had been conducted “hitherto with the consent of all parties concerned,” both as cited in Ramsbotham and Woodhouse, Humanitarian Intervention, 85.
Haiti, Iraq, Liberia, and Kosovo) were situations in which civil war had transborder effects on other states that constituted threats to the peace.\textsuperscript{12} Further weakening the case for a general right of the Security Council to authorize armed intervention in cases of human rights violations\emph{per se} is that all of these purported humanitarian interventions were actually actions undertaken with the consent of the relevant state (Liberia, Somalia, Haiti, Bosnia, Rwanda), or to protect a state against external aggression (Bosnia), or in the absence of an effective rule of law over the relevant territory (e.g., Rwanda, Somalia, Bosnia, Haiti), or perhaps to impose a war victor’s terms (Iraq), or were not authorized by the UN (Kosovo, and arguably ‘Operation Provide Comfort’ and ‘Operation Southern Watch’ in Iraq).\textsuperscript{13} In those cases where the UN arguably acted without the consent of the relevant state, it did so on behalf of peoples being repressed or exterminated either by their state or by other peoples (e.g., Iraq, Bosnia). Similarly, the \textit{post facto} recognition of NATO’s campaign in Kosovo also concerned an interpeople conflict.

\textsuperscript{12} Note that there was more than one intervention in some of these states; see Ramsbotham and Woodhouse, \textit{Humanitarian Intervention}, 87–91, 128–32. Though the typology used by these authors classes Haiti as a traditional civil war fought on an ideological rather than a communal basis with interstate elements, violations of Rawls’s list of minimum human rights did not figure on the United States’ list of possible (but likely inadequate) legal foundations for unilateral intervention (\textit{American Society for International Law Newsletter} [Jun–Aug, 1994], 16).

\textsuperscript{13} The United States and Britain dubiously interpreted UN Security Council Resolution 688 as authorizing the use of force despite the strenuous denial of the Secretary-General of UN and Permanent Members of the Security Council who had voted in favour of the Resolution. The resolution does not explicitly invoke Chapter VII, and does not explicitly authorize the ‘use of all necessary means’ or any other circumlocution that on its face or given any established legal interpretation would authorize the use of force. See Ramsbotham and Woodhouse, \textit{Humanitarian Intervention}, 77.
Further, in none of these forcible interventions to stop killing or to ensure the delivery of humanitarian shipments of food and medicines were cultural practices that contravened human rights (as opposed to, say, violent acts by one people against another) cited as a ground for the use of force. So while human rights violations that threaten or breach the peace or are acts of aggression between states, and perhaps between peoples in a single state, can constitute legal grounds for the Security Council to take forcible action under Chapter VII, human rights violations \textit{per se} are not a grounds for war. So long as cultural practices that violate Rawls's minimum human rights do not constitute threats to the peace, the UN Security Council has no legal authority to apply serious coercive sanctions such as the use of force.

It might be argued against this finding that the Security Council has the power to make final determinations of the meaning of what constitutes a threat to or breach of the peace, and this power could be used for good if violations of Rawls's minimum human rights were so classified. It is true that state practice has accepted, for example, that the Security Council can act without the benefit of the mechanisms specified in Art. 53, which would have created a UN controlled armed forces. But there is no indication that there is a consensus among the veto-holding permanent members of the Security Council, nor among the broader international community of states, that human rights violations provide a ground for Security Council intervention in the absence of effects spilling over borders, such as refugees from a civil war. In other words, while state practice can supersede the written constitution of the current international order, namely, the \textit{UN Charter}, so far no such law-making has occurred in the area under consideration. In
summary, it cannot be plausibly maintained that international law as an embodiment of international public culture currently includes a right of the Security Council to intervene in the internal sovereignty of states purely on the basis of human rights violations.

Although Chapter VIII of the UN Charter allows for regional arrangements and agencies to be involved in maintaining international peace and security through the pacific settlement of local disputes (Art. 52), it specifically states that “no enforcement action shall be taken under regional arrangements or by regional agencies without the authorization of the Security Council” (Art. 53). As the Security Council does not have the power to authorize forcible actions solely on the basis of human rights violations that do not constitute threats to international peace and security, it follows that it does not have the legal power to authorize regional arrangements or agencies to carry out such actions.

Even if the UN does not have the authority to authorize forcible interventions in cases of grave individual human rights violations, a few argue that individual states still have such a customary right. However, though a number of states have claimed a legal right to humanitarian intervention as a basis for their armed intervention in another state’s territory since 1945, it is generally agreed that none of these cases is able to illustrate that such a right exists in international law. None met with significant approval in the international community, let alone the consensus of opinion required to illustrate a proposition is jus cogens; indeed, all met with “substantial protest.”¹⁴ Not only were other

rationalities offered for these actions, but aspects of each situation which make the doctrine of humanitarian intervention as it existed in the nineteenth century either inapplicable or not necessarily present can also be found: the consent of the target state, a treaty right to intervene, the lack of a humanitarian crisis, an aim to protect the nationals of the intervening states rather than of the target state, the existence of other means of alleviating the humanitarian need short of the use of armed force, the use of a size or duration of intervention disproportionate to the humanitarian objective, or the use of the armed intervention to "exert influence upon the authority structure in the target State" (e.g., by instituting a new state or by instituting or maintaining a regime in power that would not otherwise have existed, to the advantage of the intervener(s) in a way not necessary to realize the humanitarian objective).\(^{15}\) The historical record sadly shows that any loosening of the legal bounds on the use of force by individual states even for the purpose of humanitarian intervention is exploited by states seeking a cover for acts that are primarily self-interested. While an analogous concern with the use of force for the self-interested ends of the powerful is relevant in the domestic context, this is particularly important in the international context where there is no effective sovereign able to police actions of states, particularly powerful ones (cf. *TJ*, 240). To take a stark example,

in the Proclamation on the German occupation of Bohemia and Moravia, made by Hitler on 15 March 1939, ... he referred to 'assaults on the life and liberty of minorities, and the purpose of disarming Czech troops and terrorist bands threatening the lives of minorities.'\(^{16}\)

An important final objection to this interpretation of interpeople public culture needs

\(^{15}\) Verwey, "Humanitarian Intervention," 66.

to be confronted. The recent case of NATO's intervention in the Serb-dominated Federal Republic of Yugoslavia (FRY) on behalf of Kosovar Albanians has been taken by many in the West to illustrate that Western states can undertake moral action when the UN will not, and that they should do so to make up for failures of the latter. NATO commenced its bombing campaign without UN Security Council authorization on the grounds that Russian and Chinese vetoes would have prevented forcible action despite a humanitarian crisis in Kosovo that arguably demanded this from the international community. The Security Council Resolution\textsuperscript{18} that recognized the settlement reached between NATO, Russia, and the FRY at the end of the war did not criticize NATO's intervention, and thus might be considered implicit recognition in interpeople public culture of the right of NATO states to have used force without UN authorization.

First, this incident is not an example of an intervention against a people on behalf of individual human rights violated by their cultural practices. The behaviour that justified the intervention, namely, violent forms of ethnic cleansing used as a means to prosecute a civil war over independence,\textsuperscript{19} are not cultural practices. And the ill-treatment is of one

\textsuperscript{17} See Peter W. Rodman, "The Fallout from Kosovo," \textit{Foreign Affairs} 78 (1999), 45–51, 48.


\textsuperscript{19} In five months in mid-1998, the Kosovo Liberation Army (KLA) acquired control over 30 percent of the territory of Kosovo (Christophe Chiclet, "Guerre dans les Balkans: Aux origines de l'armée de libération du Kosovo," \textit{Le Monde diplomatique} 542 (1999), 6–7, 6). As these areas were recaptured, Yugoslav Serb forces evicted whole populations of Kosovar Albanians, often using brutal force. This ethnic cleansing was "to a large degree tactical, designed to deny the rebels succour." This tactic likely also arose in part because "Kosovo... has no fixed lines dividing the antagonists... rebels can be farmers one day and combatants the next. They [are] impossible to define" (Chris
people by another. Although violations of individual human rights were occurring, for the purposes of my arguments, NATO acted to vindicate the political autonomy rights in interpeople liberalism of Kosovar Albanian people against the oppression of the FRY. So even if interpreted as an accepted part of interpeople public culture, Kosovo does not provide evidence directly contradicting my claims.

Second, the incident arguably illustrates not that NATO (or each of its member states) has a recognized right to make war to vindicate human rights, but that the UN continues to have authority to regulate matters concerning threats to peace and security despite efforts by militarily unchallenged liberal states to arrogate such powers to themselves. NATO’s actions did not have enough support to indicate they were part of jus cogens. The Security Council Resolution begins by recognizing “the purposes and principles of the Charter of the United Nations, and the primary responsibility of the Security Council


The denial of a people’s political autonomy rights, when push comes to shove, tends to lead to or involve violations of the individual human rights of the members of that people. For if a people has a right to political autonomy, then imprisoning those who attempt to realize the autonomy is a violation of their human rights. Similarly, those a state kills or wounds in attempting to suppress a legitimate forceful vindication of a right to political autonomy (assuming such vindications exist) are having their individual rights to life and security violated.

for the maintenance of international peace and security."22 Despite the Security Council having often recognized merely stable *modus vivendi* outcomes of violent confrontations, NATO also failed to gain the UN's approval for its view on the points of contention that had led to the war.23 Even if NATO had succeeded in forcibly changing public culture due to its overwhelming military advantage, this would not on its own show that the action was just. And in the absence of such a change having become accepted by enough peoples, the partisan character of such a public culture would mean that it was an unsuitable basis for a freestanding theory.

This section has shown that violations of minimum human rights on Rawls's list could lead to UN Security Council authorizations of force if they caused threats to or breaches of the peace, that this power has for the most part been used on behalf of substate peoples, and that the doctrines regulating interstate use of force other than through the UN Security Council have in certain ways been affected by international


23 The FRY had accepted prior to the bombing the principle of political autonomy for Kosovo, and was willing to accept an international, though not exclusively NATO, military presence in Kosovo to ensure protection of its citizens and its political autonomy. The FRY was unwilling, however, to let NATO have "free and unrestricted passage and unimpeded access through the Federal Republic of Yugoslavia," or to let NATO be responsible for refugee return in the place of an agency like the UN High Commission on Refugees. See Phyllis Bennis, "Differences Between Ahtisaari-Chernomyrdin Agreement With Milosevic and the Rambouillet Text" (http://www.tni.org/index.htm, then follow links for "Who is TNI?", "Phyllis Bennis," "Phyllis Bennis compares the Peace Agreements"); Paul-Marie de la Gorce, "Histoire secrète des négociations de Rambouillet." *Le Monde diplomatique* 542 (1999), 4–5. NATO's remarkable failure to achieve its stated objectives when the FRY's entire Gross Domestic Product was one sixteenth the size of the US military budget for a year is due in part to the diplomatic opposition to NATO.
law's recognition of substate peoples' interest in political autonomy. In international law, an institutional embodiment of interpeople public culture, not all of the human rights on Rawls's minimum list can create 'grave' violations that would ground a right to war. Indeed, only human rights violations that do not amount to cultural practices, and which concern the relations among peoples, have qualified as grave. The evolution of the doctrine of legitimate use of force in international law supports a remedy of interstate force to vindicate peoples' political autonomy rights much more than it supports that for any other of Rawls's minimum human rights.

So no interpeople consensus exists in favour of forcible vindication of minimum human rights that conflict with cultural practices. This means the arguments in the previous chapter apply even the case of minimum human rights violations. But the conclusion of Chapter 6 was that in the absence of such a consensus the use of force to impose it is unjustified, even if there is an expectation that experience under its principles would lead to those principles being affirmed in an overlapping consensus. So human rights democracy is a better interpretation of interpeople liberalism than human rights fundamentalism. While the war in Kosovo was only the first action marking NATO's long-planned shift from a defensive alliance to one that would undertake out-of-area missions for a wider variety of purposes without UN approval,24 interpeople liberalism

24 In April 1998, the US Senate passed a "very long resolution laying down detailed binding instructions on the future development [and enlargement] of NATO and its new strategic doctrine" which were accepted as a blueprint for the alliance by its other members. Significant points included the following: "the main justification for enlargement is 'the potential for the re-emergence of a hegemonic power confronting Europe' . . . . NATO's decisions and actions need not be referred to any other intergovernmental forum such as the UN . . . . Russia cannot veto decisions of the
holds that such actions would not be just if they involve liberal cultural coercion.

§9.3 General Fact of Oppression

This chapter has argued so far that Rawls’s political liberalism is best interpreted as endorsing no interstate use of force that would contravene a people’s prized cultural practices. The only type of interstate use of force to vindicate human rights that it sees as being currently justified is on behalf of substate peoples’ political autonomy rights, and then only when authorized by a broadly representative body like the UN ideally conceived. This section provides another argument to the same conclusion based on an argument that the parties in the interpeople original position would have knowledge of a general fact of oppression in the interpeople sphere similar to domestic liberalism’s general “fact of oppression” (PL, 37), which is related to but distinct from its fact of reasonable pluralism (PL, 36–7; §6.6 above; cf. LP, 124–5).

Rawls’s notion of reasonableness is a key locus of internal tensions that arise if political liberalism is interpreted as endorsing more use of force to impose liberal values regarding matters like minimum human rights. The version of reasonableness that appears in the interpeople sphere is drawn from the one developed for the domestic sphere, discussed above in §8.1.5.

Rawls’s interpeople justice makes a serious attempt to avoid this problem of...

Alliance... NATO may engage in missions outside its own territory ‘when there is a consensus among its members that there is a threat to their interests’.” Gilbert Achcar, “Comment l’OTAN a survécu à la guerre froide: Toujours plus à l’Est,” Le Monde diplomatique 541 (1999) (English translation by Barry Smerin at http://www.monde-diplomatique.fr/en/1999/04/?c=07nato2).
unreasonable self-assertion by taking pains to show that some peoples that affirm nonliberal domestic conceptions of justice, societies which he terms hierarchical (LP, 52, 60), would nevertheless endorse his interpeople liberalism. Showing that some nonliberal peoples would affirm his conception of interpeople justice is “fundamental” (LP, 52) to his political constructivist approach to defining justice. For if only liberal conceptions of domestic justice endorse his interpeople liberalism, then it would be open to charges of being unreasonable. However, while showing that another, possibly very small, class of domestic conceptions of justice besides liberal ones would affirm interpeople justice is helpful, it is not sufficient to block the criticism.

To see why, consider an analogous problem that would exist in Rawls’s domestic liberalism if he had sought to show that the variety within one subgroup of the comprehensive doctrines that can affirm justice as fairness as a political module was sufficient to avoid the injustices attendant on his general fact of oppression. This “general fact is that a continuing shared understanding on one comprehensive religious, philosophical, or moral doctrine can be maintained only by the oppressive use of state power” (cf. PL, 37). For one particular version of, say, Kantian liberalism to show some other Kantian liberalisms could affirm its conception of reasonableness would not make enforcing that conception less oppressive, if that conception specified that only Kantian liberalisms were reasonable. Despite this conception of reasonableness allowing “many” comprehensive religious, philosophical, and moral doctrines to exist—all different versions of Kantian liberalism—Rawls clearly wants to say that maintaining this level of shared understanding would involve an oppressive use of state sanctions, despite this
being a performative contradiction of such a doctrine (*PL*, 37).

This point should not be taken as centring on whether all forms of Kantian liberalism are considered one or many comprehensive conceptions, despite the emphasis in "The Law of Peoples" on showing that some non-liberal domestic political conceptions could endorse interpeople liberalism. Rawls's concern in his domestic work on this point has, I venture, to do with the need to ensure sufficient space for the different comprehensive conceptions that will tend to arise once a political conception is institutionalized in order to prevent the coercive enforcement of the shared understanding from becoming oppressive. The solution he proposes for justice as fairness narrows the shared understanding to be maintained from the whole content of a comprehensive doctrine to that part of it that matches the shared (political) content of the range of the comprehensive conceptions that are expected to arise and gain significant followings if the political component of it is institutionalized. In this way, only a small number of persons, unfortunately ineliminable (cf. *TJ*, 575–7; *PL*, xvi–xvii), will not participate freely in the shared understanding. As a result, a regime institutionalizing justice as fairness can presumably be stable in its maintenance of the (mostly) shared understanding without being oppressive.

What is the parallel situation in the interpeople sphere? Human rights democracy would not violate interpeople liberalism's claim that a government must be legitimate in the eyes of its people in order to be well-ordered (*LP*, 61–3), at least with regard to domestic matters that may involve cultural coercion. So there is no reason that the greater liberty it provides to peoples's domestic conceptions of justice would lead to interpeople
oppression.

More fundamentalist interpretations of interpeople liberalism could, however, lead to such oppression. If the government of a people, or the UN directly through something like a mandate system replacing "inadequate" local government, were to claim authority to implement, say, all of Rawls's minimum human rights in a way that constituted cultural coercion, then it would end up not being legitimate in the eyes of that people. Other peoples may believe that even if a people is misguided in departing from Rawls's minimum human rights, that it is wrong for other peoples, even acting through an agency like the UN, to intervene forcibly to impose those rights against the people's will. If it is to be expected that peoples (in significant numbers) will tend to affirm conceptions of justice that conflict with the more fundamentalist interpretations of interpeople justice in these ways were a fundamentalist political liberalism institutionalized, then the parties in the interpeople original situation would take those fundamentalist political liberalisms to be oppressive. They would be unreasonable because they would require too much coercion.

It is difficult to make ironclad demonstrations one way or the other on such broad questions of long-term change in the beliefs of peoples due to international regimes with which there is no current experience. But European colonialism failed to achieve many of the elevated ambitions that were used to justify it (I leave aside objectives such as the pursuit of glory and riches). It stands to reason that just as significant numbers of peoples continued to reject periodically (or opposed without let up) European efforts over several centuries to evangelize on behalf of Christianity and 'civilization' (including European
political and legal forms) using the sword, similar significant numbers would reject the cultural coercion inherent in fundamentalist interpretations of political liberalism. For interventions would occur, *ex hypothesi*, only when a people recognized as having political autonomy rights is strongly opposed to having their autonomy to continue with a cultural practice infringed. Such interventions are guaranteed to be resented and opposed. The panoply of sticks and carrots that Rawls mentions are not novel, but merely "several familiar points" (cf. LP, 64, 73–4). As they were generally unsuccessful in the past in imposing popularly opposed foreign notions, or preventing indigenous revival movements from irrupting in a significant number of cases, it is unclear why they would work so well for a fundamentalist political liberalism that peoples would not continue to oppose it in significant numbers.\(^{25}\) So fundamentalist political liberalisms violate what may be considered a general fact of oppression in the interpeople sphere because were they to be institutionalized, significant numbers of peoples would continue to have or to develop domestic political conceptions that conflicted with Rawls's minimum human rights over their cultural practices.

This conclusion regarding the fact of oppression in interpeople justice is not threatened by the possibility that a person using a political constructivist approach may simply label an undesired element of a political conception unreasonable. Rawls comes close to this when he writes that a "sincere and reasonable belief on the part of judges and

\(^{25}\) Indeed, one worrisome reading of Third World colonialism is that its use of force created a legacy of nonliberal and nondemocratic institutions and cultural practices for the post-colonial period. Coercion, in other words, taught how to coerce. There is little reason to suppose a new international imperial order would escape such a fate.
other officials that the system of law is guided by a common good conception of justice . . . is simply unreasonable, if not irrational, when those [minimum human] rights are infringed" (LP, 63). In many cases of state oppression opposed by peoples Rawls is surely correct. But an equivalent denial is possible of the reasonableness, if not the rationality, of the members of a culture strongly supporting cultural practices in conflict with Rawls's minimum human rights, and in these cases the officials' denial would not be unreasonable. For a sense of reasonableness stipulating a given list of minimum human rights cannot be presumed without question until the whole conception of justice of which it forms a part has been affirmed as legitimate in the proper manner. The general fact of oppression available to the parties in the interpeople original position would play a role while a wide reflective equilibrium was being developed by actual persons.

The oppression encompassed by the general fact of oppression need not be due to a continuing unsuccessful use of force to persuade. As noted above (p. 197), Rawls himself recognizes the injustice of having beliefs imposed on one against one's will in his discussion of paternalism (TJ, 249–50). While it is possible to interpret the principles of interpeople justice so that fundamentalist actions to inculcate belief in those principles would be taken as reasonable, such an interpretation is unacceptably like the tyrannies imposed on empirical selves in the name of their rational selves that Berlin decried (see p. 207 above). And, as argued in Chapters 7 and 8, it would also have the theoretical disadvantage of having to use force in order to bring about the conditions that justified the original use of force, or at least make possible the bringing about of those conditions. Further, at the level of non-ideal theory, concerned merely with the realization of an
already specified political theory, Rawls writes that interpeople justice "looks for policies and courses of action likely to be effective and politically possible as well as morally permissible for that purpose" (LP, 71). In situations where there is no "evident failure or absence of reason and will," and in which the more permanent aims and preferences of the potential subjects of coercion opposing that coercion are well known (TJ, 249–50), the moral permissibility of forcible intervention to impose belief in that moral permissibility is deeply problematic. As a result, human rights democracy is a better interpretation of interpeople liberalism than human rights fundamentalism. And since human rights democracy does not support cultural coercion of nonliberal peoples, interpeople liberalism is shown to support cultural toleration. Combined with the conclusion of earlier chapters that domestic liberalism supports cultural toleration, it follows that political liberalism as a whole supports cultural toleration of peoples who are opposed in an all-things-considered manner to a rule of state coercion that conflicts with a rule of a culture of the people.

§9.4 Conclusion

In bringing theoretical inquiries directly to bear on pressing social issues, this dissertation has aimed to have both practical and theoretical import. I believe whatever significance the thesis has is related to two interpenetrating beliefs that animate it. The first is that liberal conceptions of citizenship have been serving to perpetuate the colonial domination of Aboriginal peoples in liberal states, \(^{26}\) and that human rights threaten to

\(^{26}\) On colonialism, see Edward Said, *Culture and Imperialism* (New York: Knopf,
justify not only wars and economic blockades as bad as wars, but new forms of colonial domination.\textsuperscript{27} I worry about the growing willingness of human rights advocates to use force to ensure compliance by weak peoples with interpretations of human rights set by strong peoples. There should be no illusion that a quick war will stamp out a cultural practice accepted in an all-things-considered manner by a people. External attacks on a people generally increase social solidarity in the face of the external threat, and increase support even for unpopular leaders. In the case of an attack designed to put an end to a cultural practice which most members of the people affirm as right, a short bout of cultural coercion is unlikely to be successful. Unless a puppet regime lacking democratic support or some other form of continuing foreign domination is maintained over a long period, the cultural practice will continue or reappear.

Not only would such colonialism produce evil consequences in both the colonized and colonizing peoples, as Mill remarked about slavery,\textsuperscript{28} it would also be unfairly applied only against the weak. There is no realistic prospect of the UN waging war against powerful states for their grave human rights violations even if it was recognized

\textsuperscript{27} For example, Kosovo is no longer self-administered, and the prospects for an end to its UN wardship in the foreseeable future are poor.

\textsuperscript{28} Mill, \textit{Considerations on Representative Government}, 197–9.
by states to have such authority. The very prospect of a UN war against a nuclear power in order to vindicate human rights seems cruelly ironic: nuclear annihilation of all humans because of the gross human rights violations perpetrated within one people would give new meaning to the statement with which The Law of Peoples concludes:

If a reasonably just Society of Peoples whose members subordinate their power to reasonable aims is not possible, and human beings are largely amoral, if not incurably cynical and self-centered, one might ask, with Kant, whether it is worthwhile for human beings to live on the earth (LP, 128, citing Kant's remark that "If justice perishes, then it is no longer worthwhile for men to live upon the earth").

Before universal human rights, there were similar 'civilizing' missions of 'advanced' European empires aiming to help backward peoples by 'giving' them the benefit of good administration and schooling. Earlier times saw military and police support for missionaries from Christian civilizations aiming to 'help' savage heathens through spreading the light of the Gospel. Though European civilization and Christian religion can both create great goods, I do not believe this justifies eliminating competing goods through force, including the good of peoples' political autonomy. Nor do I believe that it was easy for these well-meaning Europeans and colonists to foresee that their most cherished values and means of realizing them would be so thoroughly repudiated in the reasoned views of their descendants. They likely had as much confidence then in their views as Rawls has now that the core values of his liberalism will not be rejected or

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29 Cf. Brownlie, *International Law and the Use of Force*, 436; also Franck & Rodley, "After Bangladesh: The Law of Humanitarian Intervention by Military Force," *American Journal of International Law* 67 (1973), 300, as cited in Verwey, "Humanitarian Intervention," 75: "nothing would be a more foolish footnote to man's demise than that his final destruction was occasioned by a war to ensure human rights." In this regard it worth noting the proliferation of nuclear arms and ballistic missile technology in India and Pakistan, and Russia's and China's claims that NATO's 1999 bombing of Yugoslavia ostensibly for human rights purposes threatened to cause a Third World War.
modified (*PL* 151–2 n). And though this thesis has had no cause to examine the possibility, like the older forms of colonialism that provided military and economic advantages to colonizing states that were unrelated to the moral justifications of empire just cited, today’s forms of colonialism may also serve other functions than mere promotion of respect for human rights.\(^\text{30}\)

The second animating belief of this thesis has been that Rawls’s theory, like all ways of reasoning, is embedded in a form of life.\(^\text{31}\) Within the domain of a liberal society searching for an articulation and justification of its principles of justice, political liberalism does an admirable job of articulating this fact and working to create a theory of justice that takes it into account while preserving the theory’s critical power. But the extension of this methodology to the interpeople sphere does not seem to have been carried out quite as successfully.

In order to address the justification of cultural toleration within interpeople political liberalism a number of issues were explored within domestic political liberalism. The thesis unearthed a number of problems in justifying the immediate coercive institutionalization, where feasible, of the principles of domestic liberalism in the absence

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\(^\text{30}\) While control over territory was necessary in the past, today’s forms of exploitation may depend more on the marketization of lifeworlds that the spread of liberal human rights facilitates. In cases where liberal states desire for a *raison d’État* to conduct a war, but are dependent on continuing support from their democratic populace for its successful prosecution, great powers can create such support by inducing human rights abuses in their opponents as easily as other causes of war. Cf. William Blum, *Killing Hope: US Military and CIA Interventions Since WW II* (Monroe, ME: Common Courage Press, 1995).

of a liberal public culture. It also noted that immigration into liberal states of individuals from peoples with nonliberal public cultures challenges political liberalism to come up with arguments to justify liberalism to political traditions other than those of the West (p. 233 n. 17 above). Given its focus on liberal cultural coercion of peoples with nonliberal societal cultures, it has had to ignore the possible influence of these and related issues on domestic liberalism itself. For example, do democratic principles delay when new liberal doctrines like the equality of gays and lesbians can justifiably be institutionalized in the face of widespread prejudice? Or, should the liberal state limit the application of liberal principles to non-national nonliberal societal cultures like the Amish and Hutterites?

Though aimed at dealing with a single practical issue, the thesis reveals a ground for those who are sympathetic to the communitarian critics of Rawls, such as Sandel, but who are unconvinced that Rawls's construction of the original position necessarily committed him to the theoretical view that individuals were self-interested and without bonds of community.32 By clarifying the social bases of what might be called the political epistemology of political liberalism, this thesis opens up avenues for those who are not liberals to democratically contest and possibly prove the merit of alternative political conceptions both in theory and in practice. Even if it is granted that justice as fairness can be realized in practice, and that according to political liberalism's own criteria no other political conception is more attractive in wide reflective equilibrium or on due consideration than justice as fairness, this does not dispose of the question of whether it is

32 See Michael J. Sandel, Liberalism and the Limits of Justice (Cambridge: Cambridge University Press, 1982).
the most appropriate political conception for all the peoples in the world, including ones that have what Rawls terms a constitutional consensus on liberal democracy. Indeed, political conceptions that conflict with Rawls's domestic liberalism can reasonably claim politically objectivity at the same time within the same society. Though this thesis reveals some opportunities for further criticisms of Rawls's domestic liberalism, however, I have not endorsed a nonliberal political theory for the domestic affairs of liberal peoples. The domestic policies I support are generally within the range of disagreement among egalitarian liberals.

In arguing against liberal cultural coercion in interpeople liberalism, I have also opened up avenues along which other criticisms can be made. Consider the priority interpeople liberalism gives to liberty over equality. Interpeople liberalism privileges the core liberty interests over the equality interests found in Rawls's domestic liberalism, that is, the interests protected by its lexically prior first principle of justice over those protected by its second principle (cf. PL, 4–5; TJ, 42ff; p. 41 above). These liberty interests are both conceptually and historically more central to his enterprise. Rawls argues against including both kinds of interests in his interpeople justice through domestic liberalism's model of the persons because this would make its basis too narrow.

But an approach that made equality central and liberty secondary might make a better claim to an overlapping consensus among peoples, though a different one than Rawls's interpeople justice. Especially cogent versions of the arguments in this thesis could be made concerning peoples who are nonliberal merely because of the different ordering they give to political principles that liberalism itself recognizes. Their political
conceptions should not be considered unreasonable by liberalism, and thus should be exempt from the coercion of liberal peoples. Alternative conceptions of reasonableness and other fundamental ideas in interpeople liberalism can be imagined, perhaps including an alternative list of minimum human rights that prized material equality rights over religious and liberty rights as the basis for forcible interventions in the domestic affairs of peoples.

However, the possibility that political liberalism’s methodology of developing and justifying principles of justice could be used in these ways does not provide fully articulated theories of domestic and interpeople justice that could be compared to Rawls’s own version. The proof of such competing political constructions would be whether their alternative theories of justice, when duly considered (LP, 86 n), were more convincing.

This thesis has argued that political liberalism including liberal cultural toleration is more convincing, after due consideration, than political liberalism including liberal cultural coercion. It has not addressed the justifiability within political liberalism of non-coercive acts that aim to promote either (1) changes to cultural practices of nonliberal peoples that violate minimum human rights, or (2) domestic liberalism in nonliberal peoples, particularly ones within liberal states.\(^{33}\) I offer some general remarks that are conceived as dependent on pragmatic findings for their merit.

Information sharing and dialogue between leaders and ordinary members of liberal and nonliberal peoples can be useful for all, particularly when entered with a spirit of

exchange rather than an attitude of instruction or the correction of errors. In some cases
information is all that is needed to create voluntary changes in a cultural practice that
ameliorates the damage that liberals perceive in it. For example, discussions among North
African women villagers and Western women doctors about the negative effects of
circumcisions and scarring in various cases led to voluntary shifts to less extensive
female circumcisions and more sanitary procedures for circumcisions of girls and boys.
Targeted aid can also help remove the expression of certain cultural practices, like the
sacrifice of the old and sick when a tribe is threatened with starvation. In other cases,
liberals have come to understand that the practice of hijab is not always best construed as
contributing to the oppression of women, but can also be seen as an indication of self-
respect and self-esteem associated with a religious tradition and an understanding of the
virtue of modesty.

The line between economic coercion like that of Iraq since 1991 and the non-coercive
withholding of cooperative benefits can be difficult to draw. Occasionally there may be a
moral duty to trade, as in a case of a country like Iraq that needs medical supplies and
foodstuffs and has valuable goods to sell. Still, selective trade sanctions are often not
coercive. Within the liberty that a state politically enjoys regarding non-coercive actions,
some such trade sanctions intended to advance the interests of domestic liberalism in
another people, or other policies of a liberal people such as maximizing its trade profits or
strategic power, can sometimes be justified. Refusing to sell military and police materiel
to human rights abusing regimes can be justified even if war against them cannot.
Unfortunately, as a tool designed to compel specific actions, sanctions are generally most
effective in achieving their immediate ends when they are most coercive (though they can also have perverse effects, such as increasing domestic support for Iraq’s President Saddam Hussein). Their effectiveness in these circumstances does not make them more justifiable, since liberal cultural coercion violates the standard of rightness provided by the theory of political liberalism presented here. As we have seen, an independent standard of justice, such as one that takes the fastest implementation of domestic liberalism around the world as a standard of rightness, cannot be presumed in order to justify such actions against a properly developed theory of interpeople justice.

So liberal cultural toleration does not imply that the liberal state should be neutral towards all cultural practices. Liberal states can legitimately adopt a variety of non-coercive means to promote respect for human rights and even domestic liberalism, but must be prepared to accept similar promotions of nonliberal political conceptions by nonliberal peoples. A liberal state can justifiably sponsor schools, economic development projects, or institutes promoting liberal values amongst nonliberal peoples inside or outside its borders, at least so long as this does not coercively interfere with the independence and self-determination of these peoples. For example, an Islamic state may allow centres promoting women’s rights inside its borders to be financially supported by a liberal state in exchange for its agreement to allow the Islamic state to support mosques within the liberal state that preach opposition to abortion and support for Arab-friendly foreign policies. Foregoing liberal cultural coercion when institutionalizing interpeople liberalism expresses not only tolerance for each people’s use (or misuse) of its domestic political autonomy, but also the hope that each people will come to use that capacity to
develop an appropriate political conception for its own domestic affairs. Taking advantage of power imbalances to unduly persuade others to accept liberalism should be eschewed in favour of tolerant co-existence, with expanding dialogue and interchange where advisable.

This thesis has taken up the approach to political theorizing developed by John Rawls and addressed it to a topic that was not a central concern of his. In showing that liberal cultural coercion of peoples with nonliberal cultures cannot be consistently advocated from within political liberalism, an account of the political autonomy of peoples in multipeople states has been developed. A consequence of this political autonomy of peoples is that the liberal conception of citizens as free and equal worked out for a single liberal people does not necessarily apply to all within a multipeople liberal state. I have also argued that political liberalism does not support giving the UN ideally conceived coercive powers to police the domestic affairs of peoples similar to those that a state wields over its citizens. Particularly in cases where a people is opposed in an all-things-considered manner to cultural coercion directed at its members, a coherent political theory of justice that could legitimate such coercion is lacking. In its place, I have attempted to articulate and justify an alternative interpretation of political liberalism that includes toleration of peoples with nonliberal cultural practices.
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