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Science**

Decent Peace, Stability and Justice.
John Rawls's International Theory Applied

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to my mother

Declaration

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Abstract

John Rawls's international theory, *The Law of Peoples*, has been read and criticized as "A Theory of International Justice". His major objective, however, is not the establishment of a just (liberal) world order, but to guide liberal societies towards a reasonable *peaceful*, stable and just international system. From this starting point, the thesis assesses whether Rawls's international theory can meet its task to function as a guideline for the promotion of international peace, stability and justice and how that peace might be conceived. The author argues that Rawls sketches the path to a "decent peace".

The scrutiny of the issue takes the form of an in-depth analysis and discussion of *The Law of Peoples* and a systematic investigation of a number of cases. The dissertation examines the possible contribution of Rawls's ideas, primarily the Society of Peoples and the principles of the Law of Peoples, to international peace, stability and justice. As the focus lies on decent regimes and a decent peace, three actual decent societies are identified (Oman, Qatar and Singapore), in order to highlight the applicability of the notion to the international system, as well as to ensure that decent regimes are not mere constructions serving to justify imposing liberal principles of non-liberal regimes. The dissertation finally investigates the enlargement of the democratic peace thesis towards a decent peace; it discusses the arguments for a democratic peace and applies them to Rawls's conception of decent peoples as well as to the identified regimes. It concludes asserting that the decent peace thesis is theoretically well-founded, whereas the empirical evidence is – due to only three identified regimes – rather weak. As a guideline for the foreign policy of liberal (and decent) societies *The Law of Peoples* can contribute to more stability and justice in the international realm and promote a decent peace.

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Abbreviations

APEC	Asian Pacific Economic Cooperation
ASEAN	Association of South-East Asian Nations
BBC	British Broadcasting Channel
BN	Background Note
CIA	Central Intelligence Agency
CP	Economist Intelligence Unit Country Profile
CVTEU	Consolidated Version of the Treaty of the European Union
DPIL	Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States
DRDS	Declaration on the Rights and Duties of State
EIU	Economist Intelligence Unit
EIUID	Economist Intelligence Unit Index of Democracy
EP	European Parliament
FH	Freedom House
GCC	Gulf Co-Operation Council
GDP	Gross Domestic Product
GRT	Global Resource Tax
HRR	Human Rights Report
ICJ	International Court of Justice
ICTY	International Tribunal for the Former Yugoslavia
LP	<i>The Law of Peoples</i>
NHRC	National Human Rights Committee
n. pag.	no page number
OP	original position
OP II/III	second/third original position
PAP	People's Action Party
PL	<i>Political Liberalism</i>
PRB	Parti Rakay Brunei
TJ	<i>A Theory of Justice</i>
UDHR	Universal Declaration of Human Rights
UNCAT	United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
VCLT	Vienna Convention on the Law of Treaties
WFB	World Fact Book

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1. Introduction

The “most important problem in international philosophy is the moral status of the state and the character of its relationship to other agents in the world” (Beitz 1998: 828).

“To the degree we establish that peace between democracies is a fact, and are able to explain it theoretically, we build an alternative view of the world” (Russett 1993: 24).

In the aftermath of the World War II, the international state system has undergone a huge development. Two World Wars in less than 50 years, in particular the cruelties of World War II and their dimensions, gave impetus to quick and enormous changes: the development of an extensive human rights regime, normative limitations to the legitimacy of warfare and the establishment of the United Nations (Martin and Reidy 2006: 3). With this, and the decline of colonialism too, political theory and practice had to meet numerous challenges. “One of the greatest challenges posed by this new international order has been that of providing appropriate standards of justice for this emerging system” (ibid.). John Rawls, probably the most influential political theorist of the 20th century, contributed to this search, in 1993 with his Amnesty Lecture and then in 1999 with the homonymous monograph *The Law of Peoples* (LP). Rawls’s international theory as presented in his much discussed last monograph, however, is not “*A Theory of International Justice*”. It is first a theory of international peace and stability and then of justice, referring to fair terms of cooperation between the main subjects of international law: to Rawls the peoples of the world.

Following Rawls, the world would be more peaceful if there were only liberal democratic societies, but this is unrealistic and there are other forms of society that deserve respect and can be added to the zone of peace. Rawls thinks both within and beyond theoretical boundaries, as calling his theory a “realistic utopia” shows. A realistic utopian conception goes beyond the limits of what is ordinarily understood as possible by staying within the framework of an achievable social world. Again, he turns against dominant concepts, against realism as well as strong cosmopolitan claims, as he also did in *A Theory of Justice* (1971) (TJ), where he aimed to present an “alternative to utilitarian thought generally” (TJ: 22). Furthermore, LP is based on the same methods and

ideas as his domestic theory and the liberal democratic societies of his domestic theory provide the main agents and the starting point in LP. As Rawls builds on his domestic theory, LP has to be read, understood and interpreted on the basis of it. Therefore, and to understand the criticism of LP by scholars close to Rawls, it is worth considering his international theory within the framework of his two main works, TJ and *Political Liberalism* (PL).

The Law of Peoples – An Extension of Rawls's Domestic Theory

“It is generally agreed that Rawls was the most important political theorist within the Anglo-American world since John Stuart Mill, and his masterwork, *A Theory of Justice*, is at the center of modern thinking on its subject” (Brown 2010: 311). In TJ, Rawls focused on the question of what the most appropriate conception of justice for a liberal democratic society should look like, on the basis of which fair terms of cooperation between free and equal citizens can be established. In order to guarantee that the procedure to define those principles is fair and for this reason that the principles are going to be just, Rawls constructs an imaginative original position (OP).¹

“The intuitive idea of justice as fairness is to think of the first principles of justice as themselves the object of an original agreement in a suitably defined initial situation. These principles are those which rational persons concerned to advance their interests would accept in the position of equality to settle the basic terms of their association” (TJ: 118f.²).

In Rawls's favoured “initial situation”, the OP, representatives of citizens of a liberal democratic society are to agree on a reasonable proposal of fair principles of justice that secure each members interests in the best way (TJ: 119f.).

Five familiar conditions underlie the principles to be selected. First, they need to be general principles that can in perpetuity function as a public charter for a liberal society (TJ: 131). Second, they ought to be universal in application and thus hold for everyone within society “in virtue of their being a moral person” (TJ: 132). The term “moral person” does not imply that the respective individual

¹ For an in-depth analysis and critique of the OP in LP, see chapter 4.

² Rawls 2005a; hereafter cited as TJ.

is morally good and acts accordingly, but merely that he/she is capable of being both rational and reasonable. Moral persons are rational in forming, revising and pursuing a conception of the good³, and in “choosing between principles each tries as best he can to advance his interests” (TJ: 142). They are reasonable as they have a capacity for a sense of justice⁴, including to be able to understand, apply and act upon principles of justice, from which it follows that they will respect the selected principles (TJ: 145). The capabilities of forming a conception of the good and having a sense of justice to Rawls form the two moral powers of persons. Only because people have both capacities can they be considered capable of identifying and pursuing their interests and of social cooperation, and thus, they can be held responsible for their behaviour. That representatives possess these capabilities in the OP is essential to Rawls as it ensures that they agree on principles they can freely, rationally and reasonably agree to (Freeman 2009: n. pag.). In this way, each and every citizen is able to understand and apply those principles. Third, the selected conception of justice needs to be public, meaning that the citizens are generally aware of the principles and regularly follow them. They thus need to be principles that a rational being is ready to accept and follow. Fourth, to successfully adjust competing claims of members of society, an ordering of conflicting claims must be possible (TJ: 132-134). Fifth and last, the principles need to be the “final court of appeal in practical reasoning. There are no higher standards” and “reasoning successfully from these principles is conclusive” (TJ: 135). The principles of justice override demands of law and custom, of prudence and self-interest as well as social rules (*ibid*).

³ The conception of the good is a conception of what is valuable in life and sets the aims that the respective person holding it wants to achieve; it inhabits the final aims he or she pursues and is connected to his/her relation to the world in general (PL: 19). “The capacity for a conception of the good is the capacity to form, to revise, and rationally to pursue a conception of one’s rational advantage or good” (*ibid*.). Rational individuals have ideally “carefully thought about these things and their relative importance, and they can coherently order their purposes and commitments into a ‘*rational plan of life*,’ which extends over their lifetimes” [emphasis in original] (Freeman 2009: n. pag.).

⁴ “The sense of justice is a willingness and normally effective desire to comply with duties and obligations required by justice. Rawls sees a sense of justice as an attribute people normally have. [...] He rejects the idea, popular in extensions of economic theory, that people are motivated *only* by self-interest in all that they do” [emphasis in original] (Freeman 2009: n. pag.).

These conditions are, however, not sufficient to ensure that the results of the OP are fair and just. To exclude the possibility that private interests are considered, Rawls puts the representatives behind a “veil of ignorance” that hides certain knowledge from them. The role of the veil is to guarantee impartiality and thus fairness of the set of principles that results from the procedure (Barry 1975: 13); in order to do so, the veil hides the representatives’ knowledge of their character as well as social background and standing (Freeman 2009: n. pag.). Of equal importance here is both what the representatives know, and what information the veil deprives them of.

What they know are general facts that are relevant for the choice of principles. The knowledge of general laws and theories is accessible to them. They know general facts about human society, politics and economy and understand political and economic affairs; they are familiar with laws of human psychology and the basis of social cooperation and thus know how social organizations work. Why do the representatives need this information? To name an example, it would not make sense to select principles that human beings, because of their psychology, would never act upon. The principles thus need to be practical (TJ: 137f.).

What the representatives do *not* know is a citizen’s place in society, his/her wealth, mental and physical abilities, features of psychology, to which generation he/she belongs, the conception of the good, or life plans. Whereas they know that they have a plan for life, they do not know how it looks and thus how to promote their specific personal interest (TJ: 142). They also neither know the economic or political circumstances of their society, nor its culture (TJ: 137) now and in the past, as that knowledge is not relevant for their decision but might nevertheless influence it (Freeman 2009: n. pag.). Under these conditions, the representatives cannot select principles to their personal advantage (TJ: 139). The veil is designed

“to be a fair and impartial point of view that is to be adopted in our reasoning about fundamental principles of justice. In taking up this point of view, we are to imagine ourselves in the position of free and equal persons who jointly agree upon and commit themselves to principles of social and political justice” (Freeman 2009: n. pag.).

Although the representatives are deprived of all this information, they still have access to sufficient information to decide between alternative principles, as they, for example, still know that they have an interest in securing their liberties, generating opportunities and generally enabling members of society to promote their individual aims within a reasonable framework (TJ: 143). Consequently, they “prefer more primary social goods rather than less” (TJ: 142) as those form the “all-purpose social means that are necessary to the exercise and development of the moral powers and to pursue a wide variety of conceptions of the good” (Freeman 2009: n. pag.). Those primary goods to Rawls not only cover income and wealth, but also rights and liberties, powers and opportunities as well as a sense of one’s own worth and self-respect. Every rational person desires those goods as they are (or at least tend to be) supportive in advancing their ends (TJ: 92).

Within this framework, the selection process proceeds as follows: To identify the best principles, the representatives, symmetrically situated behind the veil of ignorance, are provided with a list of traditional and some additional conceptions of justice from which they are to unanimously choose one by comparing one to the other each in pairs (TJ: 121-123). The agreement situation in the OP is fair to all parties in the hypothetical social contract. Rawls assumes that in this way the principles agreed upon are fair too. “The evaluation of principles must proceed in terms of the general consequences of their public recognition and universal application, it being assumed that they will be complied with by everyone” (TJ: 138). As everyone has access to the same information and is equally reasonable and rational as well as symmetrically situated, the representatives would be convinced by the same arguments and thus agree to the same principles. Consequently, the result would be accepted unanimously (TJ: 139).

Similar concepts are David Hume’s “judicious spectator” or Adam Smith’s “impartial spectator”. Both, however, focus on a single perspective and judgment, while Rawls strives for a general agreement that is conceived socially, an initial situation, in which the members of society are represented (Freeman 2009: n. pag.). Behind the veil of ignorance, it does not make a difference if

there is one or if there are several representatives; due to the limitations, there are no more differences in the representatives' viewpoints. All have access to the same set of information and all have reasonable as well as rational capacities (TJ: 139). Consequently, "one or more person can at any time [...] simulate the deliberations of this hypothetical situation, simply by reasoning in accordance with the appropriate restrictions" (TJ: 138). It does not matter whether one or all members of society are represented in the OP.

According to Rawls, the representatives would agree on two, or rather three, principles of justice: 1) The principle of equal basic rights and liberties, 2a) the principle of equal opportunity (positions are open to all) and 2b) the difference principle (inequalities are just if they are to the benefit of the least advantaged members of society, given the first principle is realized; the position of the worst-off needs to be maximized) (TJ: 60). The second principle guarantees the basic needs essential for being able to pursue one's interests and to preserve one's self respect (Freeman 2009: n. pag.). The selected conception of justice should be supported by the members of society (TJ: 138).

Rawls in TJ, in his own opinion, overestimated the possible homogeneity of a democratic society (Audard 2007: 186, see also Freeman 2007: 341). In PL, he thus reformulates his question: How "is it possible that there may exist over time a stable and just society of free and equal citizens profoundly divided by reasonable though incompatible religious, philosophical and moral doctrines" (PL: XViii⁵)? In TJ, the citizens of a well-ordered society adopt the principles of justice on the basis of a shared comprehensive doctrine. However, in a modern democratic society, as a result of the free exercise of reason, citizens hold different comprehensive moral or religious views that may be considered reasonable but are incompatible with one another (PL: XVI). While citizens can hold differing reasonable doctrines, they need to share a political conception that is founded on and supported by an overlapping consensus between those pluralistic doctrines. That conception has to be impartial and to rely on public reason, not be judged as true, but as reasonable, as it is part of the political not

⁵ Rawls 2005b; hereafter cited as PL.

moral sphere (PL: XViii-XX). Whereas in TJ “justice as fairness is presented [...] as a comprehensive liberal doctrine [...] in which all members of its well-ordered society affirm that same doctrine [...] *Political Liberalism* regards that society as impossible” as it “contradicts the fact of reasonable pluralism” (Rawls 2005c: 489).

Major conceptions, relevant for understanding LP and showing a development within Rawls’s thinking, are applied in PL, for which some space shall be spent here: the understanding of reasonable, comprehensive doctrines contrasted with political conceptions, and closely linked to that, of reasonable pluralism, the idea of an overlapping consensus as well as that of public reason.

As citizens are regarded as free and equal, and enjoying basic rights and liberties, they may hold diverse, reasonable, comprehensive doctrines, whether religious, philosophical or other. The term “doctrine” is used for “comprehensive views of all kinds” (ibid.: 441). Comprehensive doctrines inform the individual’s fundamental interests and the respective person is free to affirm, revise and change those doctrines (ibid.: 483). As David Reidy points out, “fundamental interests of human persons are historically, socially, and contingently given, and not necessarily universally shared” (Reidy 2004: 310). Since persons are understood as rational and reasonable, they (ideally) hold reasonable, comprehensive doctrines. Non-ideally, members of society may hold nonreasonable views, which is unproblematic as long as these views do not gain too much weight within society. The limits within which unreasonable views need to be tolerated are set by the principles of justice (Rawls 2005c: 441, PL: 39).

Rawls refers to the fact that different reasonable doctrines exist as the “fact of reasonable pluralism”. “[P]olitical liberalism assumes the fact of reasonable pluralism as a pluralism of comprehensive doctrines [...]. This pluralism is not seen as disaster but rather as the natural outcome of the activities of human reason under enduring free institutions” (PL: XXIV). Pluralism is thus a feature of a democratic society. To Rawls, liberalism itself is not to be understood as a comprehensive doctrine, but rather as a political conception that allows for several comprehensive doctrines to be held by members of society (Gaus and Courtland 2011: n. pag.). The political conception, expressed by the principles of

justice, is widely shared by members of society. So, comprehensive doctrines generally address what is essential for human life, while political conceptions only address an individual as citizen (Buchanan 2006: 152). Therefore, the conception of justice – that at best all citizens share, affirm and act upon – must be limited to the political sphere, freestanding, meaning without a link to any specific comprehensive doctrine, and based on an overlapping consensus (PL: 36-41). It should support toleration and other crucial elements of democracy (Wenar 2008: n. pag.). Only then are they to be considered “reasonable doctrines” as they, by definition, “do not reject the essentials of a constitutional democratic policy” (Rawls 2005c: 488).⁶

Reasonable persons can support a diversity of reasonable opinions and they can reject the reasonable opinions of others. They do, however, offer fair terms of social cooperation and abide to those terms if others equally do so, even if this runs against their personal advantage (ibid.). Unreasonable persons, however, either do not want to cooperate on fair terms or refuse to accept the reasonable pluralism of doctrines held in a democratic society. People who are unreasonable or hold unreasonable doctrines are not incorporated in the overlapping consensus on justice (Freeman 2007: 371). “In so far as such persons and doctrines reject principles of liberal justice, they are to be ‘contained,’ Rawls says, and not compromised with” (ibid.). Reasonable pluralism thus sets the limits of toleration (Audard 2007: 186).

“Rawls still believes that agreement on liberal justice is possible among reasonable people, not because of a compromise or *modus vivendi* [...], but on the basis of citizens’ moral sense of justice as grounded in their different reasonable comprehensive views. This is the significance of the idea of *overlapping consensus*” (Freeman 2007: 341).

By overlapping consensus, Rawls refers to “a lasting and stable principled agreement among reasonable comprehensive doctrines with each endorsing the political conception of justice from its own point of view” (Audard 2007: 197). Members of society, despite the diverse reasonable doctrines they hold, affirm –

⁶ Basically, Rawls argues that either one agrees with his argument, or is categorized as unreasonable: “reasonable doctrines are virtually defined as affirming liberal values of justice” (Freeman 2007: 350). As Brian Barry argues, the “upshot is, then, that only conceptions of the good that are congruent with justice are reasonable. Anyone who holds any other conception of the good can legitimately be coerced – and will have to be” (Barry 1995: 889).

for diverse reasons – the same political conception of justice (ibid., Rawls 2005c: 482f., Wenar 2008: n. pag.).⁷ The overlapping consensus solves the stability problem of pluralistic societies (Freeman 2007: 366). The plural society is stable because its members can reasonably agree to the political conception that constitutes an overlapping consensus between them.

The concept differs from traditional social contract theory in two mayor ways: the agreement of members of society to principles of justice is no more a *modus vivendi* among conflicting interests and doctrines, but rather, it is a (reasonable) consensus. It is thus a feasible basis for a stable democratic basic structure that is more stable than stability due to a balance of power as power relations may shift (Wenar 2008: n. pag.). Also, not all come to the consensus for the same reasons; different motives might be deduced from their respective comprehensive doctrines (Freeman 2007: 370).

The principles, ideals and standards that members of society may appeal to, that constitute the overlapping consensus are the content of public reason. Public reason can be understood as the “citizen’s reasoning in the public forum about constitutional essentials and basic questions of justice” (PL: 10). Each member can reasonably and with good reason agree to the principles as free and autonomous agents and can live up to his individual reasonable normative conception within the basic structure established according to those principles (Hirsch 2002: 54).

Public reason is not based on one political conception of justice, but on a family of reasonable conceptions, which may be incompatible or change over time, thereby causing debate. It is to settle political problems and conflicts and to set political rules of action, which members of society can reasonably endorse (PL: I-iii). To Rawls, the idea of public reason functions as a shared basis of

⁷ Wenar quotes the second Vatican Council to illustrate how a reasonable Catholicism can overlap with the liberal conception of individual liberty out of its own perspective: The council announced that “the human person has a right to religious freedom [...]. The council further declares that the right to religious freedom has its foundation in the very dignity of the human person, as this dignity is known through the revealed Word of God and by reason itself” (Wenar 2008: n. pag.).

justification, which is uncovered by reflection (LP: 19⁸) and thus satisfies the criterion of reciprocity⁹ (Wenar 2008: n. pag.).

“Political liberalism [...] holds that even though our comprehensive doctrines are irreconcilable and cannot be compromised, nevertheless citizens who affirm reasonable doctrines may share reasons of another kind, namely, public reasons given in terms of political conceptions of justice” (Rawls 2005c: 487).

Again, unreasonable reasoning is possible, for example when asserting that the religiously true overrides the politically reasonable. As with reasonable and unreasonable doctrines, Rawls excludes these ways of reasoning from being relevant for his theory, as long as they remain within certain limits. “We simply say that such a doctrine is politically unreasonable. Within political liberalism nothing more need be said” (ibid.: 488).

Summing up, a well-ordered society is effectively regulated by publicly known and justifiable principles of justice that are based on an overlapping consensus to which all members reasonably agree to despite of the reasonable pluralism of the comprehensive doctrines they hold, and because of that, they acknowledge the basic structure established according to those principles.

There are two major shifts when it comes to LP: First, whereas in Rawls's earlier work, only liberal societies qualified as well-ordered, in LP he claims that there are other types that are less just and reasonable but still well-ordered (Brown 2010: 312). Second, Rawls no longer searches for a conception of justice for social institutions of a liberal democratic society, but “a conception of justice that will be most conducive to peaceful institutional cooperation amongst peoples” (Kreide 2002: n. pag.). Also, Rawls becomes more concerned with practicability, a development that already became visible from TJ to PL (ibid.).

In LP, Rawls adopts his method (the OP and the veil of ignorance) and ideas (reasonable pluralism and an overlapping consensus). However, he arrives at different conclusions. Instead of formulating, for example, an international principle of distributive justice, he opts for a duty of assistance.

⁸ Rawls 1999; hereafter cited as LP.

⁹ “The criterion of reciprocity requires that when those terms [fair terms of cooperation] are proposed as the most reasonable terms of fair cooperation, those proposing them must also think it at least reasonable for others to accept them as free and equal citizens” (LP: 136f.).

Why does he do this? In LP, Rawls changed his focus. While TJ and PL look for principles of justice for a domestic society, Rawls in LP tries to identify the most appropriate set of principles according to which relations between societies can be organized as peaceful, as stable and as just as possible. All three are necessary and interdependent criteria. The focus shifts from the domestic to the interstate sphere – domestic justice is of secondary importance – and from justice to peace, stability and justice, in that order. By building on the democratic peace thesis, Rawls's main object is a stable peace, and secondary to this, just, domestic and international structures. Justness remains a necessary condition. This focus might clarify why LP might not be what philosophers and political theorists would have expected from *the theorist of justice*. Furthermore, although LP is Rawls's "last word", it is not the last word on his international theory: LP as a theory is incomplete. Rather than a "comprehensive theory", it is a sketch of Rawls's international thought and he is aware of that when leaving room for additions or changes on several occasions or when he relativizes his statements: the principles of the Law of Peoples may be incomplete; there may be other types of decent regimes. So what does Rawls conclude in LP and why? Below, a short overview is presented.

Rawls differentiates between five types of political regimes: liberal peoples, decent peoples, benevolent absolutistic societies, burdened societies and outlaw states, without claiming that the set is complete. Peoples in LP are the contractual partners, forming the Society of Peoples, whereas societies and states are treated as objects, political entities peoples have to deal with.

Whereas "society" is used as a general term relating to well-ordered as well as to non-well-ordered political units, like "regime" on certain occasions, peoples and states have specific meanings. "Peoples", to give a short idea of Rawls's concept, refers neither to the plural of persons, nor to groups of persons forming a cultural, social or political entity, but to countries meeting specific criteria.

"I first chose the name 'peoples' rather than 'nations' or 'states' because I wanted to conceive of peoples as having different features from those of states, since the idea of states, as traditionally conceived with their two powers of sovereignty [...], was unsuitable" (LP: v).

They are idealized states, a kind of “states plus” insofar as they limit their rational interest according to reasonable principles, for example, by honouring the principles of the Law of Peoples even if that puts extensive constraints on pursuing their rational national interest. Whereas in the common understanding of “peoples” the term refers to “collectivities that do not have a government and do not form a state”, to Rawls a people “is a state containing a well-ordered society that is either liberal or decent. So, for Rawls, all Peoples are states” (Shue 2002: 309).

States on the other hand pursue their rational interest by all means suitable, violate core human rights and/or pursue an aggressive foreign policy. So, neither Rawls’s understanding of “states” nor that of “peoples” corresponds to the established definitions.

How now do those differentiations correspond to the five types distinguished by Rawls? Liberal peoples, the main subjects of LP, have a democratic background structure and pursue their rational interests within the limits of reasonable principles; they thus honour basic human rights and refrain from pursuing aggressive foreign policies. The same holds true for decent peoples, with the difference that their basic structure is hierarchically organized. Still, members of society can take part in the process of political decision making via a consultation system. Benevolent absolutistic regimes honour human rights, are pacific but exclude their population from processes of political decision making. Burdened societies involuntarily do not comply with the Law of Peoples as they are burdened by unfavourable conditions that restrain them from establishing a well-ordered regime. Outlaw states deliberately do not comply with the principles of the Law of Peoples. By pursuing their rational interest, they violate core human rights and/or constitute a threat to other societies.

Whereas the first two types, together referred to as well-ordered peoples, are the subject of the first two parts of the monograph that Rawls refers to as “ideal theory”, the second part – non-ideal-theory – explores how peoples are to relate to absolutistic-, burdened- and outlaw regimes.

Focusing initially on ideal theory, in a first step, Rawls models a second original position (OPII). Representatives of well-ordered liberal democratic

peoples are set behind a veil of ignorance to decide on a set of reasonable principles that are to govern the relations between them: the principles of the Law of Peoples. To ensure that the principles are chosen under fair circumstances and that the results are just, as well as that the principles constitute an overlapping consensus between peoples holding different comprehensive doctrines, the veil hides the knowledge of size, geographical position, natural resources, population and economic, political or military power of the society they represent, as well as the knowledge of doctrines held on the domestic level. The representatives know, however, that they represent liberal societies. The principles chosen in OP II according to Rawls are the duties 1. to respect other peoples' freedom and independence and within that to 2. not intervene in their domestic affairs, 3. to consider equality between them as partners within a fair system of cooperation, 4. to observe treaties and undertakings, 5. to honour basic human rights, 6. to observe restrictions in the conduct of warfare, 7. to assist burdened societies and last but not least 8. the right of self-defence (LP: 37). Rawls restricts core human rights to a minimal set of four: the right to life (including that the means of subsistence and security have to be granted), to liberty (including freedom from slavery or serfdom, as well as a sufficient measure concerning the liberty of conscience, religion and thought), to property and to formal equality (LP: 65). War is only legitimate in cases of self-defence or in cases of gross violations of the core human rights.

In the second part of his ideal theory, Rawls models a third original position (OP III) where representatives of decent peoples behind the same veil of ignorance select the same set of principles as the representatives of liberal societies did in OP II. As a result, the principles of the Law of Peoples are not only accepted by liberal democratic societies, but also by decent peoples.

Non-ideal theory then focuses on the question of how well-ordered peoples, together forming the Society of Peoples, are to relate to non-well-ordered societies. Leaving benevolent absolutistic societies aside, peoples have a right to war against outlaw states, as those by definition are either aggressive or grossly violate core human rights (or both) and thereby are a threat towards other societies and/or their own people. Towards burdened societies, they have

a duty of assistance, insofar as to provide what is needed to enable those societies to establish a well-ordered basic structure.

Rawls's claim, that the duty of assistance is a sufficient measure for (fair) international re-distribution, his human rights minimalism and his classification of decent societies as well-ordered have raised critique, mainly from the cosmopolitan camp. Those aspects of LP have thus been the main objects in the reception of it.

Reviewing *The Law of Peoples*

The roots of Rawls's international theory were laid in TJ (1971) (TJ: 378-380), where Rawls enlarges his original position to representatives of nations "who must choose together the fundamental principles to adjudicate conflicting claims among states" (ibid.: 378).¹⁰ Against the ideas Rawls sketched very briefly, critics argued, first, that individuals and not states should be represented in a global (rather than an international) OP and second, that the set of principles Rawls presents are not those that the representatives of nations would agree on. A special focus of critique lay on the fact that Rawls did not apply his difference principle to the international realm. These two points were elaborated, amongst others, by Brian Barry (1975), Charles Beitz (1979) and Thomas Pogge (1989). Barry argues that the representatives would probably "challenge the rules under which Rawls requires them to operate", reject his minimal set of principles and opt for an international difference principle (Barry 1975: 129-132). Beitz and Pogge proposed a global OP as well as a principle of distributive justice and thus, in extending Rawls's theory, arrived at different conclusions to Rawls himself.

Despite the criticism, Rawls in his 1993 Amnesty Lecture "The Law of Peoples", in which he presented a more elaborate version of his international theory, neither introduced a global original position, nor an international principle

¹⁰ In TJ, the representatives of nations agree on the principles of equality and self-determination, the right to self-defence (extended to defensive alliances), that treaties are to be kept, they accept limitations in the conduct of war and to prohibit "incorporating the natural duties that protect human life" (TJ: 378f.).

of distributive justice. He turned even more against cosmopolitan thinking by picturing decent hierarchical societies, that – although they are not liberal democratic – are categorized as well-ordered members of good standing in the international realm and thus need to be tolerated and respected by liberal peoples. He also opts for a human rights minimalism that excludes liberal rights such as freedom of assembly or a right to equal representation.

Rawls's "continued faith in the nominally traditional idea of a Society of States was viewed with some disappointment" (Williams 2011: 16). Pogge in 1994 called for "An Egalitarian Law of Peoples" arguing that even if one accepted Rawls's construction of the two original positions (which he does not), a "plausible conception of global justice must be sensitive to international social and economic inequalities" (Pogge 1994: 196). He proposes a global resource tax (GRT) on which representatives of liberal societies in an OP might agree in order to mitigate unjust inequalities on the international level. Darrel Moellendorf (1996) argues not only for the addition of a principle of egalitarian distributive justice but also of a principle of liberal democracy. Moellendorf accuses Rawls of establishing principles that *could* be accepted instead of principles that *should* be accepted and questions the tolerability of decent regimes from the viewpoint of liberal standards.

Another focus point has been the claim that liberal peoples need to tolerate and respect decent peoples as members of good standing in the international realm. Kok-Chor Tan in his 1998 article "Liberal Toleration in Rawls's Law of Peoples" emphasizes the tension between liberal theory and the toleration of hierarchical societies. Fernando Tesón also argues that by tolerating decent societies, Rawls does not pay enough attention to forms of oppression and covers too few human rights. Tesón on the other hand praises Rawls for presenting an alternative to realism and justifying humanitarian intervention and supports his non-application of the difference principle to the international realm (Tesón 1994: 20). The anthology *Global Justice*, edited by Pogge and Moellendorf (2008), not only includes Rawls's Amnesty Lecture, but also the commenting essays by Pogge, Moellendorf and Tan, which have already been introduced.

When the final monograph was published in 1999, the disappointment was even greater. “With some notable exceptions, the bulk of the initial literature on LP seemed to express disappointment that Rawls failed to see the problem of international justice from a more cosmopolitan perspective” (Williams 2011: 14). The new wave of criticism was accompanied by more positive receptions. Theorists such as Chris Brown, who suggests that the “current tendency to dismiss it [LP] as fundamentally misconceived is regrettable” (2004: 43), Samuel Freeman (2007) and Leif Wenar (2006) explored potentially valuable elements of LP. Wenar declares pure cosmopolitanism as impossible and claims Rawls’s “liberal statism” to be “the only realized approach to global political morality that we have” (Wenar 2006: 111).

Rawls’s international theory, however, stands in the shadow of his domestic theory.¹¹ Nevertheless, when theorizing about international justice it is almost impossible not to at least mention Rawls.¹²

As indicated earlier, criticism on LP was first and most intensely formulated by cosmopolitans close to Rawls, such as Beitz and Pogge. Major points of critique are Rawls’s focus on states as actors instead of individuals, his human rights minimalism and the lack of distributive justice in the international realm (see also Kuper 2000). The critique was mostly combined with alternative attempts to suggest principles and measures to solve global moral problems, such as extreme economic inequalities. The critics thus not only criticized what Rawls did write but also indicated what he *should have written* instead.

“Most of his critics within the tradition have, in effect, attempted to save Rawls from himself, suggesting ways in which his approach can be modified to cope with the problems it allegedly creates, or fails to deal with—most notably the issue of the international dimension of justice, which for Rawls cannot involve redistributive social justice, a conclusion his critics regard as perverse” (Brown 2010: 311f.).

¹¹ Introductions to Rawls cover LP at least in one chapter (see for example Audard 2007: 229-274 or Freeman 2007: 416-456). In the *Cambridge Companion to Rawls* (2003), LP is hardly treated.

¹² Peter Sutch, to name an example, in his monograph *Ethics, Justice and International Relations* dedicates a chapter on a defence and interpretation of Rawls’s international theory (2001: 173-202). More specific works that touch aspects of LP refer to or even discuss LP explicitly. Within the anthology *Ethics of Assistance* (2004), edited by Deen K. Chatterjee, three articles are dedicated to LP.

The anthology *Rawls's Law of Peoples. A Realistic Utopia*, edited by Rex Martin and David Reidy, unites many of the voices that made a valuable contribution to the discussion of LP and its content. It thereby covers the topics that have been central in the discussion of LP: the background and structure (including the conception of peoples or the ideal-non-ideal-theory divide); the understanding and grasp of human rights, as well as the question of international distributive justice. A point on its own is the question of toleration.¹³

Concentrating on the background structure, the concept of peoples, especially decent hierarchical peoples, have been focused on. The common critique on decent peoples is two-headed: first, tolerating decent peoples was considered inconsistent with liberal thinking,¹⁴ and second, the concept of decent peoples is perceived as implausible.¹⁵ The toleration of non-liberal societies as members of good standing in the international realm has been questioned. Bruce Ackerman, on the topic, went as far as to claim that Rawls "proposes a disastrous political compromise with authoritarian regimes" (1994: 381).¹⁶ In "Decent Peoples, Outlaw States, Burdened Societies: Conceptual Categories in the Law of Peoples", Chris Brown illuminates Rawls's typology of political regimes and discusses the differentiation between peoples, societies and states. He argues that a binary classification (liberal/non-liberal) does not correlate to how the world currently is and enhances international tension (Brown 2004: 39) instead of peace and stability. Rawls's critics, however, not only rejected Rawls's duty of assistance as insufficient, but also considered his human rights minimalism as incomplete, as Rawls did not cover the whole set of liberal rights and liberties.¹⁷

¹³ The critique of Rawls's human rights minimalism and the duty of assistance is reviewed in more depth in chapter 4, where the principles of the Law of Peoples are analyzed. The question of the limits of toleration is dealt with in chapter 3 when focusing on the interaction between the first two types of political regimes.

¹⁴ The argument was put forward, amongst others, by Tan (2006), Beitz (2000), Pogge (2001), and Moellendorf (2002).

¹⁵ See for example Brunkhorst 2002.

¹⁶ Of minor attention in the discussions around LP have been Rawls's differentiation between ideal and non-ideal theory (see for example Simmons 2010 or Valentini 2009), his Kantian inheritance (Becker 2005; Kreide 2009; McCarthy 1996), and the role and position of women in LP (Nussbaum 2002). The first two are of relevance for the project at hand.

¹⁷ See diverse publications by Beitz and Pogge; see also: Tan 2004, Kuper 2000 and Caney 2002.

As more recent publications show, LP's potential for discussion is not yet exhausted. A dissertation by Huw Lloyd Williams (2011) in defense of Rawls explores the potential of LP to solve the problem of global poverty that has been of major concern for Pogge and others. He concludes that the duty of assistance is a far-reaching principle that can meet the challenge of global poverty. Andreas Bock (2008) in his dissertation showed that Rawls's human rights minimalism does not diminish but enhance global justice as Rawls guides liberal regimes towards creating an international society in which *every human being* lives in at least decent societies.

With reference to the project at hand, the democratic peace thesis has been discussed in relation to LP by Christine Audard (2006a), Michael Becker (2005) and targeted by Michael W. Doyle (2006), who in his paper "One World, Many Peoples: International Justice in John Rawls's *The Law of Peoples*" strives to identify decent regimes. An in-depth elaboration on Rawls's peace-argument and the picture of the Society of Peoples as potentially all-embracing "peaceful haven" is so far missing, as well as an explicit elaboration on the possible enlargement of the democratic peace to a decent peace thesis.

The main critique LP has to meet has been of it not being cosmopolitan or at least sufficiently liberal. Rawls's international philosophy, however, belongs to the liberal camp, but he combines elements of different traditions or schools of thought in a way which almost seems inconsistent. By extending his domestic theory to the international sphere, he breaks with cosmopolitanism, as well as with cultural relativism and last but not least realism (Audard 2006a: 59). In LP, a weak cosmopolitanism (universal grasp of core human rights)¹⁸ is combined with communitarian elements.¹⁹ Also, his international theory has a constructivist character, as it is developed through a procedure of construction (the OP) (Bock 2008: 5). It is contractualist insofar as the principles of the Law of Peoples

¹⁸ "The Law of Peoples can be described as a weak cosmopolitan position [...] in that it recognizes the normative force of human rights" (Tan 2006: 87, see also Freeman 2007: 442).

¹⁹ "Rawls has always defended the intrinsic good of political community [...] [and] never really held that it makes sense to view individuals as socially unsituated" (Simphony and Weinstein 2001: 12).

constitute a social contract, based on an overlapping consensus between peoples (Sutch 2001: 174). Despite all that, the application of the principle of reasonable pluralism to the international sphere and the claim for toleration and respect of all well-ordered societies, is based on liberal theory and might be considered Rawls's main contribution to it in reference to LP: Although liberal democracy is considered the most just and reasonable system, imposing this system on other regimes that pass the threshold of what is tolerable is illiberal and may cause conflicts, instability and injustice.

By drawing on and equally rejecting elements of those different ways of theorizing, Rawls draws critics on his international theory from a wide variety of camps, which leads to misunderstandings of his concepts through focus on elements that do not fit into the respective framework. "LP is a richer and more formidable philosophical target than typically acknowledged by those who take aim at it" (Reidy 2004: 312). Rawls thinks across and between the lines of the "isms" and can thus hardly be classified. Nevertheless, he remains a "member of good standing" within the family of liberal ideas.

Rawls's theorizing across and between common lines of thought is not the only thing that makes LP distinctively interesting. Although LP might always stand in the shadow of his major works, it has a distinct value for international relations theory and practice. Rawls does not paint the world in terms of black and white, liberal and non-liberal, friend and foe, the West and the rest, but in different shades of grey, where no existing regimes escape censure. These shades and how they are interwoven are worth being drawn out clearly. Rawls's idea of reasonable pluralism at the international level, obliging liberal peoples to tolerate decent regimes as equal cooperation partners, and the principles of the Law of Peoples, which can be regarded as an overlapping consensus between them, are ideas worth being considered and discussed. Even if there are no peoples in the real world, the ideal might help to discern criteria according to which one can review state behaviour; it can give additional justification to existing or evolving international norms, or, focusing on the Society of Peoples as the union of these ideal societies, help to develop or improve international

institutions. It can help to avoid illiberal policies that aim at liberalizing other societies, to avoid the imposition of liberal values on regimes that maintain their own reasonably just system of values. The model can sketch a path to the final aim – peace, stability and justice in the international realm – no matter how close one might come to actually achieving that aim. Equally, the idea of the Society of Peoples as an ideal institution might serve as a model for existing institutions.

LP has been read as “*A Theory of International Justice*” and has thus been criticized accordingly. However, LP is not about how to establish a just world order, at least not primarily. It is rather meant to provide liberal regimes with a guideline according to which they shall organize their foreign relations in order to enhance a peaceful, stable and just international realm, in order to establish a global Society of Peoples.²⁰ This guideline is meant to be applicable to the here and now, to present a feasible *realistic* utopian concept. LP is thus more “*A Theory of International Peace, Stability and Justice*”, developed within a realistic utopian framework for existing (and future) liberal societies and it has to be read, interpreted and criticized as that.

Purpose, Content and Structure of the Thesis

Rawls’s conception, being what he calls a realistic utopia, his focus on idealized states (peoples) and his idea of decent regimes, clarified by his imagined decent model society Kazanistan, pose a question: Is the picture Rawls draws of international relations as they should be, applicable to actual international relations? Therefore, my overall aim is to provide a clear sketch of Rawls’s concept by identifying and discussing ambiguities and weaknesses and deliberating on the question of whether LP may meet its task and can function as a guideline for more peace, stability and justice in the international realm and what that peace might look like. In concrete terms, I want to substantiate

²⁰ “The aim of the Law of Peoples would be fully achieved when all societies have been able to establish either a liberal or a decent regime” (LP: 5). Within the Society of Peoples, “peace and justice would be achieved” (LP: 6). LP wants to say how a “world Society of liberal and decent Peoples might be possible” (ibid.).

whether Rawls does actually sketch the path to a decent peace. Does Rawls's international theory, his typology of regimes and the system of cooperation between them, work as a model for international relations? If not, why not and can the model be adjusted? And if so, what does LP contribute to international political theory and practice? How can LP enhance peace, stability and justice on the international level? The combination of realistic and utopian elements as well as the divide between his ideal and non-ideal theory pose problems for the applicability of Rawls's model. Rawls relates ideal peoples to non-ideal surroundings, sketches an ideal decent society at the same time stating that something like that ideal, Kazanistan, "is the best we can realistically – and coherently – hope for" (LP: 78).

Here, the concept of decent peoples creates an additional problem. Rawls models Kazanistan as an exemplary decent society, but does not refer to any existing or historic state. Decent societies appear to be constructions. However, their moral status as equal cooperation partners to liberal peoples is essential to the theory. Although their basic structure is less reasonable and less just than that of liberal democracies, they are to be tolerated as equal partners of cooperation. Rawls regards this as a result of reasonable pluralism. As Rawls's aim is to sketch a system of cooperation promoting peace, stability and justice and as he builds on the assumption of a democratic peace, one would expect that Rawls would, ascribing this special moral status to decent societies, include them into the assumption of stable and just peace. One would expect Rawls to enlarge the scope of democratic peace towards a "decent peace thesis", which he, at least explicitly, does not. So does Rawls take the idea of reasonable pluralism and of tolerating decent regimes as equals seriously? Or is it just the most effective way towards a society of *liberal* peoples, as it might be more promising to motivate decent societies to reform by cooperation than by coercion? All this has to be regarded under the premise that decent societies exist at all. If there is nothing corresponding to decent peoples in the real world, then Rawls's arguments of reasonable pluralism and toleration are meaningless. LP might even be judged as a "wolf in sheep's clothing", a way to indirectly impose liberal principles on non-liberal regimes. If there are no decent societies,

never have been and most probably never will be, the principles of the Law of Peoples remain *liberal* values and do not constitute an overlapping consensus; liberal democracy remains the only regime type qualifying as well-ordered. Spreading those values by means of intervention or the duty of assistance could then be considered liberal imperialism, which is exactly what Rawls aims to avoid. If there are decent societies in the real world, why does Rawls not name examples and deliberate on a decent peace? Is the assumption of decent peace normatively and empirically provable? And if so, how could it be implemented within the framework of international relations?

An in-depth understanding and analysis of Rawls's theory as presented in LP is essential to analysing these questions and problems. Therefore, the next chapter focuses on Rawls's understanding of peoples and states and their relation to one another. Why does Rawls use "people" instead of "state" and what are the differences? Rawls's understanding of the terms is analyzed with regard to its descriptive and normative content. Also, the relations between peoples and their status of existence as political entities are analysed. Is the usage of the term "people" itself helpful or does it cause theoretical and/or terminological confusion? Are states a negative print of peoples or peoples idealized states? Do peoples exist in the real world and on what conception of political regimes are Rawls's definitions based? Here, Rawls's differentiation between ideal and non-ideal theory becomes crucial. If peoples are ideals, how come they are actors in non-ideal theory? The analysis of LP is complemented by arguments for and against the concept of peoples and an examination of the connection of the concept to Rawls's realistic utopian aspirations.

On the basis of the results of the second chapter, chapter 3 introduces Rawls's five types of political regimes. The chapter shall draw a clearer picture of the Rawlsian model and clarify ambiguities within his differentiations. As pointed out already, essential questions hereby arise from the relation between liberal and decent peoples. Is it reasonable to expect liberal regimes to tolerate non-democratic but decent societies as equal cooperation partners? Is Rawls's claim based on normative assumptions (reasonable pluralism) or founded on

pragmatic motives (democratization via cooperation instead of coercion)? The question of toleration is discussed in some depth, as it is not only crucial for understanding Rawls and his critics, but also essential for the project pursued in this dissertation: If Rawls takes toleration seriously, he would subsequently need to extend the democratic peace thesis, which he understands as proven by history and on which his theory is based, to a decent peace thesis. It is highly important to discover whether something similar to a decent people exists in the real world. Rawls uses the decent model society Kazanistan to prove that his principles of the Law of Peoples are not liberal, Western ideas but constitute an overlapping consensus between at least reasonably just, well-ordered societies. If decent societies lack counterparts in the real world, Rawls's justification for imposing the principles of the Law of Peoples on other societies, non-compliance by non-members of the Society of Peoples is a reason for intervention, might be pointless.

Chapters 4 and 5 then, focus on possible ways of recasting Rawls's theory in the international system. Chapter 4 focuses on the centre of LP: the principles of the Law of Peoples. Problems arising from the construction of the international OPs are analysed and it is discussed whether one, rather than two OPs for the international realm are more convincing. It is questioned, whether the principles can be rightly regarded as an overlapping consensus between liberal and decent regimes and explored why Rawls chose those eight principles. The focus here lies on the most contested principles: the human rights minimalism and the duty of assistance, and in reference to the latter, the missing principle of distributive justice. Why does Rawls, even within an ideal framework, limit his concept of human rights to a minimal set? Why does he not opt for an international principle of distributive justice and is the grasp of the duty of assistance sufficient?

Rawls provides hardly any information on how a Society of Peoples may be structured, so chapter 5 concentrates on understanding the Society of Peoples, developing a sketch of its setup as well as evaluating its position in LP and its possible worth for international relations. Is it a mere forum of all regimes qualifying as well-ordered, or should it take the shape of an international

institution, equipped with a basic structure and clear decision making processes? As the duty of assistance and the right to war seem to be understood as a combined effort, and as there needs to be an entity controlling, and if necessary enforcing, the principles of the Law of Peoples within the Society, a basic structure and clear procedures might be necessary. Could the European Union serve as an existing model for a “regional Society of Liberal Regimes”? Would the concept of a League of Democracies help in gaining a clearer picture of how a Society of Peoples may look? Again, decent people are focused on. Would hierarchically organized regimes accept democratic processes of decision making at an international level? Are there other possibilities to organize the basic structure of a Society of Peoples? Additional constraints on the international level seem worth discussing. What should the Society of Peoples look like? Is it a loose union of all regimes qualifying as peoples or is it an international institution that would then have to claim being a legitimate authority on the use of force, given that peoples’ right to war, though being limited, is not reduced to cases of self-defence?

After having presented a broad elaboration of Rawls’s theory, drawn a picture of it and discussed some of the ambiguities and problems that arise from both, chapter 6 focuses more closely on the question of whether decent peoples exist in the real world. Identifying decent societies is crucial in two ways. First, identifying those regimes proves that Rawls does not merely invent decent societies to justify imposing liberal principles on non-liberal regimes but rather presents an overlapping consensus between liberal and non-liberal well-ordered societies and thus a way for liberal societies to enhance peace, stability and justice in the international realm and for *avoiding* liberal imperialism. Second, it is helpful in substantiating the claim that the democratic peace thesis might be enlarged to a decent peace. On the basis of the regimes identified, an empirical claim for a decent peace proposition is formulated. Peoples are ideals that do not have, as such, correspondents in the real world. Therefore, one has to reduce the standards, as one would have to reduce the standards for liberal peoples to find non-ideal counterparts or identify those regimes closest to the criteria for decency. Those are referred to as “aspiring decent regimes”.

Based on the identified candidates for aspiring decent societies, chapter 7 then focuses on the question of how far a decent peace thesis might hold true. The normative as well as empirical justifications for a decent peace are explored, based on the arguments presented for and against the assumption of a democratic peace. These are discussed and transferred onto decent societies. Concerning empirical evidence, it is examined whether the identified aspiring decent regimes have been involved in violent conflicts against democracies or other decent regimes. If there is something like a decent peace that would give additional support to Rawls's idea of toleration, having in mind that the focus is on peace, stability and justice on the theoretical level (if it can be substantiated that the criteria made responsible for a democratic peace also apply to decent societies and can thus be suspected to have a similar effect) as well empirically (if it can be displayed that regimes that qualify as aspiring decent do pursue peaceful foreign policies in relation to other aspiring decent or liberal regimes). If there is not, reasonable pluralism and cooperation, instead of coercion, are nonetheless still valid arguments. Would Rawls have supported a decent peace thesis and why does he not deliberate on it in LP?

Finally, the concluding chapter provides a summary of the findings on the basis of which the following questions are discussed: How can the concepts of the Society of Peoples and the Law of Peoples, and how can Rawls's theory as a whole, contribute to more peace, stability and justice in the international realm and/or to a decent peace? How far may LP function as a guideline to realize that aim? How can it improve the cooperation between liberal and decent regimes? Some continuative aspects are explored: Can LP provide additional justification for existing or evolving international norms, or – focusing on the Society of Peoples as union of these ideal societies – help to develop or improve international institutions?

2. Rawls's Actors in the International Realm

In LP, the contractual partners are neither individuals, as in TJ and PL, nor states as generally understood and as one would expect from a theory of international relations, but rather *peoples*. Societies and Rawlsian states are treated as objects, as political entities peoples have to deal with.

But why start with states at all? Rawls justifies his focus on political regimes instead of individual persons with reference to Immanuel Kant, to whom the existence of separate states is a necessary condition for deliberating on international law (LP: 36). A world state to Rawls might, relying on Kant and Michael Walzer, be even worse than a Hobbesian war of everyone against everyone else. “To tear down the walls of the state is not [...] to create a world without walls, but rather to create a thousand petty fortresses” (Walzer 1983: 39). As states currently are, and will most probably continue to be, the primary actors of international relations and primary subjects of international law,²¹ any theory on international relations that has as one of its aims to deal with or solve real world problems should focus on states. Furthermore, Rawls's system is formed on the basis of which principles liberal regimes should organize their foreign policies, with the result that liberal (and decent) peoples are the natural subjects of his theory. If one does not want a world state, one needs to draw borders, both for the establishment of a basic structure, and for social cooperation of and within societies (Bock 2008: 55-57).

As indicated earlier, Rawls uses his idiosyncratic definitions of the terms “peoples” and “states” to ascribe distinct characteristics to respective regimes (Shue 2002: 308f.); “society” is used as a general term²² and may either refer to one of the five types of regimes, or to society as a constituent of a state, the sum of its members and the community they constitute (LP: 92).

²¹ Recent developments show that the focus has somehow changed, as, for example, individuals can now be sued at the International Criminal Court and not states, as at the International Court of Justice. However, these developments are not as strong as to suppose that states will, in the near future, lose their standing in the international realm.

²² See for example “liberal and decent societies” (LP: 5), “unjust societies” (LP: 8), “five types of domestic societies” (LP: 4). Therefore, Buchanan is wrong when he understands Rawlsian societies as “peoples’ organized in states” (Buchanan 2000: 700).

Rawls's understanding of peoples (and states) is hard to grasp. Clearly, Rawlsian states and peoples are distinct, if not opposite terms. Treating both as one and the same (as Buchanan does; 2000: 699) would miss Rawls's ambition to differentiate himself from traditional thinking and to emphasize the moral character of peoples (Bock 2008: 9, 37). "The idea of a people is [...] not simply a redescription of a familiar phenomenon. [...] [N]ot all states count as peoples" (Beitz 2000: 679). An in-depth analysis of the Rawlsian usage of both terms, as well as their relation to one another, is essential to understanding his project. In which context and on what forefront does Rawls differentiate between peoples and states, and is this delineation well chosen? Why talk about peoples rather than states at all?

Why Peoples, Not States

Relatively early in LP, Rawls devotes a whole paragraph to the question of why he uses the term "people" instead of "state", and he deliberates and expatiates on peoples throughout the book. The central arguments for using this terminology may be summed up as follows: 1) Rawls wants to clearly distinguish his thinking from that about "states as traditionally understood" (LP: 25). 2) The traditional idea of states is unsuitable for the theory. 2.1) The idea of peoples enables one to attribute moral motives to states and an allegiance to the Law of Peoples (LP: 17). As opposed to Rawlsian states, peoples are reasonable and rational. Reasonableness is a distinct feature of peoplehood (LP: 27). 2.2) Contrary to states, peoples lack the two powers of sovereignty (the unlimited right to war and the autonomy in dealing with one's population). Both are limited by the reasonable principles of the Law of Peoples, to which liberal and decent peoples are aligned (LP: 25).

Is Rawls's approach of giving a known term a new understanding well chosen? The thinking about political states as traditionally conceived characterizes international relations as an anarchic struggle for wealth and power (LP: 28), a condition he wants to get away from and a way of thinking about states he wants to dissociate himself from. So what differentiates states

from peoples and thereby Rawls's thinking from what he conceives of as "traditional"? What characteristics and aims are added or subtracted by Rawls from the established understanding of "state"? In the following, Rawls's concept of peoples and his understanding of states are presented and clarified by a close analysis on the usage of the terms in LP.

Rawls's Concept of Peoples

An analysis of Rawls's usage of the term "peoples" as regarding its descriptive (What are peoples?) and normative (Which rights and duties are ascribed to them?) content, aims to bring forward a clear understanding of his concepts. In a further step, their possible status of existence as political entities is discussed.

Rawls views peoples as actors in a Society of Peoples, like citizens as actors in a domestic society. If a people holds a similar status on the international level as citizens on the domestic, there have to be rights and duties, criteria for membership and the opportunity to influence processes of political decision making on both levels (LP: 23). While these rights and duties on the domestic level are codified in a constitution, the Law of Peoples in the international realm sets norms for fair terms of cooperation. The criterion for membership is well-orderedness. All members agree to the principles codified in the Law of Peoples because of the reasonable character of their respective societies. Whereas citizens' interests are specified by their conception of the good, peoples' interests are informed by a political conception of justice as well as by the principles of the Law of Peoples (LP: 40), which detaches them from moral, religious and philosophical concepts connected to the conceptions of the good (PL: 19f.). Rawls does not extend the parallel between citizens and peoples to political regimes in general. The reason for this might be the criterion of representation; the parallel does not hold for regimes that do not represent the interests of their people.

The idea of peoples is developed on the basis of liberal democratic states (LP: 9f., 23). This is why Rawls often refers only to liberal peoples and leaves

decent peoples aside or mentions them in brackets.²³ Nevertheless, they equally apply to decent peoples. Therefore, the following criteria should be met, if not specified otherwise, by both regime types.

Descriptive Features of Liberal (and Decent) Peoples

Three features basically define Rawlsian peoples:

- 1) Peoples have their own internal government, being either reasonably just, liberal and democratic or decent and putting forward the fundamental interests of society (institutional feature).
- 2) The individual members of peoples share common sympathies (cultural feature).
- 3) Peoples have a moral nature arising from an attachment to a reasonable conception of right and justice (political/moral feature) (LP: 3, 23f.).

In addition to these characteristics, a Rawlsian people is a state in the traditional sense and possesses a defined territory and citizens, as well as, in some regards, the monopoly on legitimately exercising power over both.

Reasonable, not full, justness is necessary to meet the first criterion. Rawls speaks of a “reasonably just, or decent, nature of their regimes” (LP: 27). Reasonable justness and decency are shown as alternatives of more or less equal quality. Peoples on most fronts act through their respective government whose task is to effectively represent its citizens, pursue their fundamental interests, and take responsibility for the territory, its environmental integrity and the size of the population (LP: 8). The idea of representation is the single reason why benevolent absolutistic regimes do not qualify as peoples. The term under discussion stresses that Rawlsian peoples are formed by *people* and that their governments represent those individuals. “Only in well-ordered societies, the people – meaning the citizens – are regarded and appear as agents. That is why they are being called people.” An unjust government does not represent its peoples and “there will be no people present in its action” (Pettit 2006: 43).

²³ See for example “a reasonably just liberal (or decent) polity” (LP: 25) or “reasonable liberal constitutional (and decent) regimes” (LP: 30).

The common sympathies may arise from a common language, history and political culture etc. and create a feeling of nationality between the citizens. They share something with each other, uncommon with foreigners. This feeling causes the desire to live under a common (democratic) government (LP: 25). Although people with different cultural backgrounds live together in one society, some common sympathy is needed for cooperation, no matter what the source may be. They thus are not necessarily cultural. Political principles must be selected on the basis of which difficult cases can be dealt with, such as people living under one government with different languages and historical memories: “[W]ithin a reasonably just liberal (or decent) polity it is possible, I believe, to satisfy the reasonable cultural interests and needs of groups with diverse ethnic and national backgrounds” (LP: 25). The idea of peoples here links with that of a nation. “What generates a national cultural character is the fact of participation in common public institutions, a shared language, a sense of common belonging and destiny, and a sense of a shared history or collective memory among individual members” (Tan 2006: 78). By introducing this idealization of a national community, Rawls excludes inter-state-conflicts from his discussion of international principles of cooperation (ibid.). The exclusion seems comprehensible within ideal theory, but might cause a problem for non-ideal theory.

Peoples are attributed with moral motives (LP: 17). The moral character is manifested in the rational and reasonable capacities of citizens and peoples (LP: 23f.). Peoples voluntarily limit their sovereignty by following reasonable principles, codified in the Law of Peoples (LP: 32). The moral nature of peoples comprises a sense of honour and pride in themselves: They “may be proud of their history and achievements, as a *proper patriotism* allows” [emphasis in original] (LP: 44). Peoples long to be treated with respect and are willing to respect other peoples, as they regard peoples as free and equal agents in relation to one another (LP: 32-35) and “are not swayed by the passion for power and glory” (LP: 47).

Further characteristics can be abstracted from LP. Most important here, and in extension to the institutional feature, is that peoples have to offer their

members a role in processes of political decision making and guarantee a minimal set of human rights.

As a result of their allegiance to reasonable principles, peoples lack absolute sovereignty over their territory and population. Both are, according to Rawls, held by states as traditionally conceived, wrongly granted and rightly withdrawn (LP: 26). A people's territory has the potential capacity to support the population in perpetuity if well treated, which is under the responsibility of the government. A scarcity of resources is forestalled by forward-looking policies and peoples assist one another in cases of emergency (LP: 38). There is thus hardly any reason for migration (LP: 8f.).²⁴

Peoples' interests are reasonable and congruent with fair equality and respect for all peoples (LP: 45). The protection of territory and its environmental integrity, insuring the safety and well-being of citizens and their being supplied with basic goods, preserving free political institutions, equality and independence towards other peoples and their distinct culture, are all examples of rational interests (LP: 18, 33). "Beyond these interests, a liberal people tries to assure reasonable justice for all its citizens and for all peoples" (LP: 29). National interests take priority over international ones.²⁵

The equality between peoples does not imply that there are no inequalities in international institutions, such as the UN (LP: 35). Peoples accept inequalities as long as those serve accepted ends. Financially stronger regimes make larger contributions while weaker societies accept smaller returns (LP: 41). The mutual political relations between peoples are regulated by the principles of the Law of Peoples (LP: 3, 33) and based on reciprocity and reasonable pluralism (LP: 41). Concerning political, economic and social trends, relations might shift (LP: 45). However, peoples do not wage war against each other and also not against third states without good grounds (LP: 47). They keep an army and weapons of mass destruction to defend their societies and to frighten outlaw states (LP: 9, 26).

²⁴ There might of course be other motives for migration, such as economic profit, education or personal preference of a different culture, social, political or natural surroundings.

²⁵ Therefore, peoples would never accept the principle of utility organizing economic relations between them (LP: 40) as no "people will be willing to count the losses to itself as outweighed by gains to other peoples" (LP: 60).

As a consequence of different historical and cultural backgrounds of societies, diverse varieties of liberalism can be found in democratic peoples (LP: 11). Extending a liberal conception of justice to the Society of Peoples, where even more comprehensive doctrines are found, makes toleration in dealing with non-liberal peoples inevitable (LP: 19). Reasonable pluralism, as well as the idea of an overlapping consensus of reasonable comprehensive doctrines, leave their mark on peoples (LP: 32). The principles of the Law of Peoples give expression to this “international overlapping consensus”. Growing up guided by the Law of Peoples leads peoples to voluntarily accept its norms. Before long, peoples tend to develop mutual trust and confidence through moral learning; over time, peoples see the norms by which their foreign relations are governed as advantageous for them and internalize them as an ideal of conduct. Under these conditions, stability for the right reason is consolidated (LP: 44f.). “Stability for the right reasons means stability brought about by citizens acting correctly according to the appropriate principles of their sense of justice, which they have acquired by growing up under and participating in just institutions” (LP: 13). Rawls contrasts “stability for the right reason” with “stability as a balance of forces”. Whereas the first generates even more stability over time, the second is a temporary *modus vivendi* (LP: 45).²⁶ This holds true on a domestic, as well as an inter-state level. For Rawls, it is thus essential that people, individuals or states, not only comply with rules, but that they do so for the right reason (Barry 1995: 882). However, the allegiance to the Law of Peoples is not equally strong in all peoples (LP: 18).

Liberal and decent peoples respectively meet additional criteria. Rawls uses chains of adjectives in different combinations to describe what is in short referred to as “liberal peoples”, such as reasonably just, constitutional, or democratic.²⁷ On the basis of his description of the structure of interests of peoples, Rawls develops a set of rights and duties applying to them.

²⁶ Rawls's differentiation may rely on Kant's definition of peace as being not only an absence of hostility. Peace is only constituted by a peace treaty aimed at ending all wars, not just a specific one. The latter would be a mere cease fire (Kant 2006: 8:356-386), a *modus vivendi*.

²⁷ See for example “reasonably just liberal peoples” (LP: 9), “a reasonably just and well-ordered democratic society” (LP: 13), “liberal constitutional regime” (LP: 15), “well-ordered democratic peoples” (LP: 16).

Rights and Duties of Peoplehood

What rights and duties are ascribed to peoples? And what freedoms and limitations follow from those rights and obligations? Generally, the governments of peoples are not author to all their powers. “It is significant that people’s rights and duties in regard to their so-called sovereignty derive from the Law of Peoples itself” (LP: 27). As a result of the adherence to the Law of Peoples, peoples observe those eight principles. Neither secession, nor subordinating another society is endorsed. Peoples are not allowed to gain land by conquest or by an unauthorized migration into another people’s territory (LP: 8). However, peoples hold a right to intervene in other societies, either if they are aggressive or in cases of gross violations of human rights (LP: 8, 17). That *peoples* in such cases can not only be condemned by other societies, but also be the object of coercive intervention (LP: 38) seems contradictory as peoples, by definition, are non-aggressive and honour human rights. It might, however, be a hint towards non-ideal theory in which peoples can also be non-ideal agents. It might equally be meant as an additional memorial to honour the principles of the Law of Peoples and to show that peoples “with somewhat dirty hands” might be included into Rawls’s understanding. As members of the Society of Peoples, peoples do not become untouchable. In addition, as peoples have to care for the size of their population, they have “at least a qualified right to limit immigration” (LP: 39).

There are special duties referring to liberal and decent peoples. Decent regimes have to justify political decisions and actions towards their people (LP: 72). Liberal peoples are obliged to tolerate decent societies in the Society of Peoples and to offer them fair terms of cooperation. Though Rawls does not change the perspective to decent peoples, it should be taken for granted that decent societies are to tolerate liberal peoples as equals alike.²⁸

Supplemental to these duties, there are some characteristics that should be complied with. Just institutional processes should be established, in order to support members of well-ordered societies to develop a sense of justice and to maintain the government in honouring the Law of Peoples. To what degree

²⁸ For an in-depth discussion of the question of toleration see chapter 3.

these aims are realized may differ from society to society (LP: 18). Beyond pursuing their own interests, peoples try to assure reasonable justice for their citizens and for all people (LP: 29). Promoting human rights should be a fixed concern in a peoples' foreign policy (LP: 48). Institutions and practices are to be developed to constrain outlaw states, complying with the principles of the Law of Peoples.

The amount of positive and negative duties puts forward the question of whether a political regime would voluntarily comply with the criteria Rawls sets up for peoplehood. Do peoples actually exist, at least for Rawls? Will or might they exist in the future, or are they mere models of an idealized well-ordered society without counterparts in the real world?

Do, Can or Should Peoples Exist?

"The Law of Peoples does not presuppose the existence of actual decent hierarchical peoples any more than it presupposes the existence of actual reasonably just constitutional democratic peoples. If we set the standards very high, neither exists" (LP: 75).

The question of existence is not only important for understanding Rawls, but also for identifying regimes that correspond to Rawls's idea of peoples as undertaken in chapter 6. References to all three possibilities are given.

There are hardly any references in favour of the existence of peoples. "Here again we view peoples as they are (as organized within a reasonably just domestic society) and the Law of Peoples as it might be" (LP: 17) can denote either as they actually are or as they are modelled. A stronger reference is found later in the book: "None of the more famous wars of history was between settled liberal democratic peoples" (LP: 53). But again, two interpretations are possible: Either this holds true, because peoples did not exist at this stage of history (which seems rather unlikely), or Rawls understands existing liberal democracies, such as the USA or Great Britain, as liberal democratic peoples. Later, in reference to the democracies fighting as allies in World War I and II, Rawls favours the second interpretation as well as the link to the democratic peace thesis established there. It seems as if Rawls understands France, the

US and Great Britain as being liberal peoples (LP: 52). The Law of Peoples shall be applicable to “ongoing cooperative political arrangements and relations between peoples” (LP: 17). The question of whether Rawls argues from within his model or not, arises anew. In the Amnesty Lecture, Rawls writes in favour of the existence of peoples that they “as corporate bodies organized by their governments now exist in some form all over the world” (Rawls 1993: 43).

When it comes to the question of whether or not decent peoples exist, the “Law of Peoples assumes, however, that decent hierarchical peoples exist, or could exist” (LP: 79). On another occasion, Rawls directly questions the existence of decent peoples (LP: 61). Kazanistan, serving as a model for decent peoples, is an imagined state (LP: 5, 75) and Rawls does not mention any existing or historical state meeting the criteria for this second type of political regime. Thus, decent societies seem to be a conceptual construct (LP: 99). Their existence to Rawls, however, does not seem substantial: “my remarks about a decent hierarchical society are conceptual. I ask [...] whether we can imagine such a society; and, should it exist, whether we would judge that it should be tolerated politically” (LP: 75). It is reasonable to expect that Kazanistan could exist and Rawls states that it is “not without precedent in the world” (LP: 78). Unfortunately, he does not name any precedents.

Statements against the existence of peoples can be found: peoples remain unimportant to political philosophy as long as they do not exist (LP: 19). Nevertheless, this statement includes the possibility of their existence in the future. The aim of non-ideal theory is to prove that decent, non-liberal peoples may exist (LP: 5). A society consisting of liberal and decent peoples is Rawls’s hope for the future of international relations. Albeit improbable, it is not impossible. Rawls formulates this hope on different occasions (LP: 6, 11, 22, 30). Peoples can exist in the future insofar as their possibility is consistent with the natural order (LP: 19).

If peoples are an idealization and, as such, non-existent, why then should the standards of the ideal be reduced? Rawls sets high standards in ideal theory and lowers them in non-ideal theory; if he did not, there would neither be any agents to hold the right to resist outlaw states nor any with a duty to assist

burdened societies. Ideal standards, set high, are reasonable when referring to ideal actors within ideal theory to receive a set of ideal principles that can then function as a guideline. Non-ideal theory, however, has to deal with non-ideal agents, which is necessary if one wants to apply Rawls's theory to the existing state world.

Excursus: Ideal and Non-Ideal Theory

Rawls's division between ideal and non-ideal theory has been widely accepted and has become commonplace. A positive effect of Rawls's divide has been the bringing together of political philosophy mainly in the realm of ideal theory, with political theory being more concerned with questions of non-ideal theory (Simmons 2010: 5f.). Though the ideal-non-ideal-theory divide is taken for granted by most theorists, some elaboration seems necessary, as problems may arise from the differentiation when focusing on the role and characteristics of peoples in LP. These are discussed following a short introduction to the ideal-non-ideal-theory divide.

“Do you suppose a painter is any less good who draws a pattern of what the fairest human being would be like and renders everything in the picture adequately, but can't prove that it's also possible that such a man come into being?”

‘No, by Zeus, I don't’ he said.

‘[...] Weren't we, as we assert, also making a pattern in speech of a good city?’
‘Certainly.’

‘Do you suppose that what we say is any less good on account of our not being able to prove that it is possible to found a city the same as the one in speech?’

‘Surely not,’ he said” (Plato 1991: 472d-e).

Ideal theory is no Rawlsian conception as far as its roots are concerned. Those go back at least as far as to ancient Greek philosophy, where Socrates in Plato's *Republic*, as cited above, defends his ideal of the polity towards Glaucon (Ypi 2010: 537). However, when discussing ideal and non-ideal theory, it is Rawls who generally comes to mind, who in TJ provided a sketch of an ideal, well-ordered, just, liberal society (TJ: 245f.).

The concept of ideal theory may better be understood by means of the following comparison:

“Ideal theory functions as a mythical *Paradise Island*. We have heard wonderful stories about Paradise Island, but no one has ever visited it, and some doubt that it

truly exists. [...] Yet we dream of going there, and ask ourselves how we could get there, and in which direction we should be moving in order to eventually reach Paradise Island. [...] [R]eaching Paradise Island is our ultimate goal. It gives us the direction in which we should be moving to reach a (minimally) just society" (Robeyns 2008: 344f.).

By showing us what Paradise Island looks like, how our world or an aspect of it may ideally be organized, ideal theory can guide people's actions and helps us to judge reality and assess possible improvements to it. It tells us what the ultimate goals are, in the case of theories of justice, how a just society would ideally look, but not how to get there or how to cope with non-ideal circumstances (Robeyns 2008: 345, Valentini 2009: 337). Therein lies the purpose of non-ideal theory.

Ideal theory *idealizes*; it thus sketches the world as a better place than it actually is (Robeyns 2008: 353). Also, ideal theory *simplifies* in order to enable us "to focus on certain main questions free from distracting details" (Schmidtz 2011: 776). By means of simplification, the complexity of the theory is reduced to a manageable degree as there are less parameters that need to be taken care of.²⁹ One can thus focus on the essential aspects of a problem (Robeyns 2008: 353).

Focusing on LP, ideal theory covers almost two-thirds of the whole text. Rawls makes use of idealizations and simplifications. He constructs liberal and decent peoples as ideals and simplifies the analysis by assuming favourable conditions and full-compliance within the first part of LP (Ypi 2010: 538, Wenar 2008: n. pag.), thus excluding, for example, inter-state conflicts (Tan 2006: 78).³⁰

Non-ideal theory has two main purposes. Firstly, living in an at least not fully just society, it shows us how, bearing in mind the picture introduced above, to get closer to Paradise Island, even though we might never get there. Secondly, it enables us to compare different possibilities of (political) action with

²⁹ In TJ, for example, Rawls, in order to simplify his analysis, sketches a self-contained society whose members are fully capable adults, who generally comply with the principles of justice (Valentini 2009: 332).

³⁰ The imagined state of Kazanistan serves as an example for an ideal decent people (LP: 75). But not only peoples as ideal liberal or decent states are idealized; further examples are the ideal of the virtuous statesman (LP: 97f.) and the ideal of public reason (LP: 55f.).

regards to which one will bring us further towards that ideal. Non-ideal theory is a guideline for our political (and moral) decisions (Robeyns 2008: 346). It “looks for policies and courses of action that are morally permissible and politically possible as well as likely to be effective” (LP: 89). Whereas real world conditions do not affect ideal theory, they do have an impact on non-ideal theory.

Focusing on LP, non-ideal theory tries to provide an answer to questions of transition, of how to work from the world as it is to an all-embracing Society of Peoples in which the principles of the Law of Peoples are honoured (LP: 90). It has a target and cut-off point: non-ideal theory takes grasp until the ideal is reached, which will, most probably, never be the case. Whereas ideal theory assumes full compliance and favourable conditions, the first part of non-ideal theory deals with regimes that refuse to comply, and the second focuses on noncompliance caused by unfavourable conditions (LP: 5, 90, Hsieh 2004: 646).

Although it has been taken for granted by many political theorists and philosophers, the ideal-non-ideal-theory divide has been discussed and criticized. The most prominent claim is that norms developed under idealized and simplified conditions cannot effectively function as guidelines for a non-ideal world, with non-ideal conditions and agents. They lack applicability and thus relevance. The “more the ideal theory has been built upon idealizations, the farther away it will be removed from offering us clear guidance for the nonideal world” (Robeyns 2008: 355, see also Valentini 2009: 333). In direct reference to LP, Henry Shue argued that a

“book that deals largely with ideal theory about the principles internal to such a society [the USA as potential member of a Society of Peoples] gives almost no guidance for the relations between a member (perhaps the USA) and a non-member (perhaps Iraq), except when they are already descending into hostilities” (2002: 307f.).

Principles resulting from the assumptions of ideal theory cannot, as such, serve as principles for a non-ideal world. They need to be developed and reinterpreted in order to adapt to the institutional or feasibility constraints the real world presents them with (Robeyns 2008: 355). Rawls is aware of institutional and feasibility constraints; he not only discusses ideal, but also non-ideal theory and develops his ideal theory within the limits of a realistic utopian framework.

This framework ensures that the principles selected in the OPs may be applied to liberal (and decent) societies and non-ideal theory serves as a guideline to how to apply those principles to real world relations and problems. Rawls thus considers the feasibility requirement already in ideal theory (Simmons 2010: 29). Focusing on the principles of the Law of Peoples, Rawls explicitly states that his list is open for interpretation, specification and additions. Shue's critique moreover lacks justification as Rawls very well provides advice on how members of the Society of Peoples shall relate to non-members, even beyond military intervention or pursuing the duty of assistance (Rawls 1993: 62).³¹

Rawls's ideal theory in LP is not fully ideal. The picture he sketches of a *realistic* utopia, to Rawls, is the “best we can reasonably hope for”. He projects elements of the status quo, the less reasonable, decent regimes, into his ideal theory. But why should a minimal overlapping consensus be called “ideal” (McCarthy 1996: 209)? Even if one accepts Rawls's realistic utopian framework, why should it be unreasonable to hope for a society of *liberal* peoples, given that, following Rawls, via mutual cooperation, decent regimes might recognize the advantages of a liberal regime and gradually reform towards it? An ideal LP could thus sketch a society of liberal peoples and a law of peoples that includes the full set of liberal principles that take hold on the domestic level, especially when focusing on human rights. The relations to decent regimes would then become a matter of non-ideal theory. Rawls, however, includes decent peoples in his ideal theory. Why so? By excluding decent peoples, Rawls believes his theory would be in danger of becoming ethnocentric and intolerant, and thus, in danger of violating the principle of reasonable pluralism (ibid.: 216). Having said this, Rawls does hope that decent peoples may reform into liberal ones, so one gets back to the “ideal ideal” of a society of liberal peoples. Is it worth, however, formulating such an ideal ideal if it is not attainable, or, according to Rawls, if aiming for a society of liberal peoples would violate liberal principles? Following

³¹ “Gradually over time, then, the well-ordered peoples may pressure the outlaw regimes to change their ways; but by itself this pressure is unlikely to be effective. It needs to be backed up by the firm denial of all military aid or of economic and other assistance. Further, well-ordered peoples should not admit outlaw regimes as members in good standing into their mutually beneficial cooperative practices” (Rawls 1993: 62).

Schmidtz, ideal theories must be, if not realistically attainable, at least worth a try.

“Many things are *not* worth a try. Thus, if we are on the roof of a tall building and I say, ‘Ideally, I would fly like Superman’ and you reply, ‘Well, it’s worth a try,’ you will be saying something false. Not being worth a try makes my vision of Superman a daydream or a throwaway remark, not an ideal. So, where X is not even worth a try, X does not imply reasons for action and thus is not an object of aspiration; it is instead normatively inert. However, defining an objective that *is* worth a try, even if ultimately unattainable, is not always a mistake” (Schmidtz 2011: 776).

Sketching a liberal society of peoples to Rawls may seem like trying to fly like superman, whereas a Society of Peoples may be worth a try. Even ideal theory should be based on somewhat realistic assumptions if it does not want to become utopian, something Rawls wants to avoid (Simmons 2010: 8).

Additional arguments against ideal theorizing are put forward by Amartya Sen. In *The Idea of Justice*, he argues that the problem of transcendental approaches, as Sen understands ideal theory, is the “non-existence of an identifiable perfectly just social arrangement” (Sen 2009: 15). The principles identified cannot be applied to institutions in actual societies (ibid.: 68). What we really do is to compare possible actions to one another rather than to an ideal:

“if we are trying to choose between a Picasso and a Dali, it is of no help to invoke a diagnosis [...] that the ideal picture in the world is the *Mona Lisa*. [...] Indeed, it is not at all necessary to talk about what may be the greatest or most perfect picture in the world, to choose between the two alternatives that we are facing” (ibid.: 16).

One should thus focus on a comparative approach and balance “societies that exist or could feasibly emerge” against one another (ibid.: 7, 62). To enhance justice, one does not need the picture of a perfectly just society, but measures to eliminate or improve injustices (ibid.: 26). Ideal theorizing is “of no direct relevance to the problem of choice that has to be faced. What is needed instead is an agreement, based on public reasoning, on rankings of alternatives that can be realized” (ibid.: 17). What Sen is arguing here is that “pursuing justice is actually about making comparisons; we ask ourselves whether this policy will make the world a somewhat better place as opposed to that policy, and an ideal world contributes very little, if anything, to this process of comparison” (Brown 2010: 313f.).

Freeman defends Rawls against Sen’s critique: idealizations help to maintain focus on relevant factors, rather than on irrelevant ones. Ideas of

justice can thus be clarified and moral convictions held systemized. Locke's social contract doctrine is adduced, which has informed the US-American Declaration of Independence and thus had great practical political impact (Freeman 2010: n. pag.): "The Constitution doesn't say that we are to look at available alternatives and do what is best. Instead, the abstract rights and principles of justice [...] have a fundamental regulative role in American society, and also provide a primary basis for public justification and criticism of government" (*ibid.*).³² Sen's comparative approach seems to be suitable for cases in which, for example, legislators need to decide between alternative laws or political measures, but ideal theorizing is essential for forming long-term perspectives and may inform political reforms. Sen's comparative approach cannot meet this task (*ibid.*).

Ideal theory is not only defensible against the feasibility constraint and the assumption that its results are not applicable and thus relevant for real world problems; it has also been shown to be a necessary tool. "How could we formulate judgments about the justice and injustice of society, let alone promote institutional reform, without having an ideal of what a just society would look like?" (Valentini 2009: 333). Non-ideal theory depends on ideal theory: as reaching ideal theory, or moving closer to it, is the objective of non-ideal theory, the second necessarily presupposes the first (LP: 89f.). "To dive into nonideal theory without an ideal theory in hand is simply to dive blind" (Simmons 2010: 34). Even non-philosophers striving for justice have an ideal of what it may look like in mind, and adjust their actions towards it. Furthermore, one would not know if one's actions were just if one did not have an idea or concept of justice in mind (Simmons 2010: 34-36). Going back to Socrates's argument, there is basically nothing wrong with an ideal that may not exist, but the question may be asked how useful that ideal is. This is why Rawls, by means of his realistic

³² Another reference Freeman puts forward in favour of Rawls is Martin Luther King's famous "I Have a Dream" speech. "The aspirations King appealed to were grounded in political ideals and ideal principles and could not have been conveyed by focusing on practicable alternatives offered up by the status quo" (Freeman 2010: n. pag.).

utopian framework and non-ideal theory, ensures that his international theory can be realized, however unlikely that may be.

Having presented and discussed some of the arguments put forward against Rawls's method of theorizing, the focus now shifts to the specific problems arising from the ideal-non-ideal-theory divide in LP. What is questioned here is not the divide as such, but the problem of ideal agents in non-ideal theory.

1. There should be no room for peoples as ideals in non-ideal theory. "Principles ought to be ideal; agency realistically non-ideal" (Ypi: 2010: 551).³³ Rawls should thus leave non-ideal theory to non-ideal actors. Peoples as ideals of liberal and decent societies are not only subjects in ideal theory, but also in non-ideal theory. To derive principles of fair international cooperation, sketching ideally just societies is reasonable. When it comes to applying them to the real world, "our strategies for achieving them must take account of how society actually is, its non-ideal agents and its existing political structures" (ibid.: 536). Peoples are developed within ideal theory. Non-ideal theory should not only deal with non-well-ordered regimes, but also with non-ideal liberal and decent societies.

In OP II the representatives act on behalf of the "peoples whose basic institutions satisfy the principles of justice selected at the first level" (Rawls 1993: 41). The representatives thus do not act for liberal states, but rather, for the ideal, liberal, democratic societies that Rawls sketches in his domestic theory. This idealization may not have an impact on the outcome of the selection process, due to the veil of ignorance and the reasonable and rational capacities of the representatives, but does make a difference when focusing on the conception, and even more so for the later development of non-ideal theory, in which Rawls hardly considers the problems that may arise from non-ideal liberal and decent regimes (ibid.). In LP, peoples are thus ideal in ideal *and* in non-ideal theory. At least in non-ideal theory, however, the agents, as well as their objects,

³³ Valentini formulates a similar argument: "there is nothing wrong with ideal theorising *per se* [...]. Whether an ideal theory is good or bad depends on whether it *entails* a false, idealised, account of the *subject* to which it is meant to apply" (Valentini 2009: 355).

should be characterized and evaluated according to their non-ideal character and agency.

While TJ designs “principles telling us what a just background ought to be like, [...] *The Law of Peoples* design[s] [...] principles surreptitiously assuming that such a background is in place” (Valentini 2009: 352). In the real world, however, peoples do not exist, at least not as ideals. The idealizations used during the construction of the OP II and III are “treated as facts about the agents and circumstances to which his [Rawls’s] ‘Law of Peoples’ is meant to apply” (ibid.: 353). The transition from ideal to non-ideal theory may not be successful, as Rawls’s non-ideal theory is too far away from the status quo, from the world as it is, which makes LP hard to apply to real world relations and problems (ibid.: 351-354).

To idealize for the reasons presented above is acceptable in the realm of ideal theory, but when it comes to non-ideal theory Rawls should be aware that liberal and decent societies cannot be expected to meet the criteria for peoplehood. Rawls relaxes these criteria time and again, for example by accepting “peoples with somewhat dirty hands” or by stating that peoples may not meet the duty of assistance properly because sympathy for burdened societies might not be as strong as common sympathies towards other peoples. However, Rawls never explicitly mentions that peoples of both ideal theory and of non-ideal theory meet different standards, which leads to the second problem:

2. Peoples are not ideal agents in non-ideal theory and should thus not be defined as such. The concept of peoples as ideals entails full compliance. The concept of peoples that Rawls partly uses in LP does not. Peoples in non-ideal theory become ideals with reduced standards. “On the assumption that there exist in the world some relatively well-ordered peoples, we ask in non-ideal theory how these peoples should act toward non-well-ordered peoples” (LP: 89). Institutions are needed to motivate citizens and government to abide by the Law of Peoples and remove the temptation of corruption (LP: 24).

Instead of reducing standards for ideals, Rawls should refer to non-ideal agents when it comes to non-ideal theory; in LP he is not only trying to answer the question of how ideal peoples should relate to non-ideal societies, but also

to sketch how real world liberal and decent regimes should relate to other types of societies. One possibility, taken up in chapter 6, would be to refer to “aspiring liberal and decent regimes” when it comes to non-ideal theory, to states that *aspire* to meet the criteria Rawls considers as necessary for peoplehood. Instead of referring to “peoples with somewhat dirty hands” in non-ideal circumstance, the definition of peoples as ideals would remain intact and the differentiation between ideal liberal or decent *peoples* in ideal theory and actual aspiring or relatively well-ordered liberal or decent *societies* or *regimes*, when referring to non-ideal real world conditions, would be clearly made.

The ideal-non-ideal-theory divide in Rawls’s international theory may rightfully be defended against applicability and feasibility critiques. Rawls’s realistic utopian framework and his non-ideal theory provide advice for the navigation to Paradise Island.

However, an at least methodological problem arises from Rawls’s decision to also refer to (ideal) peoples in non-ideal theory, without explicitly reducing the standards those peoples have to meet. “In short, the agents to which Rawls’s [...] [theory is] meant to apply, namely just liberal societies, do not exist, and this is why these theories are irrelevant, if not misleading, when applied to real-world circumstances” (Valentini 2009: 354). I do not go as far as Valentini does with her critique. Rawls’s usage of ideal agents in non-ideal theory is, in some ways, misleading, and again simplifies in order to keep the number of parameters manageable, for example by excluding internal conflicts within liberal and decent regimes. Problems that may arise from non-ideal circumstances and agents on the domestic level of liberal societies are to be dealt with in reference to Rawls’s domestic theory. The interconnection between TJ and LP is thus prevalent throughout Rawls’s theory. There is, however, no domestic theory for decent peoples.

The question now is “whether despite such omissions *The Law of Peoples* offers a plausible theoretical framework for reasoning about what *existing* liberal societies ought to do in order to exercise their international political power legitimately, and whether they actually do so” (Valentini 2009: 347). The

idealization of liberal and decent peoples beyond ideal theory is a methodological weakness, but the results are still of value, and they help to criticize and improve real world foreign policies of liberal societies.

Even if one cannot assume that there are well-ordered peoples as ideals in the real world, one can very well assume that there are relatively well-ordered or aspiring liberal regimes. Although the construction of Rawls's international theory may, in a friendly way, be described as somewhat cumbersome, it does not necessarily lead to the wrong conclusions. Full compliance is not necessary for the realization of the principles of the Law of Peoples as long as one can assume that under ordinary circumstances, an allegiance to them is given. Therefore, principles can be generally realized, even by non-ideal agents (Ypi 2010: 538, Robeyns 2008: 347). The principles of the Law of Peoples may also serve as a guideline for non-ideal, aspiring, liberal (and decent) regimes.

Peoples are sketched as a realistic utopia, i.e., as an ideal that *should* be (utopian) and *can* be (realistic). It remains unclear, however, whether decent peoples are a mere construction, existing, or possibly existing. Going back to Plato's picture of an ideal city state, sketching such a state is worth the endeavour as long as it can possibly exist (Plato 1991: 499b-c). If one reduces the ideal standards, peoples exist, and they should exist. Peoples are *states* as *they should be*: all societies should become liberal or decent. As Rawls gives the known term "peoples" a new meaning within his theory, his understanding of "states" too differs from that of states as traditionally conceived.

States in *The Law of Peoples*

Rawls usually refers to states either as "states as traditionally conceived" (LP: 25, 27) or as "outlaw states" (LP: 4, 5, 9). Outlaw states, for Rawls, are aggressive towards their population and/or other regimes, lack a moral character and do not respect the principles of the Law of Peoples (LP: 27-29). Rawls defines only these outlaws as states. Just as it is not clear what exactly is meant by the term "peoples", the term "state" is also defined and made use of in a specific but unclear way. What general characteristics does Rawls ascribe to

states? Are all Rawlsian states outlaw regimes? Which references are given towards existing or historical regimes and how do Rawls's states and peoples relate to one another? Does Rawls refer to states according to the Westphalian idea or is "state" a mere negative print of "people"? Below, Rawls's understanding of states is introduced and clarified by his references to existing or historical regimes. It is then discussed whether Rawls's definition can be deduced from the Westphalian model or if it is a negative print of peoples, wherefore the relations between peoples and states are put into perspective.

Rawls's Understanding of States

"States are actors in many theories of international politics about the cause of war and the preservation of peace. They are often seen as rational, anxiously concerned with their power – their capacity (military, economic, diplomatic) to influence other states – and always guided by their basic interests" (LP: 27f.).

Although Rawls states that he does not want to be seen in line with what has been written on the relations between states, he does not clearly distinguish his understanding of state from that of his colleagues, contrary to his stipulation of peoples. So the Rawlsian definition might be in line with the general understanding of the term in the theories of international relations while the term "peoples" is a genuine Rawlsian idea.

Rawls's definition of "state" is based on what is generally and minimally understood by state, a political unit, fulfilling the three criteria of statehood. States possess absolute sovereignty (LP: V, 25), lack a moral character (LP: 17, 28, 44, 62), meaning they are detached from moral principles and convictions, and are without an allegiance to the Law of Peoples (LP: 5). They are always guided by their interests, which are rationally pursued, without reasonable limits to means or content, including war as a legitimate means to make progress (LP: 28, 90). Besides their own economic and military power, states' interests are focused on their diplomatic capacities and their influence on other states, enlarging one's territory, increasing military and economic strength, gaining glory, or converting other people to the state's religion (LP: 28). They can be summed up in saving and generating power. If a society asks its citizens to fight

in the cause of economic wealth, it turns into an outlaw regime (LP: 91). The content of a state's interests and its *rational* behaviour does not allow it to be stable for the right reason (LP: 29), because it is “reasonable interests [...] make democratic peace possible and the lack of therefore causes peace between states to be at best a *modus vivendi*, a stable balance of forces only for the time being” (LP: 45).

Even though states are not members of the Society of Peoples, peoples, and their concern for human rights, limit the states' right to war and internal autonomy and thus their absolute sovereignty (LP: 42).³⁴ “No state has a right to war in the pursuit of its *rational*, as opposed to its *reasonable*, interests” [emphasis in original] (LP: 91). The political and moral force, Rawls puts the second in brackets, of human rights extends to all societies (LP: 80f.). Moreover, pursuing their interests puts Rawlsian states at odds with other regimes because they threaten the others' safety as they strive to influence other societies. This pursuit may occur in several possible ways. Within their dealings, they ignore the principle of reciprocity. This form of rationality excludes the reasonable (LP: 28f.).³⁵ The danger that these regimes embody for peace and stability is demonstrated by referencing to historical regimes. Those references are supportive in understanding Rawls's concept of states.

References to Historical States

Rawls makes several references to present and historical regimes, mainly to the earlier European (nation) states, either as examples, or to explain his understanding of states (as traditionally conceived). In addition, he refers to the ancient Greek city-states that destroyed themselves (LP: 28) and the democratic states fighting as allies in World Wars I and II (LP: 52).

³⁴ Rawls also writes about an “alleged right to do as it wills with people within his own borders” (LP: 26). As indicated earlier, the autonomy in dealing with one's people for Rawls is wrongly granted (LP: 26f.). However, it is unclear if Rawls means that there is a right, wrongly granted, or that there is no right, because it is merely alleged. Either way, the Law of Peoples reigns over states that have chosen to accept them.

³⁵ Rawls draws out reason and rationality as counterparts. However, they might go together. It might, in the long run, be rational to act reasonably, meaning in accordance with accepted terms of cooperation.

In modern European history, states may have gone to war for whatever reason (LP: 41). The “outlaw states of modern Europe” fought dynastic wars and sacrificed the lives and interests of their population to those ends. They tried to subject Europe to their will, to spread their religion and culture and to seek dominion and glory, wealth and territory (LP: 105f.). The European states were well organized and economically advanced. The reasons for their aggressive politics lay in the underlying culture, their political traditions, their institutions, laws and religious beliefs (LP: 106). Their basic structure supported hostility towards other societies (LP: 8). Given that they sacrificed the well being of their members to their interests, they are to be classified as outlaw states. More recent references point to Nazi-Germany (LP: 100).³⁶

Focusing on the international realm, Rawls perceives of world politics as still being “marked by the struggles of states for power, prestige, and wealth in a condition of global anarchy” (LP: 28).³⁷ However, he observes a development: “Since World War II international law has become stricter. It tends to limit a state's right to wage war to instances of self-defense” (LP: 27). Still, this finding does not influence his account of states.

Why does Rawls not consider this development in his theory? “States” as a negative print of “peoples” would be an explanation. Or does the cause lie in the foundations of Rawls's understanding of “state” in the modern nation state and more specifically the Westphalian model?

The Westphalian Model of State – Rawls's Traditional Understanding?

Although Rawls does not refer to the Westphalian system, connections between his understanding of states and the Westphalian model are obvious. In the following, a short sketch of the Westphalian idea of sovereignty and model of state are presented, and discussed in relation to the question in how far Rawls leans on these ideas. The results might be supportive in understanding Rawls's

³⁶ It might be of interest at this point that Rawls himself had experience of war. He served as an infantryman in World War II and “lost his Christian faith on seeing the capriciousness of death in combat and learning of the horrors of the Holocaust” (Wenar 2008: n. pag.).

³⁷ Rawls here cites from Robert Gilpin's *War and Change in World Politics* (1981).

definition of “state” and within that why referring to “peoples” instead seemed necessary to him.

In the literature on the Westphalian state, different sets of key terms are listed: autonomy and territory (Krasner 1995: 115), authority, sovereignty, territoriality and citizenship (Caporaso 2000: 8), economic self-sufficiency, political homogeneity and unity (Buchanan 2000: 701). Nevertheless, one can find an agreement on central aspects. The Westphalian system is one of “sovereign states, that is, legally autonomous, territorial, political entities that are ‘hard-shelled’ with clear defined and effective borders, but which engage in regular, systematized relations one with another” (Brown 2002a: 21).³⁸ This picture is helpful to theorists of international relations as it enables one to treat states as if they were autonomous, rational and unified actors (Krasner 1995: 115) even though they might not be. The governments of respective regimes symbolize this unity and are the relevant actors in the international arena. By presupposing unity, the Westphalian concept “in effect denies the existence of distinct ‘peoples’ with different conceptions of public order within states” (Buchanan 2000: 703).³⁹ Rawls regards not only states, but all types of regimes as unified actors.⁴⁰

A further, common aspect is the concept of sovereignty. The Westphalian concept is “a double-headed notion” as “rulers were sovereign in so far as they accepted no internal equals and no external superiors” (Brown 2002a: 26). This mirrors Rawls’s idea of the two powers of sovereignty. The first power (autonomy in dealing with one’s people) stems from the Roman concept of property. The Westphalian rulers regarded territory and people as their property, as something over which they could reign freely as absolute sovereigns. The only restriction in doing as they wished lay in the premise that other “land

³⁸ In *Sovereignty, Rights and Justice*, Brown provides an overview on the evolving nation state, the relation between economic, political and social changes to the development and reign of the nation state in international relations, from the medieval to the Westphalian concept.

³⁹ Buchanan here does not refer to the Rawlsian peoples but to peoples as traditionally conceived: a group of people sharing a common cultural, historical or whatever background and not necessarily living in a fixed nation state but across borders, probably even being scattered all over the world. Some of the most bloody and cruel conflicts in history were based on conflicts between peoples in and across nation states, a problem totally ignored by Rawls.

⁴⁰ Burdened societies here might constitute an exception, as the lack of unity might be part of their burdens.

owners" may also do as they like, from which a principle of non-intervention into the domestic affairs of other nation states can be deduced. Within the Westphalian concept, however, the second power, the *jus ad bellum*, was not absolute. Although pre-emptive attacks were justified, even without an immediate cause, they had to be justified in some way. States breaking norms have to justify these violations, or they loose their own claim to non-intervention from others (ibid: 28f., 36, Kratochwil 1995: 25, 41). "[T]hey cannot simply declare that they could and would do anything they could get away with in order to further their interests" (Brown 2002a: 36). Conclusively, following the Westphalian model, international society is norm-governed. Sovereignty necessarily needs a principle of non-intervention. Both or none have to be claimed and honoured. International sovereignty "cannot be equated simply to power wielded by a self-interested (rational) actor, since part and parcel of playing the international game consist in recognizing the sovereignty of others" (Kratochwil 1995: 25). While the first power of sovereignty is parallel to the Westphalian system, the second does not hold true for the Westphalian model in the absolute way Rawls puts it.

However, the Westphalian system is one of self-centred units; its primary principle is self-help. In this aspect, it is close to Rawls's idea of states again. Self-help implies that as there is anarchy in the international sphere, there is no higher authority to the state, so that it may "consider any policy that is in its self-interest" (Krasner 1999: 53). Self-help can thus override the principle of respecting the autonomy of the state. "A state might choose to promote its objectives by applying external pressure through military threats and economic embargoes" (ibid.). Brown reflects Krasner as follows:

"Rulers are motivated above all else to preserve themselves and will do whatever they need to do to achieve this end, including violating the so-called norm of non-intervention if this is what self-preservation requires. [...] States have always intervened in each other's affairs whenever they have felt the need to do so, whether for 'humanitarian' or purely selfish reasons" (Brown 2002a: 36).

"What self-preservation requires" is unlike "rationally pursuing one's interests by whatever means necessary". So one could say that Rawls picks up an empirical record or assumption connected to the behaviour of nation states and puts it into an absolute negative, from states violating rights and duties in cases of self-

preservation, to states doing so for whatever reason within their rational interest. A second aspect, rejected by Rawls but part of the Westphalian system, is the moral character of states. Thinkers around the Westphalian concept very well attest moral relations between states, such as the duty of benevolence, assuming that there is no moral vacuum between states, as there is none between individuals (Brown 2002a: 31, 33).

As there are no external superiors to Westphalian states, nation states legally have to be equal in relation to one another. In Rawls's Society of Peoples, the peoples tolerate each other as equal members however strong or weak their economy or military strength might be, and however big or small their territory or number of inhabitants are. Rawls claims and assumes this equality only for and between peoples in the international realm.⁴¹

Recent international politics and understandings of the international realm are still informed by the set of norms on which the Westphalian system is founded. However, the conception is changing.

"Breaches of the Westphalian model have been an enduring characteristic of the international environment because there is nothing to prevent them. Rulers have chosen or been forced to accept other principles, including human rights, minority rights, democracy, communism, and fiscal responsibility. There has never been some golden age of the Westphalian state" (Krasner 1995: 115).

A development towards assigning individuals a legal status in the international realm is given. The right to self-defence is restricted to a reaction on a direct attack by the UN Charter (Brown 2002a: 35). International law and convention intensify the ties between states. The principle of non-intervention includes that intrastate-conflicts within the Westphalian system are not subject to international law (Buchanan 2000: 703). They are, however, subject to the Law of Peoples, which shows first that Rawls does not base all of his types of societies on the

⁴¹ A claim on equality on the international level is not necessarily linked to an equal treatment of people in the domestic realm. The people within peoples are only recognized, insofar as they are granted a minimal set of human rights and a possibility towards participating in processes of political decision-making. On the international level, equality between nation states is postulated, although their internal structure may differ extremely from the concept of equality. Referring to decent peoples, according to the state religion, unequal treatment of the people within Kazakhstan is tolerable. Here, a further, though less relevant, parallel to the Peace of Westphalia is evident. Within the contract, the Augsburgian principle (*cuius regio ejus religio*) was accepted, according to which the head of state determined the religion of his/her people. A limited religious freedom was granted insofar as private worship was allowed to followers of other religions (Buchanan 2000: 703).

Westphalian concept of states, and second, that existing states and international law are not based (merely) on Westphalian principles.

As with Rawls's peoples, societies and states, the Westphalian state is a model according to which existing states and systems of cooperation can be measured, and according to which principles held by existing states can be evaluated. In cases of external sovereignty, the right to war and moral character, Rawls negatively exaggerates the features. The idea of equality between states is limited to peoples and not even extended to their domestic realm. So, aspects of the Westphalian model are not only found in the definition of the Rawlsian state, but also in his understanding of peoples and are mixed with the empirical fact that states breach the law and disregard rights and duties when pursuing their interests. However, this assumption should be limited, if not to "what self-preservation requires", then at least to key interests. Recent developments of international law, setting limits to the powers of sovereignty, should be considered. Still, the possibility that the Rawlsian state is a mere negative print of his concept of peoples remains.

States and Peoples – Negative Print or Idealization?

If states were a negative print of peoples, they should have opposite characteristics: peoples are just, states unjust, peoples are reasonable, states unreasonable. On several occasions, Rawls presents states exactly as that. Peoples are stable for the right reason. States can be stable, but only as a temporary *modus vivendi* (LP: 29).⁴² States are (naturally) aggressive and hostile, while peoples strive for peace between all societies. However, in most of Rawls's references between peoples and states, it sounds as if peoples have certain characteristics states simply do not possess, such as "peoples (as opposed to states) have a definite moral nature" (LP: 44, 61f.). Peoples have

⁴² It is not obvious, why a state, pursuing an aggressive foreign policy, should not be stable for the right reason internally. Aggressive states might be able to realize a fair equality of opportunity, a decent distribution of income and wealth, etc.. However, within Rawls's model, societies meeting the criteria for stability for the right reason might be regarded as satisfied societies, which, according to Rawls, are neither aggressive nor internally suppressive.

singular features when compared to states (LP: 27).

Peoples, then, might be regarded as an idealization of states. States act rationally, but peoples do so as well, with the difference that their policies are limited by reasonable principles. If states were a negative print of peoples, peoples would act irrationally. Whereas it is unlikely that “state” is a mere negative print of “people”, peoples might be an idealization of states, lacking the morally questionable characteristics, such as aggressiveness, and possessing due positive attributes, such as a moral nature.

“Peoples are thus states *twice idealized*. First, peoples are states with a moral capacity for compelling with a reasonable law of peoples and treating other states justly. Second, peoples also are states that reflect a distinctive national community; that is, a people is also a *nation-state*. The Law of Peoples is thus a law for nation-states *capable of a sense of justice*” (Tan 2006: 79).

Assuming that peoples are an ideal of states, it is still to be questioned, to which idea of state Rawls refers to. The analysis and the tracing back of Rawls’s understanding of state to the Westphalian model has shown that Rawlsian peoples are not only more just and reasonable than states, but also that Rawlsian states are morally worse than states are usually considered to be. Their aggressiveness and total lack of moral character are exaggerated, their absolute power of sovereignty practically not given, as peoples and the Law of Peoples limit state’s sovereignty. This limited sovereignty is similar to that granted by international law and convention. So peoples are positively idealized states, states as they should be, while Rawlsian states are “negative idealizations” of states, states as they should not be. This again leads back to the question of whether either of them exists at all and whether it makes sense to work with both terms.

Conclusion

Rawls’s idea of peoples is an ideal. He never claims that there are perfectly well-ordered societies (Pettit 2006: 45). Many might “say that it is not possible, and that utopian elements may be a serious defect in a society’s political culture” (LP: 6), and they do so with good reason. But one might also require a bit of a utopian spirit in order to bring forward the development of a reasonable, just and

enforceable international law and of states as they should be, by guiding existing societies towards developing a more peaceful, stable and just system of international cooperation with which more and more states can act in accordance. The model might help with getting closer to the ideal, states pursuing their rational interest in the light of reasonable principles. Rawls formulates their existence as a hope for the future.

Nevertheless, Rawls's argument for non-existent types of states is critical in the framework of a theory that claims to be applicable, to be realistic. Rawls argues that his usage of the term "peoples" instead of "states" is to differentiate his theory from the traditional understanding of "state", which would include absolute sovereignty, which is wrongly granted. However, this autonomy is actually not given anymore. Taking the development of international law in the aftermath of World War II into account, a great deal of limitations exist.⁴³ A given states' struggle for power and wealth does not take place in an anarchical surrounding, but is, even if not very effectively, regulated by conventions and declarations, controlled by international organizations, such as the UN, and judged by international courts, such as the International Criminal Court (ICC) or the International Court of Justice (ICJ). Accepting reasonable principles by signing and ratifying conventions shows that states are capable of acting, or of the will to act, according to reasonable principles, to cooperate in a surrounding regulated by bi- and multilateral agreements. Actual state policy might not be as bad or rational as Rawls proposes but it cannot be as good and reasonable as he would like.

However, the rational character of states remains dominant. Although states willingly act unreasonably, for example by breaking international law, they hardly ever willingly act irrationally if no further interest of those in power is involved. In cases of a conflict between core interests and reasonable principles, governments will certainly pursue their interests, and if necessary, also by violating the rights of their members of society or of other regimes.

⁴³ Consider, for example, the *Universal Declaration of Human Rights* (UDHR) (1948) or the *United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (UNCAT) (1984).

Referring to the citizen-peoples parallel, a reasonable character is found with citizens and peoples but, for Rawls, not in non-peoples societies. Having a moral character should not mean that one always acts reasonably, but that one has the capacity to act reasonably. Just as with individuals, states can act reasonably, but might not do so as a rule. Taking up the parallel, one might say that people strongly tend to abide by the rules set out in the Law of Peoples, like citizens usually comply with the laws set out by their constitutions and legal framework. Therefore, reducing the standards, peoples might consist of those regimes that strongly tend to abide by principles setting out fair terms of cooperation, because they have good reason to do so.⁴⁴ Those reasons might not be found in outlaw states or burdened societies. At least in non-ideal theory, why not talk about states, not as traditionally conceived, but as they are today, with limited sovereignty, the potential to act according to reasonable principles, but not always acting according to those. Here, the citizen-peoples parallel might work: as individuals have the capacity for rationale and reason and may act on both, states may also do so. Ultimately, states act through their governments, which are composed of individual persons, who possess both capacities.

The usage of ambiguous terminology and models weakens Rawls's concept. Based on the minimal definition, states could be understood as not necessarily aggressive or unjust, but capable of acting reasonably as well as rationally,⁴⁵ and as sovereign in most fields of political and social decision-making, but bound to international law and convention and within that, to human rights. On the basis of the analysis of Rawls's terminology, the Rawlsian typology of regimes is reviewed in the following chapter.

⁴⁴ For an in-depth discussion of this concept see chapter 6.

⁴⁵ Reasonableness might not be a necessary trait for sticking to the principles of the Law of Peoples, as in the long run, compliance might serve the state's rational interest best. "Liberal and decent peoples are likely to follow the Law of Peoples among themselves, since that law suits their fundamental interests" (LP: 125).

3. Rawls's Typology of Political Regimes

As indicated earlier, Rawls introduces five types of political regimes, distinguished according to liberal-democratic ideas (Herrera 2005: 337): political participation, the recognition of (basic) human rights and non-aggressiveness towards other regimes.⁴⁶ The global political landscape is divided into liberal peoples, decent peoples, benevolent absolutistic societies, burdened societies and outlaw states, though there is room for other types, two of which are introduced later in the chapter.

In the previous chapter, Rawls's differentiation between societies, peoples and states has been introduced and discussed for the purpose of clarifying and criticizing his understanding of the terms. Below, the five types corresponding to those terms are introduced, to provide a clearer understanding of them and the relations between them: In the following sections they are extracted from LP, analyzed and put into context one to another. How exactly are the groups characterized? How do they differ from one another and are the consequences Rawls draws from these distinctions convincing? Why should liberal peoples tolerate decent societies and vice versa? First, the five types are presented, second, the respective definitions and differentiations are discussed and third, Rawls's concept for interaction between the respective groups is introduced.

Well-Ordered Societies

The concept of well-ordered societies comes from Rawls's domestic theory, where it functions as a model for an ideal liberal democratic society and for a just political order (Hirsch 1997: 69). In PL, a well-ordered society is defined as effectively regulated by publicly known and justifiable principles of justice that are based on an overlapping consensus to which all members reasonably agree to, and because of that, acknowledge the basic structure established according to those principles (PL: 35). Rawls's perspective shifts in LP; the term "well-ordered" here is not only used to refer to liberal democratic

⁴⁶ The last point is not (genuinely) liberal democratic.

peoples, but also to societies (LP: 97, 110), regimes (LP: 5, 90, 105) and to the Society of Peoples.⁴⁷ Not the differentiation between liberal and non-liberal, but between well-ordered and non-well-ordered is crucial for being a member of good standing in the Society of Peoples. Peoples, by definition, are well-ordered.

Compliance to the principles of the Law of Peoples is necessary to qualify as well-ordered, equivalent to the compliance with principles of justice on the domestic level. Members of well-ordered regimes may participate in processes of political decision-making, either as citizens in a liberal democracy or as parts of groups in a consultation process in decent regimes. For that reason, the leaders and officials of a well-ordered society may speak for their people and represent them in relation to other societies (LP: 96). Well-ordered regimes do not need to be wealthy but must possess a background culture containing reasonable political and cultural traditions, and the human capital and know-how to establish just institutions (LP: 106). Members of society support their respective governments in honouring the Law of Peoples (LP: 18).

Just as there exist reasonably just, political regimes, so there are degrees of well-orderedness and therefore “(relatively) well-ordered societies” (LP: 89, 105f.). Thus, just as citizens in the well-ordered societies of Rawls’s domestic theory strongly tend to act according to the rules, well-ordered peoples in most cases, though not always, act according to reasonable principles. Below, the special character of liberal peoples is presented and how a well-ordered basic structure influences political decision making on an international level is clarified.

Liberal Democratic Peoples

Liberal peoples are the primary subjects of LP. They form the first type of domestic society and meet all the criteria of peoplehood introduced in the previous chapter. In addition to the elaborations in the previous chapter, further specifications need to be made in order to draw a clear picture of liberal

⁴⁷ See for example “a well-ordered Society of Peoples” (LP: 109), “a Society of well-ordered Peoples” (LP: 105, 111), also found in lower case (LP: 37).

peoples. The first feature, a reasonably just constitutional liberal democratic (or decent) government, is met; citizens control government through elections (LP: 23f.). Liberal peoples' fundamental interests are given by a liberal conception of justice (LP: 33). As specified in their constitution, they have no state religion (LP: 47). Liberal peoples have a proper self-respect, resting on "the freedom and integrity of the citizens and the justice and decency of their domestic political and social institutions. It rests also on the achievements of their public and civic culture" (LP: 47f.). This mirrors the citizens' sharing of sympathies (second criterion) and the society's moral nature (third criterion of peoplehood). However, even liberal peoples are not modelled as fully moral agents. Institutions are thus needed to motivate citizens and government to abide by the Law of Peoples and to remove temptations of corruption (LP: 24).

As they acknowledge reasonable pluralism within society, so on an international level they tolerate decent peoples as worthy and equal members of the Society of Peoples (LP: 4). In the international realm, "a liberal people can live with other peoples of like character in upholding justice and preserving peace" (LP: 28). Here, Rawls indirectly (and on other occasions directly) refers to the democratic peace thesis, which indicates that democratic states do not wage war against each other. Rawls supports this thesis but also presents arguments for why it might not work in the real world. On the one hand, democratic societies can acquire commodities at favourable prices and more easily through commerce rather than war, and therefore are engaged in trade with one another. Furthermore, they are liberal democratic, so they do not try to convert other people's beliefs and ways of life, and thus have no intention of waging war for these purposes (LP: 46), or more carefully formulated "tend not to have occasion to go to war with one another" (*ibid.*). On the other hand, democratic peace is only reachable if the relevant regimes are not purely formally constitutional democratic, but rather, satisfy stability criteria for the right reasons, which are met by all liberal conceptions (LP: 47, 50f.). Assuming that democratic states do not attack other states without good reason and do not violate human rights, there is no reason for war between democratic peoples.

Nevertheless, war between democratic states is not impossible, despite the good reasons that exist against it: first the shared democracy, second the engagement in mutual trade, and last but not least, the diplomatic ties and memberships in international organizations. If democratic peace were to fail, the reasons would lie in the institutions and practices of the relevant democratic states (LP: 52f.) and in this vein, Rawls certifies several “great shortcomings of actual, allegedly constitutional democratic regimes” (LP: 53). Democratic governments might pursue, for example, economic interests by covert action or concealed as security interests. An example is the foreign policy of the US, which allows intervention in weaker countries and has even supported the overturning of democratic systems in favour of dictatorships. Advancing towards Rawls’s ideal of democratic peoples, wars between democratic states might tend to disappear (LP: 53f.). However, Rawls’s Society of Peoples includes decent peoples, excluded by the democratic peace thesis. If “other peoples of like character” includes decent peoples, the democratic peace thesis would have to be extended to a decent peace thesis. While the discussion of a decent peace thesis is postponed until chapter 7, the concept of decent societies is introduced below.

Decent Hierarchical Peoples

Rawls leaves room for different kinds of decent peoples, but discusses only one type, exemplified by means of the imagined Muslim state Kazanistan. Other forms of decent peoples might be possible, which, though they do not include a consultation process, must be regarded as worthy members of a Society of Peoples (LP: 4, 63). How these and their basic structures might look is left open.⁴⁸ Rawls’s understanding of decency is thus central. Therefore, Rawls’s idea of decency is summarized first and then his understanding of decent peoples is elaborated on. Finally, the imagined state of Kazanistan is described to illustrate both.

Rawls formulates two conditions for a decent people, each combining

⁴⁸ A possible second type of decent peoples is introduced in chapter 6.

several aspects: first, the society's institutions have to meet specified conditions of political right and justice. Decent societies pursue no aggressive aims⁴⁹, but gain legitimate ends peacefully, through diplomacy or trade. Their underlying doctrine is comprehensive and affects the structure and social policy of government. That the basic structure of a decent society, and thus its political institutions, may be influenced by comprehensive doctrines (in Rawls's sketch the Islamic faith) marks a major difference to liberal societies (Kreide 2002: n. pag.). Furthermore, as the political and social order of other societies is to be respected by decent regimes, they may only take such influence as is compatible with this condition (LP: 64). Secondly, a decent people has to guide its members towards honouring the Law of Peoples (LP: 60). This second criterion demands a system of law which operates according to the common good conception of justice and guarantees core human rights. Additionally, *bona fide* moral duties in accordance with the people's common good conception of justice are imposed on all persons within the society's territory. The judges and officials administering the legal system should sincerely believe that the law represents the society's common good conception of justice and they must show their willingness to defend those laws in public, for example in courts (LP: 67).

The members of a decent society are understood to be decent, rational, responsible, able to take part in social life, capable of moral learning as well as knowing the difference between right and wrong. As such, they function as responsible and cooperating members within the respective groups they belong to as part of the consultation system (LP: 65-67). "In the absence of a better name, I call societies that satisfy these conditions *decent peoples*" [emphasis in original] (LP: 60). These criteria are also met by liberal peoples (LP: 63).

The consultation hierarchy functions as follows: In public life, each member of society belongs to a group. These groups form representative bodies. Within the consultation process, where the interests of all members of society according to the common good conception of justice are considered, the

⁴⁹ To Moellendorf it seems questionable why decent peoples should be non-aggressive as they do not fulfil the criteria used as arguments for the democratic peace thesis (2002: 14f.). Rawls justifies his characterization of decent peoples as non-aggressive by virtue of them being satisfied societies with a moral character.

representatives put forward the interests of group members to the ruler, who takes decisions independently but needs to justify his choices to them. Government officials are obliged to hear and react upon critique. “Judges and other official [...] cannot refuse to listen, charging that the dissenters are incompetent and unable to understand” (LP: 72). If the dissenters are not satisfied with the officials’ explanations, the critique can be renewed and must again be reacted upon as long as it stays within a reasonable frame. In addition, a right to emigration is granted (LP: 72-74). Whereas liberal systems focus on the individual’s interests, the consultation system can attend to the broader interest of political life. By showing that the consultation process is a reasonable system with merely another focus, Rawls gives reasons for acknowledging reasonable pluralism. It is reasonable to focus on individual interests, but as well, to consider the well-being of society. As members of associations, individuals take part in the process of political decision-making, most of them by (s)electing their group’s representatives. To make sure that certain members are not being suppressed, and that the representatives are able to understand their group’s needs, the majority of those representing the group should be members of it (LP: 71-75). This is, however, not a necessary condition. Contrary to benevolent absolutistic regimes, which deny every form of political participation by the public, for Rawls, the consultation hierarchy grants “a meaningful role in making political decisions” (LP: 92).⁵⁰

Decent societies may assume different institutional forms, religious as well as secular (LP: 64).⁵¹ As there may be a state religion, higher political offices might be reserved for followers of this belief. Nevertheless, the liberty of conscience is granted as members of society are allowed, and may even be

⁵⁰ Rawls does not state this directly, but it can be concluded from the differentiation to benevolent absolutistic regimes. On another occasion he testifies to a “substantial political role” concerning the members of Kazakhstan (LP: 64).

⁵¹ Though Rawls leaves room for other possibilities, he emphasizes Islam as state religion, which gives hints that he has explicit countries in mind but still leaves room for other possible concepts of societal organization. “In any event, the emphasis on religion is undesirable – the argument is much clearer when a state religion is seen as only one of the possible foundations for a decent people, and not necessarily the most important” (Brown 2004: 39f.). However, Rawls explicitly leaves room for other conceptions of the good and other possible decent regimes.

encouraged, to practice their respective religious beliefs (LP: 65). Rawls sums up the characteristics of a decent domestic society as follows:

A “decent society is not aggressive and engages in war only in self-defence. It has a common good idea of justice that assigns human rights to all its members; its basic structure includes a decent consultation hierarchy that protects these and other rights and ensures that all groups in society are decently represented by elected bodies in the system of consultation. Finally, there must be a sincere and not unreasonable belief on the part of judges and officials who administer the legal system that the law is indeed guided by a common good idea of justice” (LP: 88).

Concerning relations with other societies, decent peoples find the principles of foreign policy of liberal peoples reasonable (LP: 10). Their representatives, situated in an OP III, would adopt the same principles for the Law of Peoples (LP: 5, 63f.). They would respect the civic order and integrity of other peoples, strive to protect human rights and the good of the people they represent, maintain their security and independence, care about the benefits of trade and accept the idea of assistance among peoples (LP: 69).

Characterizing decent peoples reveals the possibility of reasonably just, non-liberal conceptions (LP: 67f.). Hierarchical peoples are well-ordered, from which it follows that “though they are not liberal democratic societies [they] have certain features making them acceptable as members of good standing in a reasonable Society of Peoples” (LP: 5). Even if there is no equal liberty for all members, the comprehensive doctrines the society is founded upon are not to be categorized as unreasonable, but merely as not fully reasonable (LP: 74). Equally, Rawls categorizes peoples as necessarily not fully just. As such, decent peoples are aligned to certain ideals that, even if not fully reasonable and just, are worth being respected by others and defended by a decent society, even if the principles they choose to follow are not liberal (LP: 92).

Whether a decent society exists at all is questioned by Rawls, although, that it is *imaginable* that such a society *could* exist is all that is necessary for him. However, if one did exist, it should be respected as a member of good standing within a society of reasonable regimes (LP: 75). To present a clearer picture of decent peoples, Rawls introduces an imagined example of a decent hierarchical society named Kazanistan.

Kazanistan is a non-liberal Muslim people functioning as a model that meets the criteria for decent peoples. “The purpose of this example is to suggest that a decent government is viable” (LP: 75). In Rawls’s view, Kazanistan is not totally just⁵² but decent (LP: 78). It tries to maximize the achievements of consultation, for example, by regularly changing the hierarchy to be more sensitive towards the needs of the people (LP: 77). So, Kazanistan is not to be regarded as a static system but rather, as one that reforms itself from time to time. As characteristic for peoples, Kazanistan’s policy is not guided by its rational prudential interest. Government is ready to limit its conduct by reasonable principles (LP: 27), which gives expression to its moral nature.

The Muslim rulers of Kazanistan have sought neither empire nor territory. Government can rightfully impose duties and obligations on all members of society who are, as they are being treated fairly although not as equals, loyal to their government. As Islam is the state religion, only Muslims may hold higher political offices and thus, they are the main influencers of political decision-making. Other religions are tolerated and may be practiced. Non-Muslims are encouraged to take part in Kazanistan’s civic culture and to maintain a cultural life of their own. To strengthen their loyalty, non-Muslims are allowed into the armed forces, even into higher ranks (LP: 75-78). In Kazanistan, “dissent has led to important reforms in the rights and role of women, with the judiciary agreeing that existing norms could not be squared with society’s common good idea of justice” (LP: 78). However, although women do not necessarily hold equal rights as they would as citizens in a liberal conception, they do have to be represented as a possible group within the consultation process.⁵³ The acceptance and integration of minorities into Kazanistan’s society enhance common sympathies between the people of Kazanistan.

Kazanistan is well-ordered and not aggressive, as its theologians interpret jihad in a spiritual and moral, not military sense (LP: 76). It honours and respects

⁵² Rawls also questions whether even existing democracies are reasonably just (LP: 75).

⁵³ The position of women in LP has been analysed and criticized by Martha Nussbaum, who claims that Rawls on the one hand is sensitive to the inequalities that women suffer from, but on the other hand his attempt to remedy those injustices is half-hearted (see Nussbaum 2002). Although women are represented in the consultation system, hold a right to property and formal equality, women in Kazanistan still do not enjoy an equal standing as compared to men.

the basic human rights and follows the Law of Peoples (LP: 83). These principles do not require changing Kazanistan's religiously based institutions according to liberal principles (LP: 121). Kazanistan meets the three criteria of peoplehood: a decent basic structure, a moral nature and common sympathies.

The concept of decent peoples has been criticized as implausible, their character as a mere stipulation or construction. Why, for example, should a society neglecting equality between its members honour human rights? Also, Rawls's hints towards a possible reform of a decent regime into a liberal one seem unconvincing insofar as Islamic states are concerned. A division between church and state, necessary for a liberal conception, is almost impossible as long as Islam is the state religion and sharia the basis of Islamic law (Padgen 2003: 199). Realistically, decent peoples are implausible (Brunkhorst 2002: n. pag.). Rawls might answer that Kazanistan is not totally just, but is decent in that it meets certain standards although remaining less just than liberal regimes. These standards suffice for it to be accepted as a member of good standing in a Society of Peoples (LP: 78f.), which follows from the principle of reasonable pluralism.

Not being approved of, but merely tolerated, decent peoples are second-class peoples. Throughout LP liberal democracy is regarded as superior to other forms of societal organization (LP: 62): "To repeat, I am not saying that a decent hierarchical society is as reasonable and just as a liberal society" (LP: 83). The central aim of LP is to determine, how the foreign policy of a *liberal* people should be organized (LP: 83). The concept of LP is developed within the framework of political liberalism and extends a liberal conception of justice towards non-liberal regimes (LP: 9, 23, 30, 36). The "concern with the foreign policy of a liberal people is implicit throughout" (LP: 10). Decent peoples serve as a means to show that the principles, selected by representatives of liberal peoples, are reasonable also to other, non-liberal (and non-Western) societies (LP: 58) and that international peace, stability and justice can be supported by avoiding liberal imperialism.

Decent peoples might be *constructed* to confirm that the Law of Peoples does not conflict with the liberal assumption of reasonable pluralism, to avoid the accusation of formulating liberal principles and enforcing them in non-liberal regimes. Decent peoples are idealizations that meet the minimal criteria to operate as legitimate cooperation partners beyond liberal regimes (Bock 2008: 51). They are not equals to liberal societies but are nevertheless granted equality; when it comes to reasonableness and justness, decency is (morally) inferior to liberal conceptions. Accordingly, Rawls refers to “a reasonably just (or at least decent) Society of Peoples” (LP: 39, see also 6, 7, 126). Decent peoples are primarily relevant as the *objects* of liberal peoples’ foreign policy (LP: 10).

Non-Well-Ordered Societies

Non-well-ordered societies for various reasons have neither a well-ordered basic structure nor an allegiance to the principles of the Law of Peoples. They thus do not qualify as members of the Society of Peoples and are the objects peoples have to deal with in the realm of non-ideal theory.

Benevolent Absolutistic Societies

Whereas Rawls intensively elaborates on well-ordered peoples and their relations to outlaw regimes and burdened societies, benevolent absolutistic societies are mentioned on just three occasions. First, Rawls gives a short characterization of this fifth type of society, which, more or less word by word, is repeated in the second: “they honor most human rights, but because they deny their members a meaningful role in making political decisions, they are not well-ordered” (LP: 63).⁵⁴ Last but not least, Rawls grants benevolent absolutistic regimes a right to war in self-defence, as they honour human rights and are not

⁵⁴ To be compared to: “they honor human rights; but, because their members are denied a meaningful role in making political decisions, they are not well-ordered.” (LP: 4) Although sounding much the same, there is a slight difference with perhaps not such a slight impact. In the chance, from generally honouring human rights to honouring most human rights, the usage of “most” might refer to Rawls’s human rights minimalism.

aggressive towards other societies (LP: 92).

Benevolent absolutistic societies do not qualify as peoples because they do not grant their members adequate opportunities to take part in processes of political decision making. Nevertheless, they do not pose a threat to international peace and stability. There is thus no reason for intervention and also no duty of assistance, as benevolent absolutistic societies do not want to establish a well-ordered basic structure.

Rawls does not deliberate on the role these societies play in international relations and how they are to become members of a Society of Peoples. That he leaves them totally aside might serve as an additional hint that his major aim is a stable international peace, and that benevolent absolutistic regimes are of no further interest as they do not threaten it. Furthermore, this type of society might only serve as a category of authoritarian regimes that do honour the core human rights but do not offer their members of society some role in processes of political decision making, thus closing a possible gap between decent and outlaw regimes. Whether regimes corresponding to this type exist and thus the plausibility of this regime type seems questionable. A further analysis, however, is not necessary for the purpose of this thesis.⁵⁵

Burdened Societies

Societies burdened by unfavourable conditions form the fourth type of political regimes. They are neither expansive nor aggressive towards other regimes. However, they are not well-ordered for several possible reasons: a lack of cultural and civic resources, a too large or undersized population, historical, economic or social deficits or “unfavourable conditions” (LP: 5, 90), but seldom because of a lack of resources, as almost every country (Rawls only questions this in the case of Eskimos) has the resources to maintain a well-ordered regime. “Burdened societies [...] lack the political and cultural traditions, the human capital and know-how, and, often, the material and technological

⁵⁵ The analysis undertaken in chapter 6 illustrates that the existence of authoritarian regimes protecting core human rights but denying political participation is unlikely as those states that do not qualify as decent (or liberal democratic) do so due to the regimes' human rights records.

resources needed to be well-ordered" (LP: 106). Furthermore, not all burdened societies are poor; their non-well-orderedness is not necessarily caused by financial distress (LP: 106-108). Chris Brown names oil-exporting countries in the Middle East and elsewhere as examples, which have the material wealth to establish well-ordered regimes but lack the human capital, or the structures in which this can be made useful for society (Brown 2004: 40). As a result, burdened societies *involuntarily* do not comply with the Law of Peoples.

Outlaw States

Outlaw regimes form the fifth type of domestic society and are marked by their deliberate noncompliance with the Law of Peoples (LP: 4f.). They lack a moral character and rationally pursue their interest by whatever means necessary, including war. They are aggressive towards other states and/or violate the human rights of their population. Non-aggressive states that violate human rights are thus categorized as outlaws, in the same way as aggressive regimes that perfectly well honour the human rights of their respective population. Both may likewise be subject to intervention (LP: 90). There are different but related motives for deliberate non-compliance to the Law of Peoples. In the case of former imperialistic European nation states, Rawls sees the cause of their disorderedness as based in the underlying culture, formed by false political traditions, institutions and class structures, as well as in their religious beliefs and moral convictions (LP: 106).

Whereas Rawls in reference to the other types does not directly differentiate between government and members of society, he does when it comes to outlaw states. The population is not to be held responsible for the regime's domestic and foreign policy, including waging war, as the common people might have been held in ignorance or blinded by state propaganda. However, even if they knew better, or should or could have known better, they are, according to Rawls, not responsible anyway. Even soldiers, except those of higher rank, are not to be held responsible as they might have either been forced to fight or their patriotism might have been exploited. Those controlling

the state apparatus, political leaders and higher officers, are responsible for the domestic and foreign policy of a state (LP: 94f.).

“The lesson of the Holocaust is, rather, that a charismatic leader of a powerful totalitarian and militaristic state can, with incessant and rabid propaganda, incite a sufficient number of the population to carry out even enormously and hideously evil plans. The Holocaust might have happened anywhere such a state came to be” (LP: 100).

Rawls needs this idea to be able to accept former outlaw states as members of a Society of Peoples when former leaders are displaced. “They are responsible; they willed the war” (LP: 95). Here, the differentiation and opposition between peoples and states is crucial. If governments act without being authorized by the people, it does not represent those people. Those people thus do not function as agents, but merely remain present as potential agents (Pettit 2006: 43).

That peoples turn into outlaw states, for example by making their citizens go to war for dynastic or economical reasons, is a permanently present danger. Charismatic leaders can come to power in democratic regimes, the citizens might hold unreasonable doctrines, or governments might act covertly. At least in the second case, the citizens seem to be responsible for the war. Democratic outlaws are thus possible, even though minor breaches of the Law of Peoples would only leave them with “dirty hands”, still being member of the Society of Peoples. Those dangers can be constrained by increasing sympathies among peoples, establishing reasonable institutions and strengthening the background culture.

Further Possible Types of Societies

Whereas Rawls introduces only five types of regimes, these do not (necessarily) constitute all there is in the international realm. Room for further types is left, in particular when referring to decent peoples, and a discussion about further differentiations can already be found in the literature.

Discerning between aggressive and non-aggressive outlaw regimes would clarify this type in reference to its characteristics (Shue 2002: 308). The two characteristics (aggressiveness and the violation of human rights) are both sufficient, but not necessary conditions. Regimes have to fulfil just one of them

to be categorized as outlaws. In addition to clarifying Rawls's typology, this further differentiation might have consequences for how people would deal with those regimes. It is worth questioning whether there is a priority towards intervening in states violating their members' proper human rights, or in states which are aggressive towards other regimes or preparing for war. If there were a ranking of necessity of intervention, it would be reasonable to make further distinctions (ibid.: 314f.). Henry Shue also argues for a further differentiation between non-aggressive and aggressive decent states (ibid.: 310). However, this category seems unnecessary as peoples showing aggressive politics become outlaw regimes. There are, by definition, no aggressive peoples.

Almost nothing is said about burdened societies; their respective burdens are scarcely mentioned. They might even lack the criteria for statehood, such as a clearly identifiable government claiming sovereignty over territory and people. It might not be clear whether the regime violates human rights, tolerates human rights violations or is simply not able to prevent or stop them. Subtypes of burdened societies, such as burdened outlaw regimes (Brown 2004: 37), might be favourable. Within LP, there is one comment hinting towards the possibility of a state violating human rights or not being able to guarantee them because of its weakness. Rawls classifies them as outlaw regimes and within that, peoples have a right to war against them. However, it could be more effective, especially when considering that the overall aim here is for a more stable, peaceful and just system of cooperation, to provide assistance for instead of using force against such regimes, if a certain degree of good will is shown in return. In any case, intervention might need to be followed by assistance.

Modes of Interaction

Rawls's five types of political regimes engage with one another in different ways. He focuses, however, on the ways in which liberal peoples in particular relate to non-well-ordered regimes and other well-ordered societies.

Within the Society of Peoples:

Why Should Liberal Peoples Tolerate Decent Societies?

The question formulated in the subtitle is central for LP, and Rawls acknowledges that there might be reasonable pluralism concerning the answer.⁵⁶ Generally understood, toleration implies that one believes that what is being tolerated is wrong but that there are, nevertheless, good reasons not to take action against it. There is room between something being fully reasonable and being unreasonable (Bock 2008: 63). The term stems from Latin: *tolerare* meaning “to put up with” or “suffer”, and “refers to the conditional acceptance of or non-interference with beliefs, actions or practices that one considers to be wrong but still ‘tolerable,’ such that they should not be prohibited or constrained” (Forst 2008: n. pag.). There are, however, different conceptions of toleration, of which Rawls’s is one.⁵⁷

Following Forst’s derivation of the term, Tan observes a paradox in the idea of toleration: “When we tolerate certain attitudes or practices, we put up with attitudes and practices that we consider not fully acceptable, much less respectable. Thus, toleration is a paradoxical virtue in that it enjoins acceptance of the unacceptable” (Tan 2006: 81). Toleration in LP, for Tan, is to be understood differently, as an institutional virtue. The virtue of toleration in this sense refers to individuals who “endorse and support institutional arrangements that protect reasonable ways of life or practices or attitudes that they also find objectionable according to their particular idea of the good” (ibid.: 82). In reference to Rawls’s international theory, it would be peoples that endorse the principles of the Law of Peoples and thus the basic structure of the Society of Peoples (ibid.).

⁵⁶ “It should be noted here that some writers maintain that full democratic and liberal rights are necessary to prevent violations of human rights. This is stated as an empirical fact supported by historical experience. I do not argue against this contention and indeed it may be true” (LP: 75).

⁵⁷ Forst in his article differentiates between four conceptions of toleration, the permission conception, the coexistence conception, the respect conception and the esteem conception, of which the third might be the closest to Rawls’s. Whereas the coexistence conception forms a *modus vivendi* where toleration is a mere means to avoid conflict, with the respect conception, the relevant parties respect one another. Although they hold different views on certain issues, they respect each other as political equals and organize their shared realm according to principles they can both agree to without favouring one of the held views over the other (Forst 2008: n. pag.).

To properly understand Rawls's conception of toleration and as LP is meant as an extension of his domestic theory, it is helpful to go back to PL. Here, Rawls elaborates on the question of how "a just and free society [is] possible under conditions of deep doctrinal conflict with no prospect of resolution" (PL: XXViii). His answer is that a reasonable conception of justice, that is adopted by citizens through reasoned, informed and willing agreement and that is independent of philosophical and religious doctrines, needs to be found. "In formulating such a conception, political liberalism applies the principle of toleration to philosophy itself" (PL: 9f.). The grasp of political liberalism must be limited to the political sphere and leave room in which individuals may pursue their diverse doctrines within a reasonable framework. They may thus organize other aspects of life, such as religion or family life, on the basis of different, non-liberal values. Political liberalism can hence be supported by all and constitute an overlapping consensus between all members of society (Tan 2008: 615). "As long as a comprehensive view accepts liberal principles as binding in the public political sphere [...] it lies within the limits of liberal toleration" (ibid.: 616). Still, there may be people who are intolerant towards comprehensive doctrines that conflict with their own or who violate the rights of others. These actions, following Rawls, are informed by unreasonable doctrines and may not only be criticized but also challenged by liberal society (ibid.: 615). The limits of toleration are set by the reasonable and reciprocity.

On the international level, the diversity between doctrines and conceptions is even greater and, following Rawls, "not all peoples can reasonably be required to be liberal" (LP: 122). As with the domestic level, the reasonable and the criterion of reciprocity set limits on which conceptions are to be tolerated and which are not. As one can only expect others to accept principles that they can reasonably agree to, one cannot expect all others to share liberal ideas. When it comes to the question of what is tolerable, one has to build on a common and not a liberal human reason (Reidy 2004: 310f.). Liberal societies in their foreign relations thus must tolerate other societies that are organized in a reasonably just way. Following Rawls, this includes decent peoples (Freeman 2007: 431), who constitute an analog to reasonable non-liberal doctrines on the domestic

level that need to be tolerated within society; consequently, liberal societies need to tolerate nonliberal well-ordered societies on the international level. Denying them toleration (and respect) would violate the principle of reasonable pluralism and imposing liberal principles on them would constitute a form of liberal imperialism, both of which Rawls in LP explicitly strives to avoid.

When it comes to the question of which states qualify as well-ordered and consequently need to be tolerated and respected, “we ask: where are the reasonable limits of toleration to be drawn?” (Rawls 1993: 37). Rawls names criteria – the recognition, guarantee and protection of human rights, the participation of the population in processes of political decision making, a right to dissent and a common good conception of justice⁵⁸ – and identifies decent hierarchical societies as candidates meeting those standards (LP: 61). Supplemental to these criteria, an allegiance to the principles of the Law of Peoples is necessary, but not sufficient, to pass the threshold of what is tolerable (Bock 2008: 3).⁵⁹ Decent peoples, meeting the legal and moral requirements, are not to be sanctioned by liberal peoples, because they “have certain institutional features that deserve respect, even if their institutions as a whole are not sufficiently reasonable from the point of view of political liberalism” (LP: 84). Decency sets the minimum condition for tolerance (LP: 67f.). Toleration for Rawls implies refraining from taking direct influence on another country in order to force it towards reform, and to recognize the society concerned as an equal member of the Society of Peoples (LP: 59). Approval is not necessarily included.

Societies that do not pass the threshold of well-orderedness do not need to be tolerated and, as on the domestic level, may be criticized and challenged: “liberal and decent peoples have the right, under the Law of Peoples, not to tolerate outlaw states” as they are “aggressive and dangerous; all peoples are safer and more secure if such states change” (LP: 81). Outlaw states exist

⁵⁸ Missing here, but mentioned on other occasions, is the non-aggressiveness of well-ordered regimes.

⁵⁹ Benevolent absolutistic regimes are “tolerated” as well, but not respected as members of good standing within the Society of Peoples.

“beyond the bound of toleration” and it is thus “permissible to intervene in their affairs” (Hutchings 2010: 114).

Historically, hierarchical regimes tend to be oppressive and deny human rights (LP: 79). However, decent societies do not and thus differ from classical hierarchical regimes in a decisive way. Rawls offers three main arguments why non-democratic decent societies have to be tolerated as members of good standing within a Society of Peoples and for why there is no reason to take active initiatives in order to turn them into democracies. The first, reasonable pluralism, is a normative motive, the second, that of effectiveness and practicability, a more pragmatic one, and the last, that of self-determination, is a well-established principle of international law.

The relevance of reasonable pluralism has already been explored. As David A. Reidy points out, “fundamental interests of human persons are historically, socially, and contingently given, and not necessarily universally shared. And for that reason it is not the job of political philosophy to make all the world liberal and democratic” (Reidy 2004: 310). From the idea of reasonable pluralism it follows that liberal states must observe certain principles in dealing with decent societies: the principles of toleration, of mutual respect and of self-determination.

Toleration, to Rawls, must include respect. Mutual respect is important, as a lack of it would lead to bitterness and contempt between peoples (LP: 122) and might inhibit a possible reform process (LP: 61). So, mutual respect is not only a *normative*, but also a *pragmatic* claim.⁶⁰ In addition, liberal societies must leave room for self-determination as liberalism acknowledges that there is more than one reasonable way to establish a just society.

Focusing on effectiveness and practicability, the “Law of Peoples considers this wider background basic structure and the merits of its political climate in encouraging reforms in a liberal direction as overriding the lack of liberal justice

⁶⁰ Rawls “believes that non-liberal societies often are not yet ready to sustain liberal and democratic institutions, [...] [but] it is not the role of a liberal society’s government to establish liberal justice non-domestically in decent societies. That is to be achieved by their own political self-determination” (Freeman 2007: 433).

in decent societies" (LP: 62). Although the social world of decent peoples is not fully just by liberal principles, toleration is required, again because bitterness and resentment between peoples may arise (LP: 61f.). Although it is desirable that all states should be liberal democratic, the aim of a more peaceful, stable and just system of cooperation between political regimes can more effectively be reached by toleration and cooperation than by force. Forcing peoples into democracy is neither normatively justifiable, nor effective. It seems absurd to reasonably force decent peoples into justness and equality. Resentment might not only be directed against liberal peoples but also against their ideals and institutions (LP: 61). Cooperation, however, can enhance democratic reform.

"Liberal peoples must try to encourage decent people and not frustrate their vitality by coercively insisting that all societies be liberal. Moreover, if a liberal constitutional democracy is, in fact, superior to other forms of society, as I believe it to be, a liberal people should have confidence in their convictions and suppose that a decent society, when offered due respect by liberal peoples, may be more likely, over time, to recognize the advantages of liberal institutions and take steps toward becoming more liberal on its own" (LP: 62).

Spreading liberal and democratic ideas is more effectively achieved through respect and cooperation, and is more reasonable and in accordance with liberal ideas. The alternative would be to draw a line between liberal and non-liberal, or Western and non-Western. This not only would enhance international tension rather than peace and stability, but also does not mirror the state world as it is (Brown 2004: 39). Convictions and values can grow from within, as existing liberal societies have demonstrated. Intervention by force most probably leads to instability. Also, decent peoples neither pose a threat to their people, nor to liberal peoples or to the international order (Freeman 2007: 434). For these reasons, decent peoples

"must be free to liberalize and democratize in their own way and [...] liberal democratic peoples must engage in an international politics of persuasion and mutual respect always prepared to accept a world within which decent nonliberal and nondemocratic peoples choose to remain as such" (Reidy 2004: 312).

Although it is "one of Rawls's many important achievements in LP that he presents powerful considerations against the complacent view that liberal democracy is the globally correct and enforceable form of political arrangements" (Tan 2006: 76), Rawls's concept of toleration has been widely

criticized, among others by Tan. In LP, Rawls relaxes the principle of toleration and leaves room for non-liberal *political* conceptions and institutions (ibid.). What has been considered “unreasonable in the domestic context, becomes reasonable in the international” (Tan 2008: 619). It seems that Rawls only relaxes toleration to enable non-liberal regimes that meet certain standards to embrace his principles of the Law of Peoples (ibid.: 620).

From a cosmopolitan viewpoint, the threshold Rawls sets for toleration needs to include the honouring of liberal rights, such as the right to equal political representation. Decent regimes would then not pass the threshold of what is tolerable (Tan 2006: 84f.).⁶¹ Rawls’s analogy of toleration on the domestic and international level is therefore considered flawed. Toleration allows a reasonable pluralism on moral, religious or philosophical views, but not on political ones. Non-liberal political views would be categorized as unreasonable (Tan 2008: 619). Cosmopolitan thinkers reject his minimal conception of the reasonable. Citizens within a liberal society that hold non-liberal non-political doctrines still enjoy the freedom to make use of their rights; liberal members of a non-liberal society do not (ibid.: 622). “When a liberal regulatory framework recognises a decent hierarchical regime as sufficiently just, it participates in the denial of freedom and equality to such individuals” (Kuper 2000: 651). Toleration of groups within liberal societies and also outside, in the form of non-liberal states, should end where the group or state neglects its members the “right and freedom to reevaluate and revise the internal practices and traditions of the group” (Tan 2008: 625). Toleration can thus not be extended to non-liberal societies.

For many critics, Rawls’s concept of toleration in LP goes way too far and misapplies the principle of reasonable pluralism. Tolerance is important on a domestic level, to leave room for other reasonable opinions. The domestic basic structure, however, needs to be liberal democratic in order to do so. Equally, the international order should be liberal democratic and leave room for non-liberal-democratic views (McCarthy 1996: 217f., Pogge 1994: 216-218). A liberal theory

⁶¹ The argument in this and similar forms can also be found in Beitz 2000, Pogge 2001 or Moellendorf 2002.

should support liberal values and principles of international justice (McCarthy 1996: 218). “A political philosophy cannot accommodate another competing political philosophy without undermining itself” (Tan 2008: 619).

Simon Caney goes as far as to claim that respecting decent peoples might include tolerating ethnic cleansing as well as discrimination (Caney 2002: 101). To illustrate his argument, Caney sketches “a ‘decent’ patriarchal society”, which extensively discriminates against women, who are denied suffrage and may not hold responsible positions in political life or in economic institutions. When women marry, their property is passed to their husband. They are denied the right to leave the house and can be flogged in case of adultery (ibid.: 103). Caney also states that Rawls is (too) indifferent to possible levels of decency as he does not make a difference between societies that might almost meet democratic standards and those that are at the bottom of the threshold of what Rawls considers tolerable (ibid.: 105).

Rawls would agree that there are more and less just, reasonable and decent societies. However, these differences do not matter when it comes to toleration, as every society passing the threshold needs to be tolerated no matter how decent, reasonable and just it is. Furthermore, such a differentiation is not made referring to liberal regimes, and also not called for. Regimes can be more or less liberal, but the degree of liberalness has no influence on whether that society is accepted as a cooperation partner or not. By pointing towards the reasonable character of (decent) peoples, Caney’s first claim is also to be rejected. Focusing on racial discrimination, Rawls leaves room for denying non-Muslims access to higher political offices, and only to those, but not for denying them medical care or marriage (see Caney 2002: 101). Minorities are not excluded but need to be represented within the consultation system, and government also needs to justify political decisions towards them. The society Caney sketches is far from what Rawls considers to be decent hierarchical. Rawls emphasizes that the interests of women must be represented in the

consultation system (LP: 75, 78,110). Minorities are not vulnerable to wanton prejudice.⁶²

Caney, like others, thus misunderstands Rawls's characterization of decent peoples and consequently, the threshold for what is tolerable from his liberal viewpoint. "By democratic standards, most states throughout human history have been oppressive (and illegitimate), but those are not necessarily or usually the standards by which they are judged among their own people" (Walzer 1980: 218). It cannot generally be argued that political choices that are not made democratically, cannot be considered as the free choices of a community. Also, an authoritarian basic structure it is not necessarily a "sign of some collective derangement or radical incapacity for a political community" but might, as a consequence of the society's culture or history, reflect "a widely shared world view or way of life" (ibid.: 224f.). From Rawls's perspective, "tyrannical and dictatorial regimes must be outlawed, and also, for basic liberal reasons, expansionist states conducting wars of religion" (Rawls 1993: 66). Non-democratic, well-ordered regimes, however, must be tolerated.

The main point of critique remains the claim that there is only room for reasonable pluralism *within* a liberal society. Toleration would then mean that only liberal societies are tolerated which is not tolerance according to liberal thinking (Bock 2008: 39). For Rawls, this argument violates not only the principle of self-determination, but also liberal principles. When it comes to human persons, there is no globally shared self-understanding or ideal of how just relations between persons should operate. That individuals need to be free and equal is a liberal idea, but following the principle of reciprocity, one cannot expect all human beings, and the societies they live in, to share this understanding. "To ground principles of international justice in such a self-understanding or idea(l) is to sacrifice (out of impatience?) the liberal commitment to reciprocity within a common human reason on the altar of one's

⁶² Minorities "are not [...] treated as inferior by Muslims in public or social relations. To try to strengthen their loyalty, the government allows that non-Muslims may belong to the armed forces and serve in the higher ranks of command" (LP: 76); see also: "As I imagine it, this decent people is marked by its enlightened treatment of the various non-Islamic religions and other minorities" (LP: 67).

preferred conception of international justice" (Reidy 2004: 310). If one considers the principle of reciprocity and tries to establish a concept of the person that may be grounded on a common human reason, one might end up with Rawls's conception of well-ordered liberal and decent societies, within which every individual enjoys the social conditions for personhood (*ibid.*: 310f.); "neither history nor a common human reason show decisively that a people must be liberal and democratic to secure for its members the social conditions necessary to their moral status as persons, not free and equal persons, but just persons" (Reidy 2004: 310).

Another common argument put forward against the toleration of decent societies is the fate of liberal individuals or groups within decent societies.

"The problem of tolerating decent peoples is that it lets down dissenting individual members in these nonliberal societies [...]; they [liberal societies] are not even permitted to take sides in internal disputes for this would be at odds with the ideal of mutual respect and recognition" (Tan 2006: 85).

By tolerating decent societies, Rawls allows hierarchical governments to impose their views on others. He allows liberal persons or groups to be denied a voice and equal rights. By claiming respect for decent peoples, he denies them respect (Caney 2002: 100). In each decent people, there will be individuals that hold liberal viewpoints and strive for liberty and equality: "There is no Islamic nation without a woman who insists on equal rights; no Confucian society without a man who denies the need for deference" (Ackermann 1994: 382). These liberals may even constitute the majority of members of society. Liberal peoples need to take sides and "why should they choose to betray our own principles and side with the oppressors rather than the oppressed" (*ibid.*: 383)? Ackermann rejects the right to resist interference as justification: it is also a Western conception and less important than public reason. Liberals should thus not give it priority when it comes to liberals in non-liberal states (*ibid.*).

Although liberal persons in non-liberal societies are not granted the full set of liberal rights, there are certain provisions that ensure that their voice may not be silenced. They too are represented within the consultation process and granted a "substantial political role [...] in making political decisions" (LP: 64). They may formulate dissent to the political decisions their government makes,

thereby forcing justification of those decisions (LP: 71f.). Also, decent (and liberal) peoples are not generally free from being criticized by other peoples; in cases of human rights violations or the suppression of minorities, peoples, liberal and decent, may very well be criticized (LP: 38).

A further argument, pointing towards a similar conflict, is that liberal peoples should provide incentives to encourage reform of decent regimes in a more liberal direction. Rawls rejects this claim concerning liberal governments. By providing incentives for reform, liberal governments might raise conflicts between members of the Society of Peoples and disturb the climate of mutual trust and the growing sympathy between the cooperating members. Furthermore, interference would collide with the principle of self-determination. International organizations, such as the UN, should also not provide such incentives. Incentives are only legitimate if non-liberal peoples ask for funds or other forms of assistance in order to be able to reform themselves (LP: 84f.). Therefore, liberal governments should not criticise decent practices, as long as they do not pass the threshold of the tolerable. Individuals in liberal societies, however, are free to use their freedom of expression and criticize decent peoples and their practices. They may also promote liberal values in a peaceful way and fund democratic reform (LP: 85, Tan 2006: 83). “Liberal citizens and associations have full rights (perhaps even duties according to their comprehensive views) to publicly criticize the illiberal or undemocratic character of other societies, and can boycott them if they choose” (Freeman 2007: 432).

The discussion that has emerged around Rawls’s understanding of toleration in LP seems partly mislead by a misunderstanding of Rawls’s idea of decent peoples. Rawls’s argument is not that decent peoples are as reasonable and as just as liberal societies. “The argument is that decent hierarchical societies should be tolerated, and, of course, toleration is not the same as approval” (Brown 2004: 38). Rawls is aware of the fact that decent hierarchical peoples are not perfectly just (*ibid.*) and there is “little doubt that Rawls believes political liberalism to be the best organizing principle [...] but wants to see the progressive liberalisation of international society achieved through the more

stable procession of consensus between states" (Sutch 2001: 186). Rawls does not want to suspend liberal ideas, but to ensure that liberals stand up to their own standards when it comes to nonliberal but reasonable conceptions.

To decide decisively whether liberals should or should not respect non-liberal societies that meet certain standards very much depends on where the line is drawn, where the threshold for toleration is situated. As Rawls is not really clear on what kind of actual society he is referring to when talking about decent peoples, it is hard to judge whether they should be tolerated. Denying that any society that is not organized according to liberal principles might have a right to be tolerated and thus to self-determination and non-intervention however, goes too far. This claim can, as Rawls does, be rightfully rejected as culturally imperialist and intolerant.

"Sometimes there is simply a plurality of 'right' answers. The idea that there is only one kind of just society – a liberal society defined by principles set out in Rawls's model – and that all others represent a falling off from this ideal does not seem a plausible response to the pluralism that undoubtedly exists in the modern world" (Brown 2010: 313).

As Rawls puts it, if "all societies were required to be liberal, then the idea of political liberalism would fail to express due toleration for other acceptable ways (if such there are as I assume) of ordering society" (LP: 59). When drawing the line of the acceptable or tolerable "Kazanistan is the best we can realistically – and coherently hope for" (LP: 78). Rawls therefore, does not sketch a liberal international order, but instead, one that liberals might accept as tolerable (McCarthy 1996: 212).

Why Should Decent Peoples Tolerate Liberal Societies?

Why should decent peoples, for example, negotiate, sign and honour a social contract with countries that to them most likely are represented by disbelievers? The addressees of LP are the governments of liberal societies and the viewpoints of decent peoples are hardly considered. A convincing answer to the question, however, is essential for LP, as well as for the decent peace thesis elaborated in chapter 7. Though Rawls does not directly discuss this question,

several arguments in favour of toleration of liberal peoples by decent peoples can be deduced: decent peoples share interests with liberal societies, minimally that of a peaceful and stable international order. Also, they profit from cooperation. As they are satisfied with the status quo for the right reason, they do not pursue aggressive foreign policies. In summary, if they are respected by liberal regimes, they have no reason to reject this cooperation, but plenty of good reasons to accept it. Furthermore and more importantly for Rawls, the principles of the Law of Peoples constitute an overlapping consensus between liberal and decent peoples; representatives of decent peoples reasonably agree to those principles. On the basis of these norms, fair terms of cooperation are established.

Outside the Society of Peoples: The Duty of Assistance and the Right to War

In order to convey an idea of how the interaction between well-ordered and non-well-ordered societies could be imagined as well as to discuss Rawls's concept, the duty of assistance and the limited right to war are elaborated on.⁶³ Focusing on the duty of assistance, however, only its content and role within LP is introduced to present a complete scheme of the modes of interaction whereas the discussion of it is postponed to the next chapter in which the principles of the Law of Peoples are analysed.

“The Law of Peoples establishes, as a long-term goal of liberal foreign policy, the elevation of burdened societies to a point at which they can sustain liberal or decent institutions for themselves” (Beitz 2000: 688). The duty of assistance is an instrument to expand the “narrow circle of mutually caring peoples in the world today” (LP: 113). It aims to provide burdened societies, which are willing to but not capable of establishing a well-ordered basic structure on their own, with the means necessary to manage their affairs in a reasonable

⁶³ Rawls never deliberates on the question of how the relations between burdened societies and outlaw states should be. Do outlaw states have a duty of assistance towards burdened societies? And do burdened societies have a right to war against outlaw regimes? If there were no guidelines on how non-peoples are to relate to one another, they would be in a constant anarchic state; “most of the actually existing nation-states in the world today are simply in a general state of war of all against all” (Shue 2002: 310).

manner and eventually become a member of the Society of Peoples (LP: 111). The ultimate target is thus to enable burdened societies to establish a politically autonomous well-ordered basic structure. To do so, members of society need to participate in the social and political life of the community; their basic needs⁶⁴ thus need to be met (Freeman 2007: 454). “The force of the duty of assistance seems to arise [...] from the importance for liberal societies of enlarging the Society of Peoples to include, eventually, all societies of the world”, arguing that “the chances for peace would be greater in a world in which all societies had been lifted out of burdening conditions” (Beitz 2000: 689).

The duty of assistance is not (only) a humanitarian duty of aid. It is a substantial duty of justice that “involves a notion of *publicly recognized want* that gives rise to specific claims of need” [emphasis in original] (Hirsch 2001: 66). This want is at hand if a person needs a good, such as clothes, to realize a value, such as health or self-respect, which is of morally high importance. To withhold such goods from that person is a moral wrong (ibid.: 67). It is, however, not a legal duty as that would imply measures (and institutions) to enforce it. It is rather a duty of virtue that peoples as moral agents have (Bock 2008: 106). Well-ordered peoples with an allegiance to the Law of Peoples should support others to establish well-ordered structures on their own (Cavallero 2003: 184). The duty of assistance has a target and cut-off point and it does not need international institutions that constantly mitigate inequalities. It is thus a principle of transition: it only holds until its aim is reached. Given that the attained, well-ordered basic structure contains a reasonable degree of justness and stability, the duty of assistance has no further reach (LP: 119).

How the duty of assistance can be best met is a highly difficult question. Neither simply throwing in funds nor coercive force are suitable means of assistance. Concrete advice and support for the specific burden are needed. As the political culture of a society is important, peoples must assist burdened societies in changing their political and social culture. In addition, the importance of human rights should be emphasized. Honouring core human rights is

⁶⁴ “By basic needs I mean roughly those that must be met if citizens are to be in a position to take advantage of the rights, liberties, and opportunities of their society. These needs include economic means as well as institutional rights and freedoms” (LP: 38).

necessary for a well-ordered society and supports the well-being of the citizens (LP: 108-110). Assistance must also focus on eliminating corruption and establishing the rule of law, on providing adequate economic resources as well as the capacity to use them and to establish well-ordered institutions (Freeman 2007: 440f.).

Simply lifting people out of destitute conditions while leaving them economically or culturally impoverished is not sufficient. [...] It may require a great deal more ongoing developmental assistance from advantaged peoples for education, infrastructure, agriculture, technology, cultural development, etc., until a burdened people is capable of political, economic, and social independence" (ibid.).

Furthermore, assistance does not have a direct impact on the distribution of wealth and income in the society receiving assistance. This is left to the responsibility of the respective society (Beitz 2000: 688). The duty of assistance might even include humanitarian intervention if one does not regard it as only a duty referring to the regime in power, but also as a duty towards the individuals living under its reign. It is possible that the burdens impeding the people from establishing a well-ordered basic structure are exactly the policies of the regime in power. These considerations link back to the possibility of burdened outlaw regimes. This possibility is important in another respect. Outlaw regimes, and thus also the people living in such states, are excluded from assistance "since the leading elite is not interested in establishing a fair or decent social structure" (Kreide 2002: n. pag.). It seems unfair to exclude those people that might be equally suffering and might be "too exhausted or too oppressed to change the situation" (ibid.). Meeting their basic needs seems as pressing as it is for individuals in burdened regimes.

In order not to become burdened themselves, peoples need to follow the principle of just saving: its purpose is to establish reasonably just, basic institutions and secure the social welfare of the people. If those institutions are established, the existing stock must be maintained and no further saving is necessary (LP: 106f.). Also, there is a duty of assistance towards other peoples. This duty takes grasp in cases of famine or drought or natural catastrophes. Provisions for such events have to be taken (LP: 38).

Although LP for Rawls is an extension of his domestic theory to the international level, the duty of assistance does not mirror the principle of distributive justice Rawls suggests for the domestic structure of a liberal society, a fact that has greatly disturbed those who built on Rawlsian thinking. But what exactly is the difference? The duty of assistance raises the claim to "Give to those who are in need of help.", whereas the difference principle demands one to "Give to the least privileged." (Hirsch 2001: 66). Whereas the duty of assistance is a threshold norm, distributive justice is a maximizing norm (Trujillo 2004: 83, Hirsch 2001: 68). It is meant to "maximize the income or wealth of the least-privileged members of a society" including to a level beyond their basic needs (ibid.: 67).

When looking for a parallel to Rawls's domestic theory, the duty of assistance comes close to the basic needs conception combined with a principle of just saving. Whereas on the domestic level, the basic needs of citizens need to be met in order to enable them to practice their rights and liberties, on the international level, regimes need to possess the means necessary to establish and maintain a well-ordered basic structure. Inequalities beyond that do not need to be regulated (LP: 114). With respect to the principle of just saving the link runs as follows: as societies on a domestic level only need to save resources up to the point where they can ensure a decent life for their people and the maintenance of just, functioning institutions, there is no further need to save and there is no further need for assistance on an international level as soon as the cut-off point is reached (Beitz 2000: 688). The role of the duty of assistance as the last of Rawls's eight principles and possible alternatives or additions are discussed in the following chapter.

Though Rawls does not explicitly designate it as a principle, he formulates a limited right to war held by well-ordered societies towards outlaw states. As indicated earlier, the principles of self-determination and non-intervention are overruled in cases of gross violations of human rights, which Rawls does not specify any further, and of (unreasonable) aggressive foreign policies (LP: 37). If outlaw states show an aggressive character and follow expansionist aims, they

become a threat to the security of peoples and their free institutions. Therefore, peoples have the right to attack such societies to protect their territory, people and culture (LP: 48, 94). War, however, is only the last resort. States violating human rights are to be put under pressure through the denial of assistance and cooperation (LP: 93).

Rawls also formulates a right to attack non-aggressive outlaw regimes even without referring to human rights protection and aggressions towards other regimes. Intervention might be justified if outlaw states simply do not comply with the Law of Peoples. "The Society of Peoples needs to develop new institutions and practices under the Law of Peoples to constrain outlaw states when they appear" (LP: 48). Outlaw regimes constitute a threat to the Society of Peoples. So, even pre-emptive war may be justified. "One strong state possessed of military and economic power and embarked on expansion and glory is sufficient to perpetuate the cycle of war and preparation for war" (LP: 48). By legitimizing pre-emptive war, Rawls opens the door to misuse of force. However, as peoples, as rights holders, limit their rational interests by the reasonable, they are unlikely to misuse this right. Furthermore, Rawls is not far from state practice. It is legitimate to ask how "many states have actually waited – once they discovered that they were going to be attacked – how many states have actually waited until the attack became imminent? The question of course answers itself: there is no such practice" (Glennon 2006: 310).

In agreement with Walzer, Rawls might argue that "[a]gainst the enslavement or massacre of political opponents, national minorities, and religious sects, there may well be no help unless help comes from outside" (Walzer 2006: 101). The use of force, for Rawls, is justified if it stops intolerable circumstances and maintains international stability, to which outlaw states pose a threat. It is not legitimate, however, to intervene merely in order to reform a society into a well-ordered regime (Beitz 2000: 685).

According to his critics, Rawls does not properly justify intervention in order to stop gross violations of human rights.

"A people's motivation to act on the principles Rawls proposes does *not* spring from any ground-level concern for individual welfare. When one people intervenes in another people's affairs [...] the intervening country does *not* do this for the sake

of the well-being of the tortured or the starving individuals in the other country [...]. Rather, the intervening country is trying to bring the other country (back) to legitimacy so that it can play its role in the society of peoples" [emphasis in original] (Wenar 2001: 90).

Intervention for the sake of international stability does not consider a moral level as well as the value of human rights (Beitz 2000: 685):

"[T]he reason why people have human rights not to be tortured does not seem to be that regimes that torture are dangerous to other regimes: although the latter fact (if it is a fact) might justify intervention, it does not imply anything about the moral situation of the tortured" (ibid.).

Beitz is not wrong when stating that Rawls justifies intervention with reference to international peace and stability, and Wenar too is not wrong in claiming that intervention is a means to "bring the country (back) to legitimacy", but this is not the whole truth. A limited right to war exists within the Rawlsian framework, justified in cases of self-defence *and* to protect human rights, for the sake of international peace and stability *and* for the sake of the people suffering from these gross violations. The limited right to war gives peoples the means to stop policies that are beneath the threshold of what is reasonable and tolerable.

Conclusion

Rawls's typology of political regimes functions on the basis of models. Are the lines between these five types well drawn? What about, for example, liberal regimes with reasonably just basic structures waging wars of aggression? Within Rawls's model, these regimes would clearly fall into the category of outlaw states.

Further to the three criteria for peoplehood, more characteristics are needed to differentiate between liberal and decent regimes, such as the concept of citizenship and formal equality of the members, and the democratic or hierarchical structure of the political regime. Additional differentiations of regime types and modes of interaction may be reasonable and advantageous when applying Rawls's model to the international realm, for example burdened outlaw regimes. The people there might be equally suffering from malnutrition and poverty, but the regime by which they are ruled not willing to establish a well-

ordered basic structure. How shall the people there be assisted? Assistance might imply intervention, or it might follow intervention to reform a system that has been ruled by an outlaw regime. As a model, however, and for the sake of limiting the variables to a manageable degree, Rawls's typology constitutes a fruitful basis for understanding his concept and for discussing other elements of his theory. The principles of the Law of Peoples, to take an example, may equally apply to five as to seven regime types (the extra two coming from including burdened outlaw regimes and differentiating between aggressive and non-aggressive outlaws).

For now, reasonable pluralism and the possibility of enhancing democratic reform via cooperation, as an alternative to liberal imperialism, are strong reasons for accepting decent societies as members of good standing in the international realm and for offering them fair terms of cooperation. Equally, there are good reasons for decent peoples to cooperate fairly with liberal regimes. "Rawls surely hopes for a world within which all peoples are liberal and democratic. But he hopes even more deeply that we can find our way to that world without violating the demands of reciprocity within a shared human reason" (Reidy 2004: 305). If this is the case, Rawls is not too far from the cosmopolitans, as, after all, he would wish for an all-embracing society of *liberal* peoples. However, he wants to show that a realistic (utopian) path to get there, while remaining true to liberal principles such as reasonable pluralism is possible. The principles of the Law of Peoples explored in the following chapter constitute a central element of this path.

4. The Principles of the Law of Peoples

“The possibility of a peaceful international life, in which liberal societies can flourish, depends upon finding a basis on which reasonable and decent peoples can cooperate willingly given the international analog of the fact of reasonable pluralism” (Beitz 2000: 672). In LP, Rawls tries to identify the most appropriate set of principles according to which relations between societies can be organized in an as peaceful, stable and just manner as possible, in short, the principles of the Law of Peoples. These are the general and basic norms of political justice that regulate the relations between peoples and non-well-ordered regimes, and they “can and should be accepted” by peoples (LP: VI, 3, 35, 37). They form the “Charter of the Society of Peoples” (LP: 85, see also Beitz 2000: 673). Rawls does not aim at a multilateral contract between sovereign states, but at peace, built on general norms, which also allows for intervention into the domestic policies of states (Becker 2005: 52).

The principles of the Law of Peoples are not only central, but also eponymous to Rawls’s international theory. Whereas particular principles, such as the human rights minimalism, have been broadly discussed, a detailed elaboration covering the complete set of principles is, as yet, absent in the secondary literature. Furthermore, Rawls does not present much justification for the selection of the relevant principles. Such an analysis is, however, worth pursuing as it not only clarifies this element of Rawls’s international theory, but also provides theoretical support for evolving and existing norms of international conduct. How does Rawls arrive at this particular set of principles? What is their precise character and how are they to be understood within the Rawlsian framework as well as within the sphere of international relations?

In the previous two chapters, the subjects and objects of LP have been explored and reviewed. The present and subsequent chapter shall clarify and discuss central elements of Rawls’s international theory (the principles of the Law of Peoples and the Society of Peoples) as well as suggest fruitful amendments to it. Possible contributions to more peaceful, stable and just international relations shall be highlighted. The chapter at hand examines the nature of the principles of the Law of Peoples. Therefore, first, the theoretical

background is explored. In a second step, the content of the principles is fleshed out and analyzed. What the chapter is not intended to be is a general inquiry into the nature and content of international law. Therefore, a general discussion of questions about the justness of war or the legitimacy of humanitarian intervention shall be avoided. An exploration of Rawls's principles and their content and relation to international law shows how Rawls's realistic utopian ideal corresponds to existing international norms, and whether it may serve as a guideline for future international relations.

The Second and Third Original Position – How the Principles of the Law of Peoples Are Selected

Laying out the principles of the Law of Peoples, Rawls begins with a second OP, thereby relying on a method set out in TJ. On the domestic level, the principles of justice provide a content of public reason; within the Society of Peoples, this is provided by the principles of the Law of Peoples (LP: 18). The moral character and fair terms of cooperation between members in the domestic case lead to the principles of justice, and on an international level, to the principles of the Law of Peoples (LP: 25).

In the OP II, representatives of liberal peoples are put behind a veil of ignorance. As in the OP for democratic societies, the representatives are modeled as rational and reasonable agents (LP: 32). Basic fairness is guaranteed by equal representation (LP: 41, 60, 115). Furthermore, the representatives have access to general information and theories they need to select reasonable principles, but the veil hides specific knowledge of the society they represent to ensure that the principles are going to be fair. The representatives, for example, know neither the size of their territory and population, their military capacities, the extent of their natural resources, nor their level of economic development. They know, however, that they represent liberal democratic societies and that “reasonable conditions obtain that make constitutional democracy possible” (LP: 32f.).

Just as with the domestic OP, one should assume that the representatives of liberal peoples also know some “general facts”, such as “the facts that, historically, political and social unity do not depend on religious unity, and that well-ordered democratic peoples do not engage in war with one another” (LP: 16). Rawls claims that there are four basic facts, four truisms that can be identified by reflecting on history and political experience, namely reasonable pluralism, democratic unity in diversity (“This is the fact that in a constitutional democratic society, political and social unity does not require that the citizen’s be unified by one comprehensive doctrine”; LP: 124), public reason and liberal democratic peace (LP: 124f.). Nevertheless, Rawls also turns against a claim that is supported by history, that is, the fact that hierarchical regimes tend to be oppressive. Against this fact, Rawls, without any further justification, assumes that decent peoples at least could exist (LP: 79).

By constructing what the representatives know and what they do not know, Rawls tailors his OP II, as he did in TJ, in a way that does not leave much room for anything other than the designated results. A second hint to this conclusion is the fact that the representatives are to select principles from an available set (LP: 32). “These familiar and largely traditional principles I take from the history and usage of international law and practice” (LP: 41). Representatives of well-ordered peoples have no menu of alternative principles and ideals to select from. They “simply reflect on the advantage of these principles of equality among peoples and see no reason to depart from them or to propose alternatives” (ibid.). In TJ and PL, the representatives may choose between different conceptions of justice, such as utilitarianism, liberalism or perfectionism. In LP, possible rival principles are not even considered (Tasioulas 2002: 377f.). The “absence of rival principles in the second original position contributes to an overwhelming sense of argumentative deficit” (ibid.).

The selection process and the principles must meet certain standards. They must serve the society’s fundamental interests; they have to make the society’s relations stable for the right reasons and meet the criterion of reciprocity (LP: 41, 45). The principles selected in the OP II are autonomous from the principles of justice, meaning they also apply to well-ordered peoples

that do *not* maintain a basic structure organized on the basis of the principles of justice (LP: 86). The Law of Peoples thus must not only be reasonable from the viewpoint of liberal societies, but also from the perspective of other reasonable peoples (LP: 57).

The parties in the OP II would adopt the same principles that “you and I”⁶⁵ would consider as fair when referring to specifying terms for mutual cooperation (LP: 45), which, according to Rawls, would be the following: 1. a duty to respect other peoples’ freedom and independence, 2. a duty to observe treaties, 3. a duty to consider equality between all parties, 4. a duty of non-intervention, 5. a right to self-defence, 6. a duty to honour human rights, 7. a duty to observe restrictions in the conduct of war and 8. a duty to assist burdened societies (LP: 37).⁶⁶

Rawls states that the list is incomplete. If the Law of Peoples were complete, it would contain principles for all politically relevant subjects and consider governments and citizens. It would include guidelines to set up institutions that organize cooperation and specify the content of each principle (LP: 86). That Rawls here leaves room in this manner also hints towards his international theory not being complete, not being the last word on international justice. The principles are superior to any other principles (LP: 41), yet more norms hold for relations between well-ordered regimes and non-well-ordered societies. Principles for fair trade need to be agreed upon, provisions for assistance be made and guidelines for shared organizations must be formulated (LP: 42).⁶⁷

Also, as Rawls argues, the principles require explanation and interpretation. Some might even become superfluous within a Society of Peoples, such as the sixth and seventh (LP: 37f.). Restrictions in the conduct of

⁶⁵ “You and I” here are representatives of different decent peoples (Rawls 1993: 54).

⁶⁶ “Readers of *A Theory of Justice* will recognize that principles 1-5 and 7 recapitulate ‘the law of nations’ as it was interpreted there” (Beitz 2000: 672). In TJ, Rawls states that if one enlarged the OP to include representatives of different nations who shall agree on a set of principles on the basis of which, they fix their mutual rights and duties behind a veil of ignorance, Rawls concludes that they would select common principles of international law; the principle of equality, self-determination, self-defence, the duty to observe treaties as well as principles for the right to go to war and for the conduct of war (TJ: 377ff.).

⁶⁷ Here, Rawls might refer to such principles as principles of just saving, or principles for forming associations and a system of fair trade.

war become superfluous within a Society of Peoples as there is no war between members and thus no object for the restriction to apply to. Focusing on the sixth principle (to honour human rights), it is questionable why Rawls considers it redundant. One could imagine that peoples, because of their nature, honour human rights and therefore do not need the principle. That, however, would also hold true for the other principles (except maybe for the duty of assistance).

In the same way that citizens on a domestic level develop a sense of justice by taking part in the social world of their respective societies, a parallel process leads peoples to act on the legal norms prescribed by the Law of Peoples (LP: 44). Moral learning over time leads to more stability and, as a result, improves the chances of a lasting peace.

In the third OP, Rawls puts representatives of decent societies behind the veil of ignorance used in OP II. The representatives of decent societies are, parallel to OP II, fairly situated, modeled as rational and moved by reasonable motives (LP: 63). Although they might not realize equality between their members of society on a domestic level, representatives of decent societies are positioned equal to one another due to the principle of reasonable pluralism and for the OP III to be fair. There is no domestic OP for decent societies, as representatives have to be positioned symmetrically, a criterion not met by the domestic structure of decent societies (LP: 70).

Rawls stipulates that decent peoples, due to their fundamental interests, would agree on the same set of principles for their foreign policy as liberal societies, thereby establishing an overlapping consensus between liberal and decent societies (LP: 63f.). The overlapping consensus is of special importance as it ensures that relations established on the basis of those principles are not a *modus vivendi*, but supported by the people that are part of this extended social contract (McCarthy 1996: 206).

The decent viewpoint is taken to guarantee that the principles selected by representatives of liberal societies are also reasonable to non-liberal well-ordered societies, necessary due to the principle of reasonable pluralism and the criterion of reciprocity (LP: 58). “The desire to achieve this assurance is

intrinsic to the liberal conception" (ibid.). Decent peoples again are second class. It seems as if decent societies are a construction to show that liberal principles may also be reasonable to non-liberal, well-ordered regimes, and that they are thus universal in grasp and can be enforced also against non-well-ordered regimes (see LP: 121f.). This impression, however, runs against one of the central elements of LP: the argument that the principle of reasonable pluralism involves avoiding liberal imperialism and the imposition of liberal values, in favour of a support of principles that constitute an overlapping consensus between all well-ordered regimes.

That Rawls more or less stipulates that decent societies would select the same set of principles (LP: 85) is a clear weakness of his theory. As indicated in the previous chapter, tolerating decent peoples might simply be a more effective way to push them towards liberal democratic reform than coercive force. "The claim that liberal democracy is or will become universally appealing is characteristic of cultural imperialism, which leads to imposing that model as a norm, even if only in a 'soft' version, based on respect and persuasion, rather than on force" (Audard 2006b: 310). To forego this critique, it is necessary to prove that decent peoples have reasonable motives for agreeing to the same set of principles as liberal peoples. Decent peoples have a moral character and should thus be ready to consent to reasonable principles. The liberal representatives agreed on a minimal set, on what to them is within the limits of the tolerable, and decent peoples, though less reasonable and just than liberal societies, should be sufficiently reasonable and just to accept those norms.

In addition to the question of why decent peoples should agree to the same set of principles, it seems even more pressing to understand why liberal peoples do not agree on a broader normative basis for their foreign policy, also covering what Rawls calls "liberal aspirations". That Rawls here also refers to article 1 of the Universal Declaration of Human Rights (UDHR) (LP: 80) is irritating. Freedom of expression and association, and the right to democratic political participation, rights that differentiate liberal from other (also from decent hierarchical) societies, similarly seem to belong to these aspirations (Beitz 2000: 684, Hirsch and Stepanians 2006: 126). The principle of non-discrimination

seems a further suitable candidate for this category. Furthermore, there seems to be no reason why liberal representatives would not include “a transnational difference principle, a human rights charter that embraces political rights and that guarantees a more far-reaching right to free speech as well as a notion of equality that demands that everybody be treated equally” (Kreide 2002: n. pag.). So why should liberal peoples in an OP on their own not consider those principles as reasonable and essential for toleration?

Rawls might answer that liberals, due to the principle of reasonable pluralism, need to respect other reasonably just conceptions and thus reduce the principles to what is minimally tolerable, and for Rawls, this does not include “liberal aspirations”. Both the justification for why decent peoples choose the same principles and for why liberals select a minimal set, seem unsatisfactory and based on Rawls’s definitions or stipulations of decent peoples and the setup of the international OPs. Cosmopolitans claim that instead of Rawls’s OP II and III, a global original position should be constructed in which, equal to the domestic OP, individuals are represented. Then, liberal aspirations would surely be covered by the principles of the Law of Peoples. Possible answers to the questions of why decent peoples should accept the principles of the Law of Peoples and why liberals should not agree on a broader set might be carved out more clearly by a close analysis of Rawls’s OPs as well as possible alternatives to it.

One Rather Than Two Original Positions

Why not construct a single global original position in which individuals, rather than states, are represented (see for example Beitz 1979, Pogge 1989 or Kuper 2000)? Additional alternatives seem to be worth discussing. Why not one international OP where all well-ordered societies (liberal and decent) are represented? Why are the non-well-ordered regimes not represented given that the principles of the Law of Peoples also concern them? There are further alternative constructions, such as Smith’s impartial spectator, or to move from Rawls’s premises, such as fairness or the criterion of reciprocity, straight to

arguing for a set of suitable principles (Barry 1995: 894). Closeness to the Rawlsian framework, however, is essential for answering the questions at hand, and shall thus be preserved. Conclusively, there are four different options:

- a) Rawls's second and third OP,
- b) a global OP (where individuals are represented),
- c) an international OP (all states are represented) and
- d) a well-ordered OP (liberal and decent peoples are represented).

Options a) and b) are best discussed in relation to one another as there has been a vivid debate between Rawls and his critics. Rawls's argument for two international OPs proceeds as follows: Liberal societies are the major subjects and addressees of his theory. As LP is meant as an extension of the domestic case, representatives of liberal societies are the parties in the first international OP. OP III is then constructed to test, whether non-liberal but well-ordered societies would accept the (same) principles. This test is necessary to ensure that the principles of reasonable pluralism, reciprocity and self-determination are honoured. Being accepted by all reasonable societies, the principles may then be enforced towards other societies.

Option b) is favoured by cosmopolitans, who doubt that liberal societies, or societies in general, are the right starting point for an international theory of justice. Rather, individuals should be represented in a global OP that neither considers state boundaries nor societal communities. "It aims at identifying principles that are acceptable when each person's prospects, rather than the prospects of each society or people, are taken fairly into account" (Beitz 1999: 519). Referring to Rawls's concept of the social contract, whereas for Rawls well-ordered societies are the contractors, for cosmopolitans, "the whole world should be regarded as a 'society' for the purposes of this social contract" (Brown 2010: 313). In a global OP, representatives of individuals would agree on very different principles. Surely, they would reject the toleration of decent societies, as they would not want to find themselves "as lowly placed members of a hierarchical society when the veil is lifted" (Tan 2008: 622f.). Also, the "legitimation of the principles of law would be much stronger if it were the individual citizens [...] who agree on the law of peoples" (Kreide 2009: 97) as the

pluralism between the forms of life they choose to live disappears when focusing on the state level (ibid.).

Additionally, the outcome of a global OP would be more legitimate as the principles would be an expression of individuals' political self-determination (Kreide 2002: n. pag.). The interests of peoples do not coincide with the interests of persons and "even if a confederation of peoples secures rights, it may well do so in a less than optimal way" (Kuper 2000: 646). As representatives in a global OP could, after lifting the veil of ignorance, end up as dissenters in a decent regime, they would opt for a more extensive set of (liberal) rights (ibid.: 651).

The main problem here seems to be one of different objectives. The question Rawls tries to answer in LP is according to which principles liberal societies should organize their foreign relations. He is addressing liberal regimes as independent agents (Sutch 2001: 176, Freeman 2007: 418). Cosmopolitans focus on the prospects of the individual on the basis of which institutions and practices should be justified and/or criticized (Beitz 1999: 519). There are thus two different objectives at play.

"Rawls is not attempting to construct a general theory of international justice (one that aims to be universal in the cosmopolitan sense). Rather, Rawls is attempting to show what liberals should be committed to in world politics and thereafter to show what needs to be done to make such principles universalisable in the sense that they could be the object of consensus for a more heterogeneous group of agents" (Sutch 2001: 175f.).

Rawls is searching for a minimal realistic utopian (not maximal ideal) conception that can have "legitimate purchase on international politics in the here and now" (ibid.: 177). In the here and now, it is "peoples, not citizens that international political institutions regard as free and equal" (Wenar 2001: 87, see also Williams 2011: 20) and they most probably will continue to be in the near future.

"History may bring us to a point at which all decent peoples are liberal and democratic and thus all individuals worldwide think of themselves in their political relations as free equals. But if so, I suspect that individuals will still think of themselves as free and equal members of distinct and diverse corporate moral agents or peoples [...]. And thus the question of international justice will continue to present itself as one fundamentally concerned with the relations between peoples" (Reidy 2004: 311).

Taking liberalism as a threshold for what is tolerable on the international level for Rawls is illiberal.

Nevertheless, although focusing on societies, Rawls does take the interests and prospects of individuals into account. His human rights minimalism and the duty of assistance aim to ensure that every individual's basic needs are met and that every person enjoys a sufficient amount of liberty (LP: 74). His scope is thus not, as cosmopolitans argue, "limited to principles *for societies* – or more accurately, for their political embodiment as *states*" [emphasis in original] (Beitz 1999: 520). Whereas Rawls's OPs are state-centric, the principles the representatives agree upon are not. Also, testing the principles liberal societies would agree upon in the OPIII is essential to Rawls. Leaving out this test – and a global OP would leave no room for that – would imply enforcing liberal principles on non-liberal regimes, which would not only be ethnocentric, but also violate liberal principles (LP: 82f.). The claim here is not that a cosmopolitan framework is generally to be rejected, but that when focusing on the here and now and when aiming to present a guideline for liberal regimes, when theorizing within a *realistic* utopian framework, the focus on states, rather than individuals, when it comes to *international* politics, seems reasonable.

c) When Rawls elaborates on an international OP in TJ, he extends his thought experiment to representatives of nations, rather than limiting it to liberal societies (TJ: 378). So why not construct an international OP where all states are represented? Also, one could argue that by excluding non-well-ordered regimes from the OPs, these societies have never agreed to the principles of the Law of Peoples. The social contract upon which the Society of Peoples is built, as a treaty, might not be considered to "create either obligations or rights for a third State without its consent" (VCLT: art. 34⁶⁸); the principles of the Law of Peoples thus cannot legitimately claim universal grasp (Beitz 2000: 686).

The reason why Rawls excludes non-well-ordered societies from his international OP is that, as explored in chapter 3, his conception of decent societies sets the threshold for which political basic structures are reasonable, and thus tolerable, from a liberal viewpoint. Accordingly, his exclusion of non-well-ordered regimes "should not be surprising; it is simply a reflection of the fact that the liberal notion of reciprocity does not require us to show that our

⁶⁸ United Nations (1969): "Vienna Convention on the Law of Treaties"; hereafter cited as VCLT.

principles would be acceptable to those holding fundamentally unreasonable points of view" (ibid.: 676). Non-reasonable regimes are not expected to agree to reasonable principles and are therefore excluded from the selection process.

The principles of the Law of Peoples thus do not constitute a *jus gentium*; they do not form "a body of principles universally accepted by states, nor is it intended necessarily to constitute a reasonable basis for the cooperation (or for that matter the peaceful co-existence) of all existing states" (ibid.). Following Rawls, the principles only need to be acceptable for *reasonable* conceptions. Taking unreasonable points of view into consideration – and just as liberal and decent peoples know that they represent liberal and decent peoples, outlaws would know that they represent (the interests of) outlaws – would be unreasonable when striving to identify reasonable principles for international cooperation.

d) Whereas it seems reasonable to exclude non-reasonable regimes from representation, why not construct one international OP where all well-ordered societies, liberal and decent, are represented? This construct would have several advantages. It is hard to justify why liberal societies in an OP on their own would limit the principles, especially when it comes to the human rights minimalism, to the set Rawls proposes, instead of incorporating more liberal rights. Rawls should have included at least a discussion on why his four core human rights are included and others, such as the principle of non-discrimination, are excluded. Rawls leaves out principles from the list decent peoples would not accept, such as constitutional democratic rights (McCarthy 1996: 210, Kuper 2000: 643). The eight principles seem more like a compromise between liberal and decent peoples. Pogge, however, argued against this perception:

"This picture is not at all that of a negotiated compromise in which the liberal delegates agree to surrender their egalitarian concerns and some human rights in exchange for the hierarchical delegates accepting the remainder. [...] The toleration model is more noble than this: The liberal delegates, informed that their societies share a world with many hierarchical societies, seek to design a law of peoples that hierarchical societies, on the basis of their values and interests as such, can reasonably accept" (Pogge 1994: 216).

In a single, international OP for all well-ordered societies, representatives might opt for a set of principles that leaves room for as much self-determination and pluralism as the reasonable allows. One could object that Rawls focuses on liberal societies, that they are of major concern and that the OPIII is only a test. As decent societies do not add anything to the principles (Kreide 2002: n. pag.), the OPIII does not seem to be any more than a simple construction to justify the principles. A shared international OP would appear to be more convincing: first, it can easily explain why liberal peoples do not propose a more elaborate, more liberal set of principles, and second, the argument for the consent of decent peoples to the set becomes stronger than in the case of two separate OPs.

Outside the Original Positions, or: Non-Ideal Theory

As indicated earlier, benevolent absolutistic regimes, burdened societies and outlaw states are not represented in the OPs and “there is no effort to justify the Law of Peoples to representatives of either” (Beitz 2000: 676). Beitz therefore argues that the principles of the Law of Peoples are not intended as a basis for cooperation and peaceful co-existence within international society and are not universally accepted (*ibid.*). Beitz’s conclusion seems convincing, but does not hold true for a possible future international society consisting of well-ordered regimes. In a future, where the international community is made up exclusively of well-ordered regimes, the principles of the Law of Peoples serve as a “basis for cooperation and peaceful co-existence within the international society” and are “universally accepted”. They are thus intended as general principles of this kind, and are trivially not accepted by non-well-ordered societies.

Though peoples generally honour the principles of the Law of Peoples, violations might occur. “I believe that in a society of liberal and decent peoples the Law of Peoples would be honored, if not at all times, then most of the time, so that it would be recognized as governing the relations among them” (LP: 125). In relations with one another, well-ordered societies are likely to comply with the principles as it serves their interests to do so. In reference to the right to

war and the duty of assistance, however, things are different. The limited right to war might be used in an extended way. The duty of assistance needs foresight. Furthermore, because of social distance and anxiety about the unknown towards a foreign society, peoples might not be easily convinced of the importance of supporting other societies (LP: 124-126).

Allegiance to the Law of Peoples serves as a fundamental basis for stability for the right reason between peoples, thereby realizing Rawls's major aim: stable, peaceful and just international relations, at least as far as peoples are concerned. The principles, their content, link to and possible impact on real world international relations are therefore introduced and discussed within and beyond a Rawlsian framework.

The Principles of the Law of Peoples

1. The Duty to Respect a People's Freedom and Independence

The first of Rawls's eight principles is a well-established international norm. The idea of free and independent states implies that "each state enjoys a certain right to be immune from the scrutiny and intervention of other states in its internal affairs", as well as that "an independent political community is free to make and amend its own laws and to enjoy its own religious and cultural life, subject only to those limitations that are necessary to reconcile the liberty of one community with the other" (Nardin 1983: 53). In short, communities can "take many forms, and [self-government] is not limited to constitutional or democratic rule" (ibid.). This mirrors Rawls's idea of a reasonable pluralism of well-ordered societies. The international legal system provides that states have a freedom of action as long as there is no rule constraining it. International law thus constitutes the framework and sets limits on a state's independence. Political or economic interdependence between states does not erode the independence of

states (Shaw 2003: 190). International law prescribes that all states hold the right to independence (DRDS 1949: art. 1⁶⁹).

Mutual respect between peoples is an essential part of the basic structure and political climate of the Society of Peoples (LP: 35, 62, 122). Therefore, “[d]enying respect to other peoples and their members requires strong reason to be justified” (LP: 61) and no sufficient reason exists when it comes to decent peoples. The right to freedom and independence within LP is thus bound to reasonable policies. Audard summarizes Rawls’s first principle as follows:

“Peoples are free and independent within limits, and should be treated as such. Sovereignty is replaced by self-determination and is restricted by precise conditions. The Law of Peoples limits permissible domestic and international policies, that is, the right to war and the right to non-interference with the treatment of its own people” (Audard 2006b: 307).

As the quotation exemplifies, terms that usually occur in relation to freedom and independence of states are that of sovereignty and self-determination. Occasionally, Rawls refers to self-determination (LP: 38, 61, 85, 111). Sovereignty is mostly connected to the two powers of sovereignty. Within the Society of Peoples, room for self-determination must be left for its members, within limits specified by the principles of the Law of Peoples (LP: 38). This runs parallel to Kant’s understanding of freedom: for Kant, external freedom is the “authority to obey no external laws than those to which I have been able to give consent” (Kant 2006: 8:350).⁷⁰ A peoples’ freedom therefore may be limited by the principles their representatives agreed on. “Thus no people has the right to self-determination, or a right to secession, at the expense of subjugating another people” (LP: 38). Furthermore, independence is no shield from condemnation should a people violate the Law of Peoples (*ibid.*). Freedom and independence only hold within the limits set by the other reasonable principles, foremost the duty to honour human rights.

⁶⁹ United Nations (1949): “Draft Declaration on the Rights and Duties of States”; hereafter cited as DRDS.

⁷⁰ This principle is also found in the fifth preliminary article for a perpetual peace: “No state shall forcibly interfere in the constitution and government of another state” (Kant 2006: 8:346).

2. The Duty to Observe Treaties

Except for when presenting the list of principles, Rawls does not again refer to the duty to observe treaties, most likely because it is considered self-explanatory. Meeting the terms of any agreements one has made is a necessary basis for cooperation, as well as fundamental for the process of moral learning leading to the generation of mutual trust and respect.

3. The Duty to Consider Equality Between Peoples

Although states may differ in size of territory or population, in terms of economic and military capacities, they are formally considered equals. Their equality is based on the independence of states from any superior, and their claim to sovereignty (Nardin 1983: 54). This formal equality entails a legal one (equality before the law⁷¹), both of which are prominent and generally accepted principles of international law.⁷² Regimes have a vital interest in their independence, security and territorial integrity as well as an interest in seeing that all these aspects are respected by other states. No state would willingly agree to a less-than-equal position in its international relations towards other states (Hirsch 2001: 63). A “people sincerely affirming a nonliberal idea of justice may still reasonably think its society should be treated equally [...]. Although full equality may be lacking within a society, equality may be reasonably put forward in making claims against other societies” (LP: 70).

The norm may be traced back to Natural Law thinking. Equality here is understood as a natural condition of states as well as the essence of man. “By nature all nations are equal the one to the other. For nations are considered as individual free persons living in a state of nature. Therefore, since by nature all men are equal, all nations too are equal one to the other” (Wolff 1934: §16). The idea is also found in Kant, who stated that external equality incorporates that “no

⁷¹ Equality before the law does not necessarily incorporate equality in *making* the law, as states have different amounts of influence. Within the UN, equality is mirrored by the “one country one vote”-system in the General Assembly. The veto powers in the Security Council mirror the relevance of state power (Shaw 2003: 193).

⁷² It is, amongst others, formulated in art. 5 of the DRDS (“Every State has the right to equality in law with every other State.”), art.4 of the Montevideo Convention on the Rights and Duties of States, art. 2,1 of the UN Charter, or principle e and f of the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States (DPIL).

one can place another under a legal obligation without similarly submitting himself to [...] a similar obligation" (Kant 2006: 8:350).

The duty to consider equality between peoples has a strong link with Rawls's first principle (see Nardin 1983: 54). In OP II and III, representatives are modelled as equals and will strive to preserve this equality (LP: 41, 60). Peoples thus mutually consider and treat each other as equals (LP: 48). This seems comprehensible, but does not explain why liberal peoples should respect well-ordered regimes as equal cooperation partners given that they do not grant the same respect to their own members of society. Rawls's central argument is, as elaborated in the previous chapter, reasonable pluralism.

"Thus, they may accord a less-than-equal status to women in the sphere of political decision making, as is the case in many Islamic countries. Yet in the absence of any globally shared nonegalitarian comprehensive doctrine like Islam, no people can reasonably expect other peoples who are willing to cooperate fairly to accept anything but an equal status in the envisaged scheme of intersocietal cooperation. Therefore, when the terms of global cooperation are specified, the interests and claims of the peoples involved have to be given equal weight" (Hirsch 2001: 63).

Even though liberal and decent peoples are not equally just and reasonable, they both legitimately claim and respect equality in relation with one another as they are both sufficiently reasonable and just.

4. The Principle of Non-Intervention

"The state is presumptively [...] the arena within which self-determination is worked out and from which, therefore, foreign armies have to be excluded" (Walzer 1980: 210). The principle of non-intervention is closely related to the first and third of Rawls's principles: because of the fact that peoples (and states in general when referring to international law) are free and independent as well as of equal standing, other societies may not intervene into their internal matters. Intervening into the domestic affairs of another state is thus not only a breach of the fourth, but also of the first and third of Rawls's principles. "The equality and liberty of states are embodied in the idea of sovereignty, their security in the idea of territorial integrity. Therefore states must respect each

other's political sovereignty and territorial integrity, unless by its conduct a state forfeits its right to this respect" (Nardin 1983: 285).

Furthermore, the principle of non-intervention is well established in international law. It does not only imply that "[e]very state has the duty to refrain from intervention in the internal or external affairs of any other state" (DRDS: art. 3), but also refraining from "fomenting civil strife in the territory of another State, and to prevent the organization within its territory of activities calculated to foment such civil strife" (ibid.: art. 4).⁷³

Though its content is generally quite clear, the principle needs further qualification: Intervention is legitimate not only in cases of gross human rights violations and self-defence, but also, as outlaw states are not to be tolerated, in case of violations of the principles of the Law of Peoples. Focusing on international law, the principle is binding for all states, while leaving room, as Rawls does, for the use of force in cases of self-defence (or collective self-defence).

Rawls's understanding of the principle may be highlighted in reference to two other theorists: Terry Nardin and Michael Walzer. Following Nardin, the "rights of political sovereignty and territorial integrity are not absolute, and therefore the ban on intervention is not absolute either" (Nardin 1983: 287). The limits are constituted by the right to self-defence and "in certain circumstances [to] come to the aid of those who are the victims of aggression" (ibid.). Those victims can either be other states or individuals within states. "The limits of sovereignty on the one hand and of intervention on the other are determined by the standards of international law and morality, and these include an international minimum standard of conduct according to which the relation between a government and its own subjects may be judged" (ibid.). These elaborations mirror well the cases in which Rawls allows for intervention.

From Walzer, on whose thinking Rawls partly relies, one can deduce why Rawls argues that the principle of non-intervention generally does not hold in relation to outlaw regimes. According to Walzer, a community relying upon a

⁷³ See also the Montevideo Convention: art. 8, 11, the UN Charter: art. 2,4, the DPIL: princ. c. The principle has, however, frequently been violated (Brown 2002a: 79).

contract requires a government to which its members are bound and which defends them against foreigners. In effect, the citizens defend themselves and the government only constitutes a means to do so. “Foreigners are in no position to deny the reality of that union” (Walzer 1980: 212) and thus owe other societies a presumption that the people are ruled according to their will and that the form of government relies on their historic development and specific internal life which outsiders need to respect. If such a state were attacked, one would expect that at least (great) parts of the members of the community would defend it “because they value their own community in the same way that we value ours” (ibid.). A state is legitimate to the degree it represents the will and interest of its people and the people have a right to rebel if it fails to do so (ibid.: 214). If they do not, they might consider the “government to be tolerable, or they are accustomed to it, or they are personally loyal to its leader” (ibid.). Even if the “fit” between governments and the people is not democratic, there might be a “fit” of some sort, which foreigners are bound to respect” (ibid.: 216). Intervention is only legitimate if it is obvious that there is no “fit” between government and people (ibid.: 214), when the instruments that should protect the community are then turned against it (or part of it), which is clearly the case if “a government is engaged in the massacre or enslavement of its own citizens or subjects” (ibid.: 217). One could conclude that those governments are outlaw governments that, as they have no standing domestically, have no standing in the international arena (ibid.: 211f.). Intervening in outlaw regimes is, thus, justified by Rawls and Walzer.

5. The Right to Self-Defence

Any “society that is nonaggressive and that honors human rights has the right to self-defense” (LP: 91f.). Here, the right is limited to defence against the invasion of one’s territory. The right to self-defence held by peoples seems to be more specific and extensive. Liberal peoples may use military force to protect and preserve the basic freedoms of their citizens and their constitutional democratic political institutions. Decent governments may rightly defend their

decent (hierarchical) basic structure. Peoples hold a right to self-defence and an extended right to defend an ally. Self-defence here does not only apply to defence against an immediate military attack (LP: 91f.), but generally against the threat constituted by outlaw regimes (LP: 81). The right to self-defence ensures collective security (LP: 42). It goes beyond the understanding of self-defence prevalent in international law.

Focusing on international law, every state holds “the right of individual or collective self-defence against armed attack” (DRDS: art. 12, see also UN Charter: art. 51). Collective self-defence thereby refers to the assistance of third party states for an attacked state, presupposing that the assisted state agrees to the assistance. For a case of self-defence to exist, three conditions need to prevail: necessity, proportionality and immediacy (Ago 1980: 68f.). Necessity implies that an “armed attack that has occurred or is reasonably believed to be imminent requires the response that is proposed” (Shaw 2003: 1031). There must be no other means by which the attack can be stopped: “Self-defence will be valid as a circumstance precluding the wrongfulness of the conduct of the State only if that State was unable to achieve the desired result by different conduct involving either no use of armed forces at all or merely its use on a lesser scale” (Ago 1980: 69). This criterion is of particular interest when focusing on preventive self-defence (*ibid.*). The latter point connects to the criterion of proportionality, which requires considering the type of weapons that may be used as a response, as well as staying within the limits of law relating to the conduct of war (Shaw 2003: 1031). Proportionality refers to the “relationship between the action and its purpose, [...] that of halting and repelling the attack or even, in so far as preventive self-defence is recognized, of preventing it from occurring” (Ago 1980: 69). It does not refer to the relation between the attack and the armed force used against it. A certain degree of flexibility is necessary at this point, as the attacked state cannot be expected to measure precisely and accurately the amount of force needed (*ibid.*). Last but not least, the criterion of immediacy means that the defensive use of armed force needs to occur “while the attack is still going on, and not after it has ended” (*ibid.*: 70). If the attacking country has withdrawn its troops and the armed raid has ended, the right to self-

defence expires. The “objective to be achieved by the conduct in question, its *raison d'être*, is necessarily that of repelling an attack and preventing it from succeeding, and nothing else” (*ibid.*: 69).

For Rawls, self-defence does not only cover “repelling an attack and preventing it from succeeding”. As indicated earlier, peoples may generally fight outlaw states because they pose a threat to international peace and stability. Rawls here follows Walzer, who stated that the

“victim of aggression fights in self-defense [...]. Other states can rightfully join the victim's resistance; their war has the same character as his own, which is to say, they are entitled not only to repel the attack but also to punish it. All resistance is also law enforcement” (Walzer 2006: 59).

Defence and punishment, however, are clearly two different things. The wider understanding of self-defence put forward by Walzer and taken on by Rawls, would more suitably be referred to as a “limited right to war” as has been explored in chapter 3.

Rawls's exclusion of outlaw regimes from the right to self-defense seems peculiar, as self-defence is an inherent right, not only to individuals, but also for states (UN Charter: art. 51). When it comes to self-defence, the nature of the regime becomes crucial. “If a state does not act in accordance with [...] moral principles, then it is doubtful whether its self-defence matters at all [...]. This might mean in some cases states had no right to self-defence if their members would actually be better off (in utilitarian or deontological terms) if the state were invaded” (Hutchings 2010: 147). A similar reasoning is found in Walzer:

“Self-defense seems the primary and indisputable right of any political community, merely because it is *there* and whatever the circumstance under which it achieved statehood. [...]The only limitation on this right has to do with internal, not external legitimacy: a state (or government) established against the will of its own people, ruling violently, may well forfeit its right to defend itself” [emphasis in original] (Walzer 2006: 82).

Additionally, if outlaw states had a right to self-defence, they could legitimately strike back in cases of intervention by well-ordered regimes.

6. The Duty to Honour Human Rights

"Among the human rights are the right to life (to the means of subsistence and security); to liberty (to freedom from slavery, serfdom, and forced occupation, and to a sufficient measure of liberty of conscience to ensure freedom of religion and thought); to property (personal property); and to formal equality" (LP: 65).

These rights constitute "necessary conditions of any system of social cooperation" and are accounted for by liberal and decent regimes (LP: 68). The reach of human rights norms, for Rawls, is universal (LP: 80). Rawls's formulation "among the human rights are" indicates that the list is open for additions and Rawls, later in LP, expands his list, claiming that articles 3-18 of the UDHR may be considered as "human rights proper" (LP: 80f., see also Riker 2009: 626). Whereas the principles discussed thus far constitute the more traditional principles of international law, the principle to honour human rights and the universal claim clash with those principles and limit them.

As with LP in general, the Rawlsian account of human rights "in many respects [...] stands in need of further elaboration" (Hinsch and Stepanians 2006: 117). First, it needs to be clarified what Rawls means when he is talking about human rights. The natural rights approach, going back to Locke and others, assumes that there are natural, inalienable rights that govern all human beings no matter when and where they live. Those principles stand above man-made positive law. "Clearly, Rawls's account of the human rights [...] ultimately has to rely on some such non-institutional understanding of human rights in order to make good on the claim that these rights are universal" (ibid.: 122).

Wilfried Hinsch and Markus Stepanians suggest that Rawls's human rights are to be understood as "universally valid moral claim rights". Claim rights incorporate a right holder, in the case of human rights a human being, and a duty bearer, a natural or a non-natural person, such as a state. A human right is a moral right insofar as it is "justified with exclusive reference to the value basis at its center, the [...] autonomy and well-being as human persons" (ibid.: 121). From the right to liberty proclaimed in article 3 UDHR held by every human being follows the duty not to enslave people in article 4. They are universal rights in that every human being holds them, but they are not to be understood as necessarily constitutional or legal rights. Central to human rights as claim

rights is the social recognition of the duties they imply, not the existence of enforcement mechanisms (ibid.: 119-121). This might also explain why Rawls does not deliberate on such mechanisms, but how does the protection of human rights as moral claim rights become a matter of international relations? According to Hinsch and Stepanians, the

"duties following from human rights do not only involve primary duties of direct compliance with the requirements of the right in question but also secondary, auxiliary duties of assistance or protection. The latter have to be discharged if the primary duties go unfulfilled or can be expected to go unfulfilled. [...] It follows from the fact that human rights do not only involve correlative primary but also secondary auxiliary duties that not only primary duty bearers can violate a person's human rights but also auxiliary duty bearers [...]. If they fail to discharge their duties of protection or assistance towards those whose rights are not respected" (ibid.: 120f.).

Rawls goes as far as to say that human rights are not merely a domestic issue to justify intervention. He does not, however, go as far as to say that the international community, as a secondary duty bearer, would violate human rights if it does not react properly on human rights violations. They constitute a *right* but not a *duty* to intervene. However, the promotion of human rights "should be a fixed concern of the foreign policy of all just and decent regimes" (LP: 48).

In LP, the significance of human rights is threefold: first, they limit the autonomy of governments in dealing with its people, second, they set a limit for reasonable pluralism among peoples because honouring core human rights is a necessary criterion for well-orderedness, and third, their violation justifies intervention (LP: 80). When specifying which human rights are considered as core human rights by Rawls, he turns against (most) liberal thinking. For Rawls, the class of human rights does not include all the rights that are guaranteed by liberal governments. Instead, he formulates a minimal set, constituting a special class of urgent rights (LP: 78f.) including those rights and freedoms that are minimally necessary for the development and exercise of the two moral powers of human beings (a sense of justice and a conception of the good). Enabling one's citizens to possess these powers is, thus, a threshold for decency (Freeman 2007: 436f.). Human rights set out the "necessary conditions to be met by any genuine scheme of cooperation among persons" (Reidy 2004: 311)

and constitute a line between reasonable and unreasonable comprehensive doctrines and conceptions of justice. As with the duty of assistance, the conception of human rights has a target and cut-off point. Intervention is justified to ensure that the core human rights are generally honoured. Beyond that (leaving self-defence aside) the principle of non-intervention takes hold (Audard 2006a: 72).

Rawls in LP is aware of the fact that the Western conception of persons as free and equal is not shared by all, and that this is also not the only reasonable understanding of this particular concept. He thus needs to identify a “conception of human and international right that can appeal both to liberal and what he terms hierarchical societies” (Sutch 2001: 184). A cross-cultural acceptability of human rights presupposes a narrow understanding of those norms (Kelly 2004: 179).

Rawls's human rights minimalism has been criticized for falling short of what a liberal theory should incorporate. “The short list of human rights enumerated by his ‘law of peoples’ is embarrassingly impoverished when contrasted to the pronouncements of the Universal Declaration of Human Rights” (Ackermann 1994: 382). Rawls's minimalism has to be perceived from within his realistic utopian framework. His aim is not ideological in the first place as he merely claims to present a *realistic* utopia. With his human rights minimalism, Rawls wants to secure first that the principles are not founded on ethnocentrism, and second, that they are realistic. “The first requirement demands that the principles of international justice are not limited in their range of acceptability to Western societies, exclusively reflecting their political values. The second is the demand that principles of international justice set a feasible political ideal” (Tasioulas 2002: 391). As Rawls's core human rights set a threshold for what is tolerable from a liberal viewpoint, they might still be ethnocentric in the sense that they are traditionally Western ideas. Even if they are, they need to be protected. Following Rawls, however, they are shared by other societies, by decent as well as benevolent absolutistic regimes, and maybe even by burdened societies.

Rawls's human rights minimalism also follows from his connecting human rights to intervention. To add a principle to the list, such as the freedom of association, would imply a right to war in order to stop gross violations of those norms. As Audard puts it more provocatively: "[A]re we ready to go to war to protect [...] the full list of human rights, everywhere, anytime, or do we have to restrict that list [...]?" (Audard 2006a: 72). Walzer formulated a similar claim: "It is not the case that one can simply proclaim a list of rights and then look around for armed men to enforce it" (Walzer 1980: 226). Liberal states would not go to war for even gross violations of the whole set of human rights. That is unrealistic. So Rawls might have aimed to put together a set of human rights that a Society of Peoples could realistically be expected to enforce, even by means of war, and this set might have been left open with good reason, as, if the human rights regime undergoes further development, other human rights might be added. If the core human rights are those that liberal and decent societies might go to war for, then gross violations, not further qualified by Rawls, might be those circumstances, under which members of a Society of Peoples might feel obliged to intervene. A right to war in any case of human rights violations, referring to the whole set as enlisted in the UDHR, would give a Society of Peoples the right to intervene in almost any society. Limiting the right to war to gross violations and to a set of urgent human rights seems reasonable in order to establish a framework for a realistic foreign policy of a Society of Peoples.

The link between human rights and intervention, however, does not seem to be a necessary one, but merely a "stipulative redefinition of 'human rights'" (Buchanan 2006: 165). To forego the risk of over-interventionism, Buchanan suggests differentiating human rights into those whose violations may trigger intervention and others that do not (*ibid.*: 166). The reason why Rawls links human rights with intervention lies in them being the threshold of what is tolerable. The set is minimal because it needs to be limited to those rights the violations of which are intolerable and the regimes that do not enforce them deemed unreasonable and thus outside the cooperative scheme of the Society of Peoples. Because human rights set this threshold, their violation is connected

to intervention, as violations go *beyond* what is tolerable and thus need to be stopped.

Frequent non-compliance with these norms, as well as the problem of enforcement and sanctions, stand against the many human rights norms prevalent in international law and declarations. This leads back to understanding human rights as primarily moral instead of positive rights: they are not enforceable but one may assume compliance, as they are accepted values of the international community. The assumption that the core human rights are shared norms is backed by Nardin, according to whom international law has traditionally “included the idea of an ‘international minimum standard’ regarding the treatment of aliens by the government of the country within which they reside. More recently it has come to embody minimum standards governing the relations between a government and its own citizens” (Nardin 1983: 239). Next to these minimal standards, Nardin also ascertains that there are diverse moral traditions that articulate moralities of personal conduct; these have been applied internationally and thus, have also become “international moralities” that accordingly articulate standards of international conduct (ibid.: 241).⁷⁴ Nardin claims that there are human rights that “are implicit in the idea of persons as members of a community” (ibid.: 276) and others that are less fundamental as they pertain to forms of arrangements of some but not all communities, amongst others the right to vote. Then, there are social and economic rights that are also secondary to the first. In the first set belong the rights not to be tortured, enslaved, arbitrarily arrested or detained, as well as exiled (ibid.: 276f.). This differentiation might harmonize with Buchanan’s proposal.

Many arguments that have been put forward against Rawls’s claim for the toleration of decent regimes also apply to his human rights minimalism. His threshold for toleration is too low; the set of human rights should also include the principles Rawls refers to as “liberal aspirations”. Buchanan even goes as far as

⁷⁴ The natural law tradition of the Catholic church, or “the tradition of Islam, which despite its militant origin has worked out an elaborate morality of mutual accommodation among separate peoples both within and outside the Moslem faith” (Nardin 1983: 241) are examples for such moralities.

to argue that “it appears that for Rawls a society in which there is a permanent racial, ethnic, religious, or gender underclass, hovering above subsistence [...] would not be a society in which those who were thus disadvantaged could complain that their human rights were violated” (Buchanan 2006: 151). Further, by limiting the set, Rawls withdraws justification and possible support from those who strive for a more extensive set. Last but not least, his rather narrow conception of human rights does not only put limits on military intervention, but also on intervention as a whole. Rawls’s minimalism thereby forbids liberal governments the opportunity to assist groups within decent societies striving for a more expansive set of human rights (Tasioulas 2002: 387). Decent regimes may prohibit assemblies with political content, such as peaceful protest, they may control the media and use it for state propaganda and much more as long as they do not (grossly) violate the human rights Rawls deems to be inevitable (Cavallero 2003: 191). Rawls thereby not only limits the possibilities of liberal states to motivate non-liberal regimes towards reform; he also weakens the (legitimate) demands of members of non-liberal societies. Beitz suggests that human rights should not only function as a threshold for international recognition, but also as a standard for government policies and for the conduct of political institutions and agencies. Their protection may serve as a target for reform in non-well-ordered societies (Beitz 2000: 687).

From within the Rawlsian framework, however, it has to be considered that decent societies do have a moral character. They do not honour human rights in order not to become subject to intervention, but rather, because they are ready to limit their rational interests by reasonable principles. They do not suppress minorities and leave them “hovering above subsistence” but grant them a place in society and a role in processes of political decision making. Securing human rights in burdened societies is clearly one of the aims of assistance as it is a necessary criterion for well-orderedness. Also, Rawls’s minimalism is supported by international practice: there “seems to be wide agreement now that the international declarations and covenants [...] have more entries for human rights than could be reasonably recognized as universal moral standards generally binding irrespective of local institutions, traditions, and circumstances” (Hirsch

and Stepanians 2006: 126).⁷⁵ In addition, all “the major human rights instruments of contemporary international law are subject to extensive reservations by state parties” (*ibid.*).

Summing up, within the limits of Rawls’s realistic utopia, Rawls’s minimalism may not be satisfactory from a liberal viewpoint, but in practice, it represents a feasible set of human rights that can and should be protected and ensured by well-ordered regimes and that can serve as a threshold for toleration and non-intervention. Rawls, thus, does not present an ideological claim, but rather, a feasible one, consistent with his concept of reasonable pluralism.

7. The Duty to Observe Restrictions in the Conduct of War

In *TJ*, Rawls comments on the (rightful) conduct of warfare from the viewpoint of a liberal society: “The aim of war is a just peace, and [...] [the] conduct of war is to be constrained and adjusted to this end” (*TJ*: 379, see also *LP*: 94).⁷⁶ Wars fought by well-ordered peoples not only need to be just. Reasonable principles must also be considered in the conduct of war. Following Rawls, in warfare, three groups need to be differentiated: leaders and state officials, soldiers and civilians. The first group (leaders, officials and elites) controls the state apparatus and is responsible for the war, as opposed to the other two groups. Soldiers, except for the upper ranks that might be counted under the first category, might be forced into war or their patriotism might be exploited. Attacks on soldiers are nevertheless justified if necessary under self-defence. Attacks on civilians are great wrongs.⁷⁷ Rawls’s ideas here run parallel to Walzer, on whose thoughts Rawls draws when it comes to the reasons for and conduct of war (Brown 2000: 129). Walzer states that “our ideas about war in general and about the conduct of soldiers depend very much on how people get killed and on who those people are” (Walzer 2006: 22). War is to be

⁷⁵ Article 24 of the UDHR (the right to periodic paid holidays) may serve as a prime example.

⁷⁶ Again, a reference to Kant’s preliminary articles may be established, as the sixth refers to the conduct of war: “No state shall allow itself such hostilities in wartime as would make mutual trust in a future period of peace impossible” (Kant 2006: 8:346). The aim of warfare is a lasting peace.

⁷⁷ Rawls here directly refers to the bombing of Tokyo, Hiroshima and Nagasaki in World War II (*LP*: 95).

considered as a “*combat between combatants*” [emphasis in original] (ibid.: 42), which generates immunities for non-combatants that hold for people, who are not trained and prepared for war, such as children, elderly or neutral persons, and those who cannot take part in combat, such as wounded or captured soldiers (ibid.: 42f.). The differentiation between groups in an armed conflict and a respective treatment of those groups therefore constitutes the first restriction on warfare.

A second restriction, connected to the first, is set by the universal grasp of human rights, which extends to the enemy’s members of society; fundamental human rights need to be secured in armed conflicts for all participants.⁷⁸ In addition, well-ordered societies should indicate the aim of their attack and the kind of relation they seek to establish with the regime they have attacked (LP: 96).

The principles presented above constitute the framework within which means-end reasoning may be practiced. Again, however, Rawls weakens the rather strong restrictions and offers room for interpretation: exceptions are possible in cases of supreme emergency (LP: 94-97). Here, Rawls might refer to Walzer, who in *Just and Unjust Wars* elaborates on the question of supreme emergency. The rules of war can only become subject to calculation if a “defeat likely to bring disaster to a political community” (Walzer 2006: 268) is at risk. “Whenever that conflict is absent, calculation is stopped short by the rules of war and the rights they are designed to protect” (ibid.).

Rawls’s conception here is rather narrow. The criteria put forward for self-defence, necessity and proportionality, should apply to each and every military conflict: the use of force is only legitimate if it is the only means available and

⁷⁸ Walzer here goes further than Rawls: “I propose to call the set of articulated norms, customs, professional codes, legal precepts, religious and philosophical principles, and reciprocal arrangements that shape our judgements of military conduct the *war convention*” [emphasis in original] (2006: 44). This development found an expression in the Statute of the International Tribunal for the Former Yugoslavia. Article 3 states that violations of “the laws or customs of war [...] shall include, but not be limited to: (a) employment of poisonous weapons or other weapons calculated to cause unnecessary suffering; (b) wanton destruction of cities, towns or villages, or devastation not justified by military necessity; (c) attack, or bombardment, by whatever means, of undefended towns, villages, dwellings, or buildings; (d) seizure of, destruction or willful damage done to institutions dedicated to religion, charity and education, the arts and sciences, historic monuments and works of art and science; (e) plunder of public or private property.”

the amount of force should be as little as possible and proportionate to the aim that shall be reached. The right to self-defence indirectly includes a limitation on the conduct of war: only those means that are necessary to stop an attack are legitimate. This, however, is not as relevant for Rawls, as he seems to understand self-defence in a wider sense: outlaw states pose a constant threat to international peace and stability, no matter if an attack is imminent or not, and therefore may be fought by peoples.

8. The Duty to Assist Burdened Societies

As indicated earlier, Rawls does not leave the representatives in the OP alternative principles to choose or reject; missing, liberal aspirations aside, seems to be an international maximin principle when it comes to the distribution of goods. It thus remains questionable first, if the representatives would select the duty of assistance if they were provided with alternatives, and second, if the duty of assistance is sufficient or needs to be supplemented with other principles. Whereas the duty of assistance has already been elaborated upon in the previous chapter, those questions are discussed below.

Brian Barry, in reaction to Rawls's elaborations on international justice in TJ, argued that although the representatives in the international OP do not know whether their society is rich or poor, they might know that in the 20th century, the majority of societies are poor and can barely meet the basic needs of their people. Even if one leaves Barry's time reference aside, as after all, the OPs are meant to have timeless force, the representatives may at least anticipate that the chances of representing an affluent society are rather poor. For the same reasons as individuals within liberal societies, the representatives would opt for "maximizing the wealth of the worst-off within any given community" arguing that "what this minimum is should not depend capriciously upon the good luck of being born into a rich society or the ill luck of being born into a poor one" (Barry 1975: 129). As the representatives in LP, however, know that they represent liberal societies, which tend to be economically advanced, and as Rawls assumes favourable conditions, the likelihood of representing a wealthy society

is rather high (Kreide 2002: n. pag.). Whereas it is not in the rational interest of liberal peoples to “maximize the wealth of the worst-off” beyond their community, they might reasonably agree to the fact that a minimum should be guaranteed for everyone, no matter into which society he/she has been born. A principle of distributive justice seems reasonable, also for other reasons.

Parallel to the discussion of the different versions of the OP, is the question of whether peoples or individuals are the right starting point. Whereas Rawls presupposes that peoples, considering themselves as independent and equal, are the relevant subjects, utilitarian thinkers may start from a different viewpoint, most likely one similar to the cosmopolitan liberalism suggested by Beitz. The focus then would lie on individual human beings (Tasioulas 2002: 377).

“Cosmopolitanism is a *moral individualism* that states that individual persons, not states, are to be recognized as the primary objects for concern in international relations. [...] As a consequence, cosmopolitanism claims that a *global difference principle* that allows not only redistribution between richer and poorer members, but also a correction of an unjust global structure, should be applied beyond national borders to counteract the arbitrariness of the territorial distribution of natural resources and to fight poverty” [emphasis in original] (Audard 2006b: 320).⁷⁹

According to Rawls, representatives in OP II and III would reject a utilitarian principle regulating the distribution of goods between them: “Well-ordered peoples insist on an *equality* among themselves as peoples, and insistence rules out any form of the principle of utility” [emphasis in original] (LP: 40). As indicated earlier, Rawls’s decision to focus on states rather than individuals as the primary subjects of international political theory (or international political philosophy) is accepted here. If one does not want a world state, one needs to draw borders. For a basic structure and societal cooperation, borders are necessary (Bock 2008: 55-57).⁸⁰

An argument that can and should be discussed is that of the co-responsibility of affluent societies towards poor conditions in other states. The unfavourable conditions under which burdened societies suffer not only result

⁷⁹ For an in depth discussion of Rawls from a cosmopolitan viewpoint see Beitz 2000: 678-683 and Kuper 2000, who suggests a global original position (647); see also Buchanan 2000 and Pogge 2004.

⁸⁰ International law, however, shows a development towards more consideration of the individual. The European Declaration of Human Rights, for example, considers that an individual can sue its state before the European Court of Justice (Becker 2005: 56f.).

from their own actions, but also from external factors. Rawls in LP ignores that “national economic policy is shaped by international economic institutions and powerful states” (Hurrell 2001: 48) and that those states have co-responsibility for the fate of poor societies (ibid.). International economic interaction is organized by treaties and conventions about trade. Those can be shaped more or less favourably for poor countries. Had the economic order been friendlier to poorer countries, much of today’s poverty would have been avoided (Pogge 2004: 263f.). Moreover, historically, “existing peoples have arrived at their present levels of social, economic and cultural development through an historical process that was pervaded by enslavement, colonialism, even genocide” (ibid.: 262). Our economic advantage towards poor countries is thus also to be seen as a consequence of a historical process that devastated those societies. The legacy of those injustices continues today (ibid.).

Pogge illustrates the argument in reference to Peter Singer’s “drowning child in the pond” example.⁸¹ Other than Singer, Pogge does not consider the addressee – in the case in hand, rich societies – as bystanders, who have no responsibility for the child who has fallen into the pond. From Pogge’s perspective, affluent societies have pushed the child into the pond (ibid.: 261-265).

Next to the positive duty to assist, he deems two negative duties as necessary: the duty not to harm as well as the duty not to take advantage of injustices at the expense of victims (ibid.: 278, Pogge 2001: 22). As with assistance, these negative duties are not only limited to the economic sphere: “there are plenty of poor-country governments that came to power or stay in power only thanks to foreign support” (Pogge 2004: 269). From this, it follows

⁸¹ Imagine you pass by a pond and recognize that a child fell in and is in danger of drowning. You can easily save the child but will get your clothes wet and dirty. All (or at least almost all) would agree that you have a duty to save the child from drowning and that there is no excuse for not doing so. Also, the fact that there are other people around who could save the child does not make a difference to your moral duty (Singer 1997: n. pag.). Now, “would it make any difference if the child were far away, in another country perhaps, but similarly in danger of death, and equally within your means to save, at no great cost – and absolutely no danger – to yourself? [...] [W]e are all in that situation of the person passing the shallow pond: we can all save lives of people, both children and adults, who would otherwise die, and we can do so at a very small cost to us: the cost of a new CD, a shirt or a night out at a restaurant or concert, can mean the difference between life and death to more than one person somewhere in the world” (ibid.).

that governments may not pursue benefits that enhance poverty abroad as that would harm the poor. Governments need to compensate poor people abroad for the benefits they gain from them and not only assist, but also reduce the unfair rules that generate unfair gains for them. “We are not ‘redistributing’ from the rich to the poor, but offsetting an unjust institutional redistribution from the poor to the rich – *re-redistributing*, if you like” [emphasis in original] (ibid.: 278).

Pogge draws an instructive picture to illustrate the claim: Imagine you drive past a child that has been hurt and must be brought to a hospital to be saved. If you drive on, you can morally be judged for not attending to the child’s needs. This may be similar to not meeting the duty of assistance. Imagine then, that you are the driver that hurt the child. Your inaction would then be judged more harshly. Upholding unjust rules that contribute to severe poverty and ignoring it should be counted as the second type of failure (ibid.). Following this picture, “our failure to make a serious effort toward poverty reduction may constitute not merely a lack of beneficence, but our active impoverishing, starving, and killing of millions of innocent people by economic means” (Pogge 2001: 15). So, next to the positive duty to protect persons from great harms at little cost (ibid.: 14f.) that derives from the child-in-the-pond example, we also have a duty to reduce the unfair rules of the international (economic) system, as well as a negative duty not to benefit from an unjust order.

These duties, for Pogge, are more important than the duty to assist. They also have an advantage as compared to assistance in that they are not sensitive to variations in regime type or distance, while duties to assist seem stronger towards societies that are culturally and territorially closer to one’s own (Pogge 2004: 279). Next to these additional duties, Pogge also considers the duty of assistance as insufficient when it comes to global redistribution and develops a model of a global resource tax (GRT), one of many alternative principles that have been developed when it comes to the duty of assistance.

“Clearly, we could eradicate severe poverty – through a reform of the global order or through other initiatives designed to compensate for its effects on the global poor – without ‘sacrificing’ the fulfilment of our own needs or even mildly serious interests” (Pogge 2004: 279). Following Pogge’s scheme of global

redistribution via global taxation, it might need only 1.13 per cent of the incomes of the people in high-income economies to lift those, who live below the international poverty line above it. In 2001, 0.22 per cent was actually provided for official development assistance (ibid.).

"The basic idea is that, while each people owns and fully controls all resources within its national territory, it must pay a tax on any resources it chooses to extract. [...]The burdens of the GRT would not be borne by the owners of resources alone. The tax would lead to higher prices for crude oil, minerals, and so forth. [...]The GRT is then a tax on consumption. But it taxes different kinds of consumption differentially. The cost of gasoline will contain a much higher portion of GRT than the cost of a ticket to an art museum. The tax falls on goods and services roughly in proportion to their resource content: in proportion to how much value each takes from our planet" (Pogge 1994: 200).

As the distribution of natural resources around the globe is arbitrary, Charles Beitz opts for a scheme of global redistribution of resources. "Citizens of a nation that finds itself on top of a gold mine do not gain a right to the wealth that might be derived from it simply because their nation is self-sufficient" (Beitz 1999: 140). In an international OP, representatives would know that resources are unequally distributed as well as that they are scarce and necessary for a functioning domestic cooperative scheme. They would select a principle that provides them with the resources necessary to have a fair chance to establish a well-ordered basic structure and to satisfy the needs of the members of their society: an international resource redistribution principle (ibid.: 141-143).

Rainer Forst, with his conception of a principle of minimal transnational justice, to a certain extent tries to reconcile Rawls with Pogge.

"According to this principle, members of societies of multiple domination have a legitimate claim to the resources necessary to establish a (minimally) justified democratic order within their political community *and* that this community be a participant of (roughly) equal standing in the global economic and political system. And the citizens of the societies benefiting from the present global system do have a collective 'duty of assistance', to use Rawls's term, to provide those necessary resources (ranging from food, housing, and medical care to a basic education, information, the possibility of effective participation, and so on) to attain self-government" [emphasis in original] (Forst 2001: 174).

The principle does accept Rawls's claim of a duty of assistance, but rejects a general separation of internal from external factors when it comes to economy and political responsibility. Unfavourable conditions, such as a lack of basic goods, are not generally homemade but at least in part result from the global system. Societies that are disadvantaged by that system have a claim to a

minimally fair system of discourse and cooperation in the international sphere and advantaged states have a duty of justice to establish those. Suitable means to realize the principle of minimal transnational justice are, parallel to Pogge, a reformation of the global economic system by giving states equal influence and thus power to take influence, as well as ending support of dictatorial regimes (Forst 2001: 174).

Wilfried Hinsch argues for a global difference principle, but from another perspective than the cosmopolitans. The duty of assistance cannot be denied, but it does not cover the whole ground of distributive justice in the international realm (Hinsch 2001: 76). In a joint scheme of production, a person that is more productive deserves a higher reward. Given a fixed total product, he/she receives a share in accordance with his/her productivity. The more productive thus ends up with a higher share so that the incentives argument – the bigger share in goods as an incentive to be more productive – holds. This may not only be applied to domestic, but also to international cooperation. More productive societies have a legitimate claim on a bigger share of the fixed total product. This presupposes that there is a “sufficiently dense economic cooperation”, the “value of this product is largely determined by economic factors beyond the agent’s control” (ibid.: 74). The more-productive states have a collective claim of deservingness and thus, access to a bigger share of their domestic product. They do not, however, have a claim to the whole of it (ibid.: 75).

Although the alternatives introduced seem to be in line with Rawls’s theory, he rejects them when it comes to the international arena, for four main reasons.

1. Global distributive justice has no target or cut-off point. With reference to Beitz’s model, Rawls criticizes that redistributing resources neither has a target nor an end. Thereby, states are no longer autarkic (LP: 116). The duty of assistance, however, aims towards enabling burdened societies to manage their own affairs in an at least decent way. Further, without a cut-off point, redistribution might even create injustices; “poorer societies could claim a revenue sharing from richer societies, even if they had the same starting conditions but failed to establish a fair and efficient institutional structure and

ended up in a worse position" (Kreide 2002: n. pag., see also LP: 17). However, following the difference principle, members of the productive society would still have more than the poorer one; the first would only have to provide the latter with a share of its benefits. Rejecting an international difference principle would also, for the same reasons, lead to a rejection of the domestic one (Kreide 2002: n. pag.). The reason why there is redistribution on a domestic level is due to combined effort, the cooperation that is necessary to gain those benefits. As Rawls in LP considers states as self-sufficient and sovereign entities, an international scheme of cooperation does not exist within his framework. The claim that whereas the duty of assistance has an aim, redistribution does not have a clear target is not true for all approaches. The reduction of poverty and the satisfaction of basic needs are two possible examples (*ibid.*). A duty of assistance can also meet these demands, perhaps even more effectively by ensuring that basic needs are met. If taken seriously, poverty could be eradicated.

2. There are not sufficient common sympathies on the international level. The ties between societies are weaker than within them as they are more distant to one another. Whereas there is a scheme of cooperation within society, where people share common sympathies, these ties are lacking on an international level. From within a realistic utopian framework, one thus has to assume that representatives of peoples would not opt for global redistribution as the ties and sympathies are too weak. In Rawls's view, no people "will be willing to count the losses to itself as outweighed by gains to other peoples; and therefore the principle of utility, and other moral principles discussed in moral philosophy, are not even candidates for a Law of Peoples" (LP: 60). Peoples are not expected to act paternalistically (LP: 111). The difference principle relies on social cooperation and reciprocity among the members of society, neither of which exist in the international realm (Freeman 2007: 446).

In opposition to this, cosmopolitans hold that membership in a society does not imply an automatic claim on a share of the benefits it produces from which foreigners are generally excluded. "Shared political membership does not justify giving distributive priority to fellow citizens" (Ypi 2010: 542). Membership,

however, seems to be relevant. Taking the family as a parallel example, siblings should be cared for by their parents, irrelevant of their natural endowments or character, which does not expand to children born into other families. It thus does make a difference to which society one belongs, as it does make a difference into which family one is born (Freeman 2007: 443). The difference principle applies to the cooperative relations existent due to the basic structure and institutions of a democratic society. It does not extend to the “more fluid and inchoate collaborative relations among world inhabitants” (*ibid.*). Freeman’s argument might lose its force if international cooperation and communication increase over time, which is a likely tendency. While the difference principle in the here and now is not applicable to the international sphere, it might become adequate in a future where cooperative relations and institutions exist on a global level (Freeman 2003: 50).

3. Central is the well-ordered character of peoples, which does not depend on wealth. Following Rawls, every society is generally capable of establishing a well-ordered regime on the basis of the resources it has and thus does not need to be wealthy. That well-ordered societies tend to be wealthy or at least able to acquire the means necessary to uphold a well-ordered basic structure is linked to their political culture and the productivity it enhances. Instead of direct economic assistance, addressing the burdens that keep societies from maintaining a well-ordered basic structure is therefore crucial (Hutchings 2010: 115). Redistribution might relax the problem of global poverty. Establishing well-ordered societies that effectively manage their own affairs might solve it.

4. Societies hold a right to self-determination. The right to self-determination implies that societies are also self-responsible. If equal societies by choice develop differently, why should the more industrialized, wealthier one pay for the other? They might have approached and solved problems differently and therefore ended up on different economic levels. Redistribution is not necessary (LP: 116f.). If they cannot manage their own affairs in a reasonable way, but are willing to, they need to be assisted until they are able to, and no further than that. In addition, following Rawls, cosmopolitanism does not

consider and respect the diversity of different cultures and national identities as well as the principle of reasonable pluralism. This carries the risk of imperialism (Audard 2006b: 320f.).

Rawls rejects a global difference principle in favour of the duty of assistance and he does so for several convincing reasons: instead of mitigating inequalities, the duty of assistance strives to enable societies to manage their own affairs in an at least decent way out of their own powers and with their own resources. If taken seriously, it could solve the problem of malnutrition and severe poverty. As peoples are moral agents, they would not, arguing from within the Rawlsian framework, maintain a global economic system that does not allow their assistance to be effective.

Against the claim that the duty of assistance is insufficient, one can argue that it requires from peoples “an increase in their development aid as well as the creation of food and educational programs. In the long run, this would lead to an improvement in the living situation of a huge number of people” (Kreide 2009: 108, see also Hurrell 2001: 50, Wenar 2001: 88). Following Charles Beitz, the duty of assistance “imposes a significant international distributive requirement in the nonideal world – though it may require less than the most plausible cosmopolitan theory, it almost certainly requires substantially more of the wealthy countries than they do now or are likely to do in the near future” (Beitz 2000: 694). This assessment fits well into Rawls’s realistic utopian framework, sketching a feasible ideal.

Although the duty of assistance incorporates much more than most of Rawls’s critics give credit for and might even be a concept able to commit (extreme) poverty to history, the negative duties Pogge puts forward seem worthy as additional criteria: peoples may not harm others in pursuing their economic interests and they may not benefit from injustices by directly or indirectly supporting the exploitation of humans abroad. Peoples should agree to those negative duties due to their moral character.

Reducing poverty, also in reference to regimes that would not fall into the category of burdened societies or that could be classified as burdened outlaws,

might also prevent human rights violations or aggressive foreign policies. If possible, “we”, to use Pogge’s claim, should thus “provide a path out of poverty to that great majority of all poor peoples whom we can reach without the use of force” (Pogge 2001: 14).

With his concern for an at least decent living standard, Rawls’s duty of assistance poses a weak cosmopolitan argument, as compared to the strong version of a principle of international distributive justice (Freeman 2007: 439). This weak cosmopolitanism, also evident in his human rights minimalism, however, seems to “be stronger than his cosmopolitan critics allow” (*ibid.*: 442).

Conclusion

The principles of the Law of Peoples (except for the duty of assistance) are well-established principles of international law. It therefore is not surprising that Rawls’s representatives in OP II and III select these principles as an overlapping consensus between them. The reach of the principles and the justification thereof, however, are somewhat unclear. The principle of equality only holds for members of the Society of Peoples, whereas the right to self-defence extends to all societies that are non-aggressive and honour core human rights, which in turn are universal. That Rawls partly limits the grasp to well-ordered members of the Society of Peoples seems reasonable, considering that only those take part in the selection process. That he extends the grasp towards non-members, thereby establishing a right to war against them, is in need of some justification. Rawls does not present explicit justification for universal human rights, which may be considered as a weakness of his theory.

A problem resulting from Rawls’s inclusion of decent regimes emerges when focusing on “liberal minds” within illiberal decent societies. The duty to respect the freedom and independence of such regimes bans liberal governments from supporting liberal groups within that society, for example by funding their activities or arguing in favour of their demands. As Rawls at least hopes that decent peoples may willingly reform towards liberal ideas, this ban may hinder democratic development within decent societies. The principle of

reasonable pluralism and the danger that involvement in the domestic affairs of decent societies may cause bitterness and resentment are convincing arguments against the criticism.

A weakness (occurring at different points of Rawls's international theory) is Rawls's practice of formulating strong claims or positions and then, in a further step, weakening them. The restrictions on the conduct of war, for example, are first presented as "lines we must not cross" and then relativized in cases of "supreme emergency" (LP: 97).

As Rawls states, "there is no single possible Law of Peoples, but rather a family of reasonable such laws" (LP: 4). Rawls indirectly establishes a right to war. Restrictions on the war conduct should include the criteria of proportionality and necessity (and of course many other specifications). There may be more existent and/or evolving norms in the ongoing process of the development of customary international law. The Law of Peoples does not need to be static. The more the international community develops towards peace, stability and justice in the international realm, the more (reasonable) principles may be added to the overlapping consensus and be established as norms of customary international law. For now, Rawls presents a set he considers as feasible, such as a minimal set of human rights that may be accepted and honoured by all well-ordered societies and that may be enforced if necessary.

"[T]he Law of Peoples exists within ideal theory" (Brown 2004: 36). Nevertheless, the principles can be understood as normative claims. In addition, Rawls partly refers to "a Law of Peoples", so other sets of just principles of cooperation are possible, perhaps like the UN Charter or Kant's principles as presented in *Towards Perpetual Peace*. Thus, existing democracies might be on the right track and keep these sets of principles as guidelines for their foreign policy. Rawls's claim that the two powers of sovereignty must be limited has already happened through the development of a net of international conventions and declarations. Still, this net often lacks efficiency in enforcing the principles covered by those conventions. The large amount of international treaties praising cooperation and peaceful conflict resolution, prohibiting the use of force and proclaiming the protection of human rights time and again, have proven to

be, at best, good intentions. They pose, with exceptions, moral, rather than legal, enforceable claims. Rawls presents a set of principles that is likely to be supported (not only) by well-ordered regimes. His elaborations on the principles of the Law of Peoples offer theoretical support for these customary principles of international law, thereby potentially contributing to their future development, and within that, to more peaceful, stable and just international relations.

5. Rawls's Society of Peoples – Peaceful, Stable and Just

Yet we must not allow these great evils of the past and present to undermine our hope for the future of our society as belonging to a Society of liberal and decent Peoples around the world" (LP: 22).

As Rawls's international theory is meant as a realistic utopia, so the Society of Peoples is also realistically utopian. LP shall illustrate the conditions under which all liberal and decent regimes could be members of the Society of Peoples (LP: 126). "By showing how the social world may realize the features of a realistic utopia, political philosophy provides a long-term goal of political endeavor, and in working towards it gives meaning to what we can do today" (LP: 128). To investigate how such an institution could ideally be constituted within the limits of the international system can be helpful in two ways. The Society of Peoples could serve as a model either for a new international institution, or for reforming existing institutions, thereby providing the "long-term goal of political endeavor" that Rawls seeks. In undertaking this task, one has to keep in mind Rawls's overall aim, which is to set out the terms of a lasting and stable peace, to be reached via a stable and fair system of international cooperation.

Rawls uses the term "Society of Peoples" more than a hundred times in his monograph without providing a detailed account of what it might look in practice. As Rawls leaves this question more or less open, it could be argued that a clearer sketch of the Society of Peoples is not essential for understanding his theory. It may be merely a way to refer to "all those peoples who follow the ideals and principles of the Law of Peoples in their mutual relations" (LP: 3). So, why is it worth pursuing this matter? In fact, the Society of Peoples within Rawls's theory serves as a focus for the establishment of peaceful, stable and just relations between peoples, uniting well-ordered societies under the Law of Peoples. It is, therefore, crucial to his project.

In this chapter, Rawls's concept of the Society of Peoples is investigated in order to eventually be able to provide a more detailed picture of the notion and to assess its potential contribution to a more stable international realm as a constitutive element of the pathway to a decent peace. For this purpose, the

information provided by Rawls is summarized, and the basic aspects he leaves open are identified by deliberating on the following questions: Is the Society of Peoples more than a loose federation of liberal and decent societies? Who would be its members and who decide on membership? Can membership be lost and if so, under what circumstances? What rights and duties would members of the Society of Peoples hold? In a further step, two sources, the concept of a League of Democracies and the reality of the European Union (EU), are introduced and leaned on to formulate reasonable suggestions on how to fill the gaps. The League of Democracies is a concept with a similar aim to that of the Society of Peoples in that it strives to unite capable actors that share values and common sympathies to tackle the problems the world has to meet in the 21st century, which has not been realized; the European Union, were it not limited to Europe, could be considered as an existing model for a society of liberal peoples. The EU is built on normative values and makes the regime type (democracy) an essential precondition for membership, in both cases following Rawls. The level of integration reached by the EU is, however, far beyond Rawls's vision of a Society of Peoples, as economic relations are irrelevant to his theory. As the EU is a complex institution, only those aspects relevant for the analysis are introduced and discussed. The hope is that by connecting Rawls's ideas to these other conceptions, a deeper understanding of his theory can be generated by providing theoretical and practical reference points for his realistic utopia. Some conclusions concerning what can be learnt from Rawls's concept in relation to existing institutions are drawn, thus showing both the gains and the problems that the idea of a Society of Peoples may pose to the international system.

Relations Between Peoples, or: The Society of Peoples

What is the Society of Peoples? At a first glance it seems to be merely a collective term, embracing all those societies that qualify as well-ordered. Rawls uses capital letters for the term (as he does with the Law of Peoples), which indicates that the concept might be of importance.⁸² So what else may it be?

The social contract on the domestic level serves as a foundation for a society's basic structure, which goes beyond the territorial context of a group of people living within the same area. The Society of Peoples should also be more than a mere group of well-ordered but unconnected societies. As the social contract on the domestic level serves to establish a state, one could argue that the Law of Peoples might constitute the foundations of a world state. However, following Kant, Rawls rejects the idea of a world state, as it could either lead to the emergence of a fragile empire, to despotism or to anarchy (LP: 36, Kant 2006: 8:367). For Rawls, the Society of Peoples must leave room for the self-determination of its members in "some kind of loose or confederative form" (LP: 61). The principles of the Law of Peoples thus do not constitute a blueprint for the basic structure of a (world) state; they rather inform the organisation of relations *between* states. The Society of Peoples, for Rawls, should be a loose federation of well-ordered societies, built on the principles of reasonable and fair modes of cooperation, regulating the internal and external relations of member states in terms of the principles of the Law of Peoples.

Tasks to Be Met

Some of the tasks and duties of the Society of Peoples have been introduced and discussed previously: a limited right to war, the duty of assistance and to honour human rights. It is also part of the responsibility of the Society of Peoples to establish institutions or cooperative organizations to take

⁸² Rawls uses the term "society of" in different forms and variations thereby referring to all those states that possess of the named quality: the "society of democratic peoples" (LP: 53), the "society of liberal peoples" (LP: 45f., 84), "society of disordered peoples" (LP: 37f.). Those are, however, not written in capital letters. Another reasonable explanation for capitalizing the Society of Peoples, while referring to a "society of well-ordered peoples" (LP: 36) on other occasions, may be that the former is part of ideal theory.

provisions for mutual assistance and set standards of fairness also for trade. These institutions should be designed for mutual benefits and to deal with non-well-ordered societies (LP: 89, 115). The aim of these responsibilities is the establishment and maintenance of peaceful and stable relations within the Society of Peoples, the widening a zone of peace towards as many regimes as possible, and constraining outlaw states (LP: 48). Rawls conceives of these institutions as follows:

"For well-ordered peoples to achieve this long-run aim [to bring all societies to honour the Law of Peoples], they should establish new institutions and practices to serve as a kind of confederative centre and public forum of their common opinion and policy towards non-well-ordered regimes. They can do this within institutions such as the United Nations or by forming separate alliances of well-ordered peoples on certain issues. This confederative center may be used both to formulate and to express the opinion of the well-ordered societies. There they may expose to public view the unjust and cruel institutions of oppressive and expansionist regimes and their violations of human rights" (LP: 93).

Such institutions may also be used to put pressure on outlaw states by jointly denying them economic or other assistance and benefits gained by cooperative efforts (LP: 93). This task does not derive directly from the principles of the Law of Peoples, but rather is a consequence of those principles, as meeting them effectively makes shared institutions almost inevitable. "The institutional structure of the Society of Peoples does not include an international analog of the state – there is no 'world government' or superstate – but rather a network of cooperative organizations" (Beitz 2000: 673). Members of a Society of Peoples may use institutions, such as the "United Nations ideally conceived", as a mouthpiece to criticize "unjust domestic institutions in other countries and clear cases of the violation of human rights" (LP: 36).

Even if we conceive of the Society of Peoples as a loose federation, membership into this cooperative scheme must somehow be decided. Who is a member of good standing and who qualifies as well-ordered? This decision is crucial as it changes the foreign relations to other well-ordered regimes and grants the state a limited right to war and a duty of assistance. As shown above, cooperative organisations are crucial for coordinating mutual assistance, guaranteeing fair trade relations and to effectively meeting the additional tasks.

Central questions concerning the Society of Peoples remain open in LP, one of which is the form of its basic structure. Which institutions and means are needed to meet the tasks effectively and to support the aim of stability, peace and justice internally and externally? How would processes of political decision making work? Closely connected to these questions is one of membership. Who is a member and who decides on membership? Can it be lost? A related question is who decides on whether circumstances constitute a right to (military) intervention? As Rawls provides only very little information on these important questions, two related concepts, one a set of ideas that might never be realized, the other a complex supranational institution, are leaned on: the League of Democracies and the EU. With respect to the EU, the chapter does not engage into a discussion of politics but focuses instead on the basic structure. Below, both concepts are introduced and then used to explore the questions formulated above, thereby concentrating on questions of membership, rights and duties as well as the basic structure, and in particular, the institutions needed to meet the tasks.

The League of Democracies

Both the idea of a League of Democracies, and Rawls's LP, build on the same assumption: democratic peace. If one understands the Society of Peoples as an organization as it should be, the League of Democracies might be a more realistic concept for such an institution, which is limited to democratic societies, and a step towards Rawls's realistically utopian ambition, a Society of Peoples that would be open for all regimes that qualify as decent, or maybe even what Rawls ultimately aims at: a society of liberal peoples.

The globalized world has to face problems its actual institutions cannot cope with, such as international terrorism, pandemics or climate change, because the only universal organization currently in existence lacks efficiency and is unlikely to reform to better this deficiency in time (Stedman 2008: 2). A new actor is needed, especially when it comes to questions of humanitarian intervention. "The most likely and morally defensible version of this alternative

would be a coalition of democratic, human rights-respecting states, bound together by a treaty" (Buchanan 2007: 450). An organization uniting the democracies of the world could be able to face the problems of the 21st century, if equipped with the power to do so: a League of Democracies.⁸³ Such an organization could legitimately – though currently illegally – intervene in the absence of Security Council authorization in cases where human rights violations make intervention necessary (ibid.: 450f.). There is a family of both more and less precise ideas around the League. In the following, a composite, that might as such not enjoy the full support of the individual proponents of the League, is presented.

The advocated new institution should unite the forces of the most capable agents sharing common interests and therefore able to act in unison (Daalder and Lindsay 2007: n. pag.).

"Democracies share the most important value of all—a common dedication to ensuring the life, liberty and happiness of free peoples. And democracies constitute the world's most capable states in terms of military potential, economic capability and political weight. A Concert that brings the established democracies together into a single institution will be best able to meet the many challenges that beset the new age of global politics" (ibid.).

Democracies already function well, possess approved procedures to overcome disagreement and trust one another's commitments. That NATO and the EU work well according to their specific roles shows that cooperation between democracies can be managed peacefully and effectively (ibid.).

Basic Structure

According to its proponents, the League of Democracies shall organize "the world's democratic governments in a framework of binding mutual obligations" (ibid.) and work alongside the UN, using its joint voice to push towards reform. "Binding" might include law, constituting duties states are

⁸³ The concept has been promoted by the Republican John McCain in his 2008 presidential election campaign in the US. A similar institution, already realized though hardly recognized or capable of action, is the Community of Democracies, a global intergovernmental coalition of democratic countries, instituted to promote democracy and to strengthen democratic norms and institutions around the world, founded in 2000 (Community of Democracies 2009: n. pag.).

obliged to meet and recommending punishment should they not do so. It should not be a “debating club”, but a legitimate and capable institution.

Such a League, one could assume, would have a democratic structure. Decisions would thus be made by majority or supermajority voting, either in terms of “one country one vote”, or according to the respective countries’ population. As there would be states with proportionally larger populations, such as India, and others with smaller ones, such as the Netherlands, which would hardly be able to wield any influence if the latter form of voting were in place, a “one country one vote” decision-making process would be more likely. Cooperation should be based on trust and respect. Therefore, the collective will of the League’s members must be respected (McCain 2008: n. pag.).

Tasks and Means

The purpose of a League is first to meet the challenges of the 21st century, second to make the world a safer place by spreading democracy and promoting human rights, and third to give underrepresented democracies a stronger voice in the international arena. Promoting democracies and pushing non-democratic regimes towards reform would be for the benefit of all. By coordinating the diverse initiatives of the world’s democracies to promote the spread of democracy, this might be done more effectively. In addition, the League might offer incentives, to candidates looking for membership, to reform democratically, as does the EU. The League would be an international institution representing global realities. Non-Western democracies, such as India or Brazil, could be integrated into the global democratic order and be given a stronger voice. It might even serve as the institutional embodiment of democratic peace (Ikenberry and Slaughter 2006: 25f.).

To act efficiently, the League would need an independent budget and at best, forces that it could command. As it is unlikely that it would have forces of its own, a structure similar to and in close cooperation with NATO, could be maintained. If, for example, the League decided that a humanitarian intervention was justified, member states should not have the possibility to block the

intervention by not providing money or troops. To be able to act quickly, the League would need permanent institutions and representatives, such as a full-time secretariat as well as regular ministerial meetings and summits (*ibid.*).

Membership

There is a rough consensus on what the criteria for membership should approximately be. Member states should hold regular, free and fair elections, guarantee basic civil and political, as well as individual, rights by law. The League ought to be open towards all states meeting the required criteria. As such, it would be a potentially universal alliance, composed of diverse countries from all around the globe (Daalder and Lindsay 2007: n. pag.).⁸⁴ As the criteria for membership within the Society of Peoples are rather clear – a reasonably just liberal or decent basic structure offering a meaningful role in the processes of political decision-making and the protection of core human rights – the question of “who decides how” is of greater interest but has neither been clearly articulated by Rawls for his Society of Peoples, nor by proponents of such a League of Democracies.⁸⁵

The European Union – A Regional Society of Liberal Peoples?

The European Union emphasizes that its foreign relations are guided by normative principles, amongst others peace, democracy, human rights, equality, social solidarity and sustainable development. These values are articulated in several documents, such as the consolidated version of the Treaty on the European Union (CVTEU), the European Consensus on Development and the

⁸⁴ Daalder and Lindsay consider around 60 societies as possible candidates (Daalder and Lindsay 2007: n. pag.) whereas McCain refers to 100 (McCain 2008: n. pag.). The Economist Intelligence Unit's Index of Democracy in 2008 counted only 30 full democracies (as well as 50 flawed democracies) (Economist Intelligence Unit 2008g: 2).

⁸⁵ Neither allowing the membership of non-democratic regimes, as has been done in reference to the Community of Democracies, nor a “coalition of the willing”, both spearheaded by the US as is the concept of a League, seem to be suitable models (Hechtl 2010: 326).

Treaty of Lisbon⁸⁶. The principle of solidarity not only applies to inner-EU relations but also shapes development and trade policies (Manners 2008: 23-25).

The Treaty on the European Union names, amongst others, the same values that are promoted by Rawls's Society of Peoples: a respect for human rights, pluralism, and tolerance. Below, the focus lies on those aspects of the EU that might help in drawing a clearer picture of a Society of Peoples.

Basic Structure

"The European Union (EU) is not a federation like the United States. Nor is it simply an organisation for co-operation between governments, like the United Nations. It is, in fact, unique. The countries that make up the EU (its 'member states') remain independent sovereign nations but they pool their sovereignty in order to gain a strength and world influence none of them could have on their own" (ECinst: n. pag.⁸⁷).

The EU possesses a broad institutional framework, embracing, next to the core institutions such as the Parliament, the Commission and the Council, consultative, financial and other specialized bodies. The focus hereafter lies on the core institutions, as they are central to the basic structure.

The European Parliament (EP) is directly elected every five years by the citizens of the EU in order to represent their interests and democratic will. Every EU citizen is entitled to vote and stand as candidate. The EP's main purpose is to pass European law (partly in cooperation with the Council), to democratically supervise other institutions and additionally, it has authority over the budget (shared with the Council) (ECep: n. pag.⁸⁸).

The Council of the European Union "shall provide the Union with the necessary impetus for its development and shall define the general political

⁸⁶ "In its relations with the wider world, the Union shall uphold and promote its values and interests and contribute to the protection of its citizens. It shall contribute to peace, security, the sustainable development of the Earth, solidarity and mutual respect among peoples, free and fair trade, eradication of poverty and the protection of human rights, in particular the rights of the child, as well as to the strict observance and the development of international law, including respect for the principles of the United Nations Charter" (European Union 2007b: art. 4,5).

⁸⁷ European Commission (Ed.): EU institutions and other bodies; hereafter cited as ECinst.

⁸⁸ European Commission (Ed.): The European Parliament; hereafter cited as ECep.

directions and priorities thereof" (CVTEU: art. 15,1⁸⁹). Operating on an intergovernmental basis, the Council accommodates the individual preferences of each member state around a common position. It is the EU's main decision-making body. Its responsibilities comprise the passing of European laws (shared with the EP), the coordination of the broad economic policies of member states, the signing of international agreements between the EU and other states or organizations, the approval of the budget, and the development of the EU's joint foreign and security policy (ECceu: n. pag.⁹⁰).

The European Council, made up of the heads of government of the member states and the President of the European Commission, meets four times a year and sets general guidelines for integration. Decisions on specific issue-areas are taken during ministerial meetings.⁹¹ The presidency rotates every six months. The country hosting the presidency takes charge of the Council agenda and decision making processes vary from consensus to qualified majority votes (ECceu).⁹²

The European Commission represents the EU as a whole and acts independently from the national governments. Amongst its tasks is to propose European law to Parliament and Council⁹³, implement decisions taken by Council and Parliament, manage daily business, run programmes (such as the Erasmus program for student exchange within the EU), spend funds, apply and

⁸⁹ European Union (2007a): Consolidated versions of the Treaty on European Union; hereafter cited as CVTEU.

⁹⁰ European Commission (Ed.): The Council of the European Union; hereafter cited as ECceu.

⁹¹ One of each member's ministers attends the meetings depending on the subject matter. They constitute a specialised council of which there are nine: General Affairs and External Relations; Economic and Financial Affairs; Justice and Home Affairs; Employment, Social Policy, Health and Consumer Affairs, Competitiveness; Transport, Telecommunications and Energy; Agriculture and Fisheries; Environment; Education, Youth and Culture. The ministers sign for their governments and are answerable to their national parliaments and citizens. Thereby, the democratic legitimacy of the Council is ensured (ECceu).

⁹² On most issues, the Council takes decisions by qualified majority voting; countries with larger populations have more weight, though less populous countries are attributed more weight than they would have proportionately. In sensitive areas, such as foreign and security policy, decisions have to be unanimous. To reach a qualified majority, the majority of members, in some cases two-thirds, have to approve, and a minimum of 255 votes have to be cast in favour of the proposal, constituting 73.9 per cent of the total. In addition, a member state may ask for confirmation that the votes in favour represent at least 62 per cent of the total population of the Union (ECceu).

⁹³ The Commission is the sole institution holding the right to initiate EU law in accordance with the principle of subsidiarity (ECec).

enforce European law (in cooperation with the Court of Justice), negotiate agreements with non-members (ECec: n. pag.⁹⁴), execute the budget, and represent the Union externally, except for matters relating to its foreign and security policy (CVTEU: art. 17,1). Decisions are taken on a majority voting system: at least 14 of the 27 commissioners must opt in favour of a proposal (ECec).

Tasks and Means

The first main purpose of the EU was the pursuit of interests via economic integration (European Commission 2007: 4), but it has significantly broadened its scope since. Amongst others, a duty to common defence, as well as a command of assistance to societies in need, can be identified. Assisting societies that suffer from “natural or man-made disasters”, fighting world poverty, promoting global development and ensuring fair rules for world trade are all aspects of the EU’s common policies (CVTEU: art. 21,2, European Commission 2007: 53). The EU as a whole is the world’s biggest donor of official development assistance (*ibid.*). Furthermore, the Union acts as an exporter of its values; principles of human rights and democracy are part of the EU’s bilateral relations with countries receiving support.⁹⁵ While there is at least a directive to assist societies in need, there is a clear duty to defend allied states “by all the means in their power, in accordance with Article 51 of the United Nations Charter” (CVTEU: art. 42,7). Aside from joint defence, the EU covers provisions for economic and military intervention into other states, also in harmony with the UN Charter, including peace keeping or conflict prevention programmes (*ibid.*:

⁹⁴ European Commission (Ed.): The European Commission; hereafter cited as ECec.

⁹⁵ Reconciling development assistance with normative values promoted by the EU, as done in the Cotonou Agreement (democracy and human rights), is difficult from a Rawlsian perspective, as a right to self-determination is granted to burdened societies. Security concerns also seem to motivate EU development assistance, given the extensive bilateral aid EU-members granted to Iraq and Afghanistan (Manners 2008: 25-27).

art. 24,1). Competences within the EU are organized according to the principle of subsidiarity.⁹⁶

To meet its tasks, the EU uses its power and voice jointly to exert influence at international organisations and forums. Generally, members are to represent EU interests and positions in international organisations and at conferences. Members shall consult one another on questions of security and foreign policy touching EU interests, and show mutual solidarity (CVTEU: art. 32, 34).

Within the frame of a common foreign and security policy, the EU may draw on national civilian and military assets and use them for missions outside its territory in accordance with the principles of the UN Charter. Members shall make those assets available to the EU (CVTEU: art. 42). There is, however, no joint European foreign policy when it comes to security and defence. These areas fall in the domain of the Council, and member states are very reluctant to create a common policy. The EU does not maintain an army. Personnel belong to member states, which maintain command over them (ECceu). The differing national positions on these sensitive matters are negotiated and coordinated by the Council. The EU operates in peace missions abroad, in many cases in association with the UN. The Council may entrust a group of member states with the fulfilment of one of the tasks if they are willing and capable to do so (CVTEU: art. 44,1).

Membership

The EU “welcomes membership applications from any democratic European country” (European Commission 2007: 3). Next to economic demands, criteria for membership include normative claims: “Membership requires [...] stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities” (European Council

⁹⁶ “Under the principle of subsidiarity, in areas which do not fall within its exclusive competence, the Union shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level” (CVTEU: art. 5,3).

1993: 13). The EU offers candidates aid in reaching the criteria needed for membership, for example through economic assistance or by providing training in EU law and practice (*ibid.*: 14f., 32f.). If the conditions for membership are met, the application has to be welcomed by a majority within Parliament, and the European Council, after consultation with the Commission, must vote unanimously for the membership to take effect (CVTEU: art. 49).

Members have the option to withdraw from the Union, in which case they have to negotiate the terms of their withdrawal with the Council.⁹⁷ There is, however, no provision for expelling a member state (Athanassiou 2009: 32). If a member state breaches EU principles, its representatives can be deprived of some of the rights granted to them under the Treaty of the European Union, including the right to vote. For that to happen, a complex procedure has to be passed, starting with a minimum of one third of the member states proposing to Parliament or Council that a serious breach is at hand or at risk of occurring, and ending with the European Council determining a violation and thereon acting unanimously. The Commission, functioning as a safeguard for EU law, can also take action in cases of non-compliance of member states by launching an infringement procedure: the respective government is officially notified of its infringement of EU law and a timeframe for a response is set. If the matter cannot be settled, the Commission passes the case to the Court of Justice, which may then impose penalties (ECec).

How a Society of Peoples Might Be Constituted

Although the level of integration within the EU is more advanced than it might be within a Society of Peoples, it can function as a model for the basic structure of the Society of Peoples, because member states remain independent and sovereign actors. As does the EU, the Society might need similar structures to pool its member states' power and influence and gain strength in the

⁹⁷ Though it seems more than unlikely that a current member would wish to withdraw, if so, a unilateral withdrawal would not be possible; to legally withdraw, a negotiated agreement with the other members is a precondition, for which the Treaty has to be amended, wherefore consensus between the member states is needed (Athanassiou 2009: 30).

promotion of shared aims and the realisation of joint obligations under the principle of subsidiarity. Complying with the duty of assistance and intervening in order to stop gross violations of human rights is more effectively practiced jointly, coordinated by an interstate institution, which makes institutions, such as the European Council and the European Commission, necessary.

The basic structure of the Society of Peoples could be established on the basis of the EU model. As a liberal democratic background structure is not shared by all member states, and as democratic procedures might therefore not be accepted, an elected parliament is unlikely. The Council and Commission, however, seem suitable candidates for reasonable and effective institutions within the Society of Peoples.

The Council would be in charge of decisions concerning the right to go to war and the general scope of foreign aid programmes or other forms in which the duty of assistance might be realized. As processes of political decision-making cannot be expected to be decided through democratic procedures, one would anticipate a necessary consensus, maybe including the possibility to abstain from voting, thereby being excluded from the programme or action any given decision entails. Modelled on the basis of a similar procedure by the EU, when

“abstaining in a vote, any member of the Council may qualify its abstention by making a formal declaration [...]. In that case, it shall not be obliged to apply the decision, but shall accept that the decision commits the Union. In a spirit of mutual solidarity, the Member State concerned shall refrain from any action likely to conflict with or impede Union action based on that decision and the other Member States shall respect its position” (CVTEU: art. 31,1).

Member states might choose to abstain from voting, instead of blocking an intervention, if their participation would conflict with other alliances or might have a negative impact on relations with countries they are closely linked to. If unanimity cannot be reached, member states would not lose their right to war against outlaw states (or states threatening their security) as Rawls does not bind the right to war to the consent of the Society of Peoples. Nevertheless, the question of war is a reasonable one to vote and decide upon, as joint action would be more effective and could be considered more legitimate than states alone acting of their own accord.

As integration within the Society of Peoples is, by far, not as deep as it is within the EU, most decisions might be taken between the heads of government of the member states. They would decide on questions of war and which country receives which form and amount of assistance; the donors would probably not want to give away their control over the flow of money. Specialized Councils might only be needed for matters of defence and human rights promotion as well as foreign aid programmes. These would, working hand in hand with the Commission, then design concrete programmes and report to the Council if requested. The Council would also decide on the Society's budget⁹⁸, whereas the Commission would be in charge of spending it according to decisions made, as well as for general administrative and organisational matters.

The Commission would serve as a permanent representative institution that enables the Society to act and react quickly and to guarantee continuous and effective work, for example, when it comes to foreign aid programmes. It would organize daily tasks and coordinate running programmes and initiatives decided upon by the Council. As the Commission might be overstaffed if each member provides one commissioner, they may be appointed on a rotating basis. A representative for each member state is not necessary, as the Commission would not be representing the member states but the Society of Peoples as a whole.

As membership within the Society of Peoples is not restricted either regionally or according to the type of regime, principally all sovereign states that meet the criteria necessary for peoplehood could apply for membership. Once established on the initiative of states that should, without a doubt, meet the relevant criteria, Council members would have to reach a consensus concerning new members.

Because regimes might disqualify from membership within the Society of Peoples, the organization would need a procedure to expel members if

⁹⁸ The Society of Peoples would need an independent budget to pay administrative and operational expenses. Costs related to programmes to attend both its duty of assistance and any necessary economic or military interventions, as both would have to be decided upon by the Council, could be covered by the member states according to their GDP, as regulated within the EU.

necessary, which is not given within the EU. It seems reasonable that the same procedure for becoming part of the Society of Peoples should take effect: the Council would need to decide unanimously (minus the candidate to be expelled) on the exclusion of the member state. Before that could happen, a procedure, equal to that within the EU (notifications of a breach of the principles of the Law of Peoples, and the possibility to react to the criticism, followed by sanctions and penalties), seems reasonable, except for cases where direct action is needed.⁹⁹

How a Society of Peoples Might Improve International Relations

Rawls's Society of Peoples might contribute to more peace and stability in the international realm, eventually leading to a lasting peace, in two ways. First, if it was set up as an international institution, it would constitute a peaceful haven for its members, protect human rights within and beyond its territory and assist burdened societies in establishing well-ordered, and therefore peaceful and stable regimes. Second, understood as an international institution as it should be, it might help to evaluate and improve existing institutions, foremost the UN, thereby again potentially contributing to a more stable, peaceful and just international realm.

The Society of Peoples as an International Institution

The Society of Peoples would neither be restricted to a certain region nor to a regime type. It therefore might have member states all over the world and might possibly embrace all societies in accordance with Rawls's final aim: an all-embracing society of well-ordered sovereign peoples ensuring peace and stability in the international realm.

As does the EU, and as would the League of Democracies, the Society of Peoples may introduce incentives for non-members to reform into well-ordered

⁹⁹ Should a member for example attack another member or show preparations for a genocide – how unlikely that may be within a cooperative scheme of reasonable people – direct action may be needed on which the Council would then decide in consensus (minus the member who then would be object to the intervention).

regimes. On the basis of the EU-model, it could incorporate its basic values, those of human rights and political participation, into its aid programmes, but only to an extent that allows the assisted state to retain a right to self-determination. If cooperation between members of the Society of Peoples becomes closer, eventually comprising of economic aspects too, additional incentives might evolve for other states to qualify as members. Although this is clearly not found within Rawls's theory, trade relations are a stabilizing factor, as it "was trade that first brought them [different peoples] into *peaceful relations* with one another and thereby into relationships based on mutual consent, community, and peaceful interactions" [emphasis in original] (Kant 2006: 8:364). In addition, members would suggest themselves as trading partners, as relations of mutual trust grow stronger over time.

The Society of Peoples, like a League of Democracies and the EU, would be able to act more swiftly and effectively than the UN. Although unanimity would be required for most decisions, members share more common ground than UN members and are, at least in the beginning, fewer in number (Daalder and Lindsay 2007: n. pag.). Thus, commitment to obligations, such as protecting human rights, might also be stronger as members of the Society of Peoples have a reasonable character and are therefore more likely to intervene, even when stepping in might not support their rational national interest. If founded, a Society of Peoples could use its united voice to push the UN towards reform. However, in case a reform proved improbable, if not impossible, it might act as a capable and independent actor alongside the UN (Stedman 2008: 2).

"A properly structured coalition would provide a law-governed regime for intervention that would prove more effective in preventing the most egregious large-scale human rights violations than the current UN system [...]. And the prospects for creating such an intervention regime may be considerably brighter than those for reforming the UN system's approach to intervention" (Buchanan 2007: 452).

Two main points of critique towards the idea of a League of Democracies have been raised: it is unlikely that a League would ever be founded, and if it were, it would be unlikely to function, as states would not give away parts of

their sovereignty to an international institution.¹⁰⁰ The League, if set up, might then share the fate of the Community of Democracies in becoming a mere debating club, as powerful states would not be ready to give up parts of their sovereignty (Kupchan 2008: 97).

Neither the first, nor the second argument hold for the Society of Peoples. As for the first argument, it suffices for Rawls that a Society of Peoples is possible within his realistic utopian framework, as it is achievable, even though it might go beyond what is ordinarily understood as practically possible; for him it is sufficient that the Society of Peoples is something that one can reasonably hope for, although it might never be realized. As for the second argument, Rawls might highlight that in a Society of Peoples, sovereign states would not have to transfer their sovereignty towards the Society of Peoples. If decisions on war are taken in consensus, members that do not agree with an intervention could either abstain from the vote or vote against and thereby block the intervention, which they should only do on reasonable grounds and not out of rational self-interest. The decision on war thereby rests with the state but is negotiated between the members. A reasonable outcome is to be expected on the basis of the reasonable character of the participants.¹⁰¹ Besides, it is already a practice in reality that states negotiate decisions on warfare within international institutional frameworks. If NATO launches an operation or mission, member states are expected to contribute according to their capacities. The same holds true for UN resolutions and their enforcement, if necessary. "Within globalization, sovereignty is traded daily" (Jacobs 2008: n. pag.). However, the final decision

¹⁰⁰ Membership in a League would force its members, if the League should mean anything, to submit a central part of their sovereignty, namely a huge part of their foreign policy and security matters, to the will of a majority or supermajority of member states. As sovereignty is held high by the nation states, this seems unlikely (Carothers 2008: 5). Democratic regimes, representing the will of their people, would need to devote this will to a majority vote of the League members.

¹⁰¹ Even if consensus on the necessity of action were reached, it would remain questionable whether the member states would also agree on the (right) means to be used, which might not necessarily be military force. As was brought up in the discussion around the League of Democracies, members might have a common idea of how things should be, but not about what means are suitable and legitimate to get there. As a lack of consensus might lead to a lack of readiness to act, it is questionable, if the League, and also therefore Society of Peoples, would be capable of quick and effective action. At least for the latter, one might hope, with Rawls, that the cooperative patterns between the members would enable them to negotiate the right course of action in time.

on whether to participate in a military intervention or not, remains with the respective government.

But why establish a new institution at all? Instead of calling for a new organization, one should strengthen existing ones (Carothers 2008: 6f.). The necessary institutions are at hand. They need reform, which might require less effort and political power than setting up new organs. The UN, which has a universal character, not only in theory but also in practice, might be a better and more legitimate actor in the international realm. NATO, in addition to being a regional actor, was designed as a military alliance, primarily to meet the Communist threat during the Cold War. However, to solve problems without a military aspect, such as would be the case for the Society of Peoples in meeting its duty of assistance, NATO lacks the necessary competences and tools (Daalder and Lindsay 2007: n. pag.).

When the UN was founded, its primary task was to establish an international framework to prevent a third world war. Its focus was placed on relations between states and not, in keeping with the idea of sovereignty, what happens within them. With the development of the human rights regime and within the globalizing world, domestic affairs have become more and more relevant for the international realm. Whereas functional agencies of the UN do good jobs concerning their specific tasks, such as the World Food Programme, or World Health Organization, when focusing on security questions, UN policy falls short. The required consensus delays action or makes it inadequate. The universal approach renders the institution and its actions beholden to the least cooperative members (*ibid.*). Support for the UN system often refers to the idea of the UN, but not to its actual performance. The UN does not live up to its standards (Perle 2007: 17). To “effectively manage the use of force by states” one needs “a rough equality in power among actors within a system, for a consensus on fundamental underlying values, for a minimal level of trust and for ease in spotting free-riders” (Glennon 2006: 313). These factors would be on show within a Society of Peoples.

Even if one agrees with the assessment that the UN’s effectiveness is limited in some cases where quick and decisive intervention is needed and

supports the idea that an additional authority is required, one might already find such an institution in the authority of regional organizations in their sphere of influence. This kind of authority is in place and has been put to the test. The EU and NATO intervened in Kosovo, the Organization of American States in Haiti, the Economic Community of West African States in Liberia and Sierra Leone, the EU in Albania, the Pacific Islands Forum in the Solomon Islands, some with a good result. The democratic, basic structure of the intervening countries did not give the NATO intervention in Kosovo legitimacy, but what did were the relevant regional organizations, the EU and the Organization of the Islamic Conference (the state was by the majority Muslim), who supported it (Stedman 2008: 7f.). But how can one decide whether to trust such an organization and its purpose? If, for example, the Shanghai Cooperation Organization¹⁰² were to authorize intervention, would one not question its intention? The legitimacy or justification of such an intervention, no matter which organization launched it, would still have to be judged by the international community, embodied in the only universal institution to date: the UN.

The question of legitimacy equally has to be raised when it comes to the Society of Peoples, in two respects: would a Society of Peoples be perceived as a legitimate actor in the international realm, capable of exercising force beyond its borders and does it have the normative legitimacy to act?

This may be denied especially by proponents of a League of Democracies and more generally of theorists that consider democracies to be the only legitimate regime type. Allen Buchanan and Robert O. Keohane argue in favour of a standard of legitimacy for international governance institutions that is “accessible from a diversity of moral standpoints and less demanding than a standard of justice” (Buchanan and Keohane 2006: 409). These standards to them are only met by democracies that honour human rights (*ibid.*). States that are not considered legitimate cannot transfer legitimacy and thus are no legitimate actors in the international arena (*ibid.*: 412-414); the consent of a government that cannot be considered as agent of its people, as speaking in their name, is not crucial (Buchanan 2010: 313).

¹⁰² Member states are China, Kazakhstan, Kyrgyzstan, Russia, Tajikistan and Uzbekistan.

Although there might be disagreement on what constitutes a human right, the authors (minimally) consider physical security, liberty (minimally including freedom from slavery, servitude, and forced labour) and subsistence as such. As with Rawls, the list is left open (Buchanan and Keohane 2006: 419f.). The rights mentioned are covered by Rawls's human rights minimalism. However, next to honouring human rights, "where democratic authorization of the exercise of political power is possible, only a democratic government is legitimate" (Buchanan 2007: 235) as it is the only system in which the fundamental equality of person is realized (ibid.: 250). Buchanan (and Keohane) take up the autocracy-democracy divide: the possibility that there may be societies that are non-democratic but honour human rights and have a legitimate claim to be respected is excluded. Although decent societies only maintain a weak understanding of formal equality, a certain level of equality is secured.¹⁰³ Making a democratic basic structure a necessary criterion for a state to be considered a legitimate actor in the international realm might lead to the imperialism Rawls seeks to avoid.

A second argument against the legitimacy of a Society of Peoples (and a League of Democracies) to intervene in other states is that any "use of force by a self-selecting group of [...] states will not generate legitimacy beyond that group" (Stedman 2008: 3). As a possibly all-embracing organisation with member states from all parts of the world, the Society of Peoples might stand a good chance of being accepted as legitimate actor in the international realm. The intervention in Kosovo shows that the EU, in extreme cases, is willing to act, even without UN mandate; the Society of Peoples might be as well. After all, actions taken by the Society of Peoples would be in accordance with the UN Charter.

A second more pragmatic argument to legitimize the use of force on outsiders is that, what happens within other states might be vital for one's own security; one should thus have a legitimate interest and possibility to intervene (Daalder and Lidsay 2007: n. pag.). Focusing on normative legitimacy, the "rightness or wrongness of a particular course of action ought to reside at least

¹⁰³ For an in-depth debate around Rawls's human rights minimalism, see chapter 4.

in part in the nature of the action itself" (ibid.). From a normative perspective, it is hard to call an intervention stopping genocide, though it may be illegal, illegitimate. The normative value of an action should be given priority over its procedural aspect (ibid.). Due to the value-base, the League might have an even stronger claim to legitimacy than the UN (Buchanan 2007: 452).

The problem of the UN is that any nation can join and that every member has one vote, even Burma, Zimbabwe and North Korea (Lustig 2008: n. pag.). Authoritarian China and Russia as veto-powers are granted a disproportionate weight (Stedman 2008: 1). Promoting human rights is extremely hard if human rights violators take part in the decision-making process. Those would be excluded within a Society of Peoples. A UN reform that would ensure that member states actually live up to the values proclaimed in the UN Charter, including human rights and justice, is more than unlikely. One could thus argue that establishing a new institution might be a fruitful alternative as the commitment to reforming the UN insofar as to enable it to provide the benefits it was established for seems insufficient (Buchanan and Keohane 2006: 422, see also Buchanan 2007: 450). This new institution could either pursue UN reform or constitute an alternative legitimate actor when it comes to questions of intervention (Buchanan 2007: 450).

Most of the arguments put forward in favour of a Society of Peoples may also be put forth for a League of Democracies. It might even be more efficient as there are fewer member states that have more common ground and share more common sympathies. So what specific characteristics make the Society of Peoples more favourable than a League of Democracies?

The Society of Peoples might be an even more valuable alternative when looking for an institution that could be considered a legitimate actor alongside the UN system: Contrary to the League, the Society would not take over the democracy-autocracy divide without giving up securing human rights. Whereas proponents of the League "underestimate the importance of the non-democratic world" (Heisbourg 2007: 17), the Society of Peoples would be accompanied by a much weaker impulse to further block-building in the international arena. It would enhance broader patterns of cooperation and enable moral learning across the

boundaries of different political systems on the basis of shared values and interests, on the basis of an overlapping consensus. It could produce incentives to reform without being charged with cultural imperialism. Whereas “a post-Cold War and post-George Bush United States will not have the capacity or the legitimacy to unilaterally take on global crisis” and whereas “working through the United Nations [...] is more often than not a recipe for paralysis” (Diehl 2008: n. pag.), the Society of Peoples might have the legitimacy and the capability to act.

The Society of Peoples would represent members from all regions of the world and have a strong normative claim. It should not supplant the UN but act alongside it with a united voice pushing towards reform. Meanwhile, it might act, if necessary, when the UN cannot reach unanimity. Even if not realized, the concept of the Society of Peoples as a model for an international society as one should be, is helpful to evaluate and improve existing institutions, foremost the UN.

The Society of Peoples – A Model for Exploring the Possible

The concept of a Society of Peoples, and Rawls’s theory in general, can function as a guideline for a liberal society’s foreign policy. Breaking down the democracy-autocracy divide by taking reasonable pluralism seriously in theory, could, in practice, improve relations between liberal and decent societies, lead to more understanding and sympathy between the two regime types, as well as other possible well-ordered regimes, and help to establish new patterns of cooperation.

Including decent peoples in his Society of Peoples is a central aspect of Rawls’s vision. Advocators and opponents of a League ignore that there are states that may neither be part of a League of Democracies nor of a “League of Dictators”. These are the regimes Rawls is especially aware of and wants to integrate into a cooperative system or offer aid to in the form of the duty of assistance. The Society of Peoples, even only as a model of a society as it should be, can have a stabilizing effect on the state world, thereby making peace at least more probable. Whereas the League of Democracies could be

considered an institutional instantiation of the democratic peace (Rudolf 2008: 2), the Society of Peoples equally could be understood as an instantiation of a decent peace.

Conclusion

By breaking down the autocracy-democracy divide and allowing decent societies into a cooperative scheme as equal partners, Rawls foregoes further block building that a League might probably cause.¹⁰⁴ A “global forum that denies autocracies a say in world affairs promises to deepen cooperation where it is least needed [...] at the expense of cooperation where it is most needed” (Kupchan 2008: 99). From the Rawlsian perspective, one might argue that well-ordered societies not only share interests but also sympathies, with, even more valuable with respect to effective cooperation, trust and respect growing over time. This makes them favoured partners of cooperation. As the development of the EU has shown, cooperation might become closer; broadening the scope over time, stronger integration might enhance stability by developing mutual trust and respect. Programmes, such as Erasmus, would also contribute to this within the Society of Peoples.¹⁰⁵

The intensification of effort to improve what is already in existence, primarily the UN, instead of calling for a new institution, seems reasonable. Nevertheless, thinking about such an institution, discussing its purpose and, within that, drawing an alternative sketch of how international relations could and/or should be organized, is a task worth doing. This chapter is not to be regarded as a call for the establishment of a Society of Peoples, but rather as an appeal to reflect on the concept more closely than secondary literature has done so thus far. Even if never realized, the idea of the Society of Peoples and its

¹⁰⁴ “For the sake of consistency, we should predict that if a league will help democracies see beyond limited short-term interests and construct shared interests and positions, then a league of authoritarian states would do the same for the Russias or Chinas of the world, with a resulting dramatic drop in global cooperation” (Stedman 2008: 7).

¹⁰⁵ Such initiatives may be pursued by non-governmental actors within the member states, in the case of Erasmus, for example, by the universities. That way, the interference of regimes into the spheres of others would remain at a minimum, and further ties and understanding between members of the different societies may evolve.

discussion is fruitful, as is Rawls's concept as a whole, to serve as a guideline for well-ordered regimes' foreign policy and as a "long-term goal of political endeavour". In this way, it does contribute, whether realized or not, to more peaceful and stable international relations.

6. Decent Peoples and the Real World

Rawls does not satisfactorily answer the question of whether peoples can or do exist in a non-ideal, real world framework.¹⁰⁶ If one sets the standards high, peoples do not exist. The question of whether or not states that correspond to Rawls's concept of peoples actually exist is essential to his theory, especially where decent societies are concerned, as they seem to be mere constructions, an impression supported by the imaginary society Kazanistan, as elaborated in chapter 3. If there are no existing or historical decent societies, they might be *invented* to justify imposing liberal principles, i.e., the principles of the Law of Peoples, on non-liberal regimes. If one were able to identify decent societies in the real world, it would strengthen Rawls's arguments and theory in three major ways. First, it would mean that LP would be more applicable to international relations and real world structures and therefore more helpful for improving real world conditions. Second and related to the first, identifying decent societies would be useful, as LP is supposed to be a guideline for the foreign relations of liberal regimes. It would thus be an appealing model for liberal regimes to improve their relations with states qualifying as decent, not only as they are suitable cooperation partners, but also to enhance international stability and justice and to advance peaceful relations. Third, it would provide an argument for the assumption that Rawls does take reasonable pluralism seriously; if decent societies lacked counterparts in the real world, Rawls's justification for imposing the principles of the Law of Peoples on other societies would be pointless. They would remain liberal principles that are only honoured by liberal democratic societies and imposing them on other regimes would constitute a form of liberal imperialism, which Rawls in LP aims to avoid and which, from a Rawlsian perspective, constitutes a violation of liberal principles, foremost the principle of reasonable pluralism. Taking reasonable pluralism seriously Rawls would consequently have to enlarge the democratic peace thesis, which he supports, to a *decent peace thesis*. As liberal peoples meet the criteria for decency as well, this thesis assumes that liberal *and* decent peoples strongly

¹⁰⁶ For a closer discussion see chapter 2.

tend not to wage war against one another.¹⁰⁷ Based on the analysis of Rawls's actors in chapters 1 and 2, the chapter at hand strives to identify suitable candidates for decent societies and thus states that within the Rawlsian framework might cooperate fairly within a Society of Peoples and reasonably agree to the principles of the Law of Peoples.

Michael Doyle in his 2006 article “One World, Many Peoples: International Justice in John Rawls’s The Law of Peoples” tries to identify decent peoples as part of his elaborations on Rawls’s regime types. His analysis, however, is limited to the presentation of a table showing the criteria for decent peoples, some possible candidates, and some further elaborations on the characteristics of the candidates and the conclusions that may be drawn from them. For the purposes of this thesis, a broader, referring to the number of regimes covered, and more profound, referring to the criteria and how they could possibly be measured, analysis is necessary for several reasons. First, Doyle hardly deliberates on why he chooses his candidates, which are found, with the exception of Bhutan and Nepal, in the Near East or North Africa. Thereby, promising candidates (such as Brunei or Singapore) are excluded. Doyle’s analysis is thus too limited. Second, Doyle’s criteria are unsatisfactorily selected and their measurement is unclear. The consultation hierarchy is considered as a presupposition. Rawls, however, leaves room for other types of decent societies, which Doyle automatically excludes. Also, the significance of the table he presents is to be questioned. In the columns of the criteria 2b (responsibility for cooperative effort), 2c (official’s belief in the system) and a “possible further criterion” (representation of historically oppressed groups mostly by its members) only have a few entries. The available entries are not always meaningful and do not convey a satisfactorily idea of whether and to what degree the criterion is met. Taking 2c as an example, there are only three entries referring to the eight candidates. The first refers to fair court trials and the treatment of suspects and prisoners, the second to basic needs and the third to the torture of prisoners. The relation to the “sincere belief held by judges and ministers” is not clearly carved out. There is not a single entry in 2b. The study

¹⁰⁷ A detailed elaboration is postponed until the following chapter.

at hand uses Doyle's undertaking and his results as a basis for a study considering candidates from all regions of the world and shall identify measurable, clearly defined criteria that leave room for different kinds of decent regimes next to the consultation hierarchy.

As Rawls's criteria for decency are ideal and not met by any existing regime, one option is to reduce the standards, but defining peoples as ideals and then reducing the standards does not seem appropriate. Therefore, a concept of "aspiring decent societies" is developed, and the question of how Rawls's criteria can best be adjusted is deliberated upon. The criteria identified as necessary for aspiring decency are further specified and transferred into a coding frame to make them applicable to existing states in accordance with available data. In a further step, possible candidates are analysed with regards to the set criteria, and conclusions on whether there truly exist regimes that qualify as aspiring decent are drawn.

Identifying Aspiring Decent Regimes – Criteria

To be able to identify aspiring decent regimes, the ideal requirements for peoplehood have to be relaxed, while keeping Rawls's ideas and conceptions in mind. From the content of LP, one can deduce that Rawls is not reluctant to such a reduction of standards, as he is well aware of peoples with "somewhat dirty hands" (LP: 94) and refers to relatively well-ordered regimes (LP: 89, 105).

Aspiring (liberal and) decent regimes will be those that promote Rawls's criteria and take them into account when setting up their basic structure, for example their constitution, and when pursuing their domestic policies. They, however, not always live up to the standards set by Rawls, for example regimes that generally honour the basic human rights he puts forward but might violate them under exceptional circumstances in a minor way, with respect to extent and frequency. Drawing a line between minor human rights violations and gross forms is a difficult task that I will attempt to treat with care. In the following, Rawls's criteria for liberal and decent peoples are summed up and how far they can and should be relaxed to meet the requirements for an aspiring decent

regime is discussed. To establish criteria for identifying existing aspiring decent regimes, findings about Rawls's criteria for decent peoples are summarized. Then, Michael Doyle's set of criteria, used in the search for decent peoples, is presented. Out of these possible criteria, a set of necessary characteristics is developed that is applicable and measurable with the data available on the respective regimes, thereby keeping Rawls's conception in mind. With further necessary specification, this set then serves as a basis for a coding frame.

Decent peoples by definition have

1. a decent basic structure and government, which represents the members of society and pursues their interests within the framework of reasonable principles. Government has to
2. grant members of society a role in processes of political decision making,
3. limit pursuing its rational interests by reasonable principles (reasonable character) and
4. honour basic human rights (LP: 4, 64, 71). Peoples
5. do not wage wars of aggression and thereby voluntarily limit their sovereignty (LP: 42, 51, 79).
6. Liberal and decent peoples respect other peoples of like character as equal cooperation partners in the international realm.

Further criteria could be expected:

7. Peoples honour the principles of the Law of Peoples and therefore have a
8. duty of assistance towards burdened societies (LP: 92, 62).
9. Decent peoples maintain a consultation hierarchy (LP: 4, 64, 71).

Doyle in his analysis refers to four or five criteria, counting the consultation hierarchy as basic presupposition. His criteria for decent regimes are:

- 1^D. that the foreign policy be non-aggressive,
- 2^D. that human rights are secured,
- 3^D. that the cooperative effort is everyone's responsibility,
- 4^D. that judges and ministers believe in the system, and
- 5^D. that, as a possible criterion, formerly oppressed groups are, in the majority, represented by members of their own group (Doyle 2006: 116).

At this point, the focus lies solely on the qualities of aspiring decent regimes on a monadic level. Points that are relevant to relations with other societies are excluded. They become relevant in the following chapter. Rawls's arguments as to why decent peoples are members of good standing in the international realm are based on their domestic basic structure and their reasonable character, both attributes that can be well examined on a monadic level. A peaceful foreign policy is to be regarded as a result of the basic structure and a reasonable character, as both contribute to the satisfaction of society and thereby the lack of a reason to go to war for purposes other than self-defence or to stop gross violations of human rights. The same holds true for the respect towards other people: they are respected because they incorporate a similar basic structure and a reasonable character. The reason why decent regimes would agree to the eight principles of the Law of Peoples is to be found on a domestic, not an international, level, so that is where the focus should lie in order to find measurable characteristics for these regimes. Therefore, as they touch on external relations, points 5 and 1^D (no wars of aggression), as well as 6 (respect towards people of like character) and 7 (allegiance to the Law of Peoples) are considered no further. Rawls leaves room for different kinds of decent peoples, so the consultation system (9) is not a necessary criterion, and on this basis, it too is left aside.

3^D (responsibility for cooperative effort) proposed by Doyle, as well as of course by Rawls, is hard to measure and Doyle does not make a single point concerning it. Furthermore, its importance for the decent character of a society is only limited. Rawls only writes that decent peoples view "persons as responsible and cooperating members of their respective groups" (LP: 66). The criterion is thus excluded from the analysis, due to its incommensurability and its limited importance.

In addition, as indicated earlier, there is hardly a point made about 4^D (belief in the system by judges and ministers). Doyle here refers to fair court trials, the treatment of suspects and inmates as well as a country's capacity to meet the basic needs of its citizens. Going back to LP, Rawls elaborates that judges and state officials need to be convinced that the law is in harmony with

society's common good idea of justice that grants human rights. If those rights are regularly violated, this harmony is not given. Judges need to show their good faith and defend those laws (LP: 66f.). In a footnote, Rawls links his criterion to an idea developed by Philip Soper, according to whom, in order to be stable, a legal system must be perceived to be just and defended by judges and state officials, who represent it, in case of normative attack. Courts thus have, next to their adjudicatory function, justificatory tasks (Soper 1984: 112f.). The people's respect for the authority of the state officials relies on the belief in the legitimacy of the system they represent, which is linked to the peoples' perception of whether the system serves their interests or at least is not unfair (ibid.: 18). Different approaches on how to measure this criterion might be taken, none of which have proved to be satisfactorily.

First, the autonomy of judges and the judiciary in general may be evaluated, but that would miss Rawls's point, which is their support of the (legal) system (LP: 66f.). The support, however, cannot be properly measured. As judges and ministers in the regimes to be classified are mostly appointed by the respective ruler, support for the government and the system is more than likely, and not helpful in judging the reasonable character of the regime at hand. Qatar may serve as an example here. "The law provides for an independent judiciary, although in practice it is dependent since all judges held their positions at the discretion of the government" (2005 HRRQ: n. pag.¹⁰⁸). Around half of the judges are foreign nationals and their resident permits need to be granted by civil authorities. Based on recommendations of the Supreme Judiciary Council, all judges are appointed by the emir for renewable three-year terms (ibid.). Also, there is no data available covering all candidates for the timeframe.

Second, the support of state officials for the system might be measured in relation to corruption. A high level of corruption could be considered an indicator for the misuse of power, in the case at hand by state officials. A corrupt judge, for example, does not represent the state and properly apply the law, but perverts the course of justice in favour of the bribe giver. However, corruption is

¹⁰⁸ U.S. Department of State (2006c): *2005 Human Rights Report: Qatar*; hereafter cited as 2005 HRRQ.

not necessarily linked to a weak or non-existent belief in the system, but might be caused by poor payment or even by tradition. In the case of Tonga, for example, the links between relatives are especially strong. If the duty towards the state conflicts with duties towards family members, there is a strong pressure on state officials to act in favour of their relatives. Also, families are hierarchically organized and orders by superiors are to be followed (James and Tufui 2004: 10f.). In addition, when making a request to a person, one is traditionally expected to present a gift (*ibid.*: 5). Those and other possible reasons for corruption make it an unsuitable indicator for the officials' belief in the system.

Third, with reference to Doyle, one could take fair court trials as indicator for meeting the criterion. Following the UDHR, "[e]veryone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him" (art. 10). Understanding the belief in the system in terms of guaranteeing fair trials does seem to miss Rawls's point. Here, it is not decisive whether the judge stands behind the system, but rather whether court procedures are correctly applied and rights, such as formal equality, are granted to the defendant.

Last but not least, as Rawls links the belief in the system to the harmony between norms, such as human rights, and legal practice, one could assume that if human rights and thus formal equality are generally respected and protected by state representatives, the criterion might best be covered.

Representing (formerly oppressed) groups by members of those groups (5^D), for Rawls, is preferable as they have a better understanding of the interests and needs of the people they represent. However, 5^D is not a necessary criterion for Rawls (LP: 75), and therefore excluded from the analysis.

The decent background structure, by definition, includes, and mainly manifests itself in, granting members of society a meaningful role in processes of political decision making; 1 (decent basic structure) and 2 (political participation) can therefore be subsumed. Honouring basic human rights (4 and 2^D) is one (and on the domestic level the only) central expression of a people's

reasonable character, because guaranteeing basic human rights displays a willingness to limit rational interest by reasonable principles.

In summary, then, two criteria for a monadic reflection on aspiring decent regimes remain:

- 1) a decent government (offering at least minimal political participation) and
- 2) a reasonable character (expressed by honouring basic human rights).

These are also central to Rawls's conception of peoples ("The term 'peoples' then, is meant to [...] highlight their moral character and the reasonably just, or decent nature of their regimes.", LP: 27) and are the main principles characterizing the model society Kazanistan ("Kazanistan honors and respects human rights, and its basic structure contains a decent consultation hierarchy, thereby giving a substantial political role to its members in making political decisions.", LP: 64). Closeness to Rawls's understanding of decent peoples is thus preserved.

In order to fit them into a coding frame, the two criteria are specified and then applied to the possible candidates for aspiring decent regimes. The coding frame in each case offers two or three possibilities, either "yes" or "granted", "no" or "not granted", or, if open to degrees, "limited" is a third alternative, which will be selected if a given case partially meets the respective criterion.

Political Participation

As far as political participation is concerned, for Rawls it is important that the reasonable interests of all members of society are represented. The different aspects listed within the coding frame are not all necessary conditions; at least one, although the more the better, has to be met to provide the population with what Rawls calls "a meaningful role in processes of political decision making" to a sufficient degree, which will be properly analysed in each case. The possible ways, in which political participation is considered, are:

- elections,
- political parties/associations,
- institutions (offering participation) and

access to the ruler or state officials.

Institutions offering participation might be the only necessary criterion when it comes to Rawls's model society Kazanistan. The study undertaken here, however, shall leave room for different possible types of decent societies, to include all those regimes that, from within the Rawlsian framework, could be understood as reasonable, or at least not unreasonable, basic structures. Therefore, the additional criteria are incorporated. Below, with reference to the coding frame, further specifications are introduced.

Elections. Free, fair and regular elections are a central criterion for democracy. Therefore, an aspiring decent society cannot be expected to meet the criteria of free, fair and regular elections. However, limited elections might very well point towards a society that Rawls would classify as decent, as they might offer a certain amount of political participation and hint towards the population's consent to government. Furthermore, representative bodies may be elected in free, fair and regular procedures, although the body itself may have a mere consultative purpose. To qualify as "existent", elections have to meet international standards and, with reference to James Lee Ray, at least half of the adult population must be entitled to vote (Ray 1993: 256f.), including permanent non-national residents, who have been living in the county for several years, or might have even spent their whole life in that territory. To be counted as "limited", Rawls's criterion (the population in some way has to be reasonably represented) is decisive, meaning that those parts of the population entitled to vote must have free access to the elections, there need to be at least two competing candidates and the results of the election must have some impact on the relevant political institutions. To score "none", there are either no elections, or they do not meet the pertinent criteria.

Political parties/associations. Political parties are a clear indicator of political participation. In countries where political parties are generally banned, political associations may take over the role of parties and therefore be considered, too. To count as "existent", political parties have to be permitted and be able to freely engage in politics. As for Rawls a consultation system suffices for decency, parties are also counted as existent if they only have a consultative

function and do not have direct influence on political decisions. To count as “limited”, political parties/associations exist, but are subject to government restrictions, exceeding common terms and conditions, such as a certain amount of members. To count as “none”, political parties/associations either do not exist or are forbidden by law and not tolerated by government.

Institutions (offering participation). “Institution” here is understood in a wider sense, covering formal organizations of government as well as societal customs, thereby including, for example, regular public meetings of government with group/village representatives. For Rawls, it is essential that the basic structure of a consultation hierarchy includes representative bodies (LP: 71) and so this aspect is a necessary criterion for a consultation hierarchy. As Rawls leaves room for other types of decent peoples, representative organs are not a necessary criterion for decent regimes as such. One possible example are village representatives that forward their villages’ interests directly to government. These representatives do not necessarily have to be elected, but need to pursue the reasonable interests of the group they are representing, minorities included.

Access to the ruler or state officials. Here, the population may forward grievances or comments on government decisions directly to the ruler or his representatives. The ruler might travel the country for this purpose, for public audiences or informal meetings to take place, such as occurs in the *diwaniyya* system¹⁰⁹ in Kuwait.

Human Rights

Although Rawls leaves room for a further extension of his set of human rights, this section only deliberates on the four he explicitly refers to including those that are connected to them. This minimal set reflects core liberal values: liberalism’s “ends are life and property, and its means are liberty and toleration” (Owen 1994: 94). Some specifications have to be made. To count as “granted”,

¹⁰⁹ “[The] country’s unique *diwaniyya* system [...] allows Kuwaiti citizens to engage with their leaders and participate in decision-making processes in an informal, quasi-tribal context” (Economist Intelligence Unit (2008c): *Country Profile Kuwait*: 8; hereafter cited as CPKu 2008)

the rights specified below not only have to be granted, for example by the constitution, but also to be honoured and protected by the state. Individual cases of violations that were not authorized and have been prosecuted by government are not considered. To count as “limited”, rights are generally honoured and secured, but exceptional instances of violations of one or more of the rights covered, if not explicitly authorized, then at least with the knowledge and thus toleration of the government, might exist. To count as “not granted” the rights are not honoured or secured by government and violators are not prosecuted.

The right to life. The right to life not only refers to a right not to be killed (except for in cases of self-defence or in some societies death penalties), but also, for Rawls, a right to an entitlement towards means of subsistence and a right to security. With “security”, Rawls likely refers to the “security of person”, which “must be understood in the context of physical liberty and it cannot be interpreted as to referring to different matters (such as a duty on the state to give someone personal protection from an attack by others, or right to social security)” (Macovei 2002: 6). Included are the right not to be unlawfully detained (UDHR: art. 9) as well as not to be “subjected to torture or to cruel, inhuman or degrading treatment or punishment” (UDHR: art. 5). Regular violations of these principles are counted as violations of Rawls’s first core human right.

The right to liberty. For Rawls, the right to liberty includes freedom from slavery, serfdom (UDHR: art. 4), forced occupation (UDHR: art. 23) and to a “sufficient measure of liberty of conscience to ensure freedom of religion and thought” (LP: 65). This last point needs further qualification, as the UDHR covers more than Rawls’s human rights minimalism considers.¹¹⁰ Liberty of conscience and freedom of religion and thought are not fully granted by Rawls to the extent the UDHR suggests. According to Rawls, there may be a state religion and believers of other religions might suffer from some disadvantages. There has to be liberty of conscience, but not equal liberty:

“[T]his liberty of conscience may not be as extensive nor as equal for all members of society: for instance, one religion may legally predominate in the state

¹¹⁰ “Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance” (UDHR: art. 18).

government, while other religions, though tolerated, may be denied the right to hold certain positions" (LP: 65).

Referring to his model society Kazanistan, Rawls states that "Islam is the favoured religion, and only Muslims can hold the upper positions of political authority and influence the government's main decisions and policies, including foreign affairs" (LP: 75). Rawls's freedom of religion therefore may be more suitably referred to as freedom of belief or worship: believers of faiths other than the state religion may practice and teach their religion in private and may suffer from minor forms of discrimination or disadvantages in relation to believers of the state religion. This plays into another aspect, needing further specification:

The right to formal equality is not further specified by Rawls and its meaning is therefore unclear. The principle of formal equality ("Things that are alike should be treated alike"), formulated by Aristotle, needs further qualifications to define which "things" or "aspects of things" are to be put in relation to one another. One example, which might be relevant to the cases to be analysed herein, is the question of evaluating evidence in court trials. "Things" here could generally refer to "evidence provided by a person" or be divided into "evidence given by males" and "evidence given by females". In the first case, men and women would be treated as alike, in the second they would not, and giving men's evidence double the import would be in harmony with the principle of formal equality. The tolerated unequal treatment of believers of faiths other than the state religion, as shown above, hints at the latter interpretation of formal equality. Also, formal equality for Rawls does not include a right to equal political representation (LP: 71). However, everyone has a right to some kind of participation in the process of political decision making, so barring women from voting, from the right to own property or denying them self-determination is not acceptable within a liberal (Rawlsian) framework.

The right to property. "(1) Everyone has the right to own property alone as well as in association with others. (2) No one shall be arbitrarily deprived of his property" (UDHR: art. 17). The owners are entitled to do with what they own as they wish, including selling, renting or exchanging property, as well as inheriting property. "Limited right to property" will be chosen in cases where women or

other groups of society are excluded from the right or if the right to own property is violated by government and “not granted” if the right to property is generally not granted or secured.

As the criteria have been set, further questions concerning timeframe and choice of candidates need to be answered. To ensure comparability between the candidates and a reliable and significant amount of data to base the analysis on, the study covers the decade from the beginning of 2000 to the end of 2009, as data sets are available for this period concerning the main resources: the Economist Intelligence Unit (EIU) Country Profiles (CP), the Background Notes (BN), the World Fact Book (WFB), the Human Rights Reports (HRR), provided by the US Department of State, and the Freedom in the World reports published by Freedom House (FH). The short forms are hereafter used for citation with the first letter of the respective country added to specify the report or profile at hand. The chosen timeframe should also enable me to capture a possible development of the candidates towards higher degrees of decency or even towards liberalism, a prognosis supported by Rawls.

Changes of government and reforms may influence the political basic structure and politics of a state during the decade. Therefore, some of the candidates may be evaluated as aspiring decent regimes from a specific point, such as after a change of government, onwards, or within a specific period; a country governed by a decent ruler for a certain period of time may qualify as decent only for that period. Furthermore, only regimes that have been stable for at least five years are considered, to guarantee a certain degree of stability and sufficient time for central ideas to be conveyed to the people and to have become understood and accepted. Stability here does not refer to stability for the right reason, but implies that a political regime successfully exercised power over the respective territory and people without major changes to the system. A threshold concerning population is not considered, as the consultation system, partly including direct access to the ruler or his representatives, is more suitable for territorially small countries with small populations.

Identifying Aspiring Decent Regimes – Procedure

The approach to identify aspiring decent regimes within the set timeframe is threefold. In a first step, possible candidates are selected by means of exclusion. Therefore, a flowchart is elaborated, in which, first, the countries are excluded that are not autonomous as they cannot be considered fully responsible for their domestic structure and when focusing on the following chapter their foreign policy. In a further step, democracies are excluded. The EIU Index of Democracy (EIUID) is taken as an indicator: Those regimes that are classified as democracy or flawed democracy by the Index in 2006 and 2008 are considered as democratic and thus might qualify as (aspiring) liberal democratic rather than aspiring decent. Democracies that do not qualify as fully democratic but flawed might be considered relatively well-ordered within the Rawlsian framework.¹¹¹ For those states that are not covered by the Index (such as Liechtenstein or Tonga), the background notes are used as a basis for evaluation. Then, the focus shifts the respective government human rights record. If the regime in one of the four (groups of) rights scores “not granted”, meaning one or more of Rawls’s core human rights are not honoured or secured by government and violators are not prosecuted, it is excluded from the further analysis as guaranteeing the four core human rights is a necessary criterion for decency. Last but not least, those regimes that do not meet the stability requirement are excluded. The remaining candidates are analyzed by evaluating the data introduced earlier and measuring the criteria presented above by means of a coding frame. “Yes”/“granted” will be marked in green, “limited” in yellow and “no”/“not granted” in red. Categories with insufficient information or that do not fit the state at hand are left blank.

In a third and last step, conclusions are drawn. Are there suitable candidates and if so within what timeframe? Are there candidates that show a

¹¹¹ The Index of Democracy only exists since 2006. Other indices that cover the whole period have been considered. However, the Democracy Index seems the most suitable. Freedom House, for example, focuses on freedoms (the more free, the more democratic) but does not include other factors whereas the Democracy Index has a broader understanding of democracy, covering electoral process and pluralism, functioning of government, political participation, political culture and civil liberties.

positive development and might meet the criteria for aspiring decency in the foreseeable future?

Possible candidates have already been mentioned in secondary literature. Doyle proposes Bahrain, Kuwait, Oman, Qatar, the UAE, and maybe also Bhutan as suitable candidates for decent peoples, highlighting Oman as probably best meeting Rawls's criteria. Doyle also tests Jordan, Nepal and Saudi Arabia (Doyle 2006: 116ff.). Chris Brown names Singapore as an example of a decent "mildly authoritarian" regime (Brown 2002b: 18).

Identifying Aspiring Decent Regimes – Results

The flow chart, functioning as a means to identify possible candidates, needs further elaboration. A red arrow indicates that the criterion is not met, green ones that the regimes meet the criterion. The states enlisted on the right are excluded from the analysis.

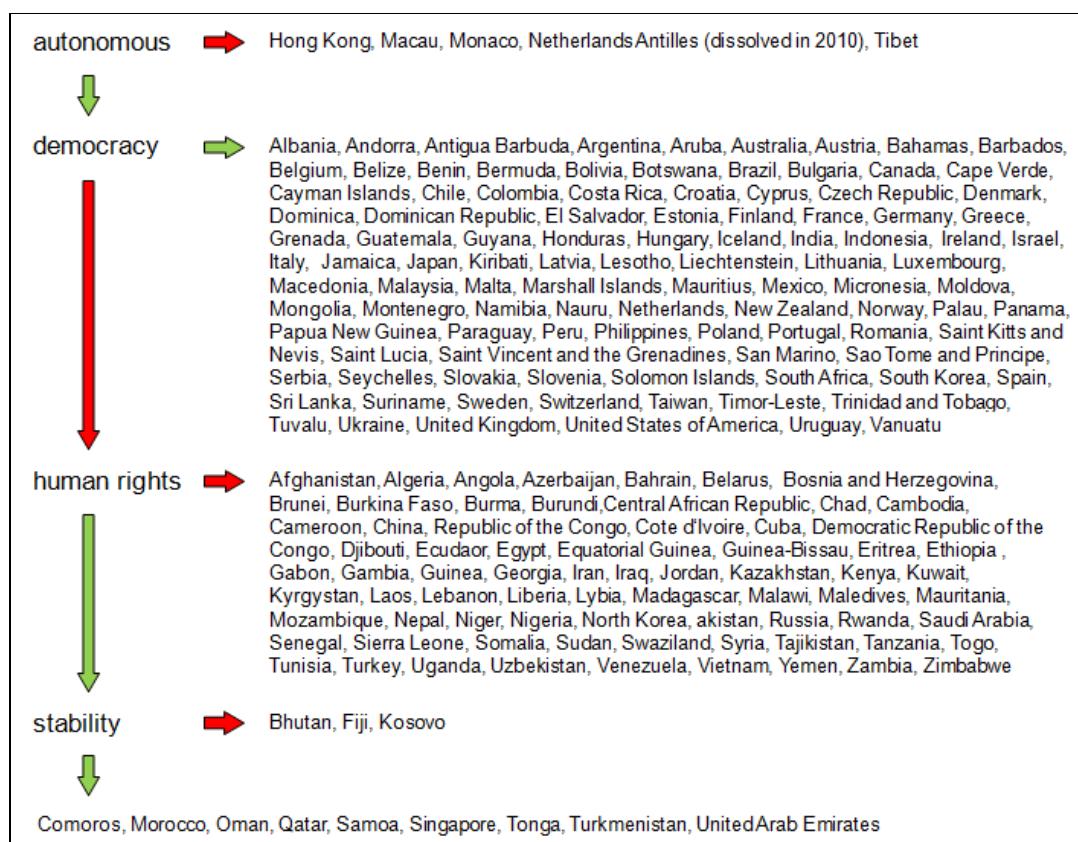


Figure 1. Exclusion of unsuitable candidates for aspiring decent societies

Additional specifications need to be made. The Holy See is excluded from the analysis, as it does not possess a single exclusive citizen and the representative institutions do not represent the citizens, but rather, Catholic Christianity. The Palestinian Territories are excluded as their statehood is (at least) contested. Although Albania slightly misses the threshold for democracy in the EIUID, it is categorized as democracy in the flowchart; despite some irregularities, it has a functioning multiparty-system and is categorized as an electoral democracy by Freedom House (FHA 2009: n. pag.¹¹²). Bhutan does not pass the stability test as the kingdom has been in a constant process of change from a monarchy towards a democracy, a development started with a new constitution in 2001 and completed in 2008 with the first free and fair elections (BNBh 2010: n. pag.¹¹³). However, the regime might be of interest as a possible society that transformed, or is in the process of transforming, from decency to liberal democracy. A second interesting candidate excluded from the coding frame due to its human rights account but interesting for exploring possible decent regimes is Brunei, as its basic structure comes close to Rawls's model of a consultation system. Whereas Bhutan is treated in a short excursus, Brunei is discussed as a possible future aspiring decent society.

Reviewing the candidates referred to in secondary literature, Oman, Qatar, Singapore and the UAE pass the test, whereas Bahrain and Kuwait fail due to a critical human rights record. In 2000, diverse serious human rights abuses were reported in Bahrain, amongst others torture as well as arbitrary arrest and detention (2000 HRRBa: n. pag.¹¹⁴), but the record improved in the following years. However, allegations of torture and other cruel, inhuman or degrading treatment occurred and until 2008, there were no known cases in which police officers had been punished for abuses (in 2008, the Ministry of the Interior "announced that it disciplined 23 police officers [...] for committing human rights abuses"; 2008 HRRBa). In the same year, "Bahraini human rights organizations

¹¹² Freedom House (Ed.) (2009a): *Freedom in the World 2009 – Albania*; hereafter cited as FHA 2009.

¹¹³ U.S. Department of State (Ed.) (2010j): *Background Note Bhutan*; hereafter cited as BNBh 2010.

¹¹⁴ U.S. Department of State (Ed.) (2001a): 2000 Human Rights Report: Bahrain; hereafter cited as 2009 HRRBa.

allege that the detainees have been subjected to regular torture and sexual assault" (FHBa 2008). Furthermore, domestic violence, including spousal rape, is a prevalent problem that is not sufficiently addressed by government (2009 HRRBa).

Focusing on Kuwait, reports that detainees are abused during investigation occurred.¹¹⁵ Government stated that it investigated the cases; however, the results or the punishment of offenders were seldom made public (2000 HRRKu, 2005 HRRKu, 2009 HRRKu). Moreover, government "occasionally arrests and detains persons arbitrarily" (2000 HRRKu). Spousal rape is not criminalized. In theory, domestic violence can be put to trial as assault, but in practice, the security of women is not effectively protected (2009 HRRKu).¹¹⁶

To score "limited" concerning the right to life and security, exceptional instances of violations of one or more of the rights covered might exist. Despite there being only a few cases reported annually in the decade under review, the fact that there are violations in every year and that those cases are barely prosecuted moves Bahrain beyond threshold for "limited". A similar result is to be attested for Kuwait. The countries are thus excluded as suitable candidates for aspiring decency.

As a conclusion, nine regimes may be considered as possible candidates for aspiring decent societies, which in a second step are now analysed by means of the coding frame.

¹¹⁵ Different forms of abuses were reported, in 2000 including blindfolding, verbal threats, stepping on toes, slaps and blows (2000 HRRKu), or in 2005, allegations of torture, beatings with sticks and reports of members of the police forces raping detainees (2005 HRRKu).

¹¹⁶ In most cases, perpetrators are not arrested, even if there is documented evidence, including eyewitness accounts, hospital reports, or a social worker's testimony and in the rare cases where perpetrators are convicted, they seldom face severe penalties (2009 HRRKu).

	Comoros	Morocco	Oman	Qatar	Samoa	Singapore	Tonga	Turkmenistan	UAE
political participation	yellow	green	green	red	green	yellow	green	yellow	yellow
human rights					yellow	green	green	yellow	yellow
access to ruler/official					yellow	yellow	yellow	yellow	yellow
institutions					yellow	yellow	yellow	yellow	yellow
pol. parties/ associations					yellow	yellow	yellow	yellow	yellow
elections	yellow	green	green	red	green	yellow	green	yellow	yellow

Figure 2. Identification of aspiring decent societies

Qatar, Singapore, and with deficits Oman, meet the criteria for aspiring decent regimes – following a weak interpretation of formal equality – and are discussed in more detail. As Samoa and Tonga almost meet the standards and as Brunei's basic structure comes close to Rawls's consultation hierarchy, those three might constitute suitable future candidates and a closer look at their basic structure and political performance is taken. Bhutan, because of its unique transformation from a monarchy to a parliamentary democracy, is of interest and will be introduced and analysed in an excursus.

The Sultanate of Oman...

is a monarchy with a population of about 3.200.000 people of which only around 577.000 are Omani citizens (BNO 2007). The Sultan rules as absolute monarch. The cabinet (the Council of Ministers) consists of 30 members who are appointed by the sultan. Although there are no political parties, Oman, since 1996, has a bicameral parliament, constituted by the Consultative Council and the State Council (BNO 2007). While State Council members are appointed by the sultan, the Consultative Council is elected according to universal adult suffrage every four years (FHO 2009).¹¹⁷ The right to vote is limited to citizens. Elections are generally regarded as free and fair. The council functions as a means to exchange information between people, government and ministries. It may summon and question service ministers, reviews drafts, provides recommendations of economic and social legislation and needs to approve state financial plans. Foreign affairs, defence, security and financial matters are not under the authority of the council. Parliament reviews legislation and advises the sultan, who alone decides. It serves as a bridge between the government and the people (BNO 2007). Citizens have two further options to communicate their concerns to the government, either through their local governor, or directly towards the sultan, who travels the country each year for precisely this purpose (Doyle 2006: 116). “In general the political authority of the sultan is widely

¹¹⁷ The sultan introduced universal adult suffrage by decree in 2003, the first elections in the decade analysed for the purpose of the thesis. In earlier elections only a small portion of citizens, chosen by tribal leaders, were allowed to cast a vote (FHO 2009).

accepted, and there are few demands for major political change" (CPO 2008: 11). Oman's background structure fits into Rawls's sketch of a consultation hierarchy and within that meets the first criterion.

Basic human rights are guaranteed by a royal decree authorized by the sultan in 1996. Those rights are only granted within the framework of Islamic and customary law (BNO 2007). Problems arise relating to the principle of formal equality and the liberty of conscience. Concerning formal equality, discrimination on the basis of sex, ethnic origin, race, language, sect, place of residence, and social class is forbidden by law, but in practice, the government does not enforce the law effectively (2009 HRRO). However, women are granted equal opportunities in education; they hold important jobs in industry and other sectors (Doyle 2006: 116). The government grants religious freedom as long as religious practice does not disturb public order or contradict with morals. Islam is state religion (CPO 2008: 7). Although core human rights are not fully secured, the government generally grants and respects them.

The State of Qatar...

is an "absolute monarchy with all powers vested in the emir" (CPQ 2009: 4) and a generally moderate society (*ibid.*: 7). Approximately 1.800.000 people live in Qatar of which only 225.000 hold citizenship (2009 HRRQ). Formerly a British protectorate, Qatar became independent in 1971. It is in the possession of vast oil and gas reserves (WFBQ 2010: n. pag.¹¹⁸).

Qatar's political system offers opportunities to take part in processes of political decision-making. While parliament, which reviews legislation and offers recommendations, is fully appointed (CPQ 2009: 6), adult citizens elect members of the Central Municipal Council, who represent society. The right to vote is very limited; in 2007, only 50.000 citizens were allowed to vote (2009 HRRQ). Elections are thus classified as "limited". The council advises ministers in matters of agriculture, local public services, and municipal affairs (2009 HRRQ). The first elections took place in 1999 (WFBQ 2010). The constitution of

¹¹⁸ CIA (Ed.) (2010b): *The World Fact Book. Qatar*; hereafter cited as WFBQ 2010).

2005 provides for an Advisory Council, but elections were not yet held (CPQ 2009: 3).¹¹⁹ The Advisory Council would consist of 45 members, of which 30 would be elected and 15 appointed by the emir (WFBQ 2010). Political issues are, in part, discussed in public. Domestic topics, as well as sensitive themes such as the inefficiency of government, are frequently discussed in state-owned radio programmes where citizens may freely express their views¹²⁰ (2005 HRRQ) and “government did not prosecute anyone for the expression of views considered offensive” (*ibid.*). The Doha Debates¹²¹, a series of public debates broadcasted via the BBC, constitute a platform where people, citizens or not, can express their views on contentious international topics. Non-citizens, however, remain less inclined to discuss sensitive topics, such as the separation of state and religion, or regional democratic reforms, in public (2009 HRRQ).

Focusing on human rights, the government’s record meets Rawls’s criteria if one applies the soft understanding of formal equality because, though steady improvements have been made, women still suffer from discrimination. In 2002, the National Human Rights Committee (NHRC) was established, composed of government officials and members of civil society. The NHRC investigates and improves human rights conditions in Qatar (2005 HRRQ). The right to physical security is generally granted. While spousal rape and domestic violence are not explicitly criminalized, a general prohibition against violence exists under which

¹¹⁹ In 2011, the emir announced that elections would be held in 2013 (BBC 2011b: n. pag.).

¹²⁰ Topics such as lack of responsiveness by various ministries to citizens’ needs, poor schools and roads, failure to deliver adequate water, and problems with the health care system are discussed in radio programmes (2005 HRRQ). In 2000, the emir’s meeting with the Israeli Prime Minister was criticized in radio and television call-in programs and talk shows (2000 HRRQ). Nevertheless, citizens – and non-citizens even more so – avoided discussing sensitive political and religious issues (2005 HRRQ).

¹²¹ Although the debates are funded by government, they enjoy editorial independence (Qatar Foundation 2012a: n. pag.). One can attend the debates, tickets are available online, or watch them on the BBC or online (Qatar Foundation 2012b: n. pag.). Two speakers, one in favour, the other arguing against the topic to be discussed, present their arguments. The chairman then asks questions after which the discussion is open to the audience. Finally, an electronic vote for or against the views held by the audience (Qatar Foundation 2012a: n. pag.). Current polls are open for participation online. The latest topic has been the inter-marriage between blood relatives. Referring to international issues, the situation in Bahrain was debated in December 2011 (Qatar Foundation 2012b: n. pag.). Another forum, equally supported by the Qatar Foundation, is “Lakom Al Karam”, meaning “the decision is yours”, a television discussion forum broadcasted in Arabic. Since 2006, Qataris aged 16 to 30 discuss sensitive domestic topics, such as human rights or democracy in Qatar (Qatar Foundation: n. pag.).

these practices are prosecuted.¹²² Concerning the right to liberty, freedom of belief and worship are granted, though restricted in public. Islam is the state religion, but discrimination based on religion is forbidden by law (2009 HRRQ). As Rawls does not demand full freedom of religion, Qatar meets Rawls's criterion. While forced or compulsory labour is prohibited by law, foreign workers, constituting three-quarters of the work force, are vulnerable to abuse.¹²³ The government, however, offers assistance to victims, for example via the Labor Board (2000 HRRQ). The right to property is generally granted (2005 HRRQ). "The constitution asserts the principle of equality between citizens in rights and responsibilities" (2009 HRRQ). However, next to social discrimination against women, legal discrimination remains, for example focusing on inheritance rights; while Muslims hold the right to inherit from their Muslim spouses, a non-Muslim spouse only inherits up to one-third of the property of her deceased husband (Muslim women are not allowed to marry non-Muslims) if he formally willed her a portion. Equally, a Muslim does not automatically inherit his non-Muslim wife's properties (2005 HRRQ). Furthermore, sisters inherit only half as much as their brothers. Although judges tend to evaluate testimonies according to credibility, in court the testimony of a man, in theory, counts for as much as the testimonies of two women. Tradition limits women's participation in politics. The situation of women has improved over the last decade (2009 HRRQ). As an example, in "2008, the law on compensation equalized the amount to be paid in case of loss of life, which beforehand was mottled if the dead person had been female" (*ibid.*).

Qatar meets the criteria for aspiring decency, with deficits when it comes to formal equality, and thus qualifies as aspiring decent.

¹²² A centre provides shelter, financial assistance, psychological counsel and legal advice for victims of domestic violence (2009 HRRQ).

¹²³ Foreign workers depend on their respective employer for residency rights. If a foreign employee wants to leave the country, the employer's consent is needed. The employer can thus force the employee to work for longer periods than he wishes. Unskilled workers and domestic servants are sometimes paid late (2000 HRRQ).

The Republic of Singapore...

is currently one of the world's most prosperous states with around 4.840.000 inhabitants (BNSi 2009). First a British colony, founded in 1819, the island became part of the Malaysian Federation for two years after which it became independent in 1963 (WFBSi 2011). In contrast to most of the other candidates for aspiring decent societies, Singapore has poor natural resources and a semi-democratic structure (CPSi 2008: 3). The EIU Index of Democracy classifies it as a hybrid regime (EIUID 2008: 6).

"Singapore is in theory a parliamentary democracy" (CPSi 2008: 3). In practice, however, it is ruled by a single party. Political power is divided between the president¹²⁴, the prime minister and a unicameral parliament. The ruling People's Action Party (PAP) has hampered the emergence of a credible opposition through strict political and social controls.¹²⁵ The office of prime minister, given to the leader of the party holding the majority of seats in parliament, was held by PAP-leader Lee Kuan Yew from independence until 1990. Since 2004, the office has been held by his eldest son (CPSi 2008: 3f.). The unicameral parliament is elected according to universal adult suffrage. Additionally, up to nine members are nominated into parliament by the president, put forward by a special committee. At least three seats have to be held by the opposition (WFBSi 2011).¹²⁶ As the population is granted a role in processes of political decision making Singapore's government qualifies as decent. It does not count as a (liberal) democracy, as the same party, and within limits the same family, has been ruling since independence. The opposition was,

¹²⁴ Up until a constitutional change in 1991, the president held only ceremonial duties, but since then, is elected and has power over legislative appointments, government budgetary affairs and internal security matters (WFBSi 2011).

¹²⁵ Freedom of speech is restricted and lawsuits are used to silence critics. Extra-parliamentary protest is strongly restricted and controlled (CPSi 2008: 3f.). The government has broad powers to limit citizens' rights and to handicap political opposition, which it has used (2009 HRRSi).

¹²⁶ Since 1959, the PAP has continuously been holding most of the seats. In 1961, the oppositional Barisan Sosialis Party resigned from parliament, making the PAP the sole representative party between 1961 and 1984, when the Workers' Party won two out of 79 seats (CPSi 2008: 4). In 2001, the primacy of the PAP decreased when oppositional parties won 25 per cent of the votes; in 2006, it decreased further when 33,4 per cent of the votes were secured by oppositional parties, thereby contesting 47 out of 84 seats (WFBSi 2011). The parliamentary elections were generally fair and free of tampering; however, the PAP placed obstacles in the path of political opponents, such as changing election law in order to make it harder for low-membership parties to set up a list of candidates (2009 HRRSi).

due to the PAP's placing obstacles in the path of political opponents, only in the 2006 elections strong enough to gain a meaningful amount of seats. Still, "the polls resembled past elections in serving more as a referendum on the prime minister's popularity than as an actual contest for power" (FHSi 2009). Singapore may, if it manages to overcome the one party system, serve as an example of a decent regime reforming itself into a liberal democracy.

Rawls's core human rights are guaranteed and respected in most cases; as caning serves as punishment for numerous offenses, the right to physical security is not fully secured. Though spousal rape is not regarded as a crime by law, it may be put to trial as assault. Victims of domestic violence are offered proper assistance. Women hold equal legal rights. Minorities are granted an active part in society (2009 HRRSi); "they actively participated in the political process and were well represented throughout the government, except in some sensitive military positions" (ibid.). Freedom of religion is generally granted, but some religious sects underlie restrictions or are banned (WFBSi 2011).

Brunei Darussalam – The Abode of Peace...

is a sultanate, independent since 1984, and was formerly a British protectorate. It possesses vast oil and natural gas resources and provides its population with "one of Asia's finest health care systems" (BNBr 2009), economic benefits to subsidize food and housing, and ensures free primary education (ibid.). As an Islamic monarchy, Brunei has been ruled by descendants of the same family for more than 600 years. Despite having a written constitution since 1959, the country has been ruled under emergency law since 1962¹²⁷ granting the sultan almost absolute power. The current ruler holds the offices of Prime Minister, Minister of Defence and Finance, is head of the

¹²⁷ After an election, the victorious party, Parti Rakay Brunei (PRB), was hindered in establishing a government, which led to a rebellion put down by the sultan (with the assistance of the British military). The PRB was subsequently banned, and since then, the sultan has ruled under emergency law. No other election has been held. Currently, the National Development Party, registered in 2005 and headed by the former PRB leader, is the only political party. Two others were banned in 2007: the People's Awareness Party was banned for internal leadership quarrels, and the National Solidarity Party for failing to furnish accounts. As there are no elections, parties hardly play any political role (CPBr 2008: 4-7).

police force, chancellor of the national university and head of the Islamic faith. Other major political offices are held by his family members (CPBr 2008: 4f.).

Concerning processes of political decision-making, the sultan is advised by four councils¹²⁸, whose members have mainly been appointed by him. Government reports aspects of its politics as well as the budget to the Legislative Council, which was reinstated in 2004 (ibid.). Four of 29 seats are not appointed but indirectly elected by village leaders (BNBr 2009). Members of the council may speak their minds freely but may be suspended for offences, such as disloyalty to the sultan. Other forms of influencing political decisions exist: based on a traditional system of village chiefs, people may secretly vote in village consultative council elections. The elected council can put forward the interests of the community, for example during regular meetings with the minister of home affairs (2009 HRRBr). “The government also met with mukim (collections of villages) representatives to allow for airing of local grievances and concerns” (ibid.). Individuals can directly express their views by taking part in internet discussions and writing letters to local newspapers or directly towards the sultan when he appears in public (ibid.). The sultan is supported by the public (BNBr 2009). Brunei’s political system comes close to Rawls’s model society Kazanistan: the sultan is advised by several councils, but may decide freely. The government, in some fields, has to report its decisions to the Legislative Council, which can question these decisions. Representatives of villages are heard either by the sultan or one of the ministers.

The human rights record keeps Brunei from qualifying as aspiring decent. While government “generally respected its citizens’ human rights in several areas” (2009 HRRBr), there were minor deficits concerning the right to life, security and to liberty, and major ones as far as the right to property and formal equality are concerned.¹²⁹

¹²⁸ The Religious Council advises the sultan on matters concerning Islam, the Privy Council on the awarding of honours, and the Council of Ministers on the respective resorts. The Council of Succession determines the succession to the throne in case of dispute (CPBr 2008: 5).

¹²⁹ The right to life and the integrity of the person are generally respected, but cases of caning exist that is used as punishment under Brunei’s criminal law, watched over by a doctor, who is authorized to stop the procedure (Amnesty International 2009: n. pag.). Though the government took initiative against violence against women, several cases were reported. Domestic violence

The Independent State of Samoa...

is a parliamentary democracy, based on the British Westminster system, that incorporates traditional Samoan customs with a population of around 188.000 people (BNSa 2009).

Focusing on Samoa's basic structure, from independence in 1962 until 2007, the head of state, holding the executive authority, was Maliteoa Tanumafili II, who had been appointed for life. After his death, a new head of state was elected by parliament for a five-year term. The parliament, the Fono, is elected by universal suffrage every five years in generally free and fair elections.¹³⁰ However, only Matai¹³¹, heads of extended families that are selected by family agreement, may stand for election. Two of the 49 parliamentary seats are reserved for non-ethnic Samoans in order to represent their interests, which are selected in separate elections (2009 HRRSa). The Human Rights Protection Party holds the majority of seats in parliament. The Samoa Democratic United Party has been the opposition party in the 2006 elections. Due to divisions within the party, it sank below the required number of eight members, necessary for forming a party in parliament. Two new parties were formed in 2008 (BNSa 2009). The members of parliament by majority vote select the prime minister, who appoints the ministers, who are "subject to the continuing confidence of the Fono" (BNSa 2009). Legislation passed by the Fono needs to be approved by the head of state (FHSa 2009).

Next to this parliamentary system, Samoa maintains a second, traditional system of civil administration, the village government, which enjoys powers within the limits of the constitution and the respective village's territory and

is criminalized, but spousal rape is not. Freedom of liberty is generally granted. Islam is state religion. Religious freedom is restricted but a freedom of worship is granted. However, in 2008, 28 foreign citizens were expelled for religious violations. Sharia permits the enforcement of "Khalid", which forbids close contact between persons of different sexes; married couples and close family members are excluded. 163 cases were reported in 2008. Stateless persons and women are not allowed to own property. Discrimination based on sex, race, disability, language or social status is not forbidden by law. Though men and women have similar rights concerning divorce and child custody, women may not pass on their nationality (2009 HRRBr).

¹³⁰ As in 2001, cases of bribery led to by-elections ordered by the Supreme Court after the 2006 elections. The by-elections were considered free and fair (2009 HRRSa and 2005 HRRSa).

¹³¹ Of the more than 30.000 matai, only 16.000 live in Samoa. Men and women may be selected as matai. However, only around eight per cent are women (2009 HRRSa).

concerns. Whereas the first was adopted after independence, the second is Samoa's "indigenous system of government, based in the first instance on each village's evolved power structure, history and traditions and practices" (Samoa Observer 2010: n. pag.). Both systems work alongside each other (*ibid.*).

Samoa's human rights account is generally good, but there are certain deficits. The right to life is generally granted. The right to physical security is not fully secured.¹³² Focusing on means of subsistence, Samoa relies on foreign aid and remittances from Samoans living abroad when it comes to satisfying the basic needs of its people (WFBSa 2009).¹³³ Still, the situation of some Samoan's is poor. A local survey conducted by the Ministry of Finance discovered that around 20 per cent of the families in Samoa live under the essential needs criteria set by the ministry, covering food, clothing, schooling, housing, travel and traditional needs (Elisara 2006: 6f.). The freedom of religion is generally granted (2009 HRRSa). Women enjoy equal rights under the law. Despite the fact that discrimination is prohibited by law, matai as well as members of specific families traditionally enjoy advantages (2009 HRRSa). The right to own property is granted.

The Kingdom of Tonga...

is formally a constitutional monarchy, but the king retains significant power (CPT 2008: 3f.). "While the Constitution allows the monarch broad powers, many of which do not require the legislative branch's endorsement, the King sometimes permits 'the system' to operate without his guidance" (2000 HRRT). Political life is dominated by the king and 33 hereditary nobles, who also dominate the Legislative Assembly, which functions as parliament. This

¹³² Cases of police abuse occurred, but are prohibited by the constitution and have been investigated. Domestic violence against women and children is common but mostly unreported due to fear of reprisal or social pressure. Though spousal rape is not criminalized, abuse of women, if reported, is prosecuted. Also, village fono punished aggressors in cases of domestic violence if signs of abuse have been visible. Corporal punishment for children is tolerated, severe abuses are aggressively prosecuted (2009 HRRSa).

¹³³ In 2006, the UN recommended upgrading Samoa's status from a Least Developed Country to a Developing Country (BNSa 2009).

unicameral parliament consists of a cabinet made up of nine nobles elected by their peers, and nine representatives elected by the general population. Citizens 21 years or older and resident in Tonga may vote. Elections for the people's representative-seats are generally regarded as free and fair. The assembly has limited powers. The King appoints the Prime Minister and appoints and presides over the Privy Council (the cabinet¹³⁴), which makes major policy decisions (2009 HRRT). Laws passed by the Privy Council are subject to review by parliament. Since the early 1990s, a pro-democracy movement exists; most of the nine seats elected by the population were constantly held by pro-democratic candidates. In 2006, for the first time, one of the people's representatives was appointed prime minister (CPT 2008: 3-5).

While Tonga generally grants the right to physical security¹³⁵ and a sufficient amount of liberty when considered within a Rawlsian framework, the right to property is limited, as women are not allowed to own land. The right to formal equality is extremely limited; nobility enjoys substantial advantages, not only as far as representation is concerned, and women suffer from discrimination (*ibid.*).

Excursus: The Kingdom of Bhutan...

completed its transition from an absolute hereditary regime to a constitutional monarchy with a parliamentary system in 2008, with the adoption of a new constitution and first ever elections to a bicameral parliament (BNBh 2010). It is of special interest as it might be an example of a decent regime transforming itself into a democratic state. Bhutan's society is marked by cultural, religious and ethnic diversity (CPBh 2008: 2): the population of about

¹³⁴ The Cabinet generally includes nobles and commoners, both serving at the King's pleasure. For the first time, in 2005, two of the nine elected people's representatives were appointed cabinet ministers (2005 HRRT).

¹³⁵ Domestic violence is rarely prosecuted under laws against physical assault. When abuse was reported to the police, victims were often encouraged to return to their homes (2005 HRRT).

672.000 people consists of three major ethnicities¹³⁶ and several smaller ones; there are four major languages and 18 dialects (BNBh 2010). Bhutan was traditionally a decentralized theocracy and converted into a monarchy in 1907. “Bhutan’s monarchy is unique in that it has actively spearheaded the transition to full parliamentary democracy” (CPBh 2008: 6). In 2007, elections to the National Council (the upper house where five members are appointed by the king) took place, followed by elections to the National Assembly (the lower house) at the beginning of 2008 (BNBh 2010).¹³⁷ Concerns about the process remain as there was no real opposition inside parliament. The two parties contesting the election, of which one won 44 out of the 47 available seats in the National Assembly, were both pro monarchy (CPBh 2008: 5f.). Democratic reforms granted the National Assembly the authority to remove the monarch with two thirds of the vote (WFBBh 2010).

Bhutan’s human rights record does generally meet Rawls’s minimal set of human rights, but these rights are not fully secured.¹³⁸ The kingdom might qualify as an aspiring decent regime. However, due to the constant process of change, further observations are necessary to evaluate the actual political performance of the regime.

Conclusion

“Decent hierarchicals do exist, but they are few in number” (Doyle 2006: 15). Three regimes were identified that qualify as aspiring decent societies and that therefore can be considered as reference points for Rawls’s realistic utopian

¹³⁶ The Ngalops (supposedly Tibetan origin) make up the majority of the population and dominate government and civil services. The Sharchops (Bhutanese) and the Lhotsampas (Nepali origins, predominantly Hindu) are the other two major groups (BNBh 2010).

¹³⁷ Elections were held according to universal adult suffrage; registered residents with legitimate citizenship, age 18 and above were allowed to vote (BNBh 2010). The voter turnout was around 80 per cent (CPBh 2008: 6).

¹³⁸ The right to physical security is generally granted but not secured effectively: persons from refugee camps arrested in relation to bomb attacks were tortured by the Bhutanese police, and there are unconfirmed claims that opposition politicians disappeared. Freedom of worship is granted, but government favoured Drukpa Kagyupa and Nigmapa Buddhism, providing subsidies and aid (2009 HRRBh). Formal equality is generally, but not comprehensively, granted. Lhotshampas, for example, are marginalized and deprived of or denied citizenship and thereby the right to vote. Measures to eliminate discrimination are taken (CPBh 2008: 3).

concept of decent peoples. Oman and Qatar offer their citizens a meaningful role in processes of political decision-making. A representation problem remains in that representation is limited to citizens only. As the majority of residents are non-citizens, this exclusion is controversial. There are, however, other possibilities for voicing opinion, such as contacting the local governor or directly addressing the sultan in the case of Oman or by means of public debate, such as the Doha Debates in the case of Qatar. Focusing on Qatar, a further development towards democratic reform is likely. The establishment of an Advisory Council would move Qatar closer to Rawls's concept of a consultation hierarchy: if the emir then wanted to dissolve parliament, he would be urged to justify his decision; the elected parliament would be able to summon ministers to explain aspects of their policy and could remove them by means of a no-confidence vote (CPQ 2009: 6). Although it is formally a democratic republic, Singapore's political system does not provide fair conditions for political elections and therefore does not qualify as democratic. The ruling "PAP completely controlled key positions in and out of government" (2005 HRRSi). However, Singapore meets the criteria for decency.

The identified aspiring decent regimes, as well as the candidates not (yet) meeting the criteria, can be subdivided into two major groups: traditional monarchies headed by an absolute ruler, such as a king or emir, and regimes that maintain a (one) party system, which are seemingly democratic but have a clear authoritarian character as the president and/or his party enjoy a quasi-monopoly on exercising political power.

Brunei is a prime example of the former group as it has been ruled by the same family for 600 years (CPBr 2008: 4). The regimes in this type are close to Rawls's invented state of Kazanistan: Islam (with exception of Tonga) is the state religion and they generally have consultative systems, for example, via Municipal Councils, village representatives or opportunities to directly address the ruler or his representatives. This category falls together with Doyle's results, and his assessment that existing decent societies do not include the major non-liberal powers, but are rather weak in power, territorially small and lack population (Doyle 2006: 115).

Singapore is an example of the latter type, where the PAP has ruled since independence, controls key positions in and outside of government and hinders a credible opposition from developing. Kazakhstan (not qualifying as decent due to its human rights record) would also fall into this category, as the same president has ruled since independence, “dictates policy” and “is treated as being above politics or criticism” (CPKa 2008: 5, 4). Samoa, with its two administrative systems, seems to be a hybrid of both groups. Bhutan might develop from the former type (traditional absolute monarchy) into the latter type of aspiring decent regimes: a system in which one party holds a quasi-monopoly on political power, in the case of Bhutan, supporting the king. It still remains unclear whether Bhutan will manage to transform itself into a constitutional monarchy with a fully functioning democratic parliament.

The chapter has provided an analysis with the demand to go beyond Doyle’s investigation in potentially covering all regions of the world and presenting an in-depth analysis of possible criteria and characteristics of aspiring decent societies. Thereby, it has been possible to identify three regimes as well as two different forms of decent basic structures. Decent regimes do exist and more may develop over time. Rawls’s concept, with reduced standards, is thus applicable to real world international relations and may serve as a fruitful guideline for the foreign policy of liberal societies as it paths the way for further patterns of cooperation and more peace and stability in the international realm. Rawls takes reasonable pluralism seriously and has sketched an ideal type with existing counterparts to justify imposing principles that are not only supported by liberal democracies, but shared by decent societies on non-liberal regimes. The implications of the findings for a decent peace thesis are analysed and discussed in the following chapter.

7. The Decent Peace Thesis

“The question we must ask is whether peace is only guaranteed by democratic justice *within* and *between* peoples or can be the result of agreements between different cultural and political systems” (Audard 2006b: 308).

Rawls's international theory is based on the assumption of a democratic peace: democracies do not wage war against one another. Thus, if all societies were democratic, a stable peace would be a reality. In LP, Rawls goes beyond the democratic peace thesis: there are other types of regimes, i.e., decent societies, which are part of the zone of peace and need to be respected due to the principle of reasonable pluralism. Rawls argues that decent societies also respect peoples of like character, that is to say liberal and decent regimes, and live in peace with them within the Society of Peoples. As a consequence, Rawls would have to assume that there is something like a “decent peace”: liberal and decent peoples do not wage war against one another. If all societies were either liberal or decent, perpetual peace might be reached. As with the democratic peace, exceptions may be possible (Russett 1993: 37f.).¹³⁹ Rawls also directly addresses the possibility of war between peoples (LP: 123).

As indicated in chapter 2 and elaborated in chapter 6, instead of referring to “peoples with somewhat dirty hands” in non-ideal circumstance, referring to “aspiring liberal and decent regimes”, states that aspire to meet the criteria Rawls considers as necessary for peoplehood, is helpful to differentiate between ideal agents in ideal theory and non-ideal agents in the real world. The thesis is thus reformulated as follows. *Aspiring liberal and decent regimes strongly tend to not wage war against one another. If all states were either aspiring liberal or decent, peaceful, stable and reasonably just, international relations might be reached.* In contrast to the democratic peace thesis, the decisive benchmark for a decent peace is no longer regime type, but rather, a reasonable character and shared norms that constitute an overlapping consensus between the societies. Within a Rawlsian framework, decency sets the threshold of what is reasonable

¹³⁹ There are degrees of democratic practice. Imperfect democracies, for example states that have recently undergone violent domestic challenges or changes or have become democratic might not be constrained by the norms other democracies are as their practice of democracy is imperfect (Russett 1993: 37f.).

and thus, may be considered crucial for a zone of peace. Due to the principle of reasonable pluralism, well-orderedness and not regime type is decisive for respect and cooperation and thus peaceful and stable relations.

At no point in LP does Rawls directly refer to a decent peace or its possibility. In Walter Riker's words, "[u]nfortunately, Rawls [...] never clearly explains or defends his claim that the democratic peace can be extended to decent societies" (2009: 618). However, the assumption of a decent peace follows from Rawls's international theory and, as at least some aspiring decent societies exist, it is worth deliberating on this conjecture beyond Rawls's elaborations in LP. Corresponding considerations are found in Riker's article "The Democratic Peace is Not Democratic". Riker analyses Rawls's peace argument and claims that decent societies do not pose a threat to peace and stability in the international community. Democratic peace could, according to Riker, be realized in a world society only constituted by decent societies, as the reasons put forward for democratic peace are not strictly, but usually, related to democracies (ibid.: 618). Decent societies share characteristics with democratic peoples; next to their well-ordered basic structure, there is an overlapping consensus on a set of norms on the basis of which they cooperate peacefully. This overlapping consensus partly covers elements that are considered responsible for the peaceful relations between democracies, such shared norms or processes of peaceful conflict resolution. The theoretical explanations for a democratic peace could thus be extended to decent societies, which would be in line with Rawls's claim that democratic and decent peoples maintain peaceful relations with each other; the degree to which the different characteristics made responsible for the democratic peace also hold for decent societies and thus the evidence for Rawls's claim, need to be explored.

In the following, arguments in favour of a democratic peace are introduced and discussed. It is then explored whether these arguments also hold for a decent peace on two levels: first, theoretically from within a Rawlsian framework, and second, on the basis of the data referring to the aspiring decent regimes identified in the previous chapter (Oman, Qatar and Singapore). Whereas the first shall show whether or not a decent peace thesis can be reinforced in theory,

the second displays whether or not, *empirically*, there is a decent peace between aspiring decent and democratic societies. Both shall point out that there are theoretical as well as empirical reasons why decent societies, from a liberal viewpoint, should be considered as equal cooperation partners in the international realm as well as from the perspective of decent societies that there are no reasons to go to war against other decent or liberal regimes, provided that they show respect in their mutual relations.

The chapter thus builds on the findings from chapters 1 and 2 concerning Rawls's actors and those of the previous chapter focusing on existing aspiring decent societies. Moreover, it explores whether a decent peace is possible and – in conjunction with chapters 4 and 5 – sketches how it might look.

Why Democratic Peace

The “idea that *one variable* alone is a sufficient (but not necessary) condition for a state of peace in the sense of non-war seems to be ridiculously naive”[emphasis in original] (Gleditsch 1992: 371).

The debate around a democratic peace is rooted in Immanuel Kant's *Toward Perpetual Peace*. Kant states that there is peace between republics, regimes that respect the rule of law and the basic freedoms of its people, thereby including, but not exclusively covering, democracies (Kant 2006: 8:350, Chan 1997: 64). The first systematic analysis on the peaceful character of democratic regimes was Quincy Wright's *A Study of War* (1983: 84, 161-163) published in 1942. Dean Babst in 1964 argued for the dyadic thesis that democracies do not fight each other. Today, many agree that although “democracies are not generally less warlike than nondemocracies [...], they rarely (if ever) fight each other” (Chan 1997: 61, see also Levy 1988: 662 and Gleditsch 1992: 369f.).¹⁴⁰ Opponents of the democratic peace thesis, however, argue, for example, that it “is only intellectual suppleness – the continual tinkering with definitions and categories – that allows democratic peace theorists

¹⁴⁰ Russett formulates these findings more carefully: “It is enough to say, first, that wars between democracies are at most extremely rare events, and second, that even violent conflicts between democracies that fall short of war are also very rare” (1995: 169).

to deny that democratic states have fought each other" (Layne 1994: 40). Cases mentioned to disprove the democratic peace proposition have been refuted by proponents of the thesis.¹⁴¹ Thus far, there have been no convincing examples of war between democracies.

The chapter at hand does not repeat the discussion around the democratic peace; rather, it explores the possible explanations for the zone of peace, including those presented by opponents of the democratic peace proposition, and tests them in reference to a possible decent peace in theory and practice. Taking the thesis that democracies at least strongly tend not to wage war against one another for granted, it is still to be argued why that is so. Supporters mostly focus on the normative account (shared norms are the basis for a zone of peace) and the institutional constraints account, whereas opponents, mostly (so called) realists, formulate a set of reasons that are not based on democratic values and basic structures, but on different causes, such as wealth or interdependence. As the realist arguments are not linked to a democratic background structure, they might also hold for a decent peace, to which all arguments are related in a further step.

Possible explanations for the phenomenon of democratic peace are:

1. the normative account,
2. constitutional constraints,
 - 2.1. re-election constraints,
3. the satisfaction account,
4. the interdependence account:
 - 4.1. trade establishes peaceful relations,
 - 4.2. shared institutions establish peaceful relations,
5. realist arguments:

¹⁴¹ Examples from the literature are the US-interstate war, Germany in World War I and Finland in World War II. Christopher Layne refers to the US-interstate war. There, one would have to count the US-Confederates as democratic, despite prevailing slavery and no right to vote for women, as was also the state of affairs in Wilhelmine Germany (Risse-Kappen 1994: 370). In the case of Wilhelmine Germany, "the chancellor was responsible to the Emperor William rather than the legislature. The electorate had little leverage over war decisions" (Owen 1994: 121f.). David Spiro counts Finland in World War II as an example, supposedly waging war against the allied democracies (Spiro 1994: 61f.). However, there is no record of combat casualties between them (Russett 1995: 168).

- 5.1. the non-zero-sum-enterprise,
- 5.2. stability, wealth and shared interests establish peaceful relations, and
6. historical processes of global social change.

Points 4 to 6, in part, are not directly related to the concept of democracy; trade, shared institutions, common interests, stability, etc. may strengthen ties between all types of regimes. Cooperation, however, needs common understanding and trust; the existence of economic and institutional ties thus may be traced back to normative or constitutional causes. Equally, historical processes can be influenced, if not affected, by patterns of cooperation that can be linked back to shared political regimes, ideas or conceptions. Although these arguments are an attempt to explain the phenomenon without reference to democratic values or background structures, they are indirectly connected to both, and in addition, constitute stabilizing factors between democracies, making them suitable justifications for why the democratic security community could and should be extended towards decent regimes, which share at least an interest in peaceful international relations as well as an allegiance to the principles of the Law of Peoples. A further concept trying to explain the zone of peace between democracies by synthesizing liberalism and realism is that of perception, according to which liberal democracies maintain peaceful relations with societies they *perceive of* as liberal democratic. This approach, due to its exceptional perspective, discussed in an excursus, as it might be especially interesting for the purpose of the thesis as one of the aims of LP is to change the perception liberal democracies might have of (aspiring) decent societies.

As Riker explains, it is “likely that several conditions (though not necessarily all of them, and not necessarily the same sub-set in each case) are at work in any historical instance of democratic peace” (Riker 2009: 622 f.). A combination of these conditions or even one of them alone might be sufficient to generate and secure a democratic, as well as a decent peace. For Rawls, the satisfaction account alone suffices for peace (ibid., LP: 47). Below, the possible explanations are discussed.

The Normative Account – Democratic Norms and Culture

“The basic norm of democratic theory is that disputes can be resolved without force through democratic political processes” (Russett 1993: 31).¹⁴² The willingness to accept compromises to solve a dispute is another norm prevalent in democratic societies (Dixon 1993: 43). Though religious beliefs, convictions and cultures may be different (reasonable pluralism) every human being has an interest in self-preservation and well-being. These shared interests can serve as a basis for a harmonious cohabitation as long as people pursue their personal preferences within the limits of the freedom of their fellow citizens. For that to happen, members of society need to tolerate and cooperate with each other (Owen 1994: 93f.). “Liberalism’s ends are life and property, and its means liberty and toleration” (ibid.: 94).

Transferred to the international level

“the culture, perceptions, and practices that permit compromise and the peaceful resolution of conflicts without the threat of violence within countries come to apply across national boundaries toward other democratic countries. In short, if people in a democracy perceive themselves as autonomous, self-governing people who share norms of live-and-let-live, they will respect the rights of others to self-determination if those others are also perceived as self-governing and hence not easily led into aggressive foreign policies by a self-serving elite” (Russett 1993: 31, see also Chan 1997: 77, Dixon 1993: 43).

In short, the “same structures and behaviors that ‘we’ assume will limit our aggression, both internally and externally, may be expected similarly to limit similarly governed people in other policies” (Russett 1993: 31f.).¹⁴³ Claiming self-determination for themselves, democracies should grant the same right to other states. “Put most simply, if political leaders are accustomed to nonviolent procedures of conflict resolution in domestic affairs, then it is likely that such methods will also prove useful in settling international disputes” (Dixon 1993: 45).

¹⁴² Further norms listed by Russett are the norm of equality (in voting, certain rights and dignity), a government resting on the consent of the people and an opposition loyal to the system. These norms are to be shared by all members of society. For Russett, norms are, though they might be violated, more important than the institutional structure (Russett 1993: 31). One could conclude that if decent societies support the listed norms, they might also meet the criteria Russett regards as constructive for the phenomenon of democratic peace.

¹⁴³ Russett’s formulation “similarly governed” leaves room for other *similar* types of societies, such as decent peoples that, according to Rawls, respect peoples of like character and are respected themselves by liberal peoples.

As democracies do not want to be dominated, they do not strive to dominate fellow democratic regimes. If a conflict between two democracies arises, shared norms prevent those conflicts from escalating to a military level. The other democracy is perceived within a mutually shared zone of law (Russett 1993: 33).

The normative considerations are backed up by the empirical facts that democracies tend to negotiate conflicts and accept third-party mediation, form alliances and observe treaty commitments (Chan 1997: 93, Russett 1995: 172, Dixon 1993: 43). “The more democratic a state the more likely its political leadership will maintain conciliatory norms of dispute resolution, and leaders with conciliatory norms are more likely than others to adopt or at least accede to conflict management efforts” (Dixon 1993: 46). It is not that a peaceful disposition is decisive in the “fight” for peace, but the capability to be trusted (Chan 1997: 81), and democracies tend to trust regimes that permit meaningful political competition (Owen 1994: 95). The normative account can be summed up as follows:

“Liberal democracies are believed reasonable, predictable, and trustworthy, because they are governed by their citizens' true interests, which harmonize with all individuals' true interests around the world. Liberals believe that they understand the intentions of foreign liberal democracies, and that those intentions are always pacific toward fellow liberal democracies. [...] Illiberal states, on the other hand, are viewed *prima facie* as unreasonable, unpredictable, and potentially dangerous. [...] Liberal democracies do not automatically fight all illiberal states in an endless crusade to spread freedom, however” (ibid.: 95f.).

As institutions build on norms, the normative model is closely linked to the constitutional constraints account and thus the institutional basic structure of a liberal society. “Both norms and institutions may contribute to the phenomenon of peace between democracies; they are somewhat complementary and overlapping” (Russett 1993: 41). They work in tandem: norms forbid wars with other democracies and constraints are established to ensure that those norms are not violated (Owen 1994: 119).

Constitutional Constraints

Domestic structures result from liberal ideas that are implemented not only on a domestic, but also on an international level (Owen 1994: 99). Within democracies, constitutional constraints make it improbable to go to war against another democracy that shares the same constraints for several different reasons. First, there are legal and constitutional restrictions to war, such as the division of powers and the system of checks and balances (Russett 1993: 38). Governments need the approval of cabinet members or legislatures (Owen 1994: 90).¹⁴⁴ Democratic institutions are complex and function slowly, which leaves more room for negotiations. Second, the decision to wage war needs, and will cause, public debate. Public support is necessary to legitimize war. Governments thus need time to mobilize public support within society, which again leaves room for additional negotiations or solutions proposed by third parties (Risse-Kappen 1994: 373). Both parties involved in the conflict know that the respective other is subject to the same constraints and will therefore not launch a surprise attack (Riker 2009: 627, Russett 1993: 40). And third, democratic institutions may serve as a “filtering mechanism on the type of individuals ultimately designated for leadership positions by promoting those of a more conciliatory nature and discouraging selection of more autocratic or belligerent individuals” (Dixon 1993: 45).

“Constitutional” here does not necessarily refer to a written constitution but can also mean a set of values embraced by the democratic society, including rules for making and applying law. Members of society share those norms and thereby constitute a body politic. The rules and values might not always be followed, but they are generally accepted. Their violation may cause criticism as well as self-criticism (Riker 2009: 628). Again, the close connection between the normative and the constitutional constraints accounts becomes visible. They constitute the centrepiece of the democratic peace thesis.

¹⁴⁴ The argument is not equally convincing in all cases. Focusing on France, for example, the question of war is reserved for the president. Nevertheless, he/she still relies on public support, making a war opposed by the public highly unlikely, but there is no institutional barrier that has to be overcome. If constitutional constraints were limited to this aspect, the thesis would look as follows: the more centralized the system, the higher the likelihood of war. This, however, does not seem to be the case (Risse-Kappen 1994: 373ff.).

Re-election Constraints. Politicians are generally sensitive towards the political consequences of a war. If it is regarded as illegitimate by the public or judged as non-effective or too expensive, politicians put a possible re-election at risk, a consequence they have good reason to abstain from. Democratic rulers will thus only wage war if it is widely considered legitimate, if the cost-benefit expectations are reasonable and, of course, if they expect to win the war. Governments need the public support of a majority of people. As in democracies the population holds multiple opinions and pursues diverse interests, a broad consensus in support of the decision to go to war is hard to gain (Riker 2009: 629).¹⁴⁵

Re-election constraints are based on the rational interest of those in power: if they want to stay in power, they may not fight wars that are perceived as illegitimate by the majority of the population, too cost-intensive or likely to be lost. Although the constraints are based on rational calculation, the explanation favoured by realists, the fact that re-election constraints exist is founded on democratic procedures and therefore connected to democratic norms (political participation) and institutions (electoral procedures). The re-election constraints can thus be understood as a sub-category of constitutional constraints.

The Satisfaction Account

As democracies are satisfied, they have no reason to go to war. Their basic needs are met, covering those commodities as well as rights and freedoms citizens require in order to exercise their rights and liberties and to seize the opportunities granted by society (LP: 38). The citizens agree with the social structure of their society, whose interests are compatible with those of other like-minded societies. Satisfaction not only results in internal stability, but also leads to externally stable relations with other societies (Riker 2009: 624). Therefore, there are no violent conflicts between democracies. The satisfaction

¹⁴⁵ This argument cannot explain why democracies, in general, do not wage fewer wars than non-democratic regimes. However, wars against democracies tend to be regarded as less legitimate, to be cost-intensive and hard to win.

account seems problematic insofar as democracies do not wage fewer wars than non-democracies, but only *not against* one another.

The Interdependence Account

The interdependence account argues that democracies are linked with one another more closely than with other regimes and thereby interdependent on several levels. Interdependence leads to cooperation and encourages mutual understanding. The benefits gained would be put at risk in cases of violent conflict. Interdependence thus supports peace.

Trade establishes peaceful relations. Economic ties are more frequent between democracies than with other regime types, because democracies seem to be more reliable in reference to respecting terms of trade and to a constant flow of money and resources (Riker 2009: 632). Extensive trade leads to close contact, which again supports mutual understanding between societies and creates further ties. If conflicts evolve, this closeness favours peaceful conflict resolution in two ways: first, mutual trust and understanding make compromises more likely; second, economic ties make a violent confrontation more costly. Along with economic loss, the advantages that such ties yield would also be lost: “the mutual benefits of trade reduce the potential benefits of conquest” (ibid.).

The idea that trade leads to peace is already found in Kant: “It is the *spirit of trade*, which cannot coexist with war, which will, sooner or later, take hold of every people” [emphasis in original] (Kant 2006: 8:368). The development of world trade enhances peaceful relations between peoples as securing peace between them contributes to trade and thereby serves their interests (Habermas 1996: 13). Democracies in particular benefit from trade as they are generally economically developed. Trade also has implications for the security of states and they thus favour trading partners they can trust, i.e., fellow democracies (Chan 1997: 75f.). A further hypothesis, going back to Kant, is found in the following.

Shared institutions establish peaceful relations. Democracies enter into alliances with one another more frequently than with non-democracies (Risse-

Kappen 1994: 371) and sign more mutual defence agreements than chance would explain (Dixon 1993: 45). Being bound by international networks and sharing institutions that are founded as a consequence of signed treaties prevents them from pursuing aggressive policies against cooperation partners. Furthermore, institutions provide means to solve conflicts peacefully. Setting up those institutions, however, presupposes peaceful relations on which institutional structures can be built (Russett 1993: 25f.).¹⁴⁶ Establishing transnational institutions, linkages and patterns of cooperation, is supported by the autonomy and pluralism of agents within democracies. Domestic groups and lobbyists ensure that existing commitments are observed. Autocracies often regulate private and governmental transnational linkages and suppress the development of multiple independent centres of power and influence (Chan 1997: 81).

Realist Arguments

Realists argue that “realism is superior to democratic peace theory as a predictor of international outcomes” (Layne 1994: 7). Whereas liberals distinguish states primarily according to regime type, realists do so according to capabilities, such as power or resources (Owen 1994: 95). The democratic peace thesis thus poses a challenge to realism in explaining international politics and vice versa (Chan 1997: 60). As stated above, realists put forward reasons for democratic peace, which are not directly connected to democracy as such; trade and shared institutions, here already subsumed under the interdependence account, belong to this group of arguments. Though these aspects themselves are not connected to a specified regime type, presuppositions that favour their existence are linked to a democratic background structure. These arguments are introduced and discussed in the following paragraphs.

¹⁴⁶ Provided this argument holds true, establishing international institutions that negotiate conflicts peacefully would be needed. Maybe the Society of Peoples could function as such an organization.

The Non-Zero-Sum-Enterprise. All members of a democratic society gain from cooperation with other democratic regimes. In case of a conflict, each “democracy faces high costs for using force and realizes that its counterpart faces a similar disincentive. Both, therefore, prefer negotiation to war” (Chan 1997: 81). Winners do not crush losers, as they might be future cooperation partners.¹⁴⁷ If a conflict leads to a military confrontation, all may lose (Russett 1993: 24). In addition, an inter-democratic war might damage the international reputation, credibility and reliability of both conflict parties, a further incentive not to escalate conflicts to a military level. The non-zero-sum-enterprise might then turn into a negative-sum-enterprise for both sides, which is not in the rational interest of either party (Chan 1997: 81).

States may initiate wars they consider as advantageous and will abstain from declaring war if they cannot benefit from it. They will, however, not always start a war from which they are likely to profit. Cost-benefit calculations are thus not the only motive for and against war (Russett 1995: 166).

Stability Establishes Peaceful Relations. If states have a stable background structure, they have no motive to externalize domestic drawbacks onto the international level (Russett 1993: 29). Moreover, they avoid engaging in conflicts with other stable societies, because the people are more likely to rally behind and defend the state. Therefore, there is a low rate of inter-democratic conflicts.

Wealth Establishes Peaceful Relations. Democracies tend to be wealthy and economically advanced. Waging war against such a state can be an expensive (and risky) undertaking. In addition, it may destroy not only sources of importation but also markets for potential investment (ibid.: 28).

Shared Interests Establish Peaceful Relations. As allies choose each other according to shared interests, and as democracies generally share interests, democracies are natural allies for each other (ibid.: 27f.). In addition, there is a

¹⁴⁷ Closeness to Kant's sixth preliminary article is obvious (though Kant relates to wartime policies while Russett deliberates on how to prevent war): “No state shall allow itself such hostilities in wartime as would make mutual trust in a future period of peace impossible. [...] For there must remain [...] some degree of trust in the enemy's manner of thinking, since otherwise no peace could possibly be reached” (Kant 2006: 8:346).

high degree of policy conformity between democratic regimes; they hold similar positions concerning most international issues (Dixon 1993: 45).¹⁴⁸

Excursus: Perception and Peace – Synthesizing Liberalism and Realism

In his 1994 article “How Liberalism Produces Democratic Peace”, John Owen tries to formulate a new theory for democratic peace, a synthesis between liberalism and realism (Owen 1994: 88, 90). He argues that a zone of peace can only be established between societies that *perceive* one another as liberal and democratic (ibid.: 102). *Realpolitik* and liberalism do both have an impact on political decisions. Some political actors are realists, others liberals. Both, however, pursue national interest, and in each case, that interest can include favouring cooperation over confrontation when referring to fellow democracies. Ideas also matter in international relations, and they have an impact on national interests. A synthesis between liberalism and realism is thus possible (ibid.: 122ff.). As Owen states: “I do not argue that power politics has no force in determining the foreign policies of liberal democracies. Rather, I describe a second force – liberalism – which prods democracies toward peace with each other, and toward war with non-democracies” (ibid.: 93).

According to Owen, the normative account and institutional constraints in tandem generate a zone of peace between democracies. However, he also includes state interest and thereby realist views into his account of democratic peace: human beings strive for self-preservation and well-being. Peace is a presupposition for both. Therefore, serving the true interest of its members, a society strives for peace and wages war only to generate peace. Liberal democracies serving the true interest of their people therefore do not wage war against one another. For this to be true, it is also necessary that the societies

¹⁴⁸ Opposing interests can, of course, occur. The conflict between Israel and Turkey about nine Turkish citizens that were killed by Israeli forces in 2010 when trying to break the Israeli naval blockage of Gaza by ship, exemplifies this. In the course of the events following the incident, Turkey demanded for an apology and compensation, expelled the Israeli ambassador and threatened to take the case to the ICJ, whereas Israel claimed that there was nothing to apologize for (BBC 2011a: n. pag.). However, the conflict did not escalate to a militant level. Also, neither Turkey nor Israel qualify as fully democratic when it comes to the EIUID (Israel is classified as flawed democracy and Turkey as hybrid regime) (EIUID 2008: 5f.).

perceive of each other as democratic (ibid.: 89f.). Wars between democracies might occur, but only if they do not perceive each other as democratic (ibid.: 120).

"[I]t is not important whether autocratic regimes pursue an aggressive foreign policy or not, but only if they are perceived as (at least potentially) aggressive. If the other is perceived as (potentially) aggressive, cooperative behavior is not recognized or even perceived as some kind of trick. Democratic peace and war against autocracies might therefore be part of a self-fulfilling prophecy; [...] the perception as peaceful or potentially aggressive lead to patterns of cooperation and interaction that support the predisposition" (Risse-Kappen 1994: 376).

Mutual recognition as doves (pacific) or non-doves (potentially aggressive) has an important impact on decisions for and against war, and "in a world of imperfect information, they [governments] often rely on the regime attributes of their counterparts to infer their dovishness – emphasizing an assessment of their intentions rather than their capabilities" (Chan 1997: 70). The "democraticness" of a regime is regarded as an indicator of its "dovishness" (ibid.). Democracies also generally have open societies and transparency which simplify international communication and coordination (ibid.: 81).

Owen's idea of perception is of great value for the chapter at hand and for Rawls's purpose too: if perception is decisive for patterns of cooperation, then exploring the peaceful and reasonable character of decent societies may offer liberal regimes new cooperation partners and thereby break the effect of a self-fulfilling prophecy.

Historical Processes

"Unlike realism, the radical view focuses on social and economic inequalities within and between societies. In this view the current peace is the peace of the successfully run plantation where the slaves go about their business without questioning their circumstances" (Gleditsch 2008: 703).

Tarak Barkawi and Mark Laffey, who are central advocates of the radical view, offer a critique of the democratic peace thesis, as well as a further alternative explanation for the phenomenon, arguing that none "of the terms that enable the democratic peace proposition can be taken for granted" (Barkawi and Laffey 1999: 423). By considering both as fixed terms, the democratic peace thesis becomes trans-historical and indifferent to historical and ongoing

processes of change (ibid.:405). Democracy and war have both undergone changes that the democratic peace literature does not account for.¹⁴⁹

The democratic peace thesis cannot account for the fact that the frequency of warfare between industrialized core states declined in the 20th century. Rather, the relation between democracy and war has to be analyzed with reference to globalization or, what many authors use synonymously, historical processes of global social change (ibid.: 403f.). Instead of asking why some states do not use force against one another, one should ask why states generally use force. Following Barkawi and Laffey, they do “in service of a project of ordering through which liberal spaces are produced” (ibid.: 419). Liberal states do not go to war with each other neither for normative, nor for constitutional reasons. “The use of force between these states is unlikely because they are embedded in geostrategic and political economic relations” (ibid.), which the authors consider to be in great part a result of the US grand strategy after World War II. The US strived to export its economic and political model to Western European states and to “preserve order” in the rest of the world where it supported administrative and coercive apparatuses, even against local (democratic) political projects (ibid.: 417-419). Zones of peace are a result of a strategic alliances between powerful industrial states to globalize capital markets, exploit the rest of the world and profit from both (Hasenclever 2006: 236).

Along with Barkawi and Laffay, Raymond Cohen offers an alternative account that might constitute a link between them and the realist critics of democratic peace. “The Chile episode illustrates a grave flaw in the democratic-

¹⁴⁹ Warfare has changed: alliance war has become necessary. Links between the military and industries of allies were established. Nuclear powers leave no alternative to peace when they directly confront each other. Other ways of using force have been developed, such as raising troops from foreign or client populations, amongst others, to reduce one's own casualties, manipulating the media, or using force covertly, such as the US did to overthrow democratic governments, such as Allende in Chile. Those are not considered as related to the superpowers in databases such as the Correlates of War project (Barkawi and Laffey 1999: 410-414). Democracies thus only seem more peaceful as covert action and structural use of force are not taken into consideration (Hasenclever 2006: 236). The use of a “homogenized liberalism ‘defines out’ other historically valid democratic claims and may license violence against them” (Barkawi and Laffey 1999: 409). Neither the understanding of “democracy” nor the international system are static (ibid.:411). Democracy needs to be conceived of as “an ongoing, historically evolving political project” (ibid.:416).

peace theory [...]. Allende's downfall was not war by Singer or Maoz's definitions. But it was war by other means" (Cohen 1994: 218). The argument that the US needed to intervene covertly because of both a lack of political support and democratic restraints, for Cohen, is merely a way of explaining away a counter example (ibid.: 219).

Cohen offers two alternative explanations for the zone of peace. The first explanation links to realism.

"Within the realist paradigm – which the democratic-peace theory purports to overthrow – it is accepted that states will resort to violence in the pursuit of valued goals or if they perceive their vital interests to be threatened. They may do this with regret; they may prefer covert to overt action; they may resist war if at all possible. But in the final analysis, realism asserts, they will fight rather than quit. The character of the target regime is of secondary importance. When the United States intervened against elected governments, it did so for *Realpolitik* reasons with the means both available and appropriate in the circumstances" (ibid.: 219).

The second explanation implies that factors other than regime type account for peace: the unifying effect of the external Soviet threat, the shared trauma of two catastrophic World Wars, the development of democracy and a trend to economic interdependence (ibid.: 221). From this perspective, historical processes and experiences are at work, too. "Rather, the soundest conclusion to draw from the evidence is that democratic states in the North Atlantic/Western European area, sharing a particular set of historical circumstance and a common cultural heritage, have avoided going to war" (ibid.: 208). Pacific unions can occur under particular historical circumstances and do not depend on regime type (ibid.).

Discussing the Democratic Peace

Realists, along with the radical view supported by Barkawi and Laffey, put forward convincing arguments that explain why democracies do not fight each other without directly referring to democracy specific norms or institutions, but to capability and rational interest or strategic alliances in a globalizing world and they question the arguments put forward in favour of a democratic peace thesis. Instead of democratic norms and culture, realist imperatives are considered as central: above all, democracies pursue their rational national interest (Layne

1994: 14). Furthermore, institutional constraints do not explain the zone of peace between democracies.

"If democratic public opinion really had the effect ascribed to it, democracies would be peaceful in their relations with all states, whether democratic or not. If citizens and policymakers of a democracy were especially sensitive to the human and material costs of war, that sensitivity should be evident whenever their state is on the verge of war, regardless of whether the adversary is democratic: the lives lost and money spent will be the same" (ibid.: 12).

Democracies respect each other simply because of their national interests.

Proponents of the democratic peace reject both arguments: Layne presupposes that all citizens within liberal democracies are liberal and that they all agree that the conflict partner is liberal. Neither condition is necessary for democratic peace, only that statesmen think that a war would be too unpopular and thereby be constitutionally constrained specifically because their positions rely on the consent and support of the people (Owen 1994: 120). Strategic considerations may have been predominant in the cases Layne analysed, but democratic peace does not rule out that factors other than democratic norms (or institutions) may lead to peaceful solutions of inter-democratic conflicts. Democracies do pursue strategic interest and strive for power (Russett 1995: 166). The imperatives of power politics equally hold for them as for other regime types (Owen 1994: 95f.). They do not, however, fight each other. "Variables suggested by realism such as relative power, alliance status, and the presence of a hegemon did not erase the effects of democracy" (ibid.: 92).

Also, the same motives that drive democracies away from wars with fellow democracies might drive them into war with non-democracies and thus explain why democracies are generally not less war prone than other types of societies. Focusing on the normative account, the assumption that internal structures and procedures are applied on an interstate level, leads to the conclusion that non-democratic societies cannot be expected to grant other states a proper right to self-determination as they do not offer this right to their own people. Whereas there is a presumption of *amity* between democracies, a presumption of *enmity* characterizes relations with non-democratic states (Russett 1993: 32).¹⁵⁰

¹⁵⁰ The differentiation between friend and foe sounds Schmittian and can and should be overcome, a process to which LP makes a valuable contribution. As far as the candidates for

“Liberal ideology prohibits war against liberal democracies, but sometimes calls for war against illiberal states” (Owen 1994: 93). As normative constraints and law cannot be expected to stop authoritarian regimes from using military force in conflicts, democracies do not restrain from using it either (Russett 1993: 33). Similar arguments relate to constitutional constraints: whereas in conflicts between two democracies both governments are accountable to the same constraints, processes of decision making in autocratic societies are quicker; if a conflict with an autocratic regime arises, democracies adapt to the processes of conflict resolution applied by their opponents in order to not fall behind (Risse-Kappen 1994: 373ff.). Authoritarian rulers are also not bound by re-election constraints and are statistically more likely to stay in office after losing a war (Chan 1997: 79f.). However, the stakes seem to be higher for dictators in another respect. Whereas democratic rulers might lose their office, dictators might be exiled, imprisoned or even killed.

Democratic peace proponents accept the argument that a non-zero-sum-enterprise, stability, wealth and shared interests favour peace, but also do not see any contradiction with the democratic peace thesis: “Neither an unfavourable strategic cost-benefit evaluation nor shared democracy is a necessary condition for avoiding war. But [...] either may well constitute a virtually *sufficient* condition” [emphasis in original] (Russett 1995: 167). Proponents of the democratic peace question and convincingly argue that realist arguments *alone* do not explain the phenomenon. Realist viewpoints therefore do play a role, but not the only role. Moreover, many of the arguments are indirectly connected to democracy: democracy favours stability and wealth. Shared norms and institutions generate shared interests. That democracies gain from cooperation also relies on the fact that they trust each other and are thus more likely to cooperate on fair terms.

Joanne Gowa relies on the shared-interest-explanation in her critique of the democratic peace proposition: the shared interests do not rely on democracy, but on shared interests evolving out of the Cold War. “I conclude

aspiring decent regimes are concerned, some of the absolute rulers enjoy broad support within society. In Oman, for example, “the political authority of the sultan is widely accepted, and there are few demands for major political change” (CPO 2008: 11).

that an explanation based on shifting interests is more consistent with this dispute-rate pattern [...]. Thus, for example, the advent of relative peace between democratic states after 1945 can be interpreted as a product of the interest patterns that the advent of the Cold War induced" (Gowa 2000: 3). She assumes that the democratic peace will not "survive the erosion of the East-West split" (ibid.: 4). However, the zone of peace between democracies has survived since.

Barkawi's and Laffey's account might provide a reasonable sketch of why and how zones of peace occur. The stress on alliances between powerful states based on interest links to the realist arguments and is covered in the later application to aspiring decent societies. Nevertheless, they cannot show why democracies with different economic levels cooperate and why the alliance of powerful states seems to be limited to the ones they are limited to, and not to powerful states in general. So again, the structures they emphasize might play a role but cannot explain the phenomenon as a whole (Hasenclever 2006: 236). Furthermore, defining the terms one works with and thereby simplifying argumentation, is necessary to be able to work with these terms at all. The emphasis on developments of forms and understandings of war and democracy, however, is a valuable contribution. Owen's account of perception might be useful here: to focus on whether states perceive of each other as democratic – or in Rawlsian words as "peoples of like character" – at the point at which conflict occurs leaves room for historically changing understandings of democracy. In summary, the account is helpful in shedding some light on possible deficiencies in the democratic peace account that can be resolved via Owen's idea of perception or are already covered by realist arguments and are thus not covered as an extra point in the analysis.

Following Cohen, "the conjunction of peace and democracy may simply be explicable in terms of a complex and unique convergence of historical circumstances" (Russett and Ray 1995: 324). He names the Soviet threat, the end of imperial competition, the spread of the welfare state and growing economic interdependence as examples. Again it seems that the factors Cohen puts forward are factors that favour peaceful conflict resolution, equal to wealth

or shared interests, but that cannot account for the whole democratic peace phenomenon: democracies all over the world are covered by the democratic peace thesis and not only those in South America or the North Atlantic that Cohen discusses. Cohen argues that India, New Zealand and Japan inherited their regimes from the Anglo-American tradition (Cohen 1994: 211). However, his argument is not persuasive. These democratic regimes cannot be counted as sharing the criteria he puts forward (a shared language, culture, or history).

Wealth, economic growth, alliances, geography, military capacities and many more factors reduce the probability that democracies will wage war against one another. Still, the conclusion that regime type does play a role and that, although one amongst many factors, it is a decisive one, is not to be dismissed (Risse-Kappen 1994: 370). The “democratic peace proposition does not rule out the possible contribution of other factors (for example strategic calculation) to avoiding war. Peace can be maintained by a variety of factors, including shared democracy” (Chan 1997: 71). Democracies are more likely to form alliances and those alliances tend to last longer, a fact only found with democratic dyads (*ibid.*: 81f.). Nations, such as England and France, waged wars against one another before they were both ruled by freely elected governments, but have not since (Babst 1964: 14). “These results cannot be explained just by security interests; democratic norms seem to matter” (Chan 1997: 82).

David E. Spiro has argued that though the statistical number zero, referring to the number of wars among democracies, sounds powerful, it is in fact statistically insignificant as democracies are rare and wars are too (Spiro 1994: 50f.). Whereas that might be true for the 19th and part of the 20th century, it has ceased to be as democracy has spread.¹⁵¹ The thesis can, however, be

¹⁵¹ Gleditsch, for example, argues against Spiro: “Kant's writings might be dismissed as theoretical speculation about a hypothetical future world with no empirical evidence and without much consequence in a world of despots. In the two centuries since then a 'separate peace' has spread to an increasing number of states [...]. Not only are there more democracies around, but their numbers are increasing. [...] With 50% democracies – not an unrealistic target for the close of this century – the separate peace encompasses close to 25% of all pairs” (Gleditsch 1992: 373). Also, Spiro considers all pairs, whereas Maoz and Russett, for example, focused their research on relevant dyads and excluded pairs that, due to their geography or economic strength, would not wage war against one another (Risse-Kappen 1994: 369).

dangerous, if democracies use it as a justification to enlarge the zone of peace by forcing regimes towards change. The “thesis can fuel a spirit of democratic crusade and can be used to justify covert or overt interventions” (Chan 1997: 59). It can motivate democracies to abstain from making concessions to non-democracies, precisely because peace is only secure between democracies (ibid.: 59f.).

Through the respectful relations that exist between democratic states, established for whatever of the above presented reasons, citizens of those states are able to form economic, social and cultural ties, for example via trade agreements or educational exchange; a web of mutually advantageous cooperation develops (Doyle 1983: 213). Though the arguments explaining the phenomenon of democratic peace are different and partly independent points, they are interwoven in some form. Economic interdependence forwards cooperation on all levels. Democracies thereby constitute a security community, coexisting in a stable peace with one another (Russett 1993: 42).

The empirically testified absence of war between democracies is neither what Kant, nor what Rawls, related to; Kant’s *foedus pacificum*¹⁵² and Rawls’s Society of Peoples go beyond that. They refer to a stable, contractually based and institutionalized system that generates lasting peaceful relations between liberal (and decent) regimes (for Kant see Risse-Kappen 1994: 371). Whether decent peoples and whether aspiring decent societies can be a part of this community is discussed below.

Decent Peace and *The Law of Peoples*

Aside from the question of whether decent peoples as defined by Rawls meet central aspects of the characteristics favouring democratic peace, it remains contentious whether or not the identified aspiring decent societies satisfy the necessary criteria to support a decent peace thesis. An analysis of

¹⁵² The “pacific federation” is based upon a treaty among peoples, established to bring about and secure peace; it shall not serve to acquire power, but to maintain the freedom of its members and gradually encompass all states, thus leading to perpetual peace (Kant 2006: 8:356).

the candidates shall explore whether a decent peace can be explained by the same factors as the democratic peace phenomenon. For that purpose, the possible explanations for a democratic peace are applied to decent peoples, as well as to the identified aspiring decent societies. By applying those characteristics to decent peoples the consistency of Rawls's peace argument in LP, indirectly formulating a decent peace thesis, is reviewed; testing the decent peace proposition empirically displays how this thesis relates to real world international relations. Moreover, the empirical test of the decent peace proposition completes the analysis of the previous chapter in surveying the relations between aspiring decent and democratic societies beyond the monadic level. An excurses on the role of Oman and Qatar in the Arab Spring explores the domestic and foreign policies of two of the three identified aspiring decent regimes with focus on their decent character.

The Normative Account

From a normative angle, the central arguments for a democratic peace are that 1) disputes between democracies can be resolved via democratic political processes and that 2) democracies conceive of themselves and other democracies as autonomous, self-governing people who share values. Non-democratic states are excluded as they do not grant their members a right to self-determination and are thus not expected to grant such a right on an international level. The same holds true for conflict resolution procedures: as non-democracies do not possess democratic processes of political decision making, they cannot draw on such procedures to resolve interstate conflicts.

1) Conflicts in decent societies are resolved via a consultation process and the ruler's duty both to provide reasonable justification for his decision and to answer to critique. If one assumes that decent regimes apply these processes in the international realm, one would expect there to exist a kind of international Hobbesian Leviathan, who would base his political decisions on a consultation process, where the states subject to those decisions may send one or more representatives to give counsel to this Leviathan, whose decision would then be

binding. The Leviathan would have to justify his decision. One could not expect any sovereign state to subject itself to such a system.

Even though decent regimes do not grant their people an extensive right to self-determination (referring to free choice of government), they claim and grant other well-ordered regimes a right to self-determination on the international level. So what could be an alternative sketch of a decent regime, applying its internal procedures to interstate relations? Consultation combined with a principle of unanimous vote seems likely (and is not far from international practice). Organized according to this principle, the Society of Peoples could constitute an international zone of law and peace under which aspiring liberal and decent regimes cooperate under fair terms.

2) Although they are not democratic, decent societies share values with liberal societies, i.e. core human rights; both regime types offer forms of political participation and have an allegiance to the principles of the Law of Peoples. Those principles might serve as a fundament to build upon to create a fair system of cooperation and a Society of Peoples as an international institution.

“Both decent societies and democracies regard the basic structure of society as a genuine scheme of social cooperation between persons, but each organizes persons into a body politic differently. In decent societies, group membership mediates between persons and political authority, while in democracies there is no such mediation” (Riker 2009: 621).

Liberal and decent regimes share sufficient common ground to cooperate peacefully on an international level. Inter-state conflicts could be resolved via a consultation process aimed at reaching a consensus on how to best settle the dispute. This might be less stable and just than democratic procedures, but it still may suffice to support the thesis at hand. Similarly to liberal regimes, “the culture, perceptions, and practices that permit compromise and the peaceful resolution of conflicts without the threat of violence within countries come to apply across national boundaries” (Russett 1993: 31). Although liberal and decent societies do not generally share normative convictions, they do have an overlapping consensus which suffices to serve as a normative basis for a fair system of cooperation that again is the basis for peaceful and stable relations.

Focusing on aspiring decent societies, Oman, Qatar and Singapore share norms with liberal societies. As shown in the previous chapter, aspiring decent regimes honour and protect the core human rights of their citizens. They do not, however, share fundamental liberal and democratic norms, such as democratic processes of decision-making or the norms of equality and self-determination on the domestic level. These conventions are considered decisive when referring to the democratic peace. While the people in aspiring decent societies generally support the government, they are not granted a proper right to self-determination.¹⁵³ This point, however, is important, as the self-determination granted by a state to its people is a mirror of the self-determination that regimes grant to other states on an international level. Nevertheless, the relevant regimes have managed to settle conflicts with neighbouring countries peacefully through diplomacy and by accepting the jurisdiction of the ICJ.

The aspiring decent regimes conceive of themselves and other states as autonomous and self-governing, both fundamental characteristics to possess when negotiating conflicts. They only participated in international disputes when authorized by the UN (and within limits in reference to the US-led war on terror). Although they do not offer their people a full right to self-determination, they do grant some options to participate in processes of political decision-making and to political discussion, that generally enable the people to solve internal conflicts peacefully and to communicate their grievances. In the case of Oman, the sultan is widely accepted by the people (CPO 2008: 11), and in Qatar, society is generally moderate (CPQ 2009: 7), with citizens openly discussing sensitive political and religious issues (2009 HRRQ). Singapore even possesses an elected parliament.

The normative account is thus partly met by aspiring decent regimes: they do share common ground with liberal societies on an international level and are capable of solving inter-state conflicts peacefully.

¹⁵³ Singapore here may pose an exception. As the ruling party, however, hinders a credible opposition from evolving and thereby leaves no room for a credible alternative to their rule, it is questionable whether the right to self-determination is granted.

Constitutional Constraints

Decent societies maintain decent institutions and share social norms that are internalized by members of society. Fundamental human rights are respected, reflecting a respect for persons. In the case of the consultation hierarchy, this manifests itself in the ruler's duty to justify his politics towards the population or their representatives. With respect to waging war, consultation procedures and public debate slow down the process (Riker 2009: 628) and reduce or even nullify a possible fear of a surprise attack a democracy might have towards other forms of authoritarian regimes. Before the ruler decides on the question of war, he has to consult the relevant group of representatives, and those representatives might discuss the topic within the group they represent first. "Decent societies will not be as diverse as democratic ones, but there is still good reason to believe that substantial consensus regarding war will be hard to reach" (ibid.: 630).¹⁵⁴ The constitutional constraints within decent societies are not as strong as in liberal regimes. Their political leaders do not depend on public support; there is no (or rarely) a division of powers or a system of checks and balances.

Constitutional constraints within aspiring decent societies are not as strong as within liberal regimes. The aspiring decent societies partly maintain democratic institutions. In the case of Oman and Qatar, the Majlis al-Shura serve as a bridges between citizens and government ministries, but the final decisions remain solely with the rulers. Singapore maintains an elected parliament that cannot be regarded as exemplary with respect to democratic procedures. As far as Oman and Qatar are concerned, in reference to decisions on war, political leaders are not dependent on public support and are not hindered by an effective system of checks and balances. As foreign policy is excluded from the issues that their councils may discuss and comment on, constitutional constraints do not hold for these two regimes, but do have an impact on Singapore due to its parliament.

¹⁵⁴ As decent societies might be constituted out of a mix of diverse ethnic and religious groupings, Riker's conclusion seems questionable. A possible extensive diversity, depending on the respective society, strengthens the argument.

Re-election constraints do not hold for Oman and Qatar, but to a certain degree for Singapore; although the ruling PAP has constantly governed since independence without any meaningful opposition, current developments promise more democratic competition.

The Satisfaction Account

Like democratic societies, decent peoples, according to Rawls, are satisfied societies. The population's basic needs are met.¹⁵⁵ Lacking commodities are acquired by trade. The society's interests are compatible with those of other like-minded states, including democracies. That rights in decent peoples may not be distributed equally does not constitute a reason for instability or dissatisfaction, as decent societies are associationist. Members do not perceive of themselves as free and equal citizens but as members of a group, and therefore do not strive for equal political freedoms (Riker 2009: 627). "Rather, they would expect political freedom consistent with their group's place in the consultation hierarchy" (ibid.).

Oman has the 52nd highest per capita income in the world, but unemployment is a prevailing problem: in 2004, an estimated 15 per cent were without work (WFBO 2011). Nevertheless, the economic situation suffices to satisfy basic needs. Some "of the largest budgetary outlays are in the areas of health services and basic education" (BNO 2007). Health care in Oman is generally good (CPO 2008: 14f.).

Qatar stands out due to social and economic progress (BNQ 2010). The per capita income is the highest in the world and the unemployment rate far below one per cent (WFBQ 2010). Government invests parts of its vast oil

¹⁵⁵ Views differ on what needs are basic. A minimal definition would cover only food, water and shelter. Rawls presents a different understanding, which serves as a basis for analysis here. For Rawls, it is a pre-requirement of the principles of justice that basic needs are met, as they are the basis that enables citizens to understand and exercise their basic rights and liberties (PL: 7). "[B]elow a certain level of material and social well-being, and of training and education, people simply cannot take part in society as citizens" (PL: 166). Along with economic and social well-being, in the following, access to a certain degree of education and healthcare is also considered as important.

revenue in infrastructure projects and civil services (CPO 2009: 13). Citizens enjoy free access not only to water and electricity, but also to health care and education (BNQ 2010).¹⁵⁶

Singapore “enjoys a remarkably open and corruption-free environment, stable prices, and a per capita GDP higher than that of most developed countries” (WFBSi 2011). The unemployment rate is low, at an estimated 2.1 per cent in 2010 (*ibid.*). The “state of education appears to be satisfactory” (CPSi 2008: 13) and good medical care is widely available (BNSi 2009).

A solid basis for satisfaction is thus given in all three cases. Oman, in comparison to the other two, lags behind, but still provides the means necessary to meet the basic needs of the people to a degree that provides no reason to externalize internal conflicts or to acquire commodities in shortage by pursuing an aggressive foreign policy.

The Interdependence Account

The interdependence account is not as relevant for Rawls’s theory. Peoples do not necessarily need to cooperate as far as, for example, trade or the duty of assistance are concerned. International ties exceeding the principles of the Law of Peoples are not required (Riker 2009: 633). The account may, however, support the decent peace thesis.

A possible economic, social, cultural or other interdependence between liberal and decent regimes is not discussed by Rawls except for mutually granted fair terms of cooperation and membership in the Society of Peoples. Mutual trust and respect, growing over time, favour close economic and social ties. The duty of assistance and the right to war can be practiced more effectively as a joint programme, a combined effort, which requires close cooperation on several levels. The Society of Peoples as such would constitute at least one shared institution. In summary, liberal and decent societies are not

¹⁵⁶ Noncitizens, however, do not enjoy these privileges free of charge and do not enjoy the same benefits as citizens in general (2009 HRRQ).

necessarily interdependent, but the character of the relations between them, as described by Rawls, hints at close relations on diverse levels.

Aspiring decent regimes share trade relations or other ties with each other – as the question of war is at hand, and as security is vital for these states, military ties here seem most interesting – as well as with liberal regimes.

Oman maintains broad diplomatic relations (BNO 2007). Its relations with its neighbouring countries are good¹⁵⁷ and a free trade agreement with the US was signed in 2006 (CPO 2008: 7). Concerning defence and security matters, Oman maintains close ties with Britain and the US, on which it relies in matters of defence (*ibid.*: 10f.). Ties with Qatar are close, with both being members of the GCC.

Like Oman, Qatar also maintains close ties with Kuwait and the UAE. As Qatar is too small to defend its territory (and natural resources), it signed defence agreements with the US, the UK and France. There are also, as in Oman, regional security agreements within the GCC (CPQ 2008: 9f.).

Singapore embraces globalization and keeps good diplomatic relations with its main trading partners (Hong Kong, Malaysia, the US, Indonesia, China and Japan; WFBSi 2011) (CPSi 2008: 3), whereas relations to neighbouring countries are partly volatile. Free trade agreements with New Zealand (2000), Japan (2001), Australia (2002) and the US (2003) exist. An economic cooperation agreement with India is in place. Singapore is a founding member of the ASEAN¹⁵⁸, which pursues economic as well as political aims. An ASEAN Free-Trade Area was founded in 2003. Focusing on defence, strong links with the US exist. Both signed a Strategic Framework Agreement in 2005, thereby expanding their cooperation concerning defense and security (BNSi 2009). Singapore is also a member of the Five-Power Defence Agreement (together with the UK, Australia, Malaysia and New Zealand) (CPSi 2008: 11). In case of

¹⁵⁷ Ties to the UAE are especially good. Oman is an active member of the GCC, along with Bahrain, Kuwait, Qatar, Saudi Arabia and the UAE (CPO 2008: 9). Relations with Yemen are now stable and there are regular on-going delegation exchanges with Iran (BNO 2007).

¹⁵⁸ Member states include Singapore, Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, the Philippines, Thailand and Vietnam (Shaw 2003: 1185). “Singapore supports the concept of Southeast Asian regionalism and plays an active role in ASEAN, the ASEAN Regional Forum, and the Asia Pacific Economic Cooperation (APEC) forum” (BNSi 2009).

an external threat, members must consult each other. Furthermore, Commonwealth forces are stationed in Singapore as a result of the agreement (BNSi 2009).

Whereas there is no identifiable pattern in trade relations, all candidates generally rely on democratic regimes as far as their security is concerned (with the exception of Malaysia in the case of Singapore). Power politics here might serve as an alternative explanation, as the US, on which the examined regimes rely, is not only a democracy, but also the world's major military power. The main institutions the regimes are involved in are constituted by well-ordered and non-well-ordered regimes.

Realist Arguments

Two arguments are pertinent: first, that cooperation between democracies is a non-zero-sum-enterprise, where both parties stand to gain through cooperation, and second, that stability, wealth and shared interests lead to peaceful relations. As liberal and decent societies tolerate and respect each other and cooperate on fair terms, their basic structures favour cooperation, from which all parties benefit. As soon as they establish ties, they may end up losing out from violent confrontation. In addition, liberal and decent regimes share at least an interest in peaceful and stable international relations and in enlarging the zone of peace constituted by them.

Stability is central to Rawls's theory, both on a domestic, as well as on an international level: there is no need for peoples to externalize domestic discontent. Well-ordered societies are stable by definition. Therefore, the stability argument as indicator for a zone of peace holds for liberal and decent societies.

"States in the midst of a political transition or those that have recently had regime changes face a higher risk of war" (Chan 1997: 83f.). This empirical fact is of interest for Rawls's model. As he hopes for liberal reforms in decent societies, those changes may cause instability within, and thus between, members of the Society of Peoples. Newly elected governments in a period of

change might face heightened domestic problems through the escalation of international conflicts, thus drawing attention away from the domestic sphere (Hasenclever 2006: 236f.). The phenomenon of war occurring in a process of change towards democracy has been researched by, amongst others, Edward D. Mansfield and Jack Snyder. Whereas it may be true that democratization in the long run promotes peace and stability in the international realm, “ill-prepared attempts to democratize weak states [...] may lead to costly warfare in the short run, and may delay or prevent real progress toward democracy over the long term” (Mansfield and Snyder 2007: 3). Negative examples are Yugoslavia, Pakistan, Burundi and Rwanda. Prerequisites for effective democratic reform are not only literacy, wealth and the rule of law, but also a shared national identity and strong political institutions. Democratic transitions are not always dangerous; when strong institutions are in place, peaceful reform is likely (ibid.: 2f.). For the cases in hand, the transition that Rawls hopes for seems non-problematic, as it is conceived as a result of a longer process and as these three examples have institutions, the rule of law, and in the case of Singapore even a party system, in place.

With reference to wealth, Rawls argues that financial prosperity, as well as natural resources, are not necessary to establish a well-ordered regime, and therefore should not be criteria within his theoretical framework. From a realist viewpoint, decent regimes neither have an interest in waging war against other decent or democratic regimes, nor is aggression against other liberal or decent regimes rewarding for them.

As indicated earlier, the identified aspiring decent regimes maintain ties to well-ordered, as well as non-well-ordered regimes. Constellations, in which the parties involved gain from cooperation but lose in case of violent confrontation, therefore exist in relation to other well-ordered as well as to non-well-ordered regimes. As all regimes share an interest in the stability of their respective regions, shared interests tie Oman and Qatar together, but not Singapore.

As far as stability and wealth are concerned, all three regimes have been stable since independence.¹⁵⁹ Qatar is a wealthy society. Oman's economic situation is good, due to its natural resources. Singapore, although it lacks natural resources, possesses a well-developed economy. All three states therefore may be considered as stable and wealthy.

The above discussion has shown that indicators for a zone of peace between well-ordered peoples are, in part, met by decent peoples and aspiring decent regimes. What remains to be examined, is whether or not the identified aspiring decent societies have been involved in violent conflict with regimes that Rawls would consider as being well-ordered.

Decent Peace – An Empirical Fact?

The aspiring decent societies identified in the previous chapter have all been involved in conflicts over the relevant decade (2000 until the end of 2009). None of the disputes, however, have escalated into a violent conflict. Involvements in interventions legitimized by the United Nations and in part in the US-led war on terror do not clash with the assumption of a decent peace.

Oman, Qatar and Singapore have been involved in border disputes, which have been settled peacefully: Oman and Yemen concluded an agreement on their maritime borders in 2003. Qatar was involved in border conflicts with its neighbours Bahrain and Saudi Arabia, which, after 60 years, were settled diplomatically: in 2001, the parties involved accepted an ICJ judgement (CPQ 2009: 9). Equally, Singapore's disputes with Malaysia and Indonesia about their maritime borders with both were settled by accepting ICJ jurisdiction (WFBSi 2011).

Oman is concerned with the stability in the region and actively promotes efforts to achieving peace and stability in the Middle East (BNO 2007). It

¹⁵⁹ Ongoing tensions between the central government and outlying groups led to an armed internal conflict in the 1970s. Currently, however, the "outbreak of armed conflict within Omani territory is highly unlikely" (CPO 2008: 11). Oman, however, had a share in the Arab Spring, which is discussed in an excursus later in this chapter.

therefore also supports a peaceful solution to the conflict arising from Iran's nuclear weapons programme. Referring to the war on terror, the Omani public opposed the war. Government, however, on the one hand expressed only discrete criticism, but on the other hand provided low-key military support (CPO 2008: 6f.). Oman also supported the US campaign in Afghanistan by providing refueling and support flights (*ibid.*: 10).

Qatar enjoys the reputation of being a regional mediator, in which capacity it functioned in conflicts in Yemen, Lebanon, Sudan and between Palestinian factions. In 2006, it contributed in negotiating a truce between Israel and Hezbollah, and was the only Arab country to send troops to support the UN Interim Force in Lebanon (CPQ 2009: 8 f.). Like Oman, Qatar pursued a diplomatic and peaceful solution to the Iran conflict (*ibid.*: 3). In 2006, Qatar was the only UN Security Council member that voted against Resolution 1696, which called for sanctions against Iran should it not suspend its uranium-enrichment programme. Qatar's independent foreign policy has, however, caused frictions with Saudi Arabia, which stay on a non-volatile level. The US al-Udeid Airbase in Qatar was used for the attack on Iraq (*ibid.*: 9).

Singapore participated in several peace-keeping missions authorized by the UN, amongst others in Kuwait (BNSi 2009). Although border conflicts have been settled, relations with both Malaysia¹⁶⁰ and Indonesia¹⁶¹ remain conflict stricken.

The identified aspiring decent societies have not been involved in military conflict with either liberal or aspiring decent regimes. Therefore, the phenomenon of a decent peace may be testified.

¹⁶⁰ Singapore's frictions with Malaysia relate to disputes around several topics including water supply, alleged environmental damage caused by Singapore's land reclamation work, and Singapore's air force's rights to fly over Malaysian territory (CPS 2008: 10).

¹⁶¹ The causes for frictions with Indonesia are manifold. Singapore, for example, refused to sign an extradition treaty with the help of which Indonesia would have been able to prosecute corrupt Indonesian businessmen operating from Singapore. A defence agreement, signed by the two states in 2007 to stabilize relations, was rejected by the Indonesian parliament (CPS 2008: 10).

Excursus: Oman, Qatar and the Arab Spring

“Oman shared in at least a portion of the 2011 drama, but for [...] [Qatar], the Arab Spring has transpired largely at arm’s length, experienced primarily through the comfortable prism of satellite television and social media” (Maloney 2011: 176). Despite the events of 2011 that have come to be called the Arab Spring, Arab Awakening or similarly, lie outside the decade that has been researched, an excursus on the role of and events in the two countries seems appropriate at this point, especially with reference to the satisfaction account when focusing on Oman, and the involvement in and impact on international conflicts when it comes to Qatar.

Traditionally, the sultan of Oman can count on the support of his people and there has only been a low level of political activism that has not threatened his rule. Young Omanis, however, have become dissatisfied with their political and, most notably, their economic situation, due to a high level of unemployment and limited opportunities to take part in processes of political decision making. In February 2011, a series of protests began. The demonstrators focused on economic grievances and called, for example, for more employment and higher wages. The protests, however, escalated: the police used tear gas, batons and rubber bullets against the protestors, whereas demonstrators threw stones and set cars and government buildings on fire. The protest spread to smaller villages and the claim for political reform became stronger (*ibid.*: 180f.). In the course of the events, more than five people were killed (Klaibar 2012: n. pag.).

The sultan reacted promptly: he raised the minimum wage, promised 50,000 new jobs and reshuffled parts of his cabinet. Elections to the Consultative Council were held in October 2011 and three members of the movement could acquire seats. In the same month, reforms were implemented, financed with the help of other Gulf states. The Consultative Council now has the right to initiate laws and to question ministers. Furthermore, instead of being appointed by the sultan, the Council’s president is elected by its members. The sultan’s quick reaction diminished the extent and duration of the protest (*ibid.*).

Although Qatar remained stable during the Arab Spring¹⁶², it played a decisive role in the events on two fronts: first, via the emir's direct diplomatic undertakings and second, in the form of media coverage by the Qatar based satellite channel Al Jazeera.

Al Jazeera, launched in 1996, has become a well-established source of information, with a reputation of covering issues important to the Arab world professionally and independently, contrary to the local channels that mostly are under the control of the respective Ministry of Information (the Qatari ministry was dissolved shortly before the channel started broadcasting). The channel receives government funding. With its coverage of the wars in Afghanistan and Iraq, Al Jazeera's popularity rose extensively, as did its influence on the public opinion in many Arabic societies (Sousaiaia 2011: n. pag.). This image changed, however, when the government took (more) influence on the coverage of the events in the different countries affected by the Arab Spring. Whereas there were vast reports on Tunisia, Egypt and Syria, protests in Bahrain, Oman and Saudi Arabia were hardly covered.¹⁶³ "The role of Al Jazeera in inspiring the Libyan and Yemeni protesters is [...] undeniable. But when protest movements reached the Gulf States [...], Al Jazeera's coverage became inexplicably tame" (Sousaiaia 2011: n. pag.). The unequal coverage that made obvious that "favourable and unfavourable coverage of the regime became a bargaining chip in regional negotiations" (*ibid.*) led to a decline in the channels reputation. Despite its small size and population, Qatar has emerged as a major player in the region and gained an international reputation (*ibid.*), not only for the media coverage of regional developments.

In the course of the Arab Spring, Qatar took a pioneering task in the Arab world: it was the first Arab country joining the intervention in Libya¹⁶⁴ and led the

¹⁶² Despite some protests in the internet, since the 1950s, "there have been no potential contenders to the power of Qatar's ruling family" (Steinberg 2012: 7).

¹⁶³ The coverage on Syria exemplifies Al Jazeera's role as Syria's foreign minister insisted that a deal with the Arab League would include that the channel stopped its critical coverage of the events in his country (Sousaiaia 2011: n. pag.).

¹⁶⁴ Qatar took a leading role in Libya by calling for intervention and supporting it in the Arab League, by being the first Arab (and second overall) country recognizing the National Transitional Council, by sending fighter jets and troops, including special forces, by sending weapons and training Libyan rebels (Steinberg 2012: 4f.). "Qatari armed forces [...] were

criticism of government crackdowns in Yemen and Syria. Furthermore, the emir was the first Arab leader calling for a military intervention in Syria (BBC 2012: n. pag.). This position shows a move away from its image as a regional mediator, preserving good relations to all regional powers aiming to enhance stability in the region by mitigating the diverse conflicts (Steinberg 2012: 1, 3).

However, Qatar's support for the uprisings connected to the Arab Spring does not extend to other Gulf states: it supported the GCC's intervention in Bahrain and sent troops to protect buildings and infrastructure as the stability in the Gulf region is of primary importance for Qatar's foreign policy and its domestic stability (Steinberg 2012: 6f.).

As a conclusion, the unrests in Oman rendered moot the stability of its political system. Reforms could only be financed with the support of other Gulf states, among them Qatar. However, in comparison to the fate of other states that have been subject to the Arab Spring, the protests in Oman were rather limited and although the claims did include more political rights and freedoms, they did not extend to the sultan's resignation. Qatar, which was untroubled by the Arab Spring, used the events to strengthen its power and influence in and beyond the region while trying to safeguard stability in the Gulf region. With reference to the thesis, the developments in both countries support the findings. Oman as a weaker candidate suffered from some instability, which it overcame by prompt reaction and by making concessions to the people on the streets, whereas Qatar remained stable.

involved in every phase of the armed conflict in Libya" (ibid: 5). In addition, Qatar provided medical treatment and humanitarian aid (Buchanan 2011: n. pag.) and funded the establishment and maintenance of a television station to counter Gaddafi's propaganda (Watson 2011: n. pag.). After Gaddafi's death and the downfall of his regime, Qatar took the lead in training the Libyan military, collecting weapons and trying to integrate the diverse rebel groups into newly established institutions (Black 2011: n. pag.).

Conclusion

To date, democratic peace is an empirical fact that is supported by convincing theoretical explanations. Though realist arguments have an impact on all types of political regimes, democracies do maintain special relations that cannot *only* be explained by realist views. According to Riker, all

"things considered, we can conclude that international relations between democracies and decent societies would be peaceful, according to the terms of the democratic peace thesis. If all societies were democratic or decent, we would have a peaceful world order" (Riker 2009: 634).

Focusing on decent peoples, the analysis herein has shown the following result: the main arguments supporting democratic peace, i.e. the normative account and the constitutional constraints, are partly met. The re-election constraints are not met, but as stated above, not all criteria need to be satisfied. Most important to Rawls's theory, the satisfaction account is shared by liberal and decent peoples, which following Riker, may constitute a sufficient criterion in itself for democratic and decent peace. Rawls's comments referring to interdependence are only marginal as he completely excludes trade and as he hardly deliberates on institutional ties between members of the Society of Peoples. The realist arguments partly apply to decent peoples. It can thus be concluded from the analysis that there are good, though – if compared to the arguments for a democratic peace – weaker, reasons that support a decent peace on the basis of democratic peace theory.

The central indicators for democratic peace, i.e. the normative and the constitutional constraints accounts, only apply limitedly to aspiring decent societies. Singapore stands out due to its democratic institutions. The satisfaction account central to Rawls is met by all three societies and thereby might provide justification. The candidates rely on democratic regimes as far as their security and defence are concerned and they maintain trade relations with well-ordered and non-well-ordered regimes, sharing institutions with both. The realist arguments are met by aspiring decent societies (which also holds true for many other regimes, independent of their type).

Empirically, there is such a thing as a decent peace phenomenon. The regimes have not been involved in a war against a democracy or an aspiring

decent regime. Furthermore, whereas Oman was affected by the Arab Spring, Qatar remained stable. An empirical argument for a decent peace, based on the partial satisfaction of the criteria for a democratic peace as well as on the absence of war between aspiring decent and democratic societies, can thus be made.

Summing up, whereas theoretical justification for democratic peace exists, the findings on decent societies and a decent peace are less strong. The major arguments for democratic peace are only partially met, but the criterion central for Rawls, that is satisfaction, is realized. There are thus, indicators that point towards, but only provide weak justification for, a decent peace thesis. However, even though application on the empirical data of only three cases might not pose a “significant” result, the theoretical enlargement of the democratic peace thesis towards decent societies offers justification for the assumption of decent peace, and the empirical test shows that there is at least no factual contradiction to this thesis.

Though the factors explaining democratic peace only partially apply to aspiring decent societies, a decent peace may be justified and aspiring decent societies may be perceived as trustworthy “doves” and thereby suitable cooperation partners. In reference to Owen, liberal and realist arguments in tandem favour a decent peace. Aspiring decent societies do not pose a threat to international security. As they honour core human rights, there is no reason for democratic societies to intervene. Liberal and decent regimes thus share some values as well as an interest in a stable and peaceful international realm. LP and the thesis at hand might contribute in changing the ways in which liberal regimes perceive of (aspiring) decent societies. If, as Owen convincingly argued, the perception of other regimes as “doves”, mostly associated with democracy, matters when it comes to international cooperation, Rawls’s theory might enhance fair, peaceful and stable cooperation between liberal and decent societies by contributing to the perception of each other as doves.

Although the inquiry has not satisfactorily proven that a decent peace thesis holds true, it may well have contributed to a better understanding of Rawls’s concept of decent societies. The extension of the democratic peace

presumption to a decent peace has shown that it is supported in theory and practice. Furthermore, cooperation may function as an incentive to voluntary democratic reforms within aspiring decent regimes. The presumption of enmity that characterizes the stance of democracies towards non-democratic regimes has been successfully put into question and incentives to consider aspiring decent regimes as members of good standing in the international community have been provided.

8. Conclusion

This dissertation is aimed at providing a clear sketch and discussion of Rawls's international theory as presented in LP, and at assessing whether it might meet its task, which is to function as a guideline for the foreign policy of liberal regimes with the intention of bringing about more peaceful, stable and just international relations. Rawls's theory has been explored, analysed, tested, defended and critiqued, from within and beyond the Rawlsian framework. A profound analysis of central aspects of LP and Rawls's terminology in chapters 2 and 3, specifically, the differentiation between peoples and states, as well as his typology of political regimes, functioned as a baseline for understanding and discussing LP. In the chapters following, 4 to 7, the applicability and value of Rawls's theory to and for international relations were assessed. The central concepts, the principles of the Law of Peoples and the Society of Peoples, were presented and discussed, to investigate both their problems as well as their contributions to international peace, stability and justice. It was explored whether at least aspiring decent peoples exist, and discussed whether the democratic peace thesis, both within the Rawlsian framework and in reference to empirical cases, could be enlarged to a decent peace thesis.

The analysis has shown that Rawls's terminology is unclear. Rawls re-defined the term "people" as an ideal, well-ordered society. The term emphasizes that for peoples, government actually represents its people, and it is this point that differentiates Rawls's theorizing from other thoughts. Whereas *peoples* in LP are "states as they should be", Rawlsian *states* are "states as they should not be". Both stipulations lead to confusions and complicate the understanding and application of LP. Whereas ideal concepts are a suitable means to identify ideal norms, as well as to evaluate non-ideal real world state behaviour in comparison to the ideal, peoples as ideals should not function as agents in non-ideal-theory, as, by definition, no non-ideal state will never meet the ideal standards. In effect, Rawls's ideal theory is not fully ideal, but rather, stays within his realistic utopian framework, sketching the "best we can reasonably hope for". This framework ensures that, despite its utopian elements, LP remains applicable to real world relations and agents. Ultimately, while

idealizing is a valid means, referring to aspiring liberal or decent regimes might be a more suitable approach when it comes to non-ideal conditions. Furthermore, Rawls's understanding of state is too negative, as state sovereignty is already bound by international law and the human rights regime, and as states, as well as individuals, should be understood as capable of reasonable and rational action.

The five types of political regimes (idealized liberal and decent peoples, benevolent absolutistic regimes, burdened societies and outlaw states) that Rawls introduces correspond to his differentiation between peoples, societies and states. While the thesis has presented a clear differentiation between these types, based on LP, the list is open for additions. Burdened outlaw regimes is one candidate, as well as a further separation between aggressive and non-aggressive outlaw states. However, as a model and for the sake of a manageable degree of variables, the five types constitute a sufficient basis for understanding and discussing Rawls's theory, and the principles of the Law of Peoples can be applied equally to these five alone or even the possible seven plus regimes. Further specifications would be helpful in developing Rawls's theory further, and for establishing closer links to the plurality of the state world. A focus of critique has been on the question of toleration between liberal and decent peoples. Reasonable pluralism, self-determination, effectiveness and practicability were shown to be adequate arguments in favour of toleration.

While the relations between liberal and decent peoples are thus marked by toleration, peoples hold a limited right to war, justified in cases of self-defence and to protect human rights. The limited right to war gives peoples the means to stop policies that are beneath the threshold of what is reasonable and tolerable. This thesis has demonstrated that the right to war is granted both for the sake of international peace and stability, and for the sake of the people suffering from these gross violations. Towards burdened societies, peoples have a duty of assistance.

When it comes to the principles of the Law of Peoples, the fact that they are well-established principles of international law supports their perception as an overlapping consensus between well-ordered societies, with the exception of

the duty of assistance. The thesis has shown that further elaboration is necessary concerning method (the OP) and content (the principles selected in the OP):

The arguments that Rawls presents in favour of the selection of principles are mostly based on stipulations. The most pressing questions, such as why liberals should opt for a minimal set of principles and why decent peoples should agree to this set, could be resolved by constructing one, rather than two, international OPs, in which all well-ordered peoples, liberal and decent, are represented. This construct would not abandon Rawlsian theorizing but in fact contribute to taking decent peoples more seriously. Decent peoples are treated as second class peoples throughout LP and Rawls never seriously takes into consideration their perspective. In a shared international OP, they would be represented as equal cooperation partners and ultimately, both of the above questions could be resolved. The minimal set would then constitute the threshold of principles on which well-ordered societies can reasonably and minimally agree.

Focusing on the outcome of the selection process, the principles of the Law of Peoples are in need of further elaboration, and as with the regime types, possibly of further additions too. Rawls's human rights minimalism, established within the limits of Rawls's realistic utopia, may not be satisfactory from a liberal viewpoint, due to not covering the full set of human rights covered by the UDHR. Focusing on practice, however, the minimalism constitutes a feasible set of human rights that can and should be honoured and protected. Rawls, thus, does not present an ideological, but a feasible claim, consistent with his concept of reasonable pluralism and his realistic utopian framework. Rawls's human rights minimalism also follows from his connecting human rights to intervention. To add a principle to the list of Rawls's core human rights, such as the freedom of association, would imply a right to war in order to stop gross violations of these norms, which first, seems unrealistic, and second, would legitimize intervention in almost every society, thus exceeding reasonable limits. The set is left open with good reason as, if the human rights regime undergoes further development, other human rights might be added.

Limitations on the conduct of war also need further elaboration. This thesis argued that the criteria of necessity and proportionality (the amount and quality of force used should be proportionate with the intended aim) taken from the use of force in self-defence, should apply equally to all cases where force is used. As a result, the use of force would, in addition to the restrictions covered by Rawls, only be legitimate if it were the only means available, and the amount of use of force should be as restrained as possible.

The thesis also defended the duty of assistance against Rawlsian critics who favour an international principle of distributive justice. In effect, the duty incorporates much more than critics allow for and would, if properly applied, make poverty history, as it includes that the basic needs of members of society need to be met. Further, it enables societies to manage their own affairs in an at least decent way. Instead of perpetuating dependency, it would produce agents capable of maintaining their own well-ordered basic structures, through the use of their own powers, and with their own resources. Nevertheless, the thesis showed that further additions to the duty of assistance might be fruitful. The negative duties Pogge puts forward, the duty not to harm others in pursuing one's own economic interests and not to benefit from injustices by directly or indirectly supporting the exploitation of humans abroad, were assessed as reasonable amendments. Both additions are in line with Rawlsian thinking. If moral learning over time generates additional common ground, further principles might be added to the overlapping consensus.

A remaining problem is that of the possibility of their being burdened outlaw regimes. The ruler, not willing to establish a well-ordered basic structure, might be considered as one of the burdens that the society is facing. In these cases assistance might imply intervention, or it might follow intervention to help the people to reform their basic structure and the system that made intervention necessary in the first place.

When it comes to the Society of Peoples, the notion has thus far received too little attention. It is not only a term for referring to all well-ordered peoples, but also the space in which peoples cooperate. As a consequence, it can be attributed with important tasks that need a more precise framework in which they

can be pursued effectively and within reasonable limits. The Society of Peoples could, as an institution, act alongside the UN to enhance peace, stability and justice in the international realm. As a model, it could function as an incentive both for UN reform, and to unite the voices of all those states that might qualify as aspiring liberal or decent.

The thesis demonstrated that there are societies that qualify as “aspiring decent”, relating to regimes that aspire to meet Rawls standards, namely Qatar, Singapore and within limits, Oman. Whereas Qatar and Oman are close to Rawls’s model society Kazanistan, Singapore, in effect, has been taken as a model for a second type of decent regime (for which Rawls leaves room in LP): a system in which one party holds a quasi-monopoly on political power but that does not qualify as liberal democratic despite having a well-ordered basic structure.

The fact that there are states that correspond to Rawls’s model of decent peoples is decisive for his theory. It shows that LP is not merely a “wolf in sheep’s clothing”, there to impose liberal principles, and also that Rawls does take reasonable pluralism seriously. LP thus displays how liberal (and decent) societies can pursue reasonable foreign policies and enhance international peace, stability and justice avoiding liberal cultural imperialism and thus honouring the principles of reasonable pluralism and of self-determination. In addition, it makes LP more applicable to real world relations and offers current liberal regimes potential international partners towards whom cooperation could (and should) be enhanced. If, following Wendt, anarchy is what states make of it, then democratic peace and an aggressive policy towards autocratic regimes is the result of socially learned practices and rules to judge the aggressiveness of a regime by its regime type (Risse-Kappen 1994: 376). Owen’s idea of perception is of great value both here and for Rawls’s purpose: if perception is decisive for patterns of cooperation, then emphasizing the peaceful and reasonable character of decent societies might offer liberal regimes new cooperation partners, and thereby break the effect of a self-fulfilling prophecy. For these reasons, Rawls’s theory and the dissertation at hand may contribute to a change in perception when it comes to decent societies.

Exploring the decent peace thesis, arguments for a democratic peace in part apply to decent societies. The overlapping arguments applying to both types of regimes in effect constitute a sufficient basis for a decent peace proposition in harmony with Rawls's theory: decent peoples are less reasonable and less just; the common sympathies shared with liberal societies are not equally as strong as those shared between liberals, but sufficient for peaceful coexistence and even respect and cooperation. The empirical argument for a decent peace, however, due to the small number of cases, is rather weak. Ultimately, a decent peace can at least be considered likely.

Summing up, the following results can be attested: there are many elements in LP that are unclear, starting with the terminology chosen. Also, there are many aspects that need further elaboration and addition, such as the list of the principles of the Law of Peoples and the typology of regimes. Rawls's theory is thus in need of further work for political philosophers and scientists to do. Last but not least, the mostly negative critique has had the effect of overshadowing unique elements in Rawls's international theory that might be fruitful for meeting the aim Rawls formulates: to set up a guideline for the foreign policy of liberal societies aimed at peaceful, stable and just international relations along the lines of liberal principles that for Rawls incorporate the toleration of non-liberal but decent regimes and thus respect and toleration instead of liberal imperialism that might enhance instability and conflict instead of peaceful and stable international relations. Rawls not only formulates claims for more reasonable and just international policies, but also provides support for existing and evolving norms of international conduct. He presents incentives for the reform of regimes as well as international institutions, or even a basis for the establishment of an international institution shared only by liberal and decent regimes and for joint development aid programs. The impact LP could have on international political philosophy and theory has yet not been exhausted.

Though being an extension of Rawls's domestic theory, LP is not *A Theory of International Justice* in three respects: the focus does not lie on justice, but on peace and then stability and then justice – each one being in need of the other. While liberals are the addressees of both theories, the scope of LP is much

broader, as it incorporates and further develops aspects of PL, foremost the idea of reasonable pluralism. Whereas in TJ liberalism was treated as a comprehensive doctrine, in PL it became a political conception, leaving room for different reasonable comprehensive doctrines. In LP, liberalism is one political conception that needs to leave room for other reasonable political conceptions in the international realm. Last but not least, LP is not, as such, a complete work, but rather, a more general structure on which one can build.

This project hopes to have not only shed light on some of those aspects, but also to have undertaken a first step towards making LP not only more applicable, but also more complete, by sketching possible enlargements of the typology of regimes, through discussion of the principles and the suggestions for further additions, by sketching how a Society of Peoples might be constituted and showing how this provides a helpful model, by identifying aspiring decent regimes and last but not least, by testing the decent peace thesis.

Rawls is searching for a minimal, realistic, utopian (not maximal ideal) conception of global justice that has “legitimate purchase on international politics in the here and now” (Sutch 2001: 177). However, as it stands and despite its realistic utopian framework, LP is in need of further rapprochement with real world circumstances, actors and relations. By presenting a clarification and critique of Rawls’s terms “peoples” and “states”, and by identifying aspiring decent regimes, two gaps, one between ideal and non-ideal theory, as well as one between construction and reality, have been bridged.

At a conference, I was asked how I could *seriously* claim that decent societies should be respected as equals. My answer is that I can, but with two qualifications: first, I would be referring to the kinds of societies that have been sketched here, and second, I would restrict the claim to governments not to individuals; liberal governments should respect decent regimes, but individuals in liberal societies can, of course, use their rights and liberties to criticize decent regimes and to assist liberals in those regimes that strive for reform. I would not claim that Qatar is equal in justness to liberal regimes. But Rawls does not either. The claim is merely that there are good reasons for liberal governments,

to whom LP is addressed, motivated by liberal ideas, to tolerate and respect such societies. Even if reasonable pluralism and self-determination are not accepted as reasons for this practice, practicability and effectiveness should be: when it comes to decent societies, cooperation is a better means than coercion in building a peaceful, stable and reasonably just, international society and in supporting democratic reform.

The German example, referring to World War II and the holocaust, aptly demonstrates what the consequences can be of an (unreasonable) comprehensive doctrine becoming a political conception. The fear that the democratic peace thesis might be misused for justifying wars targeting the advancement of peace via democratization of authoritarian regimes seems reasonable. Rawls's understanding of the implications of reasonable pluralism to the international realm might help to avoid those wars in showing a way to enhance international relations without maintaining liberal imperialism. Equally, the development of a decent peace thesis, as undertaken here, might do so too.

The idea of a decent peace may be what Kant called a philosopher's "sweet dream of perpetual peace" (Kant 2006: 8:343), because, taking everything into consideration, LP aims at an all-embracing Society of Peoples that assists burdened societies to establish well-ordered regimes through which they would then qualify as members of the Society of Peoples, and that fights outlaw states and, presumably, subsequently supports their development into liberal or decent regimes. Dreaming Rawls's dream a bit further, decent societies would recognize the advantages of democratic liberalism and therefore, step by step, reform towards a liberal democratic people, so that finally, a society of liberal peoples could develop, which would, with each reform, be even more peaceful, stable and just. It follows that LP would then be in line with cosmopolitan claims. For Rawls, the Society of Peoples however, is the best we can "reasonably hope for". Either way, LP as a guideline exemplifies how Kant's dream of a perpetual peace could be realized.

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