

## On the Public Reason of the Society of Peoples

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**Abstract.** This article examines John Rawls' account of the public reason of the Society of Peoples. I offer three main arguments by way of refinement to that account. The first is that the goal of unity supports an inclusive view of the international duty of civility such that the leaders of liberal peoples should be permitted to utilize nonpublic reasons in global politics as a way of reaching out to nonliberal peoples provided that in due course public reasons are presented. The second is that world leaders should not be the only agents subject to the international duty of civility. I consider and reject two reasons for limiting the scope of this duty and conclude that a range of non-state actors ought to employ global public reasons when justifying their actions in public political domains. The third is that, despite Rawls' hesitancy on this point, it is appropriate for public persons to appeal to a family of reasonable political conceptions of international justice. The example of climate change is used to illustrate the arguments throughout.

**Key words:** Rawls, public reason, the law of peoples, climate change.

In *Political Liberalism*, John Rawls argues that the exercise of political power is legitimate only when policies are justified to citizens on the basis of public reasons that the latter can accept *qua* rational and reasonable agents. Consequently, public political persons have a "duty of civility" to use "the political values of public reason" to justify their preferred policies to a population characterized by the fact of reasonable pluralism (Rawls 1996, 217). In *The Law of Peoples* we are told that this duty applies not only to public political persons in justifying domestic policies at home but also to public political persons in justifying foreign policy abroad. He writes:

A main task in extending the Law of Peoples to nonliberal peoples is to specify how far liberal peoples are to tolerate nonliberal peoples. Here, to tolerate means not only to refrain from exercising political sanctions – military, economic, or diplomatic – to make a people change its ways. To tolerate also means to recognize these nonliberal societies as equal participating members in good standing of the Society of Peoples, with certain rights and obligations, including the duty of civility requiring that they offer other peoples public reasons appropriate to the Society of Peoples for their actions. (1999, 59)

For Rawls, the fact that liberal peoples (peoples who enjoy legitimate liberal constitutions, democratically elected governments and reasonably just basic institutions) are concerned to develop just foreign policy and to justify their actions on the basis of reasons that all liberal and (decent)<sup>1</sup> nonliberal peoples can accept is part of the very idea of liberal peoples (1999, 9–10). The many differences that characterize reasonable pluralism *within* a liberal society may be as nothing to the differences that exist *between* liberal and (decent) nonliberal peoples – characterized by a variety of different political institutions, laws, languages, religions, cultures, and histories. So, liberal peoples are to use public reasons

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1] A "decent" society is one that does not have aggressive aims, secures human rights for all its members, and has a public system of law supported by an idea of justice (1999, 64–67).

to justify their preferred policies and negotiating positions to members of the Society of Peoples. In short,

Developing the Law of Peoples within a liberal conception of justice, we work out the ideals and principles of the foreign policy of a reasonably just liberal people. I distinguish between the public reason of liberal peoples and the public reason of the Society of Peoples. The first is the public reason of equal citizens of domestic society debating the constitutional essentials and matters of basic justice concerning their own government; the second is the public reason of free and equal liberal peoples debating their mutual relations as peoples. The Law of Peoples with its political concepts and principles, ideals and criteria, is the content of this latter public reason. Although these two public reasons do not have the same content, the role of public reason among free and equal peoples is analogous to its role in a constitutional democratic regime among free and equal citizens. (55)

*The Law of Peoples*, then, is potentially an important reference point in normative international relations theory in part because it promises an account of how liberal peoples ought to justify their actions to other peoples. Rawls' aim in developing an account of the public reason of the Society of Peoples is "to specify its content – its ideals, principles, and standards – and how they apply to the political relations among peoples." (1999, 57). My own ambition is to critically assess Rawls' account. I shall concentrate on the following questions. What, more exactly, does the public reason of the Society of Peoples look like? Should we be concerned by the prospect of leaders drawing on controversial ethical, religious, philosophical or scientific doctrines when justifying their preferred policies and negotiating positions to other peoples? What kinds of agents should be subject to the international duty of civility? Should the requirements of civility apply not merely to world leaders but also to the representatives of multinational corporations, scientific institutes, and campaigning organizations who also shape world affairs and influence international decision-making and political debate? Finally, what global public reasons are acceptable given reasonable disagreement over the principles of international justice? Should the political representatives of liberal peoples be permitted to draw on other reasonable political conceptions of international justice besides the law of peoples?

In what follows I shall present three main arguments by way of an answer to these questions. The first is that it is fitting for the leaders and representatives of states to defend their preferred policies, negotiating positions, and decisions on matters relating to the creation and governance of international political institutions and to basic questions of international justice using reasonable comprehensive doctrines provided that in due course they offer global public reasons. The basic idea is that just as inclusivity regarding public and nonpublic reasons is more likely to foster stability within a liberal society, so inclusivity is more likely to foster unity, allegiance, and affinity within the Society of Peoples. The second argument has to do with the scope of the international duty of civility. I shall argue that there are grounds for applying this duty not only to states and state-like entities but also to a range of non-state actors in recognition of the impact the actions of the latter have on ordinary people's lives and the influence they can exert on international politics and policy. The third argument relates to the Law of Peoples. In the context of a liberal society

Rawls acknowledges that the duty of civility is tolerable only if public political persons are permitted to appeal to a family of reasonable political conceptions of justice. I argue that much the same can, and should, be said in relation to the public reason of the Society of Peoples, despite Rawls' hesitancy on this point. This means that it is appropriate for public political figures to appeal to a family of reasonable political conceptions of international justice.

#### I. ON THE ROLE OF PUBLIC AND NONPUBLIC REASONS WITHIN THE SOCIETY OF PEOPLES

For Rawls, part of the rationale for the duty of civility in domestic politics is to provide the foundations for “stability”. A stable liberal democracy is one in which citizens have a strong and normally effective desire to act as the principles of justice demand. It is also a society in which there persists over time a plurality of reasonable comprehensive doctrines (Rawls 1996, 140–41). Crucial to this stability, claims Rawls, is the fact that public political persons appeal to public reason when justifying their preferred policies to the electorate; at least when it comes to constitutional essentials and questions of basic justice. Public reason is independent of comprehensive ethical, religious, and philosophical doctrines and comprises both guidelines of inquiry and political conceptions of justice that are implicit in the public political culture of a liberal society (223). Nevertheless, in the introduction to the paperback edition of *Political Liberalism* Rawls explains how his position on public reason has shifted over time from a narrow or exclusive view – according to which people in public political life are required to use *only* public reasons – to a wide or inclusive view – which allows public political persons to introduce their comprehensive doctrines into public political discourse “provided that in due course public reasons, given by a reasonable political conception, are presented sufficient to support whatever the comprehensive doctrines are introduced to support.” (lii n. 25). Similarly, in “The Idea of Public Reason Revisited” Rawls states that nonpublic reasons are allowable “provided that in due course proper political reasons – and not reasons given solely by comprehensive doctrines – are presented.” (1997, 784–85). According to Rawls, the wide or inclusive view of public reason has the advantage of “showing to other citizens the roots in our comprehensive doctrines of our allegiance to the political conception, which strengthens stability in the presence of a reasonable overlapping consensus.” (1996, lii).

Turning to the international sphere, Rawls sets out a liberal conception of international justice, embodied in the eight principles of the Law of Peoples (1999, 37).<sup>2</sup> An important plank in the argument for the Law of Peoples is the idea that it will help to support the “unity” of the Society of Peoples. Rawls argues that the unity of the Society of Peoples will depend on the extent to which peoples can support their governments in

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2] I call this a “liberal” conception because it is presented as an extension of a liberal conception of domestic justice.

honoring the Law of Peoples. “An allegiance to the Law of Peoples need not be equally strong in all peoples, but it must be, ideally speaking, sufficient.” (18). Sufficient allegiance relies on “affinity” or “mutual caring” among peoples, “that is, a sense of social cohesion and closeness.” (112). “Since the affinity among peoples is naturally weaker (as a matter of human psychology) as society-wide institutions include a larger area and cultural distances increase, the statesman must continually combat these shortsighted tendencies.” (112). Nonetheless, Rawls is optimistic that the statesman’s work is not fruitless. “What encourages the statesman’s work is that relations of affinity are not a fixed thing, but may continually grow stronger over time as peoples come to work together in cooperative institutions they have developed.” (112–13). The obvious practical problems are how to get cooperation up and running in the first place, and then how to sustain it over time. Where the Society of Peoples lacks cooperation, affinity will not flourish, but where there is no affinity, cooperation remains unlikely.

It seems to me that adopting an inclusive view of the international duty of civility might provide *part* of the solution to these problems; that it may help to overcome obstacles to unity and allegiance caused by an insufficiency of affinity and cooperation on pressing international issues. Now Rawls explains that the public reason of the Society of Peoples is “not expressed in terms of comprehensive doctrines of truth or of right, which may hold sway in this or that society, but in terms that can be shared by different peoples.” (1999, 55). It comprises guidelines of inquiry and principles of international justice that can be used by liberal peoples when debating, establishing, and implementing the rules by which they are to co-exist and cooperate with other peoples in the international sphere. The function of an inclusive view of the international duty of civility is not to challenge the role played by public reason but to augment it in ways that might aid affinity and cooperation.

To offer one illustration, I take it as read that if the international duty of civility applies to anything, then it applies to the problem of climate change. I assume that the problem of climate change raises important issues about international law and state sovereignty and basic questions of international justice because multilateral treaties on climate change can establish the groundwork for the exercise of coercive power over sovereign states<sup>3</sup> and dealing with climate change more effectively may put pressure on the Westphalian model of international politics, and failing to deal with climate change effectively places at risk people’s basic human rights – not least the right to life, or “the means of subsistence and security” (Rawls 1999, 65) – and adds to what Rawls calls the “unfavorable conditions” that

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3] Articles 16 and 18 of the Kyoto Protocol 1997, for example, established the groundwork for procedures to help the parties enforce their commitments under the agreement, specifically, to hold parties accountable if they fail to make good faith efforts to observe the treaty and to settle disputes concerning the nature of individual commitments. Although parties to the Copenhagen Climate Change Conference 2009 failed to agree on a replacement set of legally binding targets on GHG emissions reductions, the US has threatened to withhold climate change adaptation funds from countries which opposed the Copenhagen Accord, another form of coercion.

impede “burdened peoples” in their striving for just or decent basic institutions (106). The stakes could not be higher in the climate change debate and for that reason international cooperation and affinity are at a premium. Even where cooperation and affinity can get started, a further danger is that they will not grow at a pace fast enough to keep up with rapidly changing circumstances and new scientific information.<sup>4</sup> I assume, therefore, that public political persons, including world leaders, ought to avail themselves of global public reasons when negotiating, interpreting, and implementing international agreements on climate change. Yet crucial to the success of such agreements is the ability of world leaders to justify the terms of the agreements both at home and abroad. Affinity can depend on the skill of leaders in speaking to foreign governments and peoples in ways that chime with their values and aspirations. And cooperation can succeed or fail depending on what leaders can “sell” to their own people as a good deal for them as well as a just agreement. Arguably one major benefit of adopting an inclusive view of the duty of civility in the international as well as the domestic context is that it would permit world leaders to present nonpublic reasons (reasons based on a range of different comprehensive doctrines that are held by some and not by others) as a way of reaching out to constituencies of belief that might otherwise remain alienated or disconnected if nonpublic reasons are excluded.

Putting the same point another way, the inclusive view of the international duty of civility allows the leaders of liberal peoples to demonstrate how a policy can be supported by both public and nonpublic reasons and in so doing gives them the opportunity to engage with other liberal, and more importantly, nonliberal peoples using a discourse with which the latter can identify.<sup>5</sup> So, for example, if a politician is able to argue during the course of a term of office or an election campaign that his country ought to do more to tackle the problem of climate change not only because his people are joined together with other peoples around the world in accepting the Law of Peoples but also because his people are joined together with other peoples around the world in believing that they have a duty to God to protect the planet for future generations, far from undermining unity within the Society of Peoples and allegiance to the political principles of international justice, perhaps this would go some way to supporting and enhancing that unity and allegiance. It might be a way of breaking down the lack of trust and cynicism that some nonliberal peoples might initially feel towards the leaders of liberal societies. Thus in the race for the White House Barack Obama used both theological and secular reasons in his

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4] In the time it takes for an international agreement on climate change to be reached and its protocols ratified, interpreted, and implemented by the majority of countries and the largest emitters of greenhouse gases (GHGs), than climate science shows that the measures are insufficient and out of date, thus creating tensions between countries that wish to adopt more radical, future-proofing measures and those who do not. Nicholas Stern predicted that the carbon reduction targets established by the Kyoto treaty were more likely to instigate political instability around the globe than to mitigate climate change (Stern 2007). Aubrey Meyer also warned that these targets could be “worse than useless” if they lulled people into a false sense of security (2000).

5] In some instances this may involve arguing in the alternative.

speeches on climate change when addressing both domestic and international audiences (Obama 2007; 2008).

At this stage, however, I might face the objection that the values of public reason and the goals of unity and cooperation within the Society of Peoples could be undermined if public reasons are conjoined with, or presented alongside, nonpublic reasons. Suppose the leader of a developed country supports proposals which allow developing countries to go on emitting GHGs at current levels. Might not some nonpublic reasons make the presentation of proper public reasons untenable as justifications for this policy when uttered by the same agent? Suppose the leader appeals to the public reason embodied in the eighth principle of the Law of Peoples, "Peoples have a duty to assist other peoples living under unfavorable conditions that prevent their having a just or decent political and social regime." (Rawls 1999, 37).<sup>6</sup> The leader argues that the exemptions are justified because a failure to exempt developing countries from legal obligations on emissions reductions would threaten economic growth in those countries and with it the transition toward just or decent basic institutions. But suppose he also attempts to justify the exemption using the nonpublic reason that the probability of severe climate change impacts in the next 50 to 100 years is almost nil, which is a nonpublic reason because it is contrary to the probabilities accepted by the international scientific community. Or suppose that a nonpublic reason were disingenuously offered in the hopes of masking other reasons. We might imagine the leader of a large industrialized country attempting to convince the rest of the world that its neighbour, China, should be exempt from legal obligations on GHG emissions reductions because Confucianism requires the Chinese people to engage in economic growth without being fettered by such obligations. The rest of the world sees through this nonpublic reason believing that the real reason for the proposed policy is that due to its own situation the country in question should have no problem meeting its emissions reduction obligations and it wishes to strengthen its economic relations with China. Surely in these cases making the duty of civility more inclusive could actually undermine the values of global public reason and with it the international unity and cooperation it is supposed to foster.

I concede the danger but hope to make two constructive remarks about it. First, it is unlikely that the elected leader of a well-ordered liberal society would offer nonpublic reasons that have a good chance of backfiring or, to be more accurate, that he or she would continue to do so in the face of obvious diplomatic failure over a prolonged period of time. More likely is that either he or she would start to articulate nonpublic reasons that are helpful to the cause or would be replaced by someone who did. In assessing the appropriateness of the inclusion of nonpublic reasons it is fitting to consider not merely worse case scenarios but likely scenarios in which liberal peoples and their leaders learn from previous mistakes. Second, it should be seen as a key feature of the international duty of

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6] Rawls clarifies that burdened societies might lack, amongst other things, "the human capital and know-how, and, often, the material and technological resources needed to be well-ordered." (1999, 106).

civility that public political persons show due concern for the primacy of public reasons. In practice this means that if it can be understood or reasonably foreseen that the set of public reasons proffered is somehow diminished, rather than enhanced, by the presentation of nonpublic reasons, it is incumbent upon that public person to present only the public reason *at that time*.

Even if permitting public political persons to make their case on matters relating to the creation and governance of international political institutions and to basic questions of international justice through iterations of public and nonpublic reasons goes some way to addressing problems of mistrust between liberal and nonliberal peoples, I do not claim that this will be sufficient by itself to achieve the unity that Rawls seeks within the Society of Peoples. It is likely that other techniques will also be required, most notably, I think, increasing the scope of the international duty of civility to include some non-state actors<sup>7</sup> and expanding the constituents of global public reason to capture other reasonable political conceptions of international justice besides the law of peoples. In the next section I look at the issue of non-state actors, and in the final section I turn to consider other reasonable conceptions.

## II. ON THE SCOPE OF THE INTERNATIONAL DUTY OF CIVILITY

Rawls explains that the ideal of public reason is realized domestically “whenever judges, legislators, chief executives, and other government officials, as well as candidates for public office, act from and follow the idea of public reason and explain to other citizens their reasons for supporting fundamental political positions in terms of the political conception of justice they regard as the most reasonable.” (1997, 768–69). Public reason is intended for public political forums, meaning the parliaments where statements are made on legislative questions, the platforms on which political speeches are delivered to the public, and the supreme court of a constitutional democracy (767). Hence, any minimally adequate account of the public reason of the Society of Peoples – that is, any minimally adequate account of Rawls’ proposed analogy between the role of public reason in a constitutional democracy and its role among free and equal peoples – must supply a comparable list of public political persons and forums at the international level.

As a first approximation, let us say that the international duty of civility applies not only to the statesmen involved in drawing up and executing foreign policy and negotiating international treaties but also to the secretaries, special representatives, and high ranking officials of international political institutions such as the UN, as well as to judges sitting in international law courts. It also applies to citizens of liberal societies who must think for themselves whether or not foreign policies are supportable by public reasons (see Rawls

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7] When I talk of the “scope” of the international duty of civility I have in mind the agents to whom it applies. For an interesting discussion of scope in the domestic case as it relates to the range of political issues covered, see Quong 2004.

1999, 56–57). In his book, *Social Theory of International Politics*, Alexander Wendt speaks of “the ‘public sphere’ of international society, an emerging space where states appeal to public reason to hold each other accountable and manage their joint affairs” (Wendt 1999, 375–76). To add specificity, we might say that this “space” includes the departments, chambers, and committee rooms of both domestic and international political institutions, the various types of meetings, conferences, and summits where statesmen come together to discuss foreign affairs and where international treaties, agreements, and conventions are negotiated and signed, the international courts including courts of arbitration, and other international public political platforms, not least the websites, texts, and documents of states and international political institutions.

To focus on statesmen for a moment, according to Rawls’ definition, “Statesmen are presidents or prime ministers or other high officials who, through their exemplary performance and leadership in their office, manifest strength, wisdom, and courage.” (1999, 97). Indeed, he suggests that the ideal of a statesman is captured in the saying “the politician looks to the next election, the statesman to the next generation” (97). If there has ever been a problem that calls for statesmen rather than mere politicians, surely it is climate change. But what is strangely missing from Rawls’ definition is the mention of concern for other peoples. In order to reflect the international as well as intergenerational aspect of climate change perhaps we should reformulate the saying as follows: the politician looks to the next election, the statesman to the next generation and to the rest of world. We need an alternative to the term “statesman” to mark this difference. Hence we might define an *international statesman* – or *world leader* which is non gender specific – as someone who not merely works for the interests of his or her own people but also takes into consideration, and has some genuine concern for, the interests of other peoples.

So far we have seen that Rawls intends the international duty of civility to apply to states and state-like entities but *not* to non-state actors, who need not give public reasons. The desirability of this narrow scope is far from obvious, however. Sticking with the example of climate change, some non-state actors play a major role in determining total amounts of GHG emissions, whilst others serve an important function in monitoring emissions, naming and shaming countries and corporations with high emissions, and pushing for new agreements and greater reductions in emissions. I have in mind not only multinational corporations but also non-governmental organizations (NGOs) of various kinds, including global environmental organizations (such as the Climate Action Network, Friends of the Earth, and Greenpeace) and scientific organizations (such as the Union of Concerned Scientists and the Worldwatch Institute), as well as publicly recognized environmental activists, climate change scientists, and individual research institutions and centers.

Consider two possible justifications for excusing non-state actors from the international duty of civility. The first is that calling on non-state actors to live up to the ideal of civility would be like calling on the many diverse bodies and associations which make up the “background culture” of a domestic society to live up to the ideal civility. One reason



why we do not do this in the latter case is that these bodies and associations are guided, and not inappropriately so, by a range of comprehensive religious, philosophical, and ethical doctrines, and to impose on them the demands of public reason would hinder full and open discussion (see Rawls 1996, 220–21; 1997, 768). It seems to me, however, that this appeal to the possible chilling effect of the international duty of civility *vis-à-vis* non-state actors exaggerates the burden of this duty. The suggestion is not that non-state actors should somehow dispense with their nonpublic reasons – which, after all, may explain their original motivation for acting – only that when they partake of relevant public political forums they undertake to present in due course, perhaps alongside reasons based on their comprehensive doctrines, public reasons that can be accepted by all constituencies of belief.

A second possible justification for confining the international duty of civility to states and state-like entities is that this duty is grounded in the existence of institutions that have a duty to exercise legitimate political power and only states and state-like entities have such a duty (see Rawls 1996, 222). The implicit assumption is that states and state-like entities wield a power over the lives of ordinary people different in nature to that which is wielded by multinational corporations and NGOs. However, this response takes too lightly the power wielded by the latter. Even if this power is different in nature, it can still amount to the capacity to take major strategic decisions and to introduce projects on the ground without the consent of ordinary people. The response also underestimates the extent to which non-state actors can influence public political decision-making, whether directly by putting pressure on states and state-like entities or indirectly through shaping the latent beliefs, desires, and principles of the international public political culture.

To expand on these last points, when states and state-like entities take decisions over energy policy that impact the lives of ordinary people across the world it is morally fitting that they try to justify these decisions using global public reasons, but this is no less true of multinational corporations. For, they also take decisions over the production and usage of energy that have serious repercussions for the lives of ordinary people. The minimum requirement of the duty of civility is to “go public” with relevant information and changes to policy – a duty that has too often been ignored. In 2004, for example, BP attracted criticism for changing the method by which it estimates the amount of CO<sub>2</sub> it produces, effectively halving its reported CO<sub>2</sub> emissions, without notifying the public about the change.<sup>8</sup> I would likewise extend the international duty of civility to organizations that fall between the categories of state and non-state actors, including power companies whose majority shareholders are state-owned corporations. Consider the Chinese-based company Huaneng Power International, which emits 285 million tons of CO<sub>2</sub> per year, more than the total emissions of power plants in the US and UK combined (Center for Global Development 2008). I believe that a similar case can be made for applying this duty to the

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8] It did so by excluding CO<sub>2</sub> emissions associated with oil and gas bought and sold by some of its operations.

high ranking officials and representatives of major international economic institutions, organizations, and agencies, including the World Bank, the World Trade Organization (WTO), the Organization of the Petroleum Exporting Countries (OPEC), and Export Credit Agencies (ECAs).

On the assumption that the public reason of the Society of Peoples incorporates values of openness and transparency, the duty of civility implies that leaders and delegates whose countries have vested interests in energy or environmental technology companies, should declare these interests when debating proposed international agreements in the relevant areas. It also implies that if a world leader is advocating techno-optimism as the correct overall position on the climate change problem to other heads of state and this depends on scientific evidence and conclusions that are of uncertain status by comparison with the international scientific consensus, then this should also be declared. This being the case, arguably the same standard should apply to the representatives of multinational companies and international scientific institutes in the event that they are invited to support particular proposals during international political conferences. When they step from the domain of civil society into the domain of public political debate and decision-making then they ought to declare whether or not some of their reasons reflect a concern for maintaining profits or attracting scientific funding.

I believe that comparable requirements should also apply to international NGOs. Given the public political spaces to which these organizations can have access both internationally and within their host countries (everything from the local meetings of tribal elders to the offices of politicians, the various platforms of state-governed media services, and onto the committee rooms and chambers of national governments and international political institutions) and the consequences that their activities can have for the lives of ordinary people, there are grounds to extend the international duty of civility to them. Consider the case of *A Rocha*, an international Christian organization with operations in nearly 20 countries around the world.<sup>9</sup> Its climate change program, “Climate Stewards”, ostensibly helps poorer countries make economically sustainable reductions in GHG emissions as well as preparations for climate change impacts. “Climate Stewards” claims the endorsement of Professor John Houghton of the Intergovernmental Panel on Climate Change (IPCC). However, it also presents the following nonpublic reason as part of the justification for its activities: “God has given us a beautiful world. Now the climate is changing fast.”<sup>10</sup> Its website, literature, and representatives urge governments and individuals alike to engage with and partake of its strategic vision partly because of its religious vision. My suggestion is not that an avowedly Christian organization working towards the goal of international sustainable development should not be able to give full and frank

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9] The *A Rocha* website can be found at <http://www.arocha.org/int-en/index.html>, (accessed June 4, 2010).

10] This reason can be found on the *Climate Stewards* website at <http://www.climatestewards.net/cs-int-en/home.html>, (accessed June 4, 2010).

reasons for why it acts as it does based on its own comprehensive doctrine. Rather, my suggestion is that when a Christian organization is working in potentially non-Christian localities, it should in due course make use of the public political forums and platforms to which it has access, including at the local, national, and international levels, to present public reasons that its host peoples can accept, especially when the effective power of host peoples to scrutinize, reform or even reject the actions of well-resourced international NGOs can be vanishingly small (see Wenar 2006, 13–14).

Thus far I have defended an inclusive view of the international duty of civility as well as an expansive interpretation of the scope of that duty. In the final section, I shall argue that global public reason should comprise a family of reasonable conceptions of international justice.

### III. TOWARDS A FAMILY OF REASONABLE POLITICAL CONCEPTIONS OF INTERNATIONAL JUSTICE

In the domestic case Rawls argues that the “exercise of political power is proper and hence justifiable only when it is exercised in accordance with a constitution the essentials of which all citizens may reasonably be expected to endorse in the light of principles and ideals acceptable to them as reasonable and rational.” This, he calls, “the liberal principle of legitimacy” (1996, 217). This principle imposes a moral duty on public political persons to justify their actions using public reason. It needs to be underlined, however, that for Rawls the public reason of a liberal society “is not specified by any one conception of justice, certainly not by justice as fairness alone”. Rather, it is specified by “a family of reasonable political conceptions of justice” (1996, lii–liii; see also 1997, 767; 2001, 91). Hence, in the domestic case the parties in the original position not only select among variations of the two liberal principles of justice but also choose between liberal principles and alternative reasonable conceptions of justice such as utilitarianism and perfectionism. A political conception of justice is reasonable only if it can (1) be the subject of agreement in the original position among free and equal parties who are rational and mutually disinterested (1971, 292–93; 1996, 246; 1999, 107; 2001, 91), (2) provide a basis for public justification and overlapping consensus among citizens who subscribe to different comprehensive ethical, religious, and philosophical doctrines (2001, 89), and (3) be suitable for a well-ordered society viewed as a fair system of social cooperation over time; that is to say, can satisfy the criterion of reciprocity (1997, 767).

In contrast to the domestic case, however, Rawls does not offer, nor have in mind, a family of reasonable political conceptions of international justice. “The parties in the second original position select among different formulations or interpretations of the eight principles of the Law of Peoples.” (1999, 40). In other words, “the parties are not given a menu of alternative principles and ideals from which to select, as they were in *Political Liberalism*, and in *A Theory of Justice*.” (57). This means that the public reason of the Society of Peoples is based on one main political conception of justice, namely, the Law of Peoples

and its eight principles. Now Rawls acknowledges that “the principles listed require much more explanation and interpretation.” (37). Since the principles are abstract they are likely to support more than one interpretation in any given situation, so the public officials and representatives of liberal peoples will need to reflect more closely on the meaning of the Law of Peoples as part of living up to the duty of civility. He also states that other principles may need to be added to the original list of eight principles. He offers the example of “principles for forming and regulating federations (associations) of peoples, and standards of fairness for trade and other cooperative institutions” (38). Yet even if the original list of eight principles is open to interpretation and addition, it remains the case that for Rawls there is but one reasonable political conception of international justice in play.

This raises the question of how and why Rawls ends up with the particular list of eight principles rather than an alternative list or even a set of lists. In the domestic case he specifies that the family of reasonable political conceptions of justice are based on ideas seen as implicit in the public political culture of a liberal society, where this comprises “the political institutions of a constitutional regime and the public traditions of their interpretation (including those of the judiciary), as well as historical texts and documents that are common knowledge.” (1996, 13–14). In the international case, he confidently asserts that the contents of the Law of Peoples are “familiar and largely traditional principles” taken from “the history and usages of international law and practice” (57).<sup>11</sup> It is not hard to see the connections between the proposed background public political culture of the Society of Peoples (the history and usages of international law and practice) and the eight principles of the Law of Peoples. This background might include the International Bill of Human Rights, which is reflected in the sixth principle of the Law of Peoples, and the Vienna Convention on the Law of Treaties, which is apparent in the second principle of the Law of Peoples (37). However, it remains unclear why the history and usages of international law and practice should evince only one list. There exists a significant literature on the history and usage of international law, and this literature offers a number of different lists of the principles of international law that together could be used to construct a family of reasonable political conceptions of international justice (see, for example, Kelsen 1952; Franck 1995; and Lowe 2007). Furthermore, in seeking to justify the identification of public reason with a family of reasonable political conceptions of justice in the domestic case Rawls points out that the public political culture of a liberal people “may be

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11] Rawls does not offer a justification for why he mentions in this passage only the history and usages of international law and practice and not the web of regional and international political institutions that cover the modern world, including the political institutions of regional associations like the EU and the political institutions of international organizations most notably of the UN. But perhaps the assumption is that, in contrast to domestic political institutions, regional and international political institutions exist only by virtue of prior components of international law, namely, treaties, and so political institutions are automatically included under the more general heading of the history and usages of international law and practice.

of two minds at a very deep level.” (Rawls 1996, 9). Surely the public political culture of the Society of Peoples may be similarly deeply divided (see, for example, Habermas 2006).

For these reasons it seems appropriate to recognize the existence of a family of reasonable political conceptions of international justice *ex ante*. In other words, global public reason should be seen as being comprised of a number of separate reasonable political conceptions of international justice as opposed to a single conception which is subject to interpretation only within its own terms. Now it might be argued that over time the process of interpreting the eight principles of the Law of Peoples will result in a great deal of variation, so that the net result would be the same whether we start with a single conception or a family of conceptions. Even if the eight principles admit of different interpretations, however, it is not clear that this process could match the inherent diversity of a family of reasonable conceptions. As Rawls acknowledges in the domestic case, a single conception of justice “greatly limits its possible interpretations; otherwise discussion and argument could not proceed.” (1999, 145 n. 35). The likely consequence of employing a single list of principles from the start is to restrict the range and variety of principles in play at later stages.

Building on the idea of global public reason and a family of reasonable political conceptions of international justice I therefore wish to propose what I shall call *the global principle of legitimacy*: the exercise of coercive power within the international sphere is proper and hence justifiable only when it is exercised in accordance with constitutions, treaties, conventions, policies, strategies, and mission statements the elements of which all decent peoples may be reasonably expected to endorse in the light of ideals, standards, and principles acceptable to them as free and equal members of the Society of Peoples. This principle implies that any high ranking officials, leaders, delegates, representatives, chairmen, heads, and judges who debate, negotiate, and take decisions on behalf of liberal states, international political institutions, and relevant non-state actors on matters relating to the creation and governance of international political institutions and to basic questions of international justice within the various public political domains of the Society of Peoples have a moral duty to justify their preferred policies, negotiating positions, and decisions to both liberal and (decent) nonliberal peoples alike by presenting in due course (under the inclusive view) global public reasons, where global public reasons are specified by a family of reasonable political conceptions of international justice.

What, then, are likely to be some of the members of this family of reasonable political conceptions of international justice? I offer three types of conception which although distinguishable from Rawls’ liberal conception (as specified by the eight principles of the Law of Peoples), may be reasonable nevertheless.

The first conception, *modus vivendi*, starts from the premise that when liberal and nonliberal peoples follow universal standards of behavior or principles of justice this can be in everyone’s interest. The specific form of *modus vivendi* I wish to concentrate on recognizes a range of principles of international justice including the duty to assist burdened peoples in their striving for just or decent basic institutions. However, it recognizes this

duty only in conjunction with other principles that constrain its usage. One such principle is that of equity, meaning equal and impartial justice between peoples whose interests are in conflict.<sup>12</sup> This conception can be illustrated by the Obama administration's approach to climate change negotiations. When he came to office in January 2009 the President was quick to publicly recognize the gravity of the climate threat and to support a climate change bill (Obama 2009a). Speaking to students in April of that year he criticized the stance taken by President Bush saying that it was "a mistake" not to ratify the Kyoto protocol (2009b). He cited the fact that the US "has been the biggest carbon producer." He might also have cited the second principle of the Law of Peoples, "Peoples are to observe treaties and undertakings." (Rawls 1999, 37). Yet at the Copenhagen Climate Change Conference 2009 the strategy of the Obama administration was to reject a Kyoto-style treaty imposing legal obligations on emissions reductions, to insist that developing countries like China, India, South Africa, and Brazil commit to slowing down the growth of their GHG emissions, and to call for stringent standards for reporting, monitoring, and verifying emissions reductions. The justification seemed to be this. How can an international agreement on reducing GHG emissions claim to be equitable when equally large polluters (including some burdened peoples) are not bound by similar emissions targets and do not operate under the same stringent standards?<sup>13</sup>

The second conception, cosmopolitanism, is based on the idea that justice requires liberal peoples to treat all human beings with equal concern. According to the specific type of cosmopolitanism I am interested in, showing equal concern requires more than simply assisting burdened peoples and living up to a principle of equity. In the case of climate change this type of cosmopolitanism implies that rich, industrialized peoples should take drastic steps to reduce their GHG emissions and should fund adaptation measures around the globe as a matter of equal concern for the likely victims of climate change. Although cosmopolitans of this type appeal to different principles of international justice in making their case – such as principles based on responsibility for past emissions, capacity to reduce emissions in the future, equal entitlement to prosperity, and equal rights to the protection of fundamental interests (see, for example, Shue 1999; Caney 2006; and Gosseries 2006) – they all agree that the eight principles of the Law of Peoples do not go far enough. This type of conception of international justice can be seen in the high aspirations of the European Union (EU), not including Poland and other Eastern European countries, leading up to the negotiations in Copenhagen. Its delegation went prepared to play a "leading role", specifically, to agree to legal obligations to cut emissions by 20% of 1990 levels by 2020 or even by 30% if other large emitters such as the US and China

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12] For an account of the nature and function of equity in international law, see Rossi 1993. For more on its role in negotiations over climate change, see Page 2007.

13] Similar reasons may have been at the forefront of the Bush administration's decision not to ratify Kyoto. See McCright and Dunlap 2003.

showed a similar willingness to take strong action, and to make significant contributions to adaptation funds to help the poorest and most vulnerable.

The third conception, nationalism, rejects the idea that liberal peoples owe equal concern to those living in other parts of the world. The particular form of nationalism I have in mind accepts that liberal peoples have *some* duties of justice relating to other peoples but does not accept the principles of international justice defended by cosmopolitanism and denies that liberal peoples have a duty to assist burdened peoples in their striving for just or decent basic institutions. More specifically, it denies that liberal peoples have a duty to accept legal obligations on GHG emissions reductions, or that they should commit to helping burdened peoples adapt to climate change, on the grounds that such obligations and commitments are likely to be unduly economically burdensome. This conception was played out in the strategy adopted by Poland during the Copenhagen conference. Poland remains one of the highest emitters of CO<sub>2</sub> in the EU. However, in the years 1988 to 2007 it achieved a 33% reduction of emissions based on a shift from coal-based sources of energy to gas, oil, and biomass. As a result of these changes it enjoyed a large surplus of carbon credits. Going into Copenhagen the main concern of the Polish delegation was to secure its ability to sell carbon credits before and after the Kyoto protocol expires in 2012. For this reason it opposed the plans of the EU to accept a significant reduction in European emissions quotas fearing that such reductions would damage its emissions-trading market. It also attempted to block EU proposals to transfer billions of Euros to developing countries to help them adapt to climate change on the grounds that the proposals involved contributions based on past-emissions and this would leave Poland with “excessive” amounts to pay. After the talks in Copenhagen the President of Poland, Donald Tusk, offered the following justification for his country’s negotiating position: “The Polish delegation went to Denmark in order to make sure that the ambitions of the others are not achieved at our expense. And this is done.” (visegrad.info 2010).

These examples are not intended to be comprehensive or exhaustive. No doubt there are a range of other conceptions and sub-conceptions to consider. Perhaps the reasonable political conceptions of international justice to which it is appropriate to expect states and state-like entities to appeal will differ both in form and substance from the reasonable conceptions to which non-state actors should appeal. So I present these three merely as species of conceptions of international justice that might differ from Rawls’ preferred liberal conception, the Law of Peoples, but which nevertheless may be reasonable according to his criteria. That a political conception of international justice is reasonable in Rawlsian terms depends on whether or not it could (1<sup>\*</sup>) be the subject of agreement in the original position among the representatives of free and equal liberal peoples selecting principles of international justice for the basic structure of the Society of Peoples (Rawls 1999, 40), (2<sup>\*</sup>) provide a basis for public justification in international politics (55), and (3<sup>\*</sup>) satisfy the ideal of reciprocity (57). Clearly each of the aforementioned conceptions of international justice needs to be fleshed out in more detail before a final determination of reasonableness can be made. But at the very least I think a case for reasonableness can be made for

each conception using these criteria. Even liberal peoples may have reason to select, in accordance with (1\*), forms of *modus vivendi*, cosmopolitanism, and nationalism. I also assume that these different conceptions have, under the terms of (2\*), previously informed public political debate and negotiations on climate change, including meetings in Vienna, Montreal, Rio de Janeiro, Kyoto, and Copenhagen, and along with other reasonable conceptions will continue to do so in the future. Moreover, I take it as read that *modus vivendi*, cosmopolitan, and nationalist conceptions can each lay claim to upholding the ideal of reciprocity, as specified in (3\*), in some way and to some reasonable degree.

According to the view I am proposing, then, a family of reasonable political conceptions of international justice – *inter alia* liberal, *modus vivendi*, cosmopolitan, and nationalist conceptions – can provide content for the public reason of the Society of Peoples. At this stage, however, it might be objected that even with a family of reasonable political conceptions of international justice on the table, it may not be possible to reach agreement concerning pressing international issues like climate change since global public reasons will prove to be inconclusive. A similar objection has been leveled at Rawls' doctrine of public reason in the domestic case, and in that regard I think Micah Schwartzman is right to insist that inconclusiveness of public reasons is not a problem but "something to be expected within the normal politics of a liberal democratic society." (Schwartzman 2004, 198). Indeed, Rawls makes it quite clear in the domestic case that there will be a conflict between reasonable political conceptions of justice, and so "they may be revised as a result of their debates with one another." (Rawls 1996, liii). By analogy, I think that it is appropriate to hold out for a global democracy in which reasonable conceptions of international justice are aired and revised as a result of free and fair debate. In other words, the correct ambition of a theory of public reason for the Society of Peoples is not to specify one set of guidelines, values, and principles but to outline a framework in which a family of reasonable guidelines, values, and principles can develop and change over time. In this way I follow Joshua Cohen's suggestion that the form and content of global public reason is itself the product of public reasoning. As he puts it: "Global public reason is better understood as a terrain of reflection and argument than as a list of determinate rules: that is part of the force of the term 'reason.'" (Cohen 2006, 237).

The list of possible objections to public reason and global public reason does not end there, of course. Chantal Mouffe, amongst others, has criticized Rawls' doctrine of public reason – and Habermas' communicative democracy for that matter – for ignoring the agonistic dimension of democracy as contestation. It does not make sense, argues Mouffe, to shackle persons in the democratic sphere with the duty of civility, even one that is based on a family of reasonable political conceptions of justice, because to do so is to aim for a universal consensus which "is the real threat to democracy" (Mouffe 1996, 248). But then Mouffe must answer the return challenge: how can a society, and specifically the Society of Peoples, protect itself against the severe challenges it faces, not least climate change, if it does not try to civilize democratic deliberation among its different members at least to some reasonable degree? It seems to me right to expect a theory of global democracy to



be able to comment on the civility of public political debate drawing on values and principles all can accept. That being said, unity and cooperation may be put at risk if existing democratic structures are unfair such that actually living up to the international duty of civility would favor some peoples over others. For this reason I also endorse Anne-Marie Slaughter's idea of "global deliberative equality" in which all participants have "an equal opportunity to participate in agenda setting, to advance their position, and to challenge the proposals and positions of others." (Slaughter 2005, 51–53).

In this article I have presented an outline of a Rawlsian account of global public reason. I have argued that there is a rationale for preferring an inclusive view of the international duty of civility, for extending its scope to non-state actors of various kinds and in different ways, and for drawing on a family of reasonable conceptions of international justice in framing the guidelines, values, and principles of global public reason and the global principle of legitimacy. Obviously much more work needs to be done on each of these scores in order to turn this outline into a complete account. But I hope this outline provides some cause for optimism over the results of such an enterprise. I have also used the example of climate change throughout rather than looking at a range of cases. However, if the application I have offered here is plausible, then there is every reason to consider applying this approach to other areas of international disagreement, debate, and negotiation, such as the extension of human rights, the status of foreign detainees, border controls and the treatment of refugees, conventions on fishing and conservation, reform of the law of the sea, international trade dispute settlement procedures, the rules and practices of international lending and debt recovery, and nuclear weapons disarmament.

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