

The Instability of *The Law of Peoples* and a Suggested Remedy

Lavender McKittrick-Sweitzer
Ohio State University

Abstract. Rawls' *The Law of Peoples* is vulnerable to the criticism of instability, which is exemplified by his oversight of the aggressive state. In order to address this criticism in keeping with Rawls' overall project, I argue that the grounds for intervention in the Society of Peoples ought to be extended from merely human rights violations to also include the imposition of unjust inequalities by one state upon another. I also argue that Rawls' conception of public reason is too narrow, and must be expanded to include participation of all reasonable citizens, not merely representatives of the peoples with membership in the Society of Peoples. In refuting objections to each of these alterations, I establish that this two-part revision is a successful route to be taken in addressing the concern of instability while also remaining in keeping with – and perhaps making more Rawlsian – Rawls' overall project. My solution does this by further advancing liberalism, reflecting a commitment to pluralism and the social contract tradition, and more resolutely recognizing a possible divergence in moral capacities between representatives and citizens.

Key words: Rawls, Law of Peoples, instability, modus vivendi.

Rawls' account of global justice presented in *The Law of Peoples* has been the target of various criticisms that include but are certainly not limited to: failure to adequately address international distributive inequality (Tan 2004; Pogge 2002), a narrow characterization of human rights (Reidy 2006; Hinsch and Stepanians 2005), and equal treatment of decent peoples despite not being fully liberal (Nussbaum 2006; Tan 2006). Despite the great deal of attention paid to Rawls' account, little consideration is given to the pivotal point that his model is unstable due to its potential for becoming a modus vivendi – an arrangement of coordinated self-restraint of competitive behavior between two or more states in the hopes of self-interest maximization and a peaceful coexistence.

According to Rawls, it would be “wise and prudent” for the states involved in the modus vivendi to ensure that it “represents an equilibrium point”, insofar as it is disadvantageous for the participating states to violate the arrangement (2005, 147). It should be noted, however, that the states involved are fully prepared to pursue their interests to the detriment of other participants if circumstances change to permit their doing so. I offer a number of closely connected reasons for thinking a modus vivendi is inherently unstable. Potentially becoming a modus vivendi proves particularly problematic for Rawls' account because he takes stability for the right reasons – rather than a balance of forces – to be a necessary feature of any theory of justice. Setting aside the aforementioned various criticisms, I argue that Rawls' *The Law of Peoples* is vulnerable to my critique of instability for two reasons: (i) the aggressive state – a state that Rawls' model leaves logical room for but has heretofore gone unrecognized, and (ii) the restricted operation of public reason in the Society of Peoples. I ultimately suggest that adopting a model of public reason widened to permit participation of qualified individuals external to the Society of Peoples, in conjunction with revisions to the grounds for just intervention in the Law of Peoples, alleviates both

of these issues. This suggestion not only remedies instability, but also maintains the spirit of Rawls' project by further advancing liberalism, reflecting a commitment to pluralism and the social contract tradition, and more resolutely recognizing a possible divergence in moral capacities between representatives and citizens. Modifying Rawls' project with this spirit in mind ultimately makes his project more Rawlsian – more consistent with those tenets he held to be of the utmost importance for justice.

To carry out this project I first explain Rawls' conception of global justice and public reason in *The Law of Peoples*. I then elaborate my critique of instability, illustrating why Rawls' model has the potential for becoming a *modus vivendi*. Next, I explain how *The Law of Peoples* permits aggressive states. From here, I spell out my two-part remedy for the instability exemplified by the aggressive state: one, extending the permissible grounds for intervention from merely human rights violations to also include the defense against unjust inequalities being imposed upon one state or peoples by another, as well as two, a more inclusive conception of public reason that permits all reasonable citizens – not merely representatives of liberal and decent peoples – to participate. While doing this, I consider and refute objections to each of these components. In refuting these objections, I demonstrate that my two suggested modifications to the *Law of Peoples* are in keeping with Rawls' overarching project and that they should be adopted so that the threat of instability can be definitively eliminated.

I. RAWLS' THE LAW OF PEOPLES

In order to advance my criticism that Rawls' model is unstable because of the possibility that it will become a *modus vivendi*, it is helpful to first examine its relevant portions. These include what it takes to be a member of the Society of Peoples (SoP), the limited account of human rights whose violation serve as the sole justification for intervention, the Law of Peoples (LoP), as well as how it is determined by the second original position, and public reason.

The LoP is a collection of ideals and principles that are subscribed to by only the SoP. Two types of peoples are members of the SoP and are exclusively considered well-ordered societies: these are liberal peoples and decent peoples. A well-ordered society has three features: (i) everyone accepts and has knowledge that everyone else accepts the same principles of justice, (ii) its basic structure satisfies the accepted principles of justice and this is known, and (iii) its citizens have a sense of justice that guide them to generally comply with the basic institutions that are regarded as just (Rawls 2005, 35-40). Liberal peoples have three features in addition to being well-ordered: (i) they have, "[...] a reasonably just democratic government that serves their fundamental interests [...]" (ii) the citizens are united by common sympathies, which are essentially synonymous with a feeling of nationalism, and (iii) a moral nature (Rawls 1999b, 23). By virtue of (i), liberal peoples respect human rights. It is easiest to understand the status of decent peoples (as

well as those that are not well-ordered and not included in the SoP) if one first examines the role of human rights in *The Law of Peoples*.

According to Rawls, human rights are a special class of urgent rights that include “the right to life; to liberty ([...] a sufficient measure of liberty of conscience to ensure freedom of religion and thought); to property [...]; and to formal equality [...] (that is, that similar cases be treated similarly).” (1999b, 65) Human rights set a necessary – though not sufficient – standard for the decency of an institution, and they are intrinsic to the LoP (Rawls 1999b, 78-85). Human rights have three features: (i) fulfillment is a necessary condition for a society’s institutions and legal order to be considered decent, (ii) fulfillment is sufficient to exclude “justified and forceful intervention by other peoples”, and (iii) they set a limit to reasonable pluralism (Rawls 1999b, 81). Reasonable pluralism is the idea that free institutions tend to have and foster a diversity of comprehensive doctrines among their (the institution’s) members (Rawls 2005, 36). When human rights set a limit to reasonable pluralism, they deem unreasonable those comprehensive doctrines that fail to respect human rights. Essentially, if the standards set by human rights are not met, the SoP has *prima facie* justification for intervention of various kinds. Rawls is vague about what intervention amounts to, suggesting that it may be either sanctions, or – when the violations are particularly egregious – military involvement.

Decent peoples, like liberal peoples, respect human rights, prohibiting liberal peoples from intervening upon them (Rawls 1999b, 60-65). Decent peoples also respect their members’ rights to be consulted in political decisions and to voice dissent, despite members not having democratic rights. Dissenters must be heard fairly, and not dismissed as incompetent solely in virtue of being a dissenter. Perhaps most importantly, decent peoples lack aggressive aims and must seek legitimate ends through peaceful channels (such as diplomacy and trade). Rawls believes that these features of decent peoples afford them the opportunity to transform into fully liberal peoples eventually.

Outlaw states, however, refuse to abide by a reasonable LoP which means that they, among other things, fail to recognize human rights (Rawls 1999b, 90-92). Because of this refusal, they cannot participate in the SoP. Outlaw states are regimes that justify war to potentially advance their rational (yet unreasonable) interests (Rawls 1999b, 28). An alternative form of outlaw state mentioned in passing violates human rights, but is not well-ordered and is not aggressive (Rawls 1999b, 93n.6). The violation of human rights means not only that they violate what the SoP recognizes as reasonably just, but also that peoples may permissibly intervene upon them.

There are two other categories of societies that cannot partake in the SoP: the burdened society and the benevolent absolutism. The burdened society is a society that is greatly disadvantaged in the pursuit of becoming either a decent or liberal peoples due to external historical, social, and economic circumstances. The benevolent absolutism is non-aggressive and respects human rights, but fails to be well-ordered because it does not give its members a role in political decisions.

The LoP, subscribed to by only members of the SoP, is determined by implementing the second original position (Rawls 1999b, 32-40). This differs in a few ways from the first original position, a key component of Rawls' account of justice on the domestic scale presented in *A Theory of Justice*. First, in the second original position, liberal and decent peoples have rational representatives that are "fairly situated as free and equal". (Rawls 1999b, 33) Second, unlike individuals in the first original position, these peoples, taken as a single body, do not have comprehensive doctrines of the good. The absence of such doctrines is because a liberal society taken as a whole does not have a conception of the good, only the individuals within said society do. The liberal society's lack of a conception of the good permits a pluralism among conceptions of the good of individual members. So, representatives of the peoples do not operate behind the veil with a particular comprehensive doctrine of the good in mind (because there is no comprehensive doctrine that can be ascribed to the peoples as a whole). (Rawls 1999b, 34) Third, peoples' fundamental interests are specified by their political conception of justice, not by the principles they agree to within the LoP. This situation is unlike the first original position because individuals' fundamental interests are specified by their conception of the good. Fourth, peoples select principles of justice from varying interpretations of the pre-set list of eight principles of the LoP. This limitation is placed on peoples so that their rights and duties are derived, "[...] from the Law of Peoples itself, to which they would agree along with other peoples in suitable circumstances." (Rawls 1999b, 27) These eight principles are:

1. Peoples are free and independent, and their freedom and independence are to be respected by other peoples.
2. Peoples are to observe treaties and undertakings.
3. Peoples are equal and are parties to the agreements that bind them.
4. Peoples are to observe a duty of non-intervention.
5. Peoples have the right of self-defense but no right to instigate war for reasons other than self-defense.
6. Peoples are to honor human rights.
7. Peoples are to observe certain specified restrictions in the conduct of war.
8. Peoples have a duty to assist other peoples living under unfavorable conditions that prevent their having a just or decent political or social regime. (Rawls 1999b, 37)

Like in the first original position, representatives operate behind a veil of ignorance that prevents them from knowing such things as level of economic development, resources, features of the population they are representing, or the size of the territory the population occupies (Rawls 1999b, 32-33). They do know, however, that there are reasonable and favorable conditions being fulfilled that make a constitutional democracy plausible. Representatives negotiate to determine the terms of cooperation that are fair, just as in the first original position, but this negotiation is done only in terms of the eight principles. Negotiating over just these principles helps ensure that "inequalities are designed to serve

the many ends that peoples share” while the representatives of peoples try to maintain the equality and independence of their own society (Rawls 1999b, 41).

It is mandatory that the eight principles satisfy the criterion of reciprocity, since this criterion is characteristic of liberalism. The criterion of reciprocity requires that

when terms are proposed as the most reasonable terms of fair cooperation, those proposing them must think it at least reasonable for others to accept them, as free and equal citizens, and not as dominated or manipulated or under pressure caused by an inferior political or social position. (Rawls 1999b, 14)

This criterion aids in ensuring that global disparities in power or wealth are acceptable to those affected. Reasonable pluralism, like the criterion of reciprocity, is crucial for a global structure to attain liberalism. Public reason can serve as the basis from which a diverse array of peoples can develop the LoP within a liberal conception (Rawls 1999b, 55).

In order to fully understand of *The Law of Peoples*, one must be able to recognize the notion of public reason and its central role in global justice. On Rawls’ model, free and equal peoples participate in the public reason of the SoP, hashing out what their mutual relations, as peoples, should look like (1999b, 54-58). His reasoning for claiming that only well-ordered societies can engage in public reason follows from his stipulation that only they have the capacity for a moral nature, making them capable of carrying out the moral duty of public reason. States lack this moral nature – being moved purely by their rational interests – making them unsuitable candidates to reasonably consider how to advance the project of liberalism in the forum of public reason. The content of public reason consists of the criteria, ideas, political concepts, and principles of the LoP. It is important to note that

public reason is invoked by members of the Society of Peoples, and its principles are addressed to peoples as peoples. They are not expressed in terms of comprehensive doctrines of truth or of right [...] but in terms that can be shared by different peoples. (Rawls 1999b, 55)

Discussing principles in shared terms ensures that public reason can properly serve as the basis for a broad spectrum of peoples to develop and refine the LoP.

The ideal of public reason is realized when government officials – acting as representatives – follow and act on the LoP. These representatives explain to other peoples their reasons for enforcing or “revising a people’s foreign policy and affairs of state that involve other societies.” (Rawls 1999b, 56) Private citizens can achieve the ideal of public reason by imagining themselves as government officials and considering what foreign policy they would think it reasonable to advance. It should be noted, though, that while private citizens can achieve the ideal of public reason, the conclusions they reach carry no weight in the global discussion and their achieving the ideal does not amount to it being realized. Rather, private citizens’ capacity for achieving the ideal ensures that they (the citizens) will hold their representatives (government officials) to the appropriate standard for participation in public reason. Rawls holds that public reason “is part of

the political and social basis of peace and understanding among peoples” when this disposition among citizens is “firm and widespread” (Rawls 1999b, 57). When public reason is widespread in this way, peoples are properly suited to discuss in shared terms – and eventually determine – how to address critical issues.

Having completed an explication of the relevant portions of *The Law of Peoples*, our attention can now be shifted to the reasons why it is inherently unstable, which I will ultimately suggest can be remedied by (i) extending the permissible grounds for intervention from merely human rights violations to also include defense against unjust inequalities being imposed upon one state or peoples by another, and (ii), a more inclusive conception of public reason that permits all reasonable citizens – not merely representatives of liberal and decent peoples – to participate.

II. THE INSTABILITY OF THE LAW OF PEOPLES

Rawls’ model for global justice, as it stands, is vulnerable to the critique that it is inherently unstable due to the likelihood of devolving into a modus vivendi. As previously mentioned, a modus vivendi is the coordinated self-restraint of competitive behavior between two or more parties in the hopes of self-interest maximization and a peaceful coexistence. The parties involved care little for the interests of each other, and since self-interests are the primary concerns of parties, the modus vivendi will not be based upon shared values between parties; a modus vivendi is not a value-based world order where parties are committed to a shared political conception, like in the SoP. Once self-restraint is established between the parties, the modus vivendi perpetuates itself by “ensuring that each party has sufficient incentives to participate so long as most others are participating as well.” (Pogge 1989, 219) This arrangement ensures continued participation by making it the case that a party is damaged if it stops participating. Rawls’ model leaves open the possibility of an extremely unbalanced distribution of power by giving little consideration to socioeconomic inequality, and this unbalanced power or lack of consideration for inequality, in turn, allows unjust inequalities to arise. I take unjust inequalities to be inequalities imposed upon one party by another, where the inequalities are not freely accepted or agreed to by those on the receiving end of them. For the remainder of the paper I am primarily concerned with socioeconomic and distributive inequality, but that is not to say these are the only relevant types of unjust inequalities. Importantly, I am not arguing for the implementation of more demanding global redistributive principles, like those articulated by Charles Beitz (1999) or entertained by Pogge (1994). Rather, I am appealing to Rawls’ conception of justice as fairness, wherein “the fair terms of social cooperation are to be given by an agreement entered into by those engaged in it” and “made in view of what they regard as their reciprocal advantage, or good” (2001, 15). In order for the agreement itself to be fair, one party cannot have “unfair bargaining advantages over others” and the use of force, coercion, deception, and fraud are ruled out (Rawls 2001, 15).

So, consider the following case illustrating one way that unjust inequalities might arise: a party, Haplessburg, enters the modus vivendi for needed natural resources, but are at a disadvantage compared to most parties precisely because of this lack. Even if Haplessburg might instead continue in isolation (to their detriment), it seems additionally preferable to participate because they will obtain protection from being attacked or enslaved by the other participants (by virtue of a modus vivendi being coordinated self-restraint). With Haplessburg's continued participation, they continually lose power to the point where they wholly depend upon maintaining membership in the modus vivendi, even if it is no longer self-interest maximizing. The room left for unchecked inequality means that Haplessburg can no longer consider leaving the modus vivendi in favor of isolation. As the modus vivendi moves forward, Haplessburg remains weak because they have no option but to comply.

From this example, it is easy to see that parties may be left completely incapable of preventing bad outcomes. Since the modus vivendi is unstable, participants, like Haplessburg, may fear falling into the vicious cycle described above and decide to enter war in hopes of establishing protection and power. An alternative to this is that the parties involved with greater power may pre-empt the weaker party's attack. Either way, these measures intended to protect "can lead to a partial or complete breakdown of ordered relations." (Pogge 1989, 221) Even if the arrangements of the modus vivendi happen to withstand these attacks, it may be at the cost of the existence of some of the modus vivendi's participants.

Finally, it is not difficult to imagine how a party may be pragmatically incapable of giving precedence to its own members' values, when the party runs the risk of not even surviving participation in the modus vivendi. If parties fear one another, they will focus upon survival and long-term security of their members' values, rather than short-term actualization of said values. It is unlikely that a party would exercise restraint, despite ethical qualms, when their existence hangs in the balance, especially when success in prevailing seemingly ensures that their members' values will win out in the end.

For these reasons, it is evident that it is undesirable for a modus vivendi to materialize. Instability from an extremely unbalanced distribution of power, lack of protection for parties against horrible outcomes (including being dissolved), and an inability to give precedence to members' values all contribute to the conclusion that a modus vivendi will be neither peaceful nor just.

None of the eight principles address these issues. One may argue that (8) – peoples have a duty to assist other peoples living under unfavorable conditions that prevent their having a just or decent political or social regime – does address this issue by requiring liberal and decent peoples to help burdened societies that are prevented from establishing just or decent institutions by "unfavorable conditions". But Rawls does not clearly stipulate what precisely "unfavorable conditions" amount to, making abiding by this principle difficult, at best. Additionally, (8) says nothing about preventing severe socioeconomic disparity between liberal and decent peoples that have achieved

just and decent institutions respectively. It is not difficult to imagine a society that is socioeconomically disadvantaged, but meets the minimum standards for a decent society, preventing it from being classified as a burdened society. There is nothing in Rawls' model to aid these peoples. This situation is problematic because Rawls states that the Law of Peoples "holds that inequalities are not always unjust, and that when they are it is because of their unjust effects on the basic structure of the SoP, and on relations among peoples and among their members." (1999b, 113) Yet it is precisely the latter case – where inequalities have unjust effects on the relations among peoples – that I am concerned with, and that Rawls' model fails to address.

It might further be claimed that discussing this principle in the forum of public reason could give rise to revisions that would address this issue. There is no guarantee, however, that liberal and decent peoples would see to it that extreme socioeconomic disparities leading to unjust inequalities are protected against because such extremes are not a primary concern of Rawls' liberalism. Rather, the LoP is concerned with the wellbeing of individuals, as well as justice and stability for the right reasons; not distributional inequalities (Rawls 1999b, 120).

Furthermore, Rawls' model fails to adequately address what Pogge refers to as the situated assurance problem (Rawls 1999a; Kant 1999). The situated assurance problem arises when a party's reasons for accepting the burdens associated with social cooperation are undermined due to a lack of assurance that other parties will adhere to the same standards of social cooperation (Pogge 1989, 100). As a result, the situated assurance problem "threatens pervasive noncompliance with existing ground rules." (Pogge 1989, 101) One might suggest that principle (2) does sufficiently address this issue. (2) States that, "peoples are to observe treaties and undertakings." (Rawls 1999b, 37) This, however, is merely a superficial demand. There is no hint at the repercussions for failing to observe treaties, and other components of Rawls' model preclude intervention unless a human rights violation is involved. Additionally, public reason is limited only to discussion of the LoP, not to mechanisms external to the LoP that would ensure enforcement.

Even if enforcement mechanisms are developed, backing (2) more substantially contradicts the sufficient condition to escape intervention – that of merely satisfying human rights. Setting consideration of these potential mechanisms aside, the SoP is left with no substantial method for considering ensuring that peoples reasonably observe treaties. The same problem arises if one were to cite Rawls' claim that peoples must be respectful of each other and, because of this, treat each other as equals and observe treaties. Once again, there is no method in place to ensure that respect is maintained. Rawls' failure to address the situated assurance problem leaves open the possibility that peoples that play by the rules will suffer while other peoples ignore them with no repercussions. To be charitable, the purpose of pointing this out is to demonstrate that there is an oversight within Rawls' account; it is not to deny altogether that he would have been open to amending his account with an enforcement mechanism.

Finally, Rawls' focus on shared fundamental values accompanied by the concern of peoples about complications arising from the situated assurance problem plausibly leaves peoples pragmatically incapable of giving precedence to the shared values of their citizens (recall Haplessburg). Peoples will understandably be more urgently concerned with simply protecting themselves and ensuring survival within the global structure. Only once a people has secured its survival can it concern itself with promoting the values of its own citizens. One might respond as above, claiming that (2) resolves the situated assurance problem and relieves this concern of peoples. Just as before, this is merely a superficial demand until it is backed with legitimate clout. It should again be noted that backing (2) more substantially contradicts the sufficient condition of merely satisfying human rights to escape intervention. Until this problem is solved, the peoples' fear stemming from the situated assurance problem is warranted.

These three deficiencies in Rawls' account suggest that his value-based world is inherently unstable since it is capable of devolving into a *modus vivendi*. This possible devolvement means that Rawls' account may not be peaceful or just, which is a problem Rawlsian scholars ought to take seriously, given how Rawls considers stability a necessary component of any theory of justice. He takes stability to be an institution's ability to remain just when changes are made to accommodate new social circumstances.¹ If there is a deviation from justice, the institution will still be considered stable if said deviations are "effectively corrected or held within tolerable bounds by forces within the system." (Rawls 1999a, 401) Additionally, Rawls values stability for the right reason – a reasonable interest "guided by and congruent with a fair equality and a due respect for all peoples" – over stability as a balance of forces (1999b, 44-45). He is concerned that peace between states gained when stability is of the latter form will "be at best a *modus vivendi*, a stable balance of forces only for the time being." (Rawls 1999b, 45; emphasis original) As established above, a *modus vivendi* is evidently unstable.² If a model of global justice is capable of devolving into a *modus vivendi*, it too is inherently unstable. It follows from this that Rawls' global order is neither peaceful nor just.

1] One might be concerned that social circumstances are constantly shifting – particularly those shared values that shape how we characterize what is just – and so there is a higher risk of instability. Provided these shared values are "affirmed by an overlapping consensus of comprehensive doctrines", the institution will remain stable for the right reasons, and not merely because it is a *modus vivendi* (Rawls 1999b, 16).

2] It should be noted that there are competing evaluations of *modus vivendis* that, contra Rawls, find that they may be suitable (if not the best) way to achieve justice in a pluralistic world. For example, Charles Larmore (1987) argues that we can separate the principles of justice from the principles of morality, and achieve a morally neutral account of justice via *modus vivendi*. Fabian Wendt (2016), on the other hand, dismisses Larmore's characterization, understanding a *modus vivendi* not as "a distinct approach to politics" but instead as "a concept that refers to institutions that enable us to live together in peace under circumstances of disagreement and conflict, are accepted as a second-best, and satisfy certain minimal moral criteria." (353) But to understand *modus vivendis* in these ways would be to abandon central tenets of the Rawlsian project.

III. THE AGGRESSIVE STATE

Rawls does not consider the possibility of what I will call aggressive states, and as a result overlooks a powerful objection to his view that there is a clear-cut case exemplifying his model's weakness. Aggressive states lead to further unsatisfactory conclusions for his account, typifying his inability to handle a type of institution capable of destabilizing his global order. At this point I would like to pre-empt the possible objection that demonstrating that there is room for the aggressive state and that it has been overlooked does little to cast doubt on Rawls' project. Instead, it seems uncharitable to criticize him for this, since he is seemingly concerned with ideal theory while the aggressive state, as explained below, is clearly a concern of non-ideal theory. But *The Law of Peoples* should not be read as merely an ideal theory of global justice. Rawls' work clearly demonstrates that he's concerned with the non-ideal when considering those societies that are not well-ordered (i.e. outlaw states, benevolent absolutisms, and burdened societies). Additionally, Part III of *The Law of Peoples* is titled "Nonideal Theory", taking up questions of war, burdened societies, and distributive justice. Given this textual evidence, it is apparent that non-ideal theory is something Rawls took seriously, and to draw attention to his oversight of the aggressive state is hardly beyond the scope of his project.

The aggressive state recognizes and respects the human rights of its own citizens and citizens of other states and peoples, thus meeting some of the necessary conditions for having its institutions and legal order considered decent. This state's recognition of human rights does, however, meet the sufficient condition to be protected from intervention (unlike outlaw states), either by sanction or military involvement. Unlike decent peoples, this state does not consult members on political decisions, nor does it fairly listen to dissenters. In addition, this state seeks its ends aggressively rather than peacefully. Thus, the aggressive state does not abide by seven of the eight principles that constitute the LoP.

To illustrate the quintessential aggressive state, imagine two states that rely upon each other for limited natural resources: K and A. K keeps to itself while A is aggressive. Now imagine that A threatens to invade K, unless K exports its natural resources to A for no compensation. Here A has aggressively imposed a demand on K that K can do little about without losing the much-needed natural resource it receives from A. K is prohibited from intervening upon A on Rawls' model unless (i) A violates human rights in some manner, or (ii) A *actually* attacks K. That is, pre-emptive self-defense in the face of a threat is impermissible according to Rawls (1999b, 89-93). Rawls' model consequently allows A to extort K – imposing unjust inequalities – while facing no repercussions for reprehensible behavior until their (A's) actions have escalated to the point of attack.

As mentioned above, Rawls definitively states, "[human rights] fulfillment is sufficient to exclude justified and forceful intervention by other peoples, for example by diplomatic and economic sanctions, or in grave cases by military force." (1999b, 80) If we are to take Rawls' model seriously, the aggressive state is protected from intervention due to its satisfaction of human rights. Here one may raise the objection that the aggressive

state is actually failing to respect human rights. But, given Rawls' extremely limited human rights, it is unclear whether any of these rights are actually being violated. It is a mistake to say, however, that the aggressive state must be fully immune to intervention initiated by the SoP despite its aggressive aims, failure to have a consultation hierarchy, and failure to fairly listen to dissenters. This is because of the threat the aggressive state poses to not only the rational self-interests of other states and peoples, but also the shared values of the SoP, and as a result, the stability of the global order. Determining appropriate standards for handling this society seems possible, but at a cost.

To maintain Rawls' framework one may either bite the bullet and grant full immunity to aggressive societies or, alternatively, reconsider basing his framework for intervention solely upon human rights. Granting full immunity is simply not an acceptable option for reasons discussed below. In considering basing the framework for intervention, one logically has three routes to choose from: (i) maintaining that human rights violations are the only justification for intervention, (ii) completely disposing of human rights violations as the only justification for intervention, or (iii) claiming that human rights violations and something more (taken together or separately) are the only justifications for intervention. If one takes the first route and insists that human rights are the unique basis for intervention, one must at least conduct a substantive overhaul of the necessary and sufficient conditions pertaining to them. I set this option aside in favor of the third course in the hopes that my suggested remedy will leave Rawls' project, on balance, more intact than a substantive revision of human rights that would work against his efforts to maintain reasonable pluralism. Taking the second course seems wholly unreasonable, namely because it is an obsoletely held position that institutions should sit idly by while human rights violations are occurring. If one takes the third course and adds unjustly imposed inequality upon one state or peoples by another as a basis for intervention, in conjunction with a more inclusive account of public reason, then the threat of instability presently faced by Rawls' model is resolved. I discuss these modifications at length below (in Section IV).

As it is currently formulated, Rawls' position lacks the tools to deal with the aggressive state that exemplifies the inherent instability of his model. The dangers that the aggressive state pose to other peoples and states while going unchecked account for Rawls' deficiency. If the aggressive state is permitted to carry on because it is free from intervention and sanctions, the peoples that were not concerned about the situated assurance problem prior to its recognition should certainly be concerned afterwards. Moreover, the fundamental assurance problem is more likely to be instantiated.

Those threatened by the aggressive state risk being attacked or thoroughly disbanded. Prior to attack, the threatened cannot place sanctions on the aggressive state precisely because it (the aggressive state) is respecting human rights. The threatened also may not pre-emptively attack the aggressive state, because Rawls would consider such an attack to be a violation of just war doctrine (1999b, 90-91). Once attacked, liberal and decent peoples may go to war to defend themselves, but there is no guarantee that they

will prevail. If the aggressive state prevails, the overpowered peoples will likely lose all of their control. One may respond by citing the Law of Peoples as providing protection for those peoples overpowered by the aggressive state. But as it stands, it is not clear to what extent liberal or decent peoples can permissibly aid those peoples in unfavorable conditions arising from being overpowered. Depending upon what formally amounts to intervention, liberal or decent peoples may not be able to provide aid to the overpowered peoples without intervening against the aggressive state. Note that intervention may merely be strong-arming or a trade sanction intended to weaken the aggressive state and aid the overpowered. But, once again, these measures of intervention are prohibited under Rawls' model, since the aggressive state respects the limited account of human rights up until they become militarily aggressive.

The presence of the aggressive state within Rawls' model makes devolving into a *modus vivendi* even more plausible than I previously suggested. The plausibility of this occurrence, in turn, illustrates the inherent instability of his model. Given Rawls' explicit acknowledgement of the importance of stability for any theory of justice, his failure to consider the aggressive state is a serious oversight. This instability can be remedied, though, by a substantial revision of public reason and an amendment to when intervention is permissible that is in keeping with Rawls' overarching project.

IV. A SUGGESTED REMEDY

I suggest revising Rawls' account of public reason to include reasonable citizens of all states, rather than only the representatives of peoples that comprise the SoP. When paired with the amendment that a state or peoples having unjust inequalities imposed upon it by another state or peoples can permissibly intervene against its oppressor, these revisions successfully handle all three issues that contribute to my criticism that Rawls' model is unstable. Additionally, this remedy ensures stability and its maintenance through advancing the project of liberalism, in keeping with the spirit of Rawls' project. To recall, these three issues are the sparse consideration of socioeconomic inequality that can give rise to an extremely unbalanced distribution of power, failure to address the situated assurance problem, and peoples being pragmatically incapable of giving precedence to the shared values of their citizens.

To handle those states and peoples that suggest and forcefully implement unjust inequalities upon other states or peoples, I argue it is permissible for the affected party and third-party defenders to intervene upon the oppressor by sanction, or in grave cases, by military force. This amendment to what warrants intervention alleviates not only the threat posed by the aggressive state, but also the threats posed by all other states and peoples that refuse to play by the rules at any given time. As a result, instability due to devolving into a *modus vivendi* is no longer a danger for Rawls' model, despite the plausibility of the aggressive state. By revising the grounds for intervention, the LoP is backed with the necessary legitimate clout that addresses the three issues Rawls' model

was previously incapable of handling. The potential for a dangerously, and unjustly, unbalanced distribution of power is no longer likely due to peoples and states having an enforcement mechanism available to protect against unjust impositions. This protection ensures that peoples and states reasons for accepting the burdens associated with social cooperation will not be undermined due to a lack of assurance that other parties will adhere to the same standards of social cooperation. And when peoples are no longer concerned with the situated assurance problem, the inability of peoples to give precedence to the shared values of their citizens is no longer an issue. This is because they are no longer primarily concerned with ensuring survival.

One might object to this amendment to the LoP, claiming it is *ad hoc*, added merely to address the issue of those imposing unjust arrangements and is not cohesive with Rawls' overall project. I maintain, however, that this amendment to the grounds for intervention simply coheres with and supports the other eight principles of the LoP. Rawls himself acknowledges that this "statement of principles is, admittedly, incomplete" and "other principles need to be added", demonstrating the foresight that room must be left within his model to accommodate unforeseen or overlooked circumstances (1999b, 37). The amendment to intervention that I propose adding aids in ensuring that the first three principles regarding freedom and independence, observance of treaties, and respecting equality are upheld. Furthermore, it is not at odds with any of the pre-existing eight principles.

One might claim that I problematically uphold that states may also protect themselves against unjustly imposed inequalities, despite their not being liberal or just. It is questionable at best, though, that states must be subject to unjust inequalities in light of their not being wholly just themselves. This amendment to permissible grounds for intervention – taken with an altered account of public reason – not only resolves the aforementioned issues that lead to instability, it is also cohesive with other aspects of Rawls' project.

By making public reason more inclusive, alterations to the LoP are not made by only the peoples enforcing the eight principles – the SoP. Instead, all citizens that are inherently affected by decisions pertaining to the global institution (the SoP) will have the opportunity to engage in public reason, provided they are reasonable. I adopt Rawls' tenets of reasonableness, which he presents in *Political Liberalism* (2005, 48-54). A reasonable individual both willingly proposes and abides by fair principles of cooperation among equals, and readily accepts the burdens of judgment when engaging in public reason. While this definition of reasonable is not made explicit in the account of public reason given in *The Law of Peoples*, it is implicit by way of the principle of reciprocity and the fact that representatives of peoples are negotiating terms that they know their peoples will be subject to if they wish to maintain membership in the SoP.

Rawls holds that participating in public reason is an intrinsically moral duty, like other political rights and duties (1999b, 56). Recall that his reasoning for claiming that only members of the SoP can engage in public reason follows from his stipulation that only

they have the capacity for a moral nature, allowing them to realize the moral duty of public reason. In contrast, states lack this moral nature, making them unsuitable candidates for participation in public reason.

But it does not clearly follow from the nature of states that the states' citizens, when taken independently, are also incapable of advancing liberalism. One can easily imagine a citizen of a state that has a moral nature and satisfies reasonableness. The moral nature and reasonableness of said citizen allows the citizen to imagine herself as a government official and consider what foreign policy she would think it reasonable to advance, enabling her to achieve the ideal of public reason. When citizens from around the globe that share these qualities engage in public reason together, they will be able to realize the ideal of public reason (as explained in Section I) analogously to how representatives realize the ideal, according to Rawls.

I uphold, like Rawls, that contributing to the dialogue of public reason is a moral duty. This means that on my model reasonable citizens with a moral nature have a moral duty to contribute to the dialogue of public reason, and the SoP should recognize this moral duty, seeing as its fulfillment is crucial to furthering the project of liberalism. This is primarily because Rawls intends for the global institution to uphold the tenets of liberalism. Thus, the global institution must recognize the moral duty of reasonable citizens to participate in the public reason that shapes said institution, seeing as it is the global institution's aim to be a liberal democracy that would grant citizens democratic rights.

Additionally, it seems inappropriate for the SoP to determine independently what amounts to and triggers aid given to other institutions (peoples or states). Those reasonable citizens with membership in states or peoples subject to inequalities imposed by other states or peoples should be able to aid in the revision of those conditions that impact the institutions they live within, both globally and domestically. The global institution lived within is the SoP, while the domestic institution is the citizen's state or peoples. This idea appeals to the principle of affected interests, which states individuals should be able to influence decisions that affect them (Fung 2013, 2). Decisions that are not influenced by those affected may not appropriately consider their interests. In order to maintain the fairness that Rawls deems crucial to the political processes of the Society of Peoples' basic structure, it seems appropriate that all reasonable citizens – not merely representatives of peoples – have the opportunity to determine what size contributions are acceptable for a given predicted return and what inequalities are just (1999b, 113-115). Furthermore, to arbitrarily exclude the perspectives of some individuals affected by distributional concerns merely by their state membership contradicts the call for reasonable pluralism that Rawls values so highly. Notably, arbitrary exclusion also goes against the underlying and pervasive current in social contract theory that those that develop contracts are synonymous with those that are subject to it (Nussbaum 2006). Broadening public reason in the way suggested above avoids these issues and, instead, mends Rawls' account so that is more clearly reflects a commitment to pluralism and the social contract tradition.

While it cannot be decisively determined what conclusions those participating in this comprehensive public reason will come to – as this is an empirical question – there is reason to be optimistic. As more participants are welcomed – due to their moral obligation rooted in their being reasonable moral citizens – to engage in public reason it is likely that the ideal of public reason will be achieved. As citizens move towards the disposition to “repudiate government officials and candidates for public office who violate the public reason” of free and equal citizens, the political and social basis of peace and understanding will be strengthened, just as Rawls had hoped (1999b, 57). The achievement of the ideal of public reason will feasibly ensure that inequalities that do arise are just in nature because there has been true fairness in participation and consent. If it is the case that there has been true fairness in participation and consent, inequalities will not contribute to the situated assurance problem or the inability of peoples to give precedence to the shared values of their citizens, unlike in Rawls’ original model. It is in this way that revising public reason not only aids in ensuring stability, but also advances the project of liberalism as explained by Rawls.

One might wonder why I have decided to argue for all reasonable citizens to participate in public reason, rather than just representatives of citizens. I do so for two reasons. The lack of inclusivity in Rawls’ public reason arises from only reasonable representatives – government officials of the members of the SoP – being permitted to participate. In order to recognize the sentiments of those individuals affected by global policies, more than just reasonable representatives need to be included. The need for consideration of reasonable individuals arises out of the government officials of states being, by nature, unreasonable due to their abstaining from becoming liberal or decent. Additionally, the government officials of states may not serve as representatives of their state’s members, depending upon what type of government the state has. Some examples include a patriarchy without elected representatives, or a state where elections are notoriously fraudulent. When dealing with outlaw states, according to Rawls, the leaders and officials of said state should be distinguished from civilian members because “[the leaders and officials] are responsible [...] the civilian population, often kept in ignorance and swayed by state propaganda, is not responsible.” (1999b, 95) If government officials are the only people that are permitted to participate in public reason, then there is the potential for all voices of a given state’s citizens to go unheard. But the voices of those affected being unacknowledged goes against the principle of affected interests. By obligating all reasonable citizens of all states and peoples to participate in public reason, there is no longer a concern of lack of representation in the dialogue.

One might suggest that rather than obligating all reasonable citizens to participate, there should be a shift in what it means to be a representative. However, including all reasonable citizens is preferable to this move because altering the definition of representative presents a host of issues and is ultimately inconsistent with Rawls’ project, which I aim to leave intact. If one changes what it means to be a representative from being the sole representative of a state or peoples to being the representative of a collection of

individuals based on some shared interest, then the formal equality that Rawls values so highly is abandoned. I am taking shared interest to be something like feminist values, subscription to a religion, persons with disabilities activism, or an interest in racial equality. The problem with this type of representation is that an individual might – and likely does – have multiple interests, and so they will either be forced to choose a primary interest by which they will be represented, or be represented by a multitude of interests. For individuals to be forced to choose a primary interest may deny other components of their identity, which is a violation of the human right to liberty of consciousness. For individuals to have varying numbers of representatives respective to their interests does not amount to formal equality, and thus violates the human right to formal equality. If individuals act as their own representatives, as I suggest, then liberty of consciousness and formal equality is maintained because each reasonable individual eligible to participate in public reason is granted the same weight. It is for these reasons that I offer the solution of participation of all reasonable individuals, rather than merely representatives of one form or another.

V. CONCLUSION

In short, I have illustrated how *The Law of Peoples* is vulnerable to the criticism of instability, which is exemplified by Rawls' oversight of the aggressive state. In order to address this criticism in keeping with Rawls' overall project, I have argued that the grounds for intervention be amended so that it is also just for a state or peoples to intervene upon another state or peoples when unjust inequalities are being imposed. I have also argued that Rawls' conception of public reason is too narrow, and must be expanded to include participation of all reasonable citizens, not merely representatives of the peoples with membership in the Society of Peoples. In refuting objections to each of these alterations, I have established that this two-part revision is a successful route to be taken in addressing the concern of instability while also remaining in keeping with – and perhaps making more Rawlsian – Rawls' overall project. My solution does this by further advancing liberalism, reflecting a commitment to pluralism and the social contract tradition, and more resolutely recognizing a possible divergence in moral capacities between representatives and citizens.

mckittrick-sweitzer.1@osu.edu

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