


RESEARCH ARTICLE

Overlapping consensus view of human rights: a Rawlsian conception

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Abstract

This paper advances and defends the overlapping consensus view of human rights (OCV) as a political conception of human rights most consistent with John Rawls's normative account of a realistic utopia at the international level. Although some clues exist in *The Law of Peoples* to support this view, an innovative reconstruction is called for to complete the picture. This paper aims to offer such a reconstruction, which is predicated on two premises: first, the parties to the international original positions, which include decent nonliberal peoples (DNPs), are reasonable and worthy of liberal toleration; and, second, the protection of human rights proper is a module that can fit into all acceptable comprehensive doctrines at the international level, including societal comprehensive doctrines in DNPs. The first premise has been subjected to vehement liberal critiques and left for dead, and the second premise has not been taken seriously and relatively neglected. This paper defends these premises in turn to justify the OCV as constitutive of Rawls's normative account of a realistic utopia at the international level.

Key words: Decent nonliberal peoples; human rights proper; moral group members; overlapping consensus view of human rights; realistic utopia; societal comprehensive doctrines

Introduction

John Rawls's conception of human rights advanced in his *The Law of Peoples* (1999a)¹ with its minimalist list of 'human rights proper' stands in stark contrast to the standard list of human rights endorsed by the international legal human rights system. Taking the protection of human rights proper as constitutive of a normative vision of a peaceful and stable world order – a 'realistic utopia' (LoP, 6) – Rawls conceived of them as a special class of urgent rights the protection of which is necessary for any system of social cooperation worthy of liberal toleration. Since Rawls thought of 'decent' nonliberal peoples as 'bona fide' members (LoP, 63) worthy of liberal toleration in the international arena, he considered his human rights proper to be acceptable to decent nonliberal peoples (DNPs) and therefore not parochial to the

¹Henceforth abbreviated as LoP.

liberal West. Liberal theorists' initial reactions to Rawls's account of human rights in *The Law of Peoples* (LoP) were swift and harsh, criticizing it for ultraminimalism,² which not only omits critically important human rights but is also excessively lenient toward internally oppressive nonliberal societies.³ Although some liberal theorists have come to defend various aspects of Rawls's LoP over the next two decades,⁴ such defenses came at a cost: these have typically involved relegating the mandate to protect human rights proper to a mere handmaiden to liberal foreign policy and concomitantly downgrading Rawls's stated aim in LoP to present it as constitutive of a realistic utopia.⁵

This paper aims to defend Rawls's minimalist conception of human rights as a crucial piece of his normative account of a realistic utopia at the international level. I shall reconstruct it as a political conception (LoP, 68) entitled the *overlapping consensus view of human rights* (OCV). This reconstruction requires taking seriously Rawls's claim that LoP is an 'extension' of his political liberalism (LoP, 9) elaborated in *Political Liberalism* (1993),⁶ which, by adopting a social contractarian framework, derives a political conception of justice in a domestic original position. Hence, LoP applies social contractualism to a Society of Peoples at the international level in order to derive a reasonably just Law of Peoples that regulates the realistic utopia in international original positions. The Law of Peoples includes the principle to honor human rights proper (principle 6). The parties to the international original positions, however, are representatives of *peoples*, whereas the parties to the domestic original position are representatives of individual persons. My reconstruction is therefore predicated on two premises, which parallel those regarding Rawls's domestic conception of justice: first, the parties to the international original positions, which include DNPs, are reasonable and worthy of liberal toleration (LoP, 59, 61, 62, 74); and, second, the protection of human rights proper is a module that can fit into all acceptable comprehensive doctrines at the international level, including societal comprehensive doctrines in DNPs. Liberal critics have argued that Rawls's attempt to connect his LoP to his political liberalism fails because of an inconsistency in the way that the relevant parties to the original positions are characterized at different levels. In particular, why should DNPs, which 'fail' to conceive of their members as free and equal citizens (LoP, 60; 70–71; 83), be included in the second international original position as reasonable parties? Liberal critics claim that DNPs may be internally oppressive and, therefore, undeserving of liberal toleration. This has led liberal theorists to criticize Rawls's minimalist conception of human rights, meant to be acceptable to DNPs, as lacking moral justification.⁷

In order to reconstruct Rawls's conception of human rights as an OCV constitutive of his realistic utopia, I shall defend the two premises in turn. To lay the groundwork for this, the second section examines Rawls's idea of a realistic utopia at the international level. Since Rawls's claim that his LoP extends his political

²Nickel 2007.

³Teson 1995; Moellendorf 1996; Beitz 2000, 2001; Caney 2002; Tasioulas 2002; Pogge 2003; Buchanan 2004; Macleod 2006; Tan 2006; Nickel 2007.

⁴Heath 2005; Freeman 2006; Wenar 2006; Reidy 2006, 2017; Beitz 2009; Wellman 2012.

⁵An exception is Mandle (2020) who offers a normative defense of LoP based on the idea of legitimacy.

⁶Henceforth abbreviated as PL.

⁷Caney 2002; Pogge 2003; Buchanan 2004; Tan 2006; Wenar 2006.

liberalism is at the center of this normative account, the parallels between the two are evaluated, with a special focus on the parallel regarding the overlapping consensus. I shall argue that, despite the incompleteness of Rawls's account, sufficient textual evidence exists to support the OCV. The third section examines liberal objections to the first premise, which range from questioning the discrepancy between the relevant parties to the original positions at different levels to rejecting Rawls's inclusion of DNPs as reasonable parties worthy of liberal toleration. The main source of liberal discontent is identified as DNP's conception of persons as moral group members, whose defensibility is examined in the fourth and fifth sections. The sixth section returns to the second premise – that honoring human rights proper is a module among acceptable comprehensive doctrines including societal comprehensive doctrines of DNPs – and defends it in the case of Islam.

Rawls's realistic utopia and human rights

One of Rawls's fundamental aims in LoP was to derive a particular conception of right and justice that applies to international law and practice – the Law of Peoples – so that the Society of Peoples it regulates can become a 'realistic utopia' in the international arena. As constitutive of Rawls's 'ideal' theory, the idea of a realistic utopia refers to a vision of a highly desirable state of affairs not yet in existence, which 'could and may exist' (LoP, 7). Rawls's idea of a realistic utopia was motivated by his wish to avoid the repetition of the great evils of human history by promoting peace and justice at the international level among mutually respecting well-ordered peoples. It is predicated on the idea of liberal toleration of nonliberal peoples whose ways of ordering society are acceptable – DNPs. For Rawls, tolerating DNPs requires more than just refraining from coercive interventions against them. It includes recognizing and even respecting them as equal participating members in good standing of the Society of Peoples. Insisting that the liberal way to organize society is the only permissible way and attempting to transform DNPs into liberal peoples, according to Rawls, amount to a failure to express due toleration for other acceptable ways of ordering society (LoP, 59).

Rawls's Law of Peoples is developed out of a liberal idea of justice 'similar to, but more general than' the political conception of justice at the domestic level. Rawls's LoP account extends a liberal conception of justice for a domestic regime to a Society of Peoples (LoP, 9). This extension, however, is in the method of deriving the realistic utopia, most clearly demonstrated by the application of the original position as a model of representation, and not in the content, for significant substantive differences exist between domestic and international levels. Most importantly, the relevant parties to the original positions at the international level are representatives of not individuals but peoples characterized by three basic features: first, they have political institutions that serve their fundamental interests reasonably well; second, the members are united by common sympathies whatever the source⁸; and third, they have a moral nature that enables them to entertain a sense of proper pride and honor that calls for due respect consistent with the

⁸Rawls recognized that for certain liberal peoples that are multiethnic and multicultural, common sympathies need not be based on a common language, history, or political culture. Still, a common culture is

equality of all peoples (23–25).⁹ Rawls insisted that the original position is used in ‘exactly the same way’ at the international level as in domestic society (33), albeit twice: once among liberal peoples and then again among DNPs. The purpose of original positions at the international level is to ensure that the representatives of peoples, modeled as rational, are fairly situated as free and equal to deliberate about the correct subject – the content of the Law of Peoples – in accordance with the ‘criterion of reciprocity’ (35).

Although the realistic utopia, as a normative idea, consists of first principles and precepts, it must be feasible, predicated on actual laws of nature, and stable in a manner allowed by such laws – stable ‘for the right reasons’ (LoP, 12–13), as opposed to stability as a ‘balance of forces’ (44). The idea of stability is central for Rawls’s normative project and reflects his conviction that moral and political principles on which enduring just institutions are based must be compatible with a sound understanding of human nature and psychology.¹⁰ In PL, Rawls argued that there are two aspects of domestic society that contributes to the stability of the political conception of justice for the right reasons. The first has to do with the ‘reasonable moral psychology’ of citizens, which will lead to the cultivation of a durable moral commitment to the political conception of justice (PL, 81–82). The second involves the idea of an overlapping consensus on the political principles among all reasonable comprehensive doctrines (141); the political conception of justice can be stable under the condition of reasonable pluralism because reasonable citizens in a well-ordered society can affirm the freestanding political conception as a module within their comprehensive doctrines, which they already affirm. As an extension of PL, LoP should incorporate the two conditions for stability at the international level. First, Rawls argued that LoP takes people ‘as they are’ and does not expect anything that exceeds normal human psychology and capacities, while imagining the political structure as it might be in reasonably favorable historical circumstances (LoP, 11). Second, the principles of the Law of Peoples constitute an essential module within a range of acceptable¹¹ comprehensive doctrines, whether at the individual or societal levels, and is thereby supported by an overlapping consensus of reasonable peoples, comprising liberal and decent nonliberal peoples. LoP meets these conditions of stability, as I shall show.

The paper’s primary aim, however, is to make a case for the overlapping consensus view of *human rights* (OCV). Hence, let us focus on the sixth principle of the Law of Peoples, which is ‘Peoples are to honor human rights’. Rawls’s human rights – which he calls ‘human rights proper’ (LoP, 20, footnote 23) – embody ‘a special class of urgent rights’ (79) that are universally valid; they include the right to life (to the means of subsistence and security); to liberty (to freedom from slavery,

most often the basis of common sympathies (see footnote 20, LoP, 25), and this supports the claim that peoples are equivalent to idealized nation-states (Tan 2006, 77). See also, Miller’s review (2000).

⁹Although Rawls’s discussion was focused on liberal peoples’ international original position, Rawls stated that it can be extrapolated to DNPs (LoP, 62).

¹⁰Freeman claims that Rawls’s political liberalism was conceived after realizing that his position in *A Theory of Justice* (TJ) did not satisfy the conditions of stability in liberal society (28, 30). Rawls was concerned with stability, however, even in TJ (1999b), e.g. see, p. 415.

¹¹I use ‘acceptable’ to encompass reasonable comprehensive doctrines in liberal societies and ‘not fully unreasonable’ societal comprehensive doctrines in DNPs (LoP, 74).

serfdom, and forced occupation, and to a sufficient measure of liberty of conscience to ensure freedom of religion and thought); to property; and to formal equality (i.e. that similar cases be treated similarly) (65). They signify necessary conditions for any acceptable system of social cooperation in the international arena.¹² In Rawls's account of a realistic utopia at the international level, human rights proper become significant in three ways. First, their protection is among the eight principles of the Law of Peoples that should be accepted in the international original positions. Second, they are crucial for defining DNP, as their conception of justice (a 'common good idea of justice') must secure the members' human rights proper. Third, they play a special role in containing regimes that refuse to comply with a reasonable Law of Peoples – outlaw states – thereby specifying limits to their political autonomy. Hence both liberal peoples and DNP should protect their members' human rights proper and condemn their violation occurring elsewhere. Only regimes that protect their members' human rights proper can be considered decent and thereby admissible in a reasonably just Society of Peoples; only they are entitled to forestall justified and forceful intervention by other well-ordered peoples (LoP, 65).

Does protecting human rights proper, as part of the Law of Peoples, constitute an essential module within a range of acceptable comprehensive doctrines at the international level? Rawls's own account on this seems incomplete. In order to demonstrate that his account of a realistic utopia at the international level is an extension of his political liberalism at the domestic level, Rawls listed seven features of domestic society as a realistic utopia and then sought to find parallel features of the Society of Peoples that would qualify it as a realistic utopia. My argument that Rawls's conception of human rights is the OCV is predicated on identifying a feature of the Society of Peoples that parallels the sixth feature of domestic society that social stability must be predicated on a reasonable political conception affirmed by an 'overlapping consensus of comprehensive doctrines' (LoP, 16). At the international level, however, Rawls stated that the 'unity' of the Society of Peoples does not require religious unity and that the Law of Peoples constitutes a content of its public reason parallel to the principles of justice constituting a content of public reason in domestic society (18). There is no mention of an overlapping consensus at the international level.

Yet 'unity' at the international level parallels 'social unity' at the domestic level, which is understood in terms of 'social stability'. This is in turn based on the political conception of justice being affirmed by an overlapping consensus among reasonable comprehensive doctrines (LoP, 16). In other words, the political conception of justice has to be a 'module' that can fit into all reasonable comprehensive doctrines (PL, 12). It is only then that social stability for the right reasons can be attained. The fact that Rawls did not discuss stability for the right reasons at the international level, whereas he did at the domestic level, may seem to weaken

¹²Cohen (2004) distinguishes between 'justificatory minimalism' and 'substantive minimalism' arguing in favor of the former. The former represents a minimalist conception of human rights as a 'module' that can be subject to an 'overlapping consensus' among all societal comprehensive doctrines, whereas the latter confines human rights to 'protections of negative liberty' (192). Cohen claims that Rawls's list of human rights exemplifies substantive minimalism (210). I believe Cohen is mistaken. Understood as the OCV, Rawls's list exemplifies justificatory minimalism and represents the absolute minimum set of human rights, on which all well-functioning societies ought to agree.

the case for a parallel between the Society of Peoples and domestic society regarding an overlapping consensus. The aim of this paper is to demonstrate this parallel by arguing that Rawls's position on human rights has counterparts to the two aspects of domestic society that contribute to stability: first, reasonable moral psychology of the individuals involved, and, second, the idea of an overlapping consensus. Rawls's attribution of reasonable moral psychology to members of DNPs is addressed in the fourth and fifth sections, which focus on the first premise of my argument for the OCV – that DNPs are reasonable and worthy of liberal toleration. The second premise for the OCV will be defended in the sixth section by demonstrating that the protection of human rights proper can be a module in DNPs' societal comprehensive doctrines. The next section surveys some of the most trenchant liberal critiques of Rawls's conception of human rights to highlight the importance of defending the first premise.

Why include DNPs in the international original position?

Defending the first premise is a necessary condition for justifying the OCV; if DNPs were not reasonable or worthy of liberal toleration, then reaching an overlapping consensus on human rights with DNPs would lose moral significance. Indeed, what aggrieved liberal critics about Rawls's portrayal of a realistic utopia is not just that he took representatives of peoples as the relevant parties to the international original positions; rather, it was that Rawls included DNPs among the parties. Rawls claimed that nonliberal peoples can be considered reasonable if they are peaceful toward other well-ordered peoples and their societal comprehensive doctrine adequately protects their members' basic well-being. In particular, these nonliberal peoples must meet the normative conditions for 'decency' (LoP, 67): internationally, they are not aggressive toward other well-ordered peoples and respect their independence.¹³ Domestically, their legal system must meet three conditions: first, it secures human rights proper for all members; second, it imposes genuine moral duties and obligations on members; and third, judges and other officials administering the legal system are faithful to 'a common good idea of justice' that not only protects human rights proper of all its members but also takes into account every member's fundamental interests.

The persistent liberal critique that Rawls's list of human rights is unwarrantedly truncated¹⁴ is therefore a manifestation of liberal discontent with Rawls's inclusion of DNPs as equal parties to an international social contract. In endorsing a short list of human rights acceptable to DNPs as universal human rights, in other words, Rawls was 'excessively deferential' to DNPs.¹⁵ The liberal objection to accepting DNPs as equal partners in the international social contract has taken two main forms: first, some have interpreted Rawls's LoP as promoting a pragmatic *modus vivendi* meant to appease internally oppressive DNPs in order to constrain outlaw states that pose a greater threat to international peace and stability. As such, the list of human rights proper is 'relativist' and does not have an independent moral

¹³For Rawls's explanation of Kazanistan's non-aggressiveness, see LoP, 76, footnote 18.

¹⁴E.g. Teson 1995; Beitz 2001; Caney 2002; Buchanan 2004; Macleod 2006; Nickel 2007.

¹⁵Beitz 2000, 687.

foundation.¹⁶ There are parts in Rawls's LoP that seem to support this interpretation, especially where Rawls emphasized the foreign policy of well-ordered peoples toward outlaw states. This interpretation, however, is ultimately untenable for at least three reasons¹⁷: first, Rawls himself explicitly rejected the idea that 'stability among peoples can never be more than a *modus vivendi*' (LoP, 19). Second, Rawls clearly stated that his account of well-ordered peoples' foreign policy is derived from and subordinate to the ideal of the public reason of free and equal peoples manifest in the principles of the Law of Peoples (56). Third, Rawls's explicit aim in LoP is to provide a vision of a realistic utopia, which is a normative ideal.

Those who recognize the normativity of Rawls's project in LoP still argue that Rawls's proposal to take DNPs as equal partners in an international original position is indefensible. They start by questioning Rawls's decision to take the representatives in the two international original positions as those of *peoples* rather than of individuals. This seems unnecessary among liberal peoples that already adopt the liberal idea of the members as free and equal citizens. Liberal critiques, however, are more vehement when it comes to including DNPs. 'Associationist' DNPs – what Rawls called 'decent hierarchical' peoples – not only conceive of their members as members of groups (LoP, 64, 68), but also do not confer the same political rights on the members not subscribing to the societal comprehensive doctrine. While personally acknowledging that liberal peoples are 'superior' to DNPs in their social organization (62; see also, 83),¹⁸ Rawls recognized that there could be other 'acceptable' ways of organizing society according to societal comprehensive doctrines (59). Rawls therefore insisted that nonliberal peoples that meet the conditions of decency are qualified to be liberal peoples' equal partners in the international social contract; not treating them as equal partners would amount to failing to express due toleration for other acceptable ways of ordering society.

Liberal critics persist, however, in asking why decency is sufficient for considering DNPs as bona fide members of a Society of Peoples worthy of liberal toleration. Isn't Rawls merely stipulating the definition of decency, leaving us without a clear enough common-sense idea of decency to judge other than 'arbitrarily'¹⁹? They insist that human rights are ultimately justified by the reasonable interests of *individuals*, and not those of whole societies.²⁰ Therefore, according to these critics, DNPs, which do not subscribe to the conception of persons as free and equal citizens, do not deserve liberal toleration. More importantly, accepting Rawls's truncated list of human rights acceptable to DNPs as regulative of the international order has dangerous implications on the ground. First, it would jeopardize democratic dissidents and human rights reformers (in the conventional sense) within DNPs.²¹ In particular, Rawls's imaginary Islamic DNP Kazanistan bans non-Muslims from holding higher political or judicial offices to gain political influence, thereby forestalling the possibility of regime change in the direction of liberal

¹⁶Nickel 2007.

¹⁷In my view, liberal foreign policy should be considered an implication rather than a major premise of Rawls's normative enterprise.

¹⁸It is also possible that Rawls accepted the Kohlbergian thesis (Kohlberg 1986) that the justice perspective is the most mature moral perspective regardless of culture, as David Reidy argues (2017).

¹⁹Beitz 2001, 275.

²⁰*Ibid.*, 277.

²¹Teson 1995, 88ff.; Tan 2006, 85.

democracy. Second, accepting the minimalist conception of human rights would be detrimental also to the conforming members of DNPs. Suppose that there is no visible dissent within a DNP. Rather than indicating a society in which every member is satisfied, it may signify a 'successfully tyrannical' regime that has effectively stymied any opposing views through religious or political indoctrination.²² Allen Buchanan puts this in even starker terms: Rawls' idea of the common good conception of justice that protects human rights proper is compatible with regimes that are 'very deeply and arbitrarily inequalitarian'.²³

Although both of these liberal critiques are challenging, the first critique had been sufficiently addressed by Rawls himself in his portrayal of Kazanistan as adequately participatory and tolerant of dissenters (LoP, 74–75). This paper, therefore, focuses on the second critique, according to which any society that does not uphold the liberal conception of persons as free and equal citizens fails to respect individuals within and, therefore, cannot be considered as reasonable. According to Kok-Chor Tan, 'the boundary of reasonable disagreement' expands to an unacceptable degree at the international level for Rawls. The societal comprehensive doctrine of a theocracy, such as Kazanistan, which threatens the individual freedom of its members and is therefore unreasonable in liberal contexts, becomes reasonable in the international context.²⁴ This 'inconsistency' may render the crucial Rawlsian concept of reasonableness impotent.²⁵ Others fault Rawls's idea of reasonableness in the international context for being 'subjectivist' and justifying systems of 'serious' inequalities in DNPs.²⁶ DNPs' protection of women's interests, in particular, would be 'so inadequate that it is compatible with some of the severe inequalities that reportedly existed in Taliban society'. Furthermore, women in DNPs would accept their subjugated status without complaint or resistance because they may be 'brainwashed into submissiveness' by being acculturated within a sexist cultural and institutional framework.²⁷ At the heart of this liberal skepticism is the assumption that those – especially those socially subjugated – who uncritically accept the prevalent conception of persons as group members in DNPs are necessarily brainwashed or indoctrinated. I call this the 'brainwash' charge. If this charge is plausible, then DNPs cannot be considered 'reasonable', and the first premise necessary for the OCV must be rejected.

Conception of persons as moral group members: psychological defense

A first step in critically assessing the critique that DNPs are not reasonable is clearly understanding Rawls's idea of reasonableness. Rawls himself never defined it, stating that what 'reasonable' means may be revealed only by its uses (PL, 94; LoP, 67, 87)²⁸ and then be clarified and explicated by other concepts and principles.²⁹ Further, Rawls used it in several different senses. The primary application is to *persons*: reasonable persons are willing to, first, propose fair terms of cooperation and to abide by them provided that others do the same; and second, recognize the burdens of judgment and accept that they cannot expect others to agree on

²²Tan 2006, 86.

²³Buchanan 2004, 164.

²⁴Tan 2006, 90.

²⁵Ibid., 89.

²⁶Buchanan 2004, 167.

²⁷Ibid., 170.

²⁸Rawls argues similarly regarding 'decency', LoP, 67, 88.

²⁹See, Freeman 2002, 31.

comprehensive doctrines (PL, 56ff.). The idea of reasonableness applied to a whole *people* in the international context, therefore, cannot be this primary sense of reasonableness applied to persons. Rather, it must be understood analogically: a reasonable people would be one willing to live alongside others on terms that all can accept. Understood in this way, then DNPs' reasonableness may seem banal, as they accept the Law of Peoples,³⁰ which commits them not to attempt to impose their societal comprehensive doctrine on other well-ordered peoples.

Liberal critics would not be satisfied with the answer that DNPs are reasonable in this banal sense. If this is what 'reasonable' means, then perhaps the focus should be on whether DNPs are worthy of liberal toleration. Liberal critics would deny that DNPs are worthy of liberal toleration, as their members who do not subscribe to the liberal conception of persons as free and equal citizens are necessarily brainwashed. Therefore, unless the brainwash charge can be satisfactorily refuted, liberal critics won't be placated. Hence, the rest of this and the next sections consider whether the DNP conception of persons as moral group members is justifiable.

Rawls claimed that DNP members do not conceive of themselves as free and equal individuals. Hence, they are not reasonable in the sense applied to persons. Indeed, Rawls never said that they are reasonable.³¹ Rather, they are 'decent and rational'. They are also *moral* in the sense of being responsible, cooperative, and having a robust sense of moral right and wrong as understood in their society; they are capable of recognizing, understanding, and acting according to their moral duties and obligations as members of these groups consistent with their common good idea of justice. Furthermore, they are capable of 'moral learning' (44, 66). DNP members are therefore best characterized as *moral group members* – persons who think of themselves as group members with the moral capacity to cooperate with others. Rawls focused on decent hierarchical societies, which are 'associationist' in form (LoP, 64).³² Although Rawls's characterization of the decent hierarchical conception of persons as moral group members is plausible in general, his focus on associationist decent hierarchical societies seems narrow. Rawls himself acknowledged that associationist decent hierarchical societies are just one type of DNPs (63). Hence, I propose to generalize the conception of persons as moral group members to all types of DNPs, not just to associationist forms; the identities of DNP members may then be focused on larger groups, such as the nation-state or even a religious world community – e.g. the Islamic *umma*.

The essence of the conception of persons as moral group members is that they primarily think of themselves as responsible and cooperating members of groups, regardless of group size. They have the moral capacity to know the difference between right and wrong according to their societal comprehensive doctrine,

³⁰This pertains to accepting principle 1 of the Law of Peoples. Going beyond this banal sense and showing that DNPs are substantively committed to maintaining international peace would require showing that an overlapping consensus can be reached on principle 1, which goes beyond the scope of this paper.

³¹Therefore, Buchanan's analysis of 'reasonable' in the DNP context (2004) is incorrect.

³²By this, he meant a society whose members belong to different sub-state social groups in public life represented in the legal system by a body in a decent consultation hierarchy. It is not entirely clear why Rawls imagined these societies as associationist. Although he invoked Hegel's influence for this interpretation (LoP, 72), it does not represent real-world polities in parts of the world where the idea of societal comprehensive doctrines is widely accepted and practiced.

which is inherently moral.³³ Societal comprehensive doctrines are comprehensive doctrines adopted and prescribed at the societal level and endorsed by a predominant majority. A moral doctrine is comprehensive when it encompasses conceptions of value in human life, including ideals of personal virtue and character, that inform much of our nonpolitical conduct. Unlike political conceptions, such as the principles of justice in liberal domestic society, societal comprehensive doctrines have a general scope and apply to a wide range of subjects beyond the political (PL, 175). They provide the overarching and comprehensive evaluative framework for the entire cultural community. DNP members who embrace their societal comprehensive doctrine are *moral* group members who follow duties and obligations imposed by the system of law, which conforms to their common good idea of justice entailed by the societal comprehensive doctrine. *Moral* here signifies not only the moral capacity of the individual group members, but also the moral nature of the relevant group itself unified by an inherently moral societal comprehensive doctrine, which I argue is a necessary component of any *decent* nonliberal people.

It is reasonable to believe that Rawls attributed this conception of persons to DNPs in line with a precept of a realistic utopia to take people 'as they are' (LoP, 11). In other words, Rawls's conception of DNP members may reflect the reasonable moral psychology conducive to stability at the international level for the right reasons. The crucial question though is whether this conception of persons is defensible, as Rawls seems to have thought. Other than claiming that DNPs are not slave societies and their members voluntarily embrace their nonliberal societal comprehensive doctrine (66), which represents an acceptable way of ordering society, Rawls did not offer a direct defense of the DNP conception of persons as moral group members. The closest that Rawls came to defending this conception of persons is by reference to their capacity for 'moral learning', which refers to the psychological process whereby DNP members will come to accept the legitimacy of the Law of Peoples over a period of time; as they witness other well-ordered societies comply with the principles of the Law, which results in international peace and stability, they may conclude that the Law is advantageous for themselves and those they care for and consolidate their commitment to it (44). This process is on a par with the psychological process of learning among citizens in liberal societies conducive to developing their sense of justice, which would generate social stability for the right reasons in liberal societies (PL, 86–87). By recognizing that DNP members are capable of moral learning, Rawls intimated that not only the decency of their nonliberal polity, but also the reasonable justice of the international order regulated by the Law of Peoples would be stable for the right reasons.³⁴

Yet, this is by no means a direct defense of the conception of persons as moral group members. Liberal critics may continue to suspect that DNP members' relationship to their 'not fully unreasonable' societal comprehensive doctrine is

³³E.g. Buddhism, Confucianism, Christianity, Hinduism, Islam, Judaism, as well as Pantheism of various indigenous cultures.

³⁴Rawls claims that this argument from moral psychology is not psychological 'originating in the science of human nature' but rather 'philosophical' drawn from the political conception of Justice as Fairness (PL, 87). This seems inconsistent with his later recognition that a 'psychological' principle sets limits to what can sensibly be proposed as the content of the Law of Peoples (LoP, 112).

spurious, their capacity for moral learning notwithstanding. The brainwash charge is one manifestation of this suspicion. Therefore, unless DNP members' advocacy of their societal comprehensive doctrine can be shown to be defensible, this conception of persons will be vulnerable to the brainwash charge, which in turn undermines Rawls's claim that DNPs are worthy of liberal toleration. In order to see if this conception of persons is able to overcome the brainwash charge, we need to examine how moral group members relate to their societal comprehensive doctrine, which would benefit from an investigation into how humans relate to groups in the first place. For this, however, we may need to venture out of 'armchair' philosophy into social scientific, including psychological, research on the human self itself. Contrary to its unmitigated repudiation by liberal theorists, recent scholarship in the social sciences has viewed the conception of moral group members favorably. According to this research, members of our species have evolved as group members for whom group identification represents 'an adaptive social cognitive process' that makes social cohesion and cooperation possible.³⁵ Group membership is essential both for our physical survival and our psychological and emotional well-being.³⁶ Hence, thinking of oneself as a group member is not aberrant, but normal human psychology.³⁷

Recognizing the importance of group membership for our species does not mean that we ought to tolerate just any endorsement of group membership or solidarity. Some groups clearly do not deserve toleration, as they are not only internally oppressive but also externally aggressive. Yet many human groups have promoted peaceful coexistence with other groups, protected their members' well-being according to their cultural values, and, most importantly, enjoyed the loyalty and attachment of a predominant majority of the members. Such groups have typically been united by an inherently moral societal comprehensive doctrine.³⁸ This is consistent with various social scientific research that has shown that humans are fundamentally moral.³⁹ Although all humans share innate moral predispositions, the final product of their cultivation that we recognize as the moral orientation of particular individuals is thoroughly permeated by cultural elements from which it would be extremely difficult, if not impossible, to extricate oneself.⁴⁰ Under these circumstances, it would be coercive and destabilizing to impose a culturally specific perspective found only among 'some of the most psychologically unusual people on Earth' in Western, educated, industrialized, rich, and democratic ('WEIRD') societies⁴¹ on those who were not socialized in liberal societies.

I believe Rawls's plea to include DNPs in the realistic utopia is consistent with such findings. Taking the world and human beings as they are, Rawls recognized and accepted the radical pluralism of world cultures and comprehensive doctrines

³⁵Turner 2010/1985, 268.

³⁶Barkow *et al.* 1992; McAdams and Pals 2006.

³⁷Tajfel 1981; Dawes *et al.* 1990; Ellemers *et al.* 2002; Wilson 2002; Hunt and Benford 2010; Haidt 2012.

For a surprising and increasingly influential claim that liberal democracy fails because it is oblivious to the fact that voters think of themselves as group members and are mainly motivated by group loyalties in politics, see Achen and Bartels 2017.

³⁹Wilson 2002; Smith 2003; Sperber 2005; Tancredi 2005; De Waal *et al.* 2006; Hauser 2006; Turner 2010/1985; Haidt 2012; Diamond 2013; Greene 2013; Mendez *et al.* 2018. Indeed, Rawls seems to have accepted such an assumption in his emphasis on 'moral powers', and 'a sense of justice' in particular, as central to stability.

⁴⁰Shweder *et al.* 1987; Haidt and Joseph 2008.

⁴¹Henrich *et al.* 2010.

in order to envision an international realistic utopia. Rawls clearly saw that even the political conception of persons as free and equal citizens – as a fundamental idea implicit in the public culture of liberal democracies (PL, 13; see also, 8, 9, 14, 15, 18, 19, 20, 43, 46, 59, 78, 104, 156, 175) – is a ‘liberal idea’ inapplicable to DNPs (LoP, 66). That Rawls recognized profound psychological limits set by our cultures is obvious in an obscure footnote (LoP, Part III, 112, footnote 44) where he stated that social learning of moral attitudes supporting political institutions would be most effectively facilitated – and thereby conducive to stability for the right reasons – when supported by widely shared cultural institutions and practices. Rawls further acknowledged that this psychological principle sets limits to what can sensibly be proposed as the content of the Law of Peoples. Moral frameworks are thoroughly steeped in culture, embodying distinct cultural patterns, and fundamental moral values and ideals that guide our concrete lives are wedded to thick interpretations of our inherently moral societal comprehensive doctrines, interwoven in cultural threads. DNP members, whose cultures are not liberal, have been socialized to see themselves as moral group members within their cultural community; they consider themselves responsible and cooperating members of their cultural community committed to upholding and protecting their shared moral order. Hence it would be unreasonable to expect them to think of themselves as free and equal citizens even only in the political realm. Citing the importance of maintaining mutual respect among reasonable peoples (LoP, 62), Rawls argued that insisting that consistency between PL and LoP be attained by imposing the liberal conception of persons on others would amount to denying a due measure of respect to and wounding the self-respect of not only DNPs but also their members, leading to ‘great bitterness and resentment’ (61).⁴²

Conception of persons as moral group members: normative defense

Liberal critics may point out that this social scientific account is merely descriptive and therefore not sufficient for the normative project that aims to propose a realistic utopia. Nonliberal societal comprehensive doctrines to which DNP members subscribe are moral merely in the anthropological sense, but cannot be philosophically justified. Recall Buchanan’s claim that DNP’s common good conception of justice may be very deeply and arbitrarily inegalitarian, which disadvantages the socially disenfranchised, particularly women. Hence DNP women who subscribe to societal comprehensive doctrines may be ‘brainwashed’. This perception is indeed widespread in liberal societies and echoed by liberal feminists who claim that women in nonliberal cultures are suffering from ‘false-consciousness’⁴³ or ‘adaptive’ preferences.⁴⁴ The conception of persons as moral group members, liberals may continue, is indefensible because it may rationalize the subjugation of those who are indoctrinated to embrace oppressive (and sexist) societal comprehensive doctrines. Overcoming gender inequality in nonliberal societies, according to this logic, is

⁴²In TJ, Rawls said that self-respect is ‘perhaps the most important primary good’ (386), and Freeman argues that stability requires giving greater support to citizens’ sense of self-respect (2002, 22). That imposing liberal values on DNPs will undermine their members’ self-respect, then, can be destabilizing.

⁴³Okin 1994.

⁴⁴Nussbaum 2000; Superson 2005.

predicated on their members rejecting their inegalitarian societal comprehensive doctrines and adopting liberalism in order to see themselves as free and equal citizens.

Defending Rawls's inclusion of DNP's whose members think of themselves as moral group members in his realistic utopia, therefore, requires demonstrating the agency of DNP women in accepting the allegedly oppressive societal doctrines. For this, we need to go beyond Rawls's speculations and find real-world evidence that such women can be agents in their own right. Identifying a group of women who fit the characterization of DNP women in the real world, however, must overcome at least two challenges: first, most discussions by liberal theorists and feminists about the agency of women in nonliberal contexts – often to show its deficiency – have been pervaded by stereotypes and unsubstantiated perceptions prevalent in liberal societies. Second and relatedly, some have identified the largely imaginary 'Taliban women' – Muslim women under Taliban rule who willingly embrace their subjugation – as a paradigmatic example of women in nonliberal contexts.⁴⁵ This, I believe, is a mistake. Most, if not all, women under Taliban rule were not willing adherents of the Taliban ideology⁴⁶ and do not qualify as DNP members who *voluntarily* adopt the societal comprehensive doctrine. I propose to examine Islamist women in North Africa (Egypt and Morocco) as examples of DNP members.⁴⁷ These Islamist women wholeheartedly embrace Islam⁴⁸ and participate in the *da'wa* (Islamic education) movement⁴⁹ whose political goal is to establish an Islamic state regulated by Shari'ah law.

Why are these women's ethnographies relevant to the Rawlsian ideal theory? Rawlsian ideal theory aims at 'strict compliance'⁵⁰ with the identified normative principles. This state of affairs, although worth striving for, does not (yet) exist. Regardless, the ideal must be realistic under 'favorable circumstances' that would make the ideal regime possible, provided that the political will exists.⁵¹ I take non-coercion as the first and foremost among these 'favorable' conditions – namely, the adoption of the societal comprehensive doctrine should not have resulted from coercion. Also, the ideal must remain within the realm of what is 'realistically practicable' (13) by conforming to the general facts of moral psychology. We have seen in the last section how conceiving oneself as a moral group member is consistent with reasonable moral psychology. The ethnographies of the Islamist women therefore illustrate how DNP women who exemplify reasonable human moral psychology exercise their agency under noncoercive circumstances in nonliberal contexts. I believe that the account of DNP women's agency is necessary for defending the Rawlsian realistic utopia, which includes DNP's, by offering a much needed antidote to the persistent liberal misperception about women in these societies.

⁴⁵Buchanan 2004; Oshana 2006; Westlund 2009.

⁴⁶Rostami-Povey 2007.

⁴⁷See, e.g. Mahmood 2005/2012; Ahmed 2011; Hafez 2011; Salime 2011. For more relevant facts and critical analyses, see Herr 2018.

⁴⁸Not surprisingly, misunderstandings about them abound among liberal feminists, including those who perceive them as cultural dupes. See, Ibrahimhakkioğlu 2012.

⁴⁹*Da'wa* literally means 'call, invitation, appeal, or summons', associated with 'God's call to the prophets and to humanity to believe in the "true religion", Islam' (Mahmood 2005/2012, 57).

⁵⁰Rawls 2001, 13.

⁵¹Rawls 1999b, 216.

Let us now turn to whether Islamist women's agency is sufficiently robust to render the brainwash charge untenable. In Egypt, participation in the *da'wa* movement by Islamist women associated with the Egyptian Islamist group Muslim Brotherhood has been so active that it has been called the Women's Mosque Movement (WMM).⁵² *Da'wa* is a religious duty of all Muslims to urge fellow Muslims to greater piety by teaching one another correct Islamic conduct. The idea is that once Egyptians became Islamically educated, they would willingly accept Islamic government and Shari'ah out of their own convictions.⁵³ The *da'wa* movement led to dramatic increases in mosque attendance by both women and men in Egypt. To meet the demands for religious instruction, women became actively involved in the movement and took on the role of '*da'iya*' – the practitioner of *da'wa* – who provides religious teachings in mosques and helps others cultivate Islamic virtues.⁵⁴ WMM has enabled Egyptian Islamist women to hold public meetings in mosques for the first time in Egyptian history and thereby changed the historically male-centered character of mosques and Islamic pedagogy. Islamist women's participation in the movement, however, has certain limits. For instance, WMM participants have not challenged gender hierarchy within Islamist organizations; women are encouraged to carry out *da'wa* only among other women and are not allowed to do so among men. Furthermore, women's improved public role in religion and politics seems to be predicated on women's acceptance of feminine virtues, such as shyness, modesty, humility, and fear.⁵⁵ These virtues advocated by WMM participants may seem to confirm the Western perception that these women's agency is flawed. The defense of such virtues by WMM participants, then, may seem to attest to their brainwashed mental state.

Such a perception is justified only if human agency is understood as autonomy. Recall that the prevalent conception of persons in DNPs, also accepted by WMM participants, is not that of free and equal – autonomous – citizens, and it would be unfair to evaluate their agency by the liberal standard. This is why liberal theorists have consistently failed to discern such women's agency. WMM women view themselves not as autonomous individuals, but rather as devout Muslims who embrace fundamental moral values and ideals enjoined by their faith as constitutive of the very substance of their 'intimate, valorized interiority'.⁵⁶ WMM participants believe that they can become their authentic moral selves only by fully immersing themselves in and habituating Islamic virtues and practices embraced by all members, including men, of their cultural community. Given the constitutive role that the body plays in the construction of the moral self, training the body to embody one's moral norms and standards becomes crucial for WMM participants who aspire to be unfaltering in their commitment to becoming God's pious subjects. They willingly take on the often painful regime of disciplinary practice to embody pious virtues in their daily lives. It is in this context that WMM participants embrace the very processes and conditions that secure their subordination to God, not because they are brainwashed, but rather because they consider these the means by which they become 'self-conscious' moral agents in their moral

⁵²Mahmood 2005/2012.

⁵³Ahmed 2011, 73.

⁵⁴Mahmood 2005/2012, 57.

⁵⁵Ibid., 141.

⁵⁶Ibid., 23.

community.⁵⁷ WMM participants therefore exemplify moral group membership par excellence, striving to embody moral virtues in their personal lives in conformity with their moral societal comprehensive doctrine.

The concern that WMM participants' commitment to embody 'submissive' virtues entrenches them in a hopelessly patriarchal religious system can be overcome when we examine another group of North African Islamist women similarly committed to the *da'wa* movement. Since the 1980s, Moroccan Islamist women actively participated in male-centered Islamist groups in opposing the government's repeal of Shari'ah from the Moroccan legal system.⁵⁸ This had been instigated by Moroccan feminists who launched a mass petition campaign against the *mudawwana* (the Shari'ah-based Moroccan family law) in 1992. Hence Islamist women targeted the feminists whose 'ignorance' and misunderstanding of Islam they deplored. The Islamist women insisted that the Islamic foundational texts, the Qur'an and the Sunna (the Prophet's conduct and statements), are inclusive in conceiving men and women as equal members of the Islamic faith community (*umma*). Women are not only equally responsible as men for building a just society through *da'wa*, but are actually better equipped for *da'wa* than men in their capacity as mothers. Once women's roles are defined as educators of the *umma*, they argued, women's active participation in the public sphere must be legitimized as a matter of faith. Women's participation in *da'wa* would counteract patriarchy, as the purpose of Islamic education is to eliminate 'the culture of denigration of women' widespread in society.⁵⁹ Islamist women's conception of women's emancipation pursues the liberation of both men and women, not as individuals, but as God's faithful subjects.⁶⁰

These accounts of Islamist women, I hope, offer the necessary counterevidence against the pervasive brainwash charge. Devout Islamist women, while not autonomous in the liberal sense, are first and foremost capable moral agents who strive toward embodying Islamic virtues and promoting the Islamic common good of creating a virtuous Islamic republic. Furthermore, they are not merely indoctrinated dupes of their societal comprehensive doctrine incapable of questioning the imposed religious dogma; rather, they can become 'the insider agents of change' in Islamist movements⁶¹ by insisting on their right to creatively reinterpret Shari'ah – *ijtihad* – as equal members of their moral community. This demonstrates that progress toward gender justice⁶² is possible in an Islamic DNP, albeit in a distinctly Islamic way, through Muslim women's social participation.⁶³ Rawls was therefore correct to warn us not to presume that decent societies are unable to reform themselves in their own way (LoP, 61).

Human rights and an overlapping consensus

The last two sections have defended the first premise of the OCV that DNPs are equal parties to the international social contract worthy of liberal toleration by

⁵⁷Ibid., 17.

⁵⁸Salime 2011.

⁵⁹Ibid., 53.

⁶⁰Ibid., 21.

⁶¹Ibid., 68.

⁶²For an account of gender justice distinct from the liberal feminist account, see Herr 2019.

⁶³Rawls offered relevant thoughts on gender justice in nonliberal contexts – especially in burdened societies – in LoP, 110–11.

showing not only that DNPs are reasonable but also that their members, who think of themselves as moral group members, are competent moral agents. This section defends the second premise, which has been largely neglected by liberal theorists,⁶⁴ that the protection of human rights proper can be supported by an overlapping consensus among all well-ordered peoples, including DNPs. Let's begin with liberal peoples. Although the liberal complaint has been that the list is too minimalist, it is not difficult to see that human rights proper would be supported by liberal peoples' political conceptions of justice, as the former is a subset of an extensive set of liberal rights endorsed by the latter. Turning now to DNPs, their support for human rights proper is banal in one sense, as their 'common good ideas of justice' protect human rights proper and the good of the people they represent (LoP, 69). This is tautologous, however, as nonliberal peoples must accept the principle on human rights proper to qualify as decent. For DNPs' protection of human rights proper to be stable in the right way, it must be based on more than mere stipulation. In order to justify the political conception of the OCV, it must be shown that protecting human rights proper forms a module within DNPs' societal comprehensive doctrines.

The aim of this section is to show exactly this. As stated previously, societal comprehensive doctrines are moral doctrines encompassing conceptions of value in human life, including ideals of personal virtue and character, that inform much of our nonpolitical conduct. In DNPs, they are adopted and prescribed at the societal level and endorsed by a predominant majority. Showing that the protection of human rights proper is a module within a societal comprehensive doctrine involves demonstrating that the former can be supported by the latter. Given the plurality and diversity of societal comprehensive doctrines, however, there cannot be a single universal justification of human rights proper pertaining to all DNPs. Rather, their justification can be constructed only from within each societal comprehensive doctrine.⁶⁵ Different types of DNPs can be envisioned according to their societal comprehensive doctrine (LoP, 68), such as Muslim peoples, Buddhist peoples, Confucian peoples, and Hindu peoples. A full justification of the OCV calls for separate investigations into different societal comprehensive doctrines of all DNPs to determine whether these can also encompass the protection of human rights proper as a module. Due to space limitations, however, this paper focuses on one particular type of DNP – an Islamic DNP⁶⁶ – as a first step toward defending the OCV in relation to DNPs.

Historically, human rights discourse founded on the Universal Declaration of Human Rights (UDHR) has not been received favorably in Muslim societies. This is so not only in the descriptive sense that their authoritarian regimes have often flouted the citizens' human rights, but also in the normative sense that the UDHR has been perceived as representing 'the Western cultural invasion'. This

⁶⁴Exceptions are Taylor 1999 and Chan 1999.

⁶⁵Taylor 1999, 125.

⁶⁶One challenge to conceptualizing an Islamic DNP concerns determining the relevant Islamic polity. Traditionally it was viewed as the entire religious community of Muslims (*umma*). When we imagine the Islamic DNP as a modern state, however, we are confronted by that fact that the citizenry in most modern states is irremediably heterogenous, whether racially, ethnically, religiously, or ideologically. See, March 2019, Ch. 7. I follow Rawls, however, in engaging in ideal theory to imagine an ideal type of the Islamic DNP with minimal exposure to liberal ideas.

perception has fueled reactions by ‘apologists’ who claim that Islam supports a more expansive set of human rights than the UDHR or ‘puritans’⁶⁷ who unilaterally reject anything other than Islamic values.⁶⁸ Others have found the UDHR’s secular foundation alienating to Muslims as a religious people.⁶⁹ Investigating whether Islam as a societal comprehensive doctrine may support human rights proper – the right to life; to liberty; to property; and to formal equality – however, should focus on the ‘doctrine’ of Islam whose normative ‘potentialities’⁷⁰ can be explored independently from socio-politico-historical contexts.⁷¹ At the center of the Islamic orthodox doctrine is Shari’ah law, which is the body of Muslim religious law founded on the Qur’an and the Sunna. Shari’ah, however, is inherently pluralistic, consisting of an accumulated assemblage of jurists’ interpretations of authoritative Islamic texts belonging to multiple Islamic schools ‘equally legitimate and orthodox’.⁷² Although Shari’ah represents ‘God’s Way’, it must involve the human agency of interpretation for its production and execution.⁷³ Many experts on Shari’ah agree that universal human rights to which all humans are entitled can find support in Shari’ah, as Qur’an asserts the status of humans as God’s ‘vicegerents (caliph)’ and the most valued among God’s creation for the ‘miracle’ of the human intellect. Since humanity is a ‘symbol of divinity’, protecting human integrity and dignity is a divine mandate.⁷⁴ Further, the Qur’anic discourse promotes justice as a core value that justifies the existence of government and an obligation owed to God.⁷⁵

Yet orthodox Islamic texts do not directly refer to human rights, and the connection requires some contemporary interpretive work. Khaled Abou El Fadl argues that the idea of human rights can be supported in Islam if individual rights are understood as ‘qualified immunities’ predicated on the idea that interests related to an individual’s well-being deserve protection from infringements. The pre-modern Islamic juristic tradition had articulated the importance of protecting certain interests of individuals, particularly pertaining to the ‘necessities’ of religion, life, intellect, lineage or honor, and property.⁷⁶ Furthermore, the valorization of the human intellect as symbolizing divinity, in particular, implies ‘the right to rational development’, which protects a human entitlement to minimum standards of both physical and intellectual well-being, including guaranteed freedom of conscience,

⁶⁷For the view that even theorists of political Islam – an example of ‘puritans’ – have argued for the protection of human rights as compatible with Islam, see March 2019. ⁶⁸Abou El Fadl 2003, 306.

⁶⁹Sachedina 2009, 10, 37.

⁷⁰It bears emphasizing that the protection of these human entitlements remains ‘potentialities’, distinct from historical Shari’ah, which has condoned violations of such human entitlements. Focusing on the doctrinal potentialities, however, is consistent with the Rawlsian ideal theory.

⁷¹Abou El Fadl 2003, 304. According to An-Na’im (1996), Muhammad’s teachings diverge between the earlier Mecca period, which supports equality and non-discrimination on grounds of gender or religion, and the later Medina period. Although the Medina teachings have become orthodox, An-Na’im argues that Shari’ah, by adopting the Mecca teachings, may support constitutionalism. Rawls (1999c) took this as evidence that Muslims may even support constitutional democracy in liberal contexts (endnote 46).

⁷²Abou El Fadl 2007, 32.

⁷³Abou El Fadl 2003, 321. Shari’ah should not be confused with actual state law, whether enacted in its spirit or not, as the ‘inherent subjectivity and diversity of Sharia principles’ cannot be contained in a set of positive legal injunctions (An-Na’im 2011, 67; see also Abou El Fadl 2003, 325).

⁷⁴Abou El Fadl 2003, 320.

⁷⁵*Ibid.*, 328.

⁷⁶*Ibid.*, 332.

expression, and assembly.⁷⁷ Recognizing the right to liberty of conscience for non-Muslims within may seem the most challenging for the Islamic doctrine, which does not accept the separation of church and state. Yet protecting religious freedom of non-Muslims is consistent with the Qur'anic guarantees of religious freedom.⁷⁸ Indeed, Shari'ah allows freedom of belief that may contradict the majority's belief, provided that such beliefs are not expressed in public with the intent to convert others.⁷⁹

Is this kind of support for human rights in Islam, which requires contemporary (re)interpretations of the doctrine, adequate for the OCV? To see this, it would be fruitful to examine Rawls' tripartite distinction on the nature of the support that reasonable comprehensive doctrines may give to the political principles of justice in domestic society: the former could be 'congruent with', or 'supportive of', or at least 'not in conflict with' the latter (PL, 140). By congruence, Rawls implied a deductive relationship, as exemplified in the principles of justice being deductively derived from Kant's moral philosophy. The second relationship is that of 'approximation', for which Rawls took classical utilitarianism as an example; Rawls claimed that due to 'limited knowledge' regarding facts on the ground utilitarians would accept the political principles of justice as a 'satisfactory' workable approximation to the principle of utility. A 'pluralist account of the realms of values' exemplifies the third relation of support in that it affirms the political principles through 'balancing' that recognizes the priority of political values over others. This is the weakest kind of support that is predicated on avoiding contradiction (170). Islam's support for human rights proper is not one of deductive entailment, for no core Islamic text has fully developed a doctrine of human rights from which the support can be derived. It is not that of 'balancing' either, as the Islamic doctrine is not a mere aggregate of views pertaining to distinct realms of values. The second relation may not seem entirely appropriate either, as what is limited in the case of Islam is not just knowledge about facts but also doctrinal completeness. As a religious doctrine based on texts created in the 7th century, Islam could not anticipate later developments in human history. Yet, Islam's support for human rights proper may be understood as a satisfactory workable approximation to the core Islamic values and principles predicated on suitable (re)interpretations to adapt to new circumstances (such as those created by the existence of the modern state). Hence, the protection of human rights proper can be supported by Islam as a module in the sense of approximation broadly construed.⁸⁰

Liberal theorists, however, have been skeptical about the idea of an overlapping consensus on human rights. I consider two objections from prominent liberal theorists. First, Peter Jones (2001) claims that the overlapping consensus view, rather than addressing the problem posed by human diversity, avoids it by completely

⁷⁷Ibid., 326.

⁷⁸'There is no compulsion in religion', Qur'an 2:256; 18:29.

⁷⁹Asad 2008, 591–92.

⁸⁰As previously stated, the justification for the protection of human rights proper would differ among well-ordered peoples, as it involves the fullness of the societal comprehensive doctrine. Whereas the liberal justification endorses the protection of human rights proper as a subset of an extensive set of rights for free and equal individuals in the public arena, the Islamic justification for protecting human rights proper is predicated on the idea that human rights proper are entitlements conferred on humanity by God so that it can properly carry out its role as God's caliph.

deferring to comprehensive doctrines. Consequently, its common denominator would be so 'meagre' and 'denuded of content' that the human rights that remain in the list would be 'hardly worth having'.⁸¹ This theory of human rights, Jones claims, thereby becomes 'superfluous'.⁸² Jones's concern, however, does not apply to the OCV advocated in this paper. First, the problem of human diversity that the OCV addresses is whether the protection of human rights at the international level can attain stability for the right reasons. If the list of human rights is expansive, such as that advocated by the UDHR, it risks becoming culturally specific or parochial and thereby alienating those in nonliberal cultures. Even if its imposition may be reluctantly accepted by the latter, their compliance would at best be stable as a 'balance of forces' (LoP, 44). In order to attain stability of human rights protection at the international level for the right reasons, a genuine overlapping consensus on human rights, implied by the OCV, is necessary. Jones's claim that the OCV would be superfluous is therefore not defensible. Second, Jones's claim that the content of human rights would be so meagre or denuded of content is also false, as the OCV is *not* an overlapping consensus among 'everyone everywhere'.⁸³ Rather, the consensus is only among reasonable well-ordered peoples whose comprehensive doctrines – whether individual or societal – meet an acceptable threshold. The meaningfulness of the OCV's content is evident in that it can be enforced to stop the suffering of individuals in outlaw states or burdened societies.

David Miller offers another critique of the OCV that it would not support human rights that promote 'autonomy'.⁸⁴ Miller's critique is on target, as most, if not all, nonliberal societal comprehensive doctrines do not make individual autonomy one of their foundational values. For example, our examination of the Islamist women demonstrates that their aim in life is not to be autonomous individuals (or citizens) but rather to become God's pious subjects. The OCV reconstructed in this paper therefore does not support an expansive list of liberal human rights, such as that found in 'the standard documents such as the Universal Declaration and its successors',⁸⁵ insofar as these rights are justified by appeal to autonomy. Rather, it supports protecting a minimalist list of human rights, such as Rawls's human rights proper, which requires no such appeal. Yet, the question is whether this can be considered a weakness of the OCV. I do not believe so. As has been argued, the OCV is a political conception of human rights constitutive of Rawls's normative account of a realistic utopia aiming to promote international peace and justice that are stable for the

⁸¹Jones 2001, 35.

⁸²Ibid., 36.

⁸³Ibid., 35.

⁸⁴Miller 2007, 177. Relatedly, Miller also claims that the OCV won't include human rights that honor human 'equality'. Confucianism, for example, assumes 'inequality of status within the community' (176). Responding to Miller's point about inequality requires clarifying an ambiguity about Confucianism. If it is understood as a socio-political ideology that had historically subjugated vulnerable members, such as women, Miller is correct. However, to be consistent with Rawls's ideal theory, Confucianism must be understood as a moral comprehensive doctrine founded by Confucius and Mencius, to which Miller's critique does not apply, as it conceives of the members of an ideal Confucian society as equals in their capacity for moral self-cultivation. The Confucian conception of the self, however, is irreducibly inter-relational embedded in 'five human relations' – which include relations between parents and child and husband and wife. These relations are foundational for the proper development of the Confucian self in that optimally maintaining these relations by performing one's roles properly is constitutive of the Confucian moral goal of self-cultivation. In principle, the dyad in each relation is not defined by hierarchy but rather by harmonious role playing that would conduce to the self-cultivation of each party.

⁸⁵Ibid., 176.

right reasons. The international realm as we know it comprises not just liberal peoples but also nonliberal peoples, some of which strive toward the normative goal of decency – DNPs. DNPs represent acceptable ways of organizing society and deserve to be treated as members in good standing worthy of liberal toleration. Their cooperation is essential in the pursuit of international peace and justice, predicated on the protection of universal human rights. Yet DNP members, such as Muslims, are unwilling to accept the idea of human rights unless they are able to affirm it on their own religious foundation.⁸⁶ Therefore, the only normative foundation for human rights that would protect human rights across the globe in a way that is stable for the right reasons would be the OCV.

Conclusion

This paper has reconstructed Rawls's conception of human rights as the OCV, which is constitutive of Rawls's normative vision of a realistic utopia at the international level. According to this reconstruction, the OCV is a political conception of human rights supportable by all reasonable parties – liberal and decent nonliberal peoples – to the international original positions just as justice as fairness is a political conception supportable by an overlapping consensus of all reasonable parties – individual citizens – to the domestic original position. The reconstruction of Rawls's conception of human rights as the OCV is predicated on two premises: first, the parties to the international original positions, which include DNPs, are reasonable and worthy of liberal toleration; and, second, protecting human rights proper is a module within all acceptable comprehensive doctrines at the international level, including societal comprehensive doctrines of DNPs. This paper has defended the first premise by arguing that DNPs are reasonable by analogy. Yet liberal critics may claim that DNPs, which are reasonable in this banal sense, are still not worthy of liberal toleration, for they conceive of their members as moral group members. By offering psychological and normative defenses, I have argued that DNP's conception of persons as moral group members is worthy of liberal toleration. This paper has then defended the second premise by using the example of Islam to show how a nonliberal societal comprehensive doctrine can support the protection of human rights proper.

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⁸⁶An-Na'im 2011, 57.

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