When liberal peoples turn into outlaw states: John Rawls' Law of Peoples and liberal nuclearism

1 author:

Thomas E. Doyle, II
Texas State University

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Thomas E Doyle II
Texas State University, USA

Abstract

John Rawls' account in *Law of Peoples* of a realist utopia composed of a society of liberal and decent peoples is a stark contrast to his description of "outlaw states," which seek to undermine the legal and moral frameworks that constitute a pacific global order. Rawls argues that outlaw states cannot conceive of political accommodation with their external enemies; instead, they opt for the rule of force, terror, and brutality. Rawls even urges that liberal peoples are justified in maintaining a nuclear deterrent to prevent outlaw states from obtaining and then using nuclear weapons on liberal societies if the opportunity arose. This article examines the paradoxical question of liberal societies that, in the name of opposing outlaw states, undertake security policies which correspond to "outlaw" statist behavior. It then explores the implications of liberal roguishness for the legitimacy of liberal international security arrangements, such as the Nuclear Nonproliferation Treaty Regime.

Introduction

The aim of this article is to use John Rawls' advocacy of nuclear deterrence[1] by liberal peoples against the possibility of outlaw state aggression as found in his *Law of Peoples* (*LP*) as a way of exploring an ethically paradoxical feature of state agency and sovereignty. Rawls' brief, and almost tangential, advocacy of nuclear deterrence is set against

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Corresponding author:
Thomas E Doyle II, Department of Political Science, Texas State University, UAC 335, 601 University Drive, San Marcos, TX 78666, USA.
Email: ted29@txstate.edu

his larger project of theorizing an international application of a liberal domestic society organized around the egalitarian principles of justice as fairness. On Rawls' view, the institutionalization of a Law of Peoples grounded on justice as fairness makes it possible to imagine a global Society of Peoples in which a durable and just peace is established. However, in the "real" world of international politics, in which the requisite institutionalization of pacific norms escapes realization, liberal peoples are threatened by "outlaw states" defiant of a Law of Peoples and which cannot conceive of political accommodation with domestic or foreign liberal opponents. In this "real" world, the prospect of extreme militarized conflict between liberal and illiberal peoples is ever present. Accordingly, Rawls urges that liberal peoples ought to retain nuclear weapons to deter outlaw state aggression and the possibility of outlaw state nuclear proliferation.

Rawls' advocacy of liberal nuclear deterrence raises some crucial questions for his overall project of theorizing the possibilities of a realistic utopia, and these questions can be approached in a variety of ways. In this article, I am concerned to frame a particular critical analysis around the following questions:

1. How does Rawls' account constitute a notion of ethical universalism and thereby delineate ethical possibility for a Society of Peoples?
2. What are the implications of Rawls' view on outlaw states and the need of liberal peoples to deter them with nuclear weapons for the possibilities of ethical universalism under a Law of Peoples?

In response to these questions, the article will argue that Rawls' advocacy of liberal nuclear deterrence produces the very opposite kind of ethical universalism he envisions. This production is a function of the "grammar" of Rawls' account, where the term "grammar" is understood in Wittgensteinian terms. Specifically, it argues that the choice of liberal peoples to retain nuclear deterrence produces a universalization of the rule of force, terror, and brutality to the exclusion of the rule of international law as an extension of justice as fairness. It amounts to the tragic subversion of justice as fairness among societies originally committed to its establishment.

Wittgensteinian "grammar" and international ethics

The preceding invocation of Ludwig Wittgenstein and "grammar" necessitates a few remarks prior to moving onto the promised critical analysis of Rawls' advocacy of liberal nuclear deterrence. The following points are not meant to be comprehensive, but instead seek to supply a minimal scaffold around which the critical analysis can be understood.[2]

Wittgenstein's later linguistic philosophy is understood by many to have mounted a critique against the general notion that the task of theory is to depict things in the world and the relations among them as they "really" are (Biletzki and Matar, 2014; Pin-Fat, 2011: 6–7; Wittgenstein, 1958). This phrase "as they really are" is ambiguous. It might refer to mind-independent objects and their properties, which for Realist International Relations (IR) theory refers to objective facts about political geography, state capacities and interests, and power (Booth and Wheeler, 2008: Chapters 1–3; Buzan and Hansen,

2009: Chapters 1–2). Fundamentally, Realist IR theory understands its task as describing and explaining the nature or essence of international politics as security competition among states under the anarchy condition. IR Realist theory claims to "know" such essences or natures by virtue of parsimonious explanation, which identifies the underlying reality that accounts for variations among particular cases of state interactions (Waltz, 1979: 1–17). On the other hand, this phrase might refer to socially constructed objects and properties that, for Conventional Constructivist IR theory, are established as social facts or structures that constrain actors' agency (Buzan and Hansen, 2009: Chapter 1; Fierke, 2007: Chapters 1–2). For example, anarchy might be what states make of it, but it is quite difficult to alter a particular structure of anarchy once it is established (Booth and Wheeler, 2008; Wendt, 1992). IR Constructivist theory also claims to "know" such underlying realities by virtue of unifying assumptions, such as the idea that agency and structure are mutually constituted (Klotz and Lynch, 2007: 3–16). Accordingly, despite different ways of rendering the phrase "as things really are," the joint theoretical assumption is that social reality is a domain of facticity which language can represent accurately and which theory can explain reliably.

The ambiguity of "as things really are" also appears in the International Ethics (IE) literature. On the one hand, we might read the ethical stance of Hans Morgenthau's classical Realism as positing an international morality framed by objective and universal laws of human nature. Such laws are moral facts, and they are independent of human agency to alter them. Given the fact of international anarchy, Morgenthau infers that there is a "moral dilemma of foreign policy" which is a special case of "the moral dilemma which faces man on all levels of social action" (quoted in Pin-Fat, 2011: 8). The moral dilemma of foreign policy is not an artifact of human agency, but is woven into the heart of humanity's "fall from grace" (Pin-Fat, 2011: Chapter 3). On the other hand, we might read the ethical stance of John Rawls' egalitarian liberalism as positing an international political morality framed by a social contractarian mechanism with the aim of universalizing a socially constructed understanding of justice as fairness. So, although Rawls would avoid the robust moral realism of Morgenthau, his minimal moral realism is evident in his account of how a socially constructed Law of Peoples structures the future exercise of agency and, as such, constitutes part of social reality as a domain of facticity. The corresponding assumption is that Rawlsian ethical theory is capable of representing such facts accurately, which is another way of saying that it can depict "things as they really are."

A Wittgensteinian grammatical reading of IR and IE theory dispenses with the robust or minimalist moral realism which anchors mainstream theoretical approaches. This is to say, it dispenses with the idea that language is fundamentally about representing or mirroring international politics or ethics "as it really is" and that theory should be devoted to discovering its objective essence or nature. Rather, a Wittgensteinian conception of "language game" directs our analytical focus to the performative role of discourse in constructing objects, relations, and practices in international politics and ethics. It is in this sense that Wittgensteinians are concerned with noting how discourse or "grammar" is "the shadow of possibility cast by language on phenomena" (Wittgenstein, 1974: §329). In short, this is to say that an IR theory is an effort to regulate the possibilities by which international politics is understood and practiced. In the domain of IE, it counts as an

effort generally to regulate the possibilities of moral assessment in international politics and their applications to relevant international actors. Specifically, it counts as an effort to regulate what is constituted as "normal," "right," "wrong," "justifiable," and so forth, among international actors.

The practical stakes of such an effort are quite high. If we take a particular IE account as representing how "things really are" with respect to ethics and IR, then our understandings of what is right or good in international politics are effectively regulated and constrained to the options favored by that account rather than alternative accounts. We might therefore fail to notice how the language of the given account cannot avoid casting impossibilities on the very phenomena it is trying to represent or assess. One of the major virtues of a Wittgensteinian approach is this ability to call attention to that which our regulated understandings fail to register, and this in turn permits us to consider the ethical impossibilities of an account and the alternative ways of accounting for "a thing."

I will assume the foregoing remarks on a "grammatical reading" of IR and IE theory are sufficient to enable an adequate critical analysis of Rawls' advocacy of liberal nuclear deterrence. The first aim is to call attention to the manner in which Rawls imagines the ethical and political possibility of a Law of Peoples as an international (i.e. universal) standard of conduct for peoples and states. The second aim is to call attention to how Rawls' account cannot avoid casting what he would consider an ethical impossibility, namely the subversion of the rule of law and the transformation of liberal peoples into outlaw states.

Liberal society as a realistic utopia

How does Rawls' *LP* constitute a notion of ethical universalism and thereby delineate ethical possibility for a Society of Peoples? In the first part of *LP*, Rawls introduces the conception of a "realistic utopia." In his view, a political philosophy is realistically utopian "when it extends to what are ordinarily thought to be the limits of practical political possibility and, in so doing, reconciles us to our political and social condition" (Rawls, 1999: 11). This concept of reconciliation is the point at which Rawls aims to fit the ideal theory of the Law of Peoples within the framework of the nonideal conditions of international politics. Without this conception of reconciliation at the heart of "realistic utopia," Rawls' project cannot get off the ground. For, without such a conception, the nonideal conditions of international politics make any realization of justice as fairness impossible among diverse peoples. Of course, the landscape of international politics is originally that of the nonideal, or the absence of justice and law as a rule for conduct. For this reason, the theoretical effort of reconciliation must begin first at the domestic level, and this effort is found in Rawls' (1996, [1971] 1999) earlier work *A Theory of Justice* (*TJ*) and *Political Liberalism*. Afterwards, the possibilities for a realistic utopia emerge insofar as the character of the global is determined by the character of the domestic (Rawls, 1999: 8).

In Rawls' pre-*LP* work, four concepts frame his account of domestic liberal societies: justice as fairness, the equal liberty of citizens, public reason, and constitutionalism. We might say that, for Rawls, each of these concepts is necessary and jointly sufficient for a domestic society to count as liberal. The concept of justice as fairness describes two basic principles of liberal society: that each person shall have an equal right to the most

extensive scheme of equal basic liberties compatible with a similar scheme for others, and that social and economic inequalities should be arranged to the greatest benefit of the least advantaged and attached to offices and positions open to all under conditions of fair equality of opportunity (Rawls, [1971] 1999: 42, 72). These two principles of justice place the equal liberty of citizens at the heart of liberal society. From there, Rawls claims that public reason is the exercise of reason by the representatives of free and equal citizens over matters of constitutionality and basic justice. It is the exercise of public reason that makes a constitutional democracy a deliberative democracy (Rawls, 1999: 14, 132–140). These representatives include popularly elected legislators and executive officers as well as candidates for such offices and the judiciary (Rawls, 1996: 227–230). It is through these constitutional devices that liberal democratic society attempts to operationalize (however imperfectly) the ideal of procedural justice which satisfies all the basic requirements of the principle of equal liberty of citizens (Rawls, [1971] 1999: 194). These devices include a bicameral legislature, separation of powers mixed with checks and balances, and a bill of rights with judicial review (Rawls, [1971] 1999: 197). The degree to which the ideal of procedural justice is operationalized is the degree to which liberal society domestically can claim to have reconciled liberal ideals with their social and political realities. As we will see later, it is the durability of this reconciliation once (if) it is achieved that distinguishes between stable liberal societies and ones which have degraded into outlaw states.

In order to apply the concept of a "realistic utopia" developed for domestic society to the international level, Rawls in *LP* draws on the Kantian concept of the pacific federation among constitutional republics (Kant, [1795] 1996; Wenar, 2013). For Rawls, this Kantian concept is based on "the social contract idea of liberal political conception of a constitutionally democratic regime …" (1999: 10). Rawls' use of "social contract" assumes an original anarchy condition among diverse political societies which, despite any existing liberal societies' well-orderedness, produces mutual and existential insecurities for all. In this vein, Rawls mentions how *TJ* originally imagined the extension of justice as fairness to international law for the limited purpose of judging the aims and limits of just war (Rawls, [1971] 1999: 331; 1999: 4). The consideration of just war theory as a topic for justice as fairness confirms the assumption of the anarchy condition among states (or peoples) which arises in the invocation of "social contract."

Indeed, Rawls' worry about the insecurity of liberal societies in an international system is his project's central motivation. Rawls claims that a Law of Peoples is essential because of the urgent desire to prevent the "great evils of human history" from recurring: unjust war and oppression, religious persecution and the denial of liberty of conscience, starvation and poverty, and genocide and mass murder (1999: 7). On Rawls' view, preventing the recurrence of these great evils is, as has been suggested above, by the constitution of a liberal domestic society which, when its institutions are well-established, will cultivate by social habit the respect for peace, human rights, and justice as defined by political liberalism. The second step of preventing great evil is by instituting such habits among liberal democratic societies, thereby instituting the "democratic peace." Indeed,

> … the crucial fact of peace among democracies rests on the internal structure of democratic societies, which are not tempted to go to war except in self-defense or in grave cases of

intervention in unjust societies to protect human rights. Since constitutional democratic societies are safe from each other, peace reigns among them. (Rawls, 1999: 8)

Recalling that the composition of the international system nonetheless remains anarchic, even if a discrete society of liberal peoples can construct a pacific federation, Rawls advances a third step for the prevention of great evil:

> Yet so long as there are outlaw states, as we suppose, some nuclear weapons need to be retained to keep those states at bay and to make sure they do not obtain and use those weapons against liberal or decent peoples. How best to do this belongs to expert knowledge, which philosophy does not possess. (1999: 9)

Rawls' third step marks the analytical point of concern for this article. Before this critical analysis is undertaken, it is important to note its location in the Rawlsian narrative of the Society of Peoples. To do this, it is important to detail Rawls' accounts of the outlaw state, the liberal commitment to international law and principles, and the corresponding necessity of liberal societies to resort to nuclear deterrence against outlaw states.

The liberal commitment to international law and principles

The Kantian contractarian premise on which Rawls' account of a Society of Peoples is based must start from the position that, prior to the construction of a pacific federation, all sovereign political societies are at war merely by being near one another (Kant, [1795] 1996: §8:354). This condition of war is the central motivation for sovereign political societies to reconstitute themselves as constitutional republics (or liberal peoples) and enter into a pacific federation consistent with the Kantian notion of social contract (Kant, [1795] 1996: §8:350–357; Rawls, 1999: 3). Insofar as the Law of Peoples is an extension of justice as fairness to the international level, then a commitment to justice as fairness entails a commitment to international law and its principles (Rawls, 1996: 24). The principles of the Law of Peoples indicate that

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 and social regime (Rawls, 1999: 37).

Rawls admits that these principles are incomplete and many require further explanation and interpretation (1999: 37). However, an initial reading suggests that if the

international system were composed strictly of well-ordered liberal peoples, then the fourth, sixth, and seventh principles are superfluous. The superfluity of these principles would count as a positive affirmation of the universalization of justice as fairness in IR. Until that time, the full set of principles is thus necessary for a mixed international system of liberal and nonliberal societies. In this case, liberal societies might become stuck in a series of ethical foreign policy dilemmas on a wide range of security issues unless some rule for adjudicating conflicts among rights or duties is specified.[3] Rawls' remark on the fourth principle—that of nonintervention—provides some of that specification insofar as it "will obviously have to be qualified in the general case of outlaw states and grave violations of human rights" (1999: 37). This is to say, for Rawls any society or state's failure to uphold this absolute duty forfeits the right of noninterference.

In this vein, we recall that Rawls' original interest in international law was restricted to assessing the aims and limits of just war, which tells us that the general right to war revealed by this tradition limits the use of armed force to national self-defense (1999: 91). Indeed, this is expressed above in the fifth principle of the Law of Peoples. Rawls recognizes that other political societies in the world have the right of armed self-defense, but we have seen that he believes this right is conditional. Accordingly, liberal peoples may use economic coercion or armed force to intervene in outlaw states if they have tolerated or committed genocide or other crimes against humanity among their people (Rawls, 1999: 81). Importantly, such humanitarian intervention is not properly understood as aggression, but third-party self-defense insofar as the population which suffers at the hands of outlaw states are unable to mount their own defense (Freeman, 2003: 47).

In short, for Rawls, a liberal commitment to international law and principles is not a commitment to nonviolence in the nonideal context of international politics. However, it is a commitment to establish and maintain the basic conditions of justice as fairness among diverse polities, some of which are not liberal or constitutional republics. Toleration of difference is extended to nonliberal peoples which are not aggressive or hostile to fundamental human rights (Rawls, 1999: 16–19). However, outlaw states cannot be tolerated, and therefore must be contained or defeated (Rawls, 1999: 81). Let us now turn to examine more specifically Rawls' account of the outlaw state.

The outlaw state

One of the major distinctions in *LP* is that between "peoples" and "states." Rawls recognizes that IR scholars take the state as a basic unit of analysis, and as such are not concerned with the distinction he makes between peoples and states (1999: 27–29). For Rawls' purpose in theorizing a Law of Peoples, states generally are governments which may or may not have their citizen's best interests at heart. In contrast to liberal peoples, which limit their basic interests to what is reasonable (e.g. the security of the citizenry, preservation of liberal practices) and whose relations comport with justice as fairness, states are best understood as rational actors which are primarily concerned with gaining and keeping power. The rationality of states is thus associated with the means–ends calculation of egoism, where preferences are taken as given (and therefore not analyzed according to a notion of moral value) and the means are right insofar as they realize the specified preferences.

After making this distinction between states and peoples, Rawls' concern for states in the IR sense dissipates altogether.[4] From this point onward, his concern is to define the "outlaw state" as that regime which refuses "to comply with a reasonable Law of Peoples" (Rawls, 1999: 5, 90). For Rawls, an outlaw states' noncompliance with a reasonable Law of Peoples is its very essence or nature. Domestically, outlaw states employ the rule of force, terror, and brutality. They make a practice of routinely disregarding fundamental human rights, such as freedom from slavery or serfdom, liberty of conscience, and freedom from (the threat of) genocide or ethnic cleansing (Rawls, 1999: 78–79). Internationally, outlaw states are not concerned with honoring treaty commitments. They commit aggression in order to expand their power or influence, and they are not concerned with honoring *jus in bello* constraints during military action. And if they succeed in conquering a foreign territory, they impose their unjust practices on the subjugated populations. Like Nazi Germany, outlaw states are inclined to pursue weapons of mass destruction which they can use on liberal peoples (Rawls, 1999: 9). Given their nature, outlaw states recognize "no possibility at all of a political relationship with [their] enemies" (Rawls, 1999: 99). Rather, these enemies are to be "cowed by terror and brutality, and ruled by force" (Rawls, 1999: 99). If outlaw states truly orient their foreign policies according to the maxim of the rule of (nuclear) force, then for Rawls liberal societies are left with no choice except to meet force with force.

A liberal people's commitment to nuclear deterrence

In order to meet force with force, or more precisely threat with threat, Rawls means to suggest a reasonable foreign policy position that preventing outlaw state aggression via nuclear deterrent threats is preferable to exercising armed force in self-defense once aggression has begun. However, Rawls does not mean to offer insight to the most plausible means for doing so, and he defers the question of how to best undertake deterrence to "expert knowledge, which philosophy does not possess" (1999: 9). I take it that Rawls means to defer to International Security Scholars and foreign policy practitioners here. Rather, as a contribution to IE scholarship, Rawls' advocacy of liberal nuclear deterrence against outlaw states is meant to comport with the right of liberal peoples to self-defense (Principle 5). To do so raises questions about the ethical principles behind nuclear deterrence, which Rawls does not explicitly address.

From a general "morality of war" perspective, it is reasonable to assume that the threat of armed force is permissible if the act of armed force in self-defense is permissible. The converse assumption is also reasonable: that it is wrong to threaten to do something it is wrong to do. This converse assumption has been called the Wrongful Intentions Principle (Walzer, 2000: 272). In this vein, Rawls accepts that the right of self-defense is conditioned by the *jus in bello* principles of noncombatant immunity principle and the related principle of proportionality (1999: 94–101). I take it that this is the underlying content of the seventh principle of the Law of Peoples. According to Samuel Freeman (2003), this principle expresses the idea that "within war the human rights of enemy noncombatants are to be respected; noncombatants are not be targeted for attack, and measures should be taken to protect them and their property from injury" (2003: 47). The right of self-defense is thus conceived as being against the outlaw ruling elite and not in

any proper sense against the peoples which happen to live within the regime's territorial boundaries.

We have seen the brevity with which Rawls advances his advocacy of liberal nuclear deterrence. It is unclear why Rawls chose to not offer a separate moral argument for his view, but he does take pains to mention that his view does not depart "in any significant respect" from Michael Walzer's view, which is one of the most familiar justifications of nuclear deterrence in the nuclear ethics and just war literatures (Rawls, 1999: 95 fn. 8; Walzer, 2000: Chapter 17). For Walzer, nuclear war is an unmitigated evil, and on the Wrongful Intentions Principle the threat of it is also evil. Of course, the immorality of the threat is not essentially in its utterance; rather, it is in the need to follow through with the threat if deterrence fails. Paradoxically, though, the imperative to prevent nuclear war and its effects introduces the possibility that an otherwise immoral act might become morally necessary. The hope is that nuclear deterrent threats will not fail, in which case nuclear holocaust is avoided and aggression prevented without firing a single shot. In a nuclear-armed world, though, deterrence failure is a persistent possibility, along with the nuclear war that it threatens. Walzer's agonizing conclusion on the matter is that

> Deterrence is a way of coping with [the permanence of the supreme emergency condition], and though it is a bad way, there may well be no other that is practical in a world of sovereign and suspicious states. We threaten evil in order to not do it, and the doing of it would be so terrible that the threat seems in comparison to be morally defensible. (2000: 274)

For Walzer, nuclear deterrence is the nonideal provision for preventing the overthrow of the moral goods which are embodied by national communities. For Rawls, it is the nonideal provision for preventing the destruction of liberal peoples and, if established, a Society of Peoples. And the crux of the position turns on the fine distinction between the intent to prevent evil (which leads to the willingness to pose a nuclear deterrent threat) and the intent to not do evil (which would happen if the threat had to be carried out). Without this distinction, the moral justification of nuclear deterrence is incoherent.

Read grammatically, it seems that Walzer's palpable difficulty in wringing out a moral justification of nuclear deterrence is a function of his attempt to reconcile the grammar of the right of self-defense with the *jus in bello* imperatives of noncombatant immunity and proportional defense against enemy states that disregard the latter imperatives. In terms of the Rawlsian grammar, the opposites that need reconciliation are the rule of international law and the rule of nuclear force. As I read Rawls, he seems to think that the construction of international legal grounds for the right of self-defense is meant to indicate that the rule of international law has not been suspended or subverted if armed force is deemed necessary to exercise. Put simply: the use of force is not evidence necessarily that the rule of law has been subverted by the rule of force. For, under conditions where outlaw states refuse to comply with the Law of Peoples or the international law based on it, the (threat of the) use of force is necessary to the substitution of the rule of law by the rule of force. Thus, where outlaw states (seek to) possess nuclear weapons, a liberal nuclear deterrent could not be considered inconsistent with the rule of international law.

Nonetheless, it is not clear that Rawls believes nuclear deterrent threats against outlaw peoples should ever be carried out. Rawls mentions that the question of the morality

of nuclear war is independent of the morality of nuclear threats, and he condemns the United States' use of atomic weapons on Japan in World War II (1999: 98–101). For Walzer, nuclear war explodes just war theory, and it would follow that nuclear war explodes the Law of Peoples and the liberal commitment to international law and principle that these weapons are tasked to secure (2000: 282). It now seems that Rawls (and Walzer) have overlooked at least one necessary consideration that they might have prematurely deferred to the "experts": namely, the conditions under which a credible nuclear deterrent threat is possible. It is this consideration that reveals the ethical impossibility at the heart of Rawls' advocacy, and which might very well produce the universalization of the Law of Force and Terror over the Law of Peoples.

Liberal peoples as outlaw states: The subverting of the Law of Peoples and the universalization of the rule of nuclear force

It is important to recall at this juncture Wittgenstein's remark that "grammar is the shadow of possibility cast by language on phenomena." The aims of Rawls' Law of Peoples include the reconciliation of the ideal and nonideal, the harmonization between liberal and nonliberal but decent peoples, and the possibility of incentivizing benevolent absolutisms to adopt a decency that befits the Society of Peoples. For Rawls, such a world can be realized, and in that sense a Society of Peoples is a realistic utopia. Rawls' contrasting account of outlaw states is meant to report an unfortunate political and moral fact—that outlaw states cannot be reconciled to the Law of Peoples. It is their nature to act contrary to the rule of law and, accordingly, to aggress against pacific liberal societies. It is unfortunate, but liberal peoples cannot avoid the challenge of outlaw states.

The article's second question is now engaged: what are the implications of Rawls' advocacy of liberal nuclear deterrence for the possibilities of ethical universalism under a Law of Peoples? Two implications arise if this is posed as a question for grammatical analysis. The first is that the grammar of nuclear deterrence is a grammar of rationality and not reasonableness, and liberal societies exchange the latter for the former when adopting nuclear deterrence strategies. The second is that the grammar of outlaw states is a grammar of ideological fundamentalism which is unreasonable in several ways. Both "grammars" introduce a limit into the ethical possibilities for Rawls' account. And, taking both implications together, it seems that Rawls' advocacy transforms liberal peoples into rational actors, and this transformation unwinds the crucial distinction between the natures of liberal peoples and outlaw states. When liberal peoples are rational actors, they are outlaw states.

The rational actor grammar of nuclear deterrence

The grammar of nuclear deterrence is a Realist grammar which has the effect of transforming the reasonableness of liberal peoples into the rationality of Hobbesian actors. This transformation is evident in a number of ways. First, in the same passage where Rawls advocates for liberal nuclearism, he intimates that outlaw states can be deterred by nuclear threats. This is presumably due to the latter's rational calculation that survival

under containment is better than the risk of defeat accompanying military aggression. What Rawls seems to overlook is that the choice for nuclear deterrence is also a rational calculation. The hostility of outlaw states towards liberal peoples is Hobbesian, but the intolerance (i.e. hostility) of liberal peoples towards outlaw states is also Hobbesian. In short, there is no significant difference between Hobbes' description of sovereign states armed to the teeth in the mode of mutual deterrence and Rawls' description of an international order composed of mutually hostile liberal societies and outlaw states.

Second, Hobbesian state actors cannot be concerned with moral principle or moral justification for acting according to a rule of force. Rawls has insisted that liberal peoples are concerned to observe reasonable limits in the exercise of self-defense, and this concern is evidence of their commitment to the rule of international law. At the very minimum, however, nuclear deterrence complicates this liberal posture. To address this complication, the previous section related Walzer's (and by extension, Rawls') moral justification of nuclear deterrence as predicated on the morality of intentions. For Walzer, nuclear deterrence is immoral, but we "threaten evil in order to not do it, and the doing of it would be so terrible that the threat seems in comparison to be morally defensible." Liberal peoples are willing to threaten to undertake nuclear reprisals against outlaw states, but they do not intend in any clear sense to carry out the threat. In other words, liberal peoples intend to bluff and they hope outlaw states will not have the temerity to call it.

What Rawls seems to overlook is that nuclear deterrent threats must be perceived as credible *by outlaw states*. In the Realist grammar of nuclear deterrence, credibility is a function of capability and commitment. This is to say, nuclear deterrent threats require nuclear-armed capabilities, but more importantly they require the commitment to follow through with the threat if the outlaw state "misbehaves" in some significant way. Thus, the grammar of nuclear deterrence is contrary to the "reasonableness of bluffing." The liberal hope that nuclear bluffing can accomplish the containment of outlaw states without the use of nuclear force is the thin reed on which the reasonableness of liberal foreign policy on this matter rests. Given that outlaw states are rational actors and are quite likely to understand the strategy of liberal hope, it should follow that the grammar of nuclear deterrence marks the limit of the rationality of bluffing. In order to ensure that outlaw states will take the nuclear threat as credible, the nuclear-armed liberal society must communicate the commitment to carry out the threat. But, this commitment is a rational commitment, not a reasonable one.

How so? If a Liberal grammar takes it that the right of self-defense is reasonably limited by the *jus in bello* principles of noncombatant immunity and proportionality, the implied question for Rawls is if a limited self-defense is sufficient against the threat posed by outlaw states. It is difficult to read Rawls as answering this question in the affirmative. Rawls construction of outlaw states depicts them as so incorrigible that only the most severe measures of self-defense will work. However, we recall the Liberal commitment to *jus in bello* constraints: namely, that the human rights of citizens in enemy states must not be violated, that noncombatants are not to be targeted, and so forth. The making of nuclear threats opens the possibility of nuclear reprisal on the innocent citizens of outlaw states. Indeed, the success of nuclear deterrence in the Cold War was predicated upon the knowledge that large urban areas were to be held as nuclear

hostages, and that reprisal strikes would impose unacceptable damages on both countries were aggression to occur (Morgan, 2003: 30). Since the success of Cold War nuclear deterrence could not have been assured if deterrent threats were made only against rival government and military targets, the success of liberal nuclear deterrence against outlaw states cannot be assured if the targets are limited to government and military targets. The threats must be made against outlaw state populations or assets that exceed *jus in bello* constraints, and this transforms liberal nuclearism into a grammar of rationality and not reasonableness.

If we contrast Rawls' advocacy of nuclear deterrence with the Kantian account of perpetual peace on which it is supposed to rest, we find additional reasons for thinking that liberal nuclearism is not reasonable. With all the appropriate caveats regarding applications of Kant to the Cold War and post-Cold War eras, Rawls' liberal nuclearism sits uneasily with Kant's third preliminary article regarding the eventual need of states to abolish standing armies (Kant, [1795] 1996: §8:344). Kant recognized that states might need the defensive or deterrent capabilities that standing armies provide in order to ward off rising or immediate security threats ([1795] 1996: §8:345). However, state leaders might also have incentives for using standing armies to fight wars of aggression. For this reason, the maintenance of standing armies imposes on rival and neighboring states an unremitting security dilemma which incentivizes arms races and increases the chances of war. Rawls' liberal nuclearism amounts to a standing armed force that incentivizes the spread of nuclear weapons across the world and which, as time passes, becomes less likely to roll back as Kant prescribed for standing armies. And yet, liberal society would not think that incentivizing the continued spread of nuclear weapons is reasonable.

Second, Rawls' liberal nuclearism does not comport with Kant's sixth preliminary article which states that "No state at war with another shall allow itself such acts of hostility as would have to make mutual trust impossible during a future peace" ([1795] 1996: §8:346). Kant's proscriptions in this regard were against assassination, poisoning, or other subterfuges. Although threats of nuclear reprisal are not covert acts of violence and betrayal, they communicate the kind of hostility that makes mutual trust quite difficult to cultivate. I believe Rawls would acknowledge that nuclear deterrence is not a trust building strategy, but I think he would insist that there is no possibility of peace between liberal societies and outlaw states given the nature of the latter to refuse compliance with a reasonable Law of Peoples. Yet, liberal peoples are not to tolerate outlaw states, and so the security posture of liberal nuclearism is, to repeat, that of a Hobbesian rational actor. The effect of the Rawlsian grammar on this matter is to elevate rationality over reasonableness.

The unreasonable grammar of ideological fundamentalism

Rawls deploys the rational and unreasonable grammar of nuclear deterrence because he depicts outlaw states as ideological opponents of liberal society and the Law of Peoples. His description of outlaw states comports with the historic way in which US administrations depicted the former Soviet Union and, more recently, the class of "rogue state actors" such as Iran and North Korea (The White House, 2002). Ken Booth and Nicholas J Wheeler (2008) argue that a foreign policy orientation is ideologically fundamentalist

if its ideological convictions are decisive in addressing the security dilemmas which states encounter (2008: 64–65). During the Cold War, US foreign policy towards the former Soviet Union was informed significantly by ideological convictions about the moral evil of Communism. Rather than a measured and reasonable assessment of the behaviors of Soviet leaders in light of what might be understood as their historic national interests, the dominant wing of US foreign policy advisors believed that the very character of the Soviet Union constituted a fundamental challenge to everything for which the United States stood (Booth and Wheeler, 2008: 65–67). According to this Manichean grammar, diplomacy or accommodation could not be seen as anything other than signals of weakness or appeasement. This grammar fostered a corresponding tendency to exaggerate Soviet military capabilities, to misread Soviet intentions and signals as always implying aggression, and to underestimate the degree to which Soviet leaders felt threatened by hostile US statements and military build-ups (Booth and Wheeler, 2008: 51–58). Nothing could reassure US leaders that Soviet policies might rather have been a defensive response to a perceived Western tendency for expansion (Booth and Wheeler, 2008: 69). It was this ideological fear that drove the United States to undertake an unprecedented expansion of nuclear arms in the early Cold War and settle on the policy of mutually assured destruction.

Rawls' depiction of outlaw states is comparable to Cold War depictions of the former Soviet Union and to post-Cold War US administrations' depictions of "rogue state actors." Rawls' invocation of Nazi Germany in the discussion of outlaw states recalls the incessant comparisons by the Bush 41, Clinton, and Bush 43 administrations' depictions of Iraq's Saddam Hussein and Syria's Bashar al-Assad with Adolf Hitler (Golding, 2013; Jentleson, 2010: 263). Rawls' depiction of outlaw states' treatment of dissident minorities recalls the Nazi treatment of Jews, and the characterization that outlaw states will not observe international agreements recalls the Nazi's rejection of the terms of the League of Nations and its betrayal of Stalin when Hitler violated their nonaggression pact. Rawls' construction of outlaw states seems to omit discussion of nonliberal states that do not fit into the categories of decent peoples, burdened societies, or benevolent absolutisms (e.g. Imperial Japan). The ideologically charged grammar in Rawls' account mirrors the securitizing discourse against Iraq after 9/11/01, and it is this securitizing discourse that opens the space for liberal nuclear deterrence.

As a result, the ideological fear of the "outlaw" in Rawls' account enervates liberal reasonableness and a willingness to observe *jus in bello* constraints against enemies which are seen to be incapable of humane action. It takes the transformation of liberal societies even beyond that of Hobbesian rational actors and into that of Manichean enemies in which peace is incomprehensible and for whom total war must be pursued after the first shot is taken. Indeed, it naturalizes and normalizes the sustained deployment of humankind's most indiscriminate and destructive weapons as the only instruments that can possibly contain the otherwise uncontainable axes of evil. In the end, the ideological fear of the "outlaw" will assuage the liberal conscience that carrying out the nuclear deterrent threat was the only reasonable option left to them—that is, that the outlaw states made it to where liberal peoples had no other choice but to push the button. And the moment that the liberal people's conscience is assuaged by the Rawlsian grammar, its transformation into the outlaw state is complete.

Conclusion: Security dilemma sensibility as a response to Rawlsian unreasonableness

This article undertook a Wittgensteinian grammatical reading of Rawls' advocacy of liberal nuclear deterrence against "outlaw states," which he constructs as irreconcilable and hostile opponents of a Law of Peoples. It recalled Rawls' depiction of liberal peoples as those concerned with institutionalizing justice as fairness internationally. Accordingly, liberal peoples are described as holding fundamental commitments to the rule of international law and reasonable constraints on the threat and use of force in self-defense. It then argued that Rawls' advocacy of liberal nuclear deterrence constitutes a grammatical insertion of Realism, which compels an inconsistency with the grammar of liberal practice. The grammar of nuclear deterrence subverts *jus in bello* constraints insofar as liberal states must be prepared to follow through with nuclear threats or else risk political defeat or war. To assuage the liberal conscience that suspension of *jus in bello* constraints might be necessary, it is crucial to depict outlaw states as having an ideological (and possibly sociopathic) disregard for humane conduct. Through his discursive maneuvers, Rawls' unwittingly transforms liberal peoples into outlaw states, who as rational actors are not concerned with observing reasonable limitations on foreign policy against those for whom they harbor ideologically driven fears.

The foregoing grammatical analysis suggests that Rawls' theory encounters a fundamental conundrum: how should (an alliance of) liberal societies conceive of their security in a world composed of liberal and illiberal societies? Fundamentally, should a liberal grammar of security emphasize "security against" or "security with" illiberal societies? Any answer to this question accepts an implicit premise that it is desirable to hold onto Rawls' liberal state system. From there, reasons for or against adopting a "security with" posture can be assessed without presuming that the Rawlsian liberal order is itself a candidate for replacement. Moreover, arguments in favor of a "security with" framework might investigate how Kant's third definite article in *Perpetual Peace* on hospitality might facilitate such a reform (Kant, [1795] 1996: §8:358). I defer discussion on these points to another article, as they require more analysis than what can be done here. However, I can sketch below one possible answer to these questions if we assume Rawls' liberal state system is worthy of retaining.

We have seen that Rawls does not believe that "security with" "outlaw states" is possible, and this marks a significant limit of ethical possibility in his account. However, as the Realist grammar of "security against" leads to transforming liberal practices into outlaw state practices, it is important to determine if the security conundrum might not be approached some other way. Now, it is not entirely clear to me that the conundrum can be resolved and, if not, it would seem to follow that liberal societies *qua* outlaw states must emerge as the morally and politically tragic outcome of international politics. On the other hand, an introduction of the grammar of "security with," inspired by Kant's *Perpetual Peace* and Booth and Wheeler's conception of "security dilemma sensibility" might mitigate or transcend this conundrum (even if it cannot be resolved). I will conclude the article with an initial exploration of this ethical possibility.

Booth and Wheeler define "security dilemma sensibility" as a government's empathetic stance towards its enemy's security interests and dilemmas as well as an

appreciation of how its own security postures can activate others' insecurities (2008: 64–65). They argue that discourse regulated by security dilemma sensibility can constrain or override ideological fundamentalism in foreign policy, which in turn can help to mitigate or transcend their mutual security dilemma (Booth and Wheeler, 2008: 296–299). In making this point, it is important to not confuse empathy with sympathy for one's enemies or the uncritical tendency to put one's vital interests on the shelf. Rather, empathy alters the discursive focus away from the inalterable character of an enemy and towards a stricter empirical assessment of enemy behavior. It de-essentializes the enemy, and it makes it more possible to reasonably determine a range of appropriate means of realizing mutual security outcomes. Had Rawls' account of outlaw states been informed by security dilemma sensibility, the corresponding remarks on liberal society's security strategy would have been more nuanced and the uncritical and contradictory advocacy of nuclear deterrence could have been omitted.

An inclusion of security dilemma sensibility into the Rawlsian account could have then provided an anchoring point for conceiving security among liberal and nonliberal peoples as "security with" rather than "security against." To this end, I recommend the following amendment to the Rawlsian grammar: a Society of Liberal and Decent Peoples is committed to instituting a set of practices among themselves which establish a "working peace system" (Booth and Wheeler, 2008: 177–182). In this vein, the ordinary practices of foreign policy emerge from the respective parties' observance of the Law of Peoples and a set of corresponding international agreements. The governing elites of states outside this Society are welcomed on the condition that they affirm the Law of Peoples. For states whose ruling elites are unwilling to offer such affirmation, the Society enters into talks with the aim of identifying one or more network of common interests across which parties will find that it is rational to be reasonable. The Society might then propose the institution of one or more cooperative regimes, the practices of which are aimed at realizing the common interests and also building a minimal level of trust among the parties. Arguably, the network of common interests might be narrow, and significant disagreement and conflicts of interest might remain on other points. And certainly, liberal activists might find many domestic practices of nonliberal states offensive to a robust notion of civil, political, economic, or social rights. However, the ideological discourse of "outlaw state" would be dropped, along with the corresponding fear of such states. It would be replaced with a discourse of patient yet firm accommodation with nonliberal societies which are experiencing their own evolutionary dynamics. It would emphasize that the avoidance of war and the successful diffusion of justice as fairness is accomplished better by de-ideologizing conflicts of interest and by taking the steps necessary to build a working peace system from the ground up.

Acknowledgements

Notes

1. The scholarly literature on nuclear deterrence is immense. See, for example, Bunn and Chyba (2006), Freedman (1997), Morgan (2003), and Sagan and Waltz (2003). The corresponding literature on the morality of nuclear deterrence is also large. In addition to the works cited in the article, see, for example, Doyle (2010), Gauthier (1984), Kavka (1978), Lee (1993, 1985), and Nye (1986).
2. For a more complete introduction to Wittgenstein's approach, see Biletzki and Matar (2014), McGinn (1997), Pin-Fat (2011: Chapter 1), and Pitkin (1972). Although this article relies heavily on Pin-Fat's treatment of Wittgenstein for International Relations (IR), others have drawn on Wittgenstein and should be consulted: see, for example, Fierke (2007), Kratochwil (1996), and Onuf ([1989] 2013).
3. For a discussion on the ethical dilemmas that nuclear-armed democracies face, see Doyle (2013).
4. Commentators have debated the value of Rawls' distinction between states and peoples for his overall project. See Buchanan (2000: 698–701) and Brock (2010: 89). Although I agree that this distinction is problematic, I am more concerned with the contrasting character descriptions between liberal societies and outlaw states insofar as nuclear deterrence is capable of securing the former from the latter.

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Author biography

Thomas E Doyle II is Assistant Professor of Political Science at Texas State University. His research interests include nuclear ethics, normative International Relations (IR) theory, and the politics of nuclear proliferation/nonproliferation. His first book is titled, *The Ethics of Nuclear Weapons Dissemination: Moral Dilemmas of Aspiration, Avoidance, and Prevention* (Routledge, 2015). He has published in *Ethics and International Affairs*, *Ethics and Global Politics*, *International Theory*, the *International Studies Compendium*, and the *Journal of Military Ethics*.