

I. Introduction.

In *The Law of Peoples*² (hereafter *LoP*), John Rawls places basic human rights centerstage. All peoples must honor human rights, both internally in their own domestic orders, and externally in their relations with other peoples or human populations. Human rights constitute a cornerstone of any acceptable regime of international law and relations. In this respect, Rawls's position is orthodox; it affirms the central elements of the post-World War II consensus in human rights discourse and practice.

In other respects, however, Rawls's treatment of human rights in *LoP* is heterodox. For example, Rawls does not justify human rights through direct appeal to the equal moral status of individual human persons or a teleological understanding of a universal human nature or an account of fundamental human interests or capacities.³ Indeed, he characterizes Article 1 of the *Universal Declaration of Human Rights* of 1948 (hereafter *UDHR*), which makes just such direct appeals, as an expression of "liberal aspirations" rather than the articulation of a premise from which universal human rights might be publicly justified within the international context.⁴

Further, Rawls characterizes human rights in the first instance as norms governing international relations, the relations between peoples.⁵ They are primarily addressed to and impose duties on peoples. To be sure, human rights benefit, and are undoubtedly meant by Rawls to benefit, individual human persons. But Rawls does not emphasize this aspect of human rights. An oft-cited passage is illustrative: Rawls seems to suggest that human rights violations invite international remedial action primarily because of the threat they pose to peaceful

international relations between peoples, and not, one is left to surmise, because of the harm done to the basic interests or dignity of the individual persons whose rights are violated.⁶

Finally, Rawls is explicitly minimalist in his listing of basic human rights. While he explicitly affirms basic human rights to subsistence, physical security, personal property, formal equality under the law, freedom from slavery or forced occupation, and sufficient liberty to sustain meaningful freedom of religious practice and thought, he does not explicitly affirm basic human rights to democracy, nondiscrimination, or the full range of liberal democratic freedoms (of assembly and association, or expression, for example).⁷ To be sure, as we shall see, Rawls is less minimalist in his conception of basic human rights than many critics have allowed. Nevertheless, he clearly rejects the view that all or nearly all of the rights contained within the *UDHR* are basic human rights, or human rights proper, as he puts it.⁸

With respect to the justification, nature and content of human rights, then, Rawls's position appears to be heterodox to some not insignificant degree. This, of course, generated both surprise and disappointment in many quarters, not least among those who saw in what they took to be the reigning orthodoxy of human rights discourse and practice a natural extension of the sort of moral vision Rawls delivered in *A Theory of Justice*.⁹ My aim in this essay is to explicate sympathetically what I take to be Rawls's position on human rights and, by so doing, to demonstrate that Rawls's position is both more plausible and less heterodox than many critics have recognized.

II. Basic Human Rights: The List.

Rawls identifies eight principles which taken together constitute the law of peoples. Principle number six states “[p]eoples are to honor human rights.” Discussions of Rawls's

position on human rights typically begin with his list of basic human rights in Section 8.2.2.a.. The list there strikes most readers as excessively minimalist. Of course, Rawls begins his list with the words “[a]mong the human rights are...” and thus clearly does not intend the list to be exhaustive. Indeed, immediately after introducing his eight principles, including the just mentioned principle number six, Rawls characterizes the principles as incomplete and in need of supplement, interpretation and explanation. That his Section 8.2.2.a. list is not exhaustive is confirmed in Section 10. There he affirms as human rights, in the full and most fundamental sense of the term, the rights specified in or entailed by Articles 3-18 of the *UDHR*.¹⁰ These include the central elements of due process and the rule of law (Articles 6-12 and 17), the right to refuse nonconsensual marriage (Article 16), a right against cruel, inhuman or degrading punishment and against torture (Article 5), the right to seek asylum (Article 14), the right to a national identity (Article 15), and the right to freedom of movement (Article 13).

Rawls also affirms those rights that would seem to be entailed, on any plausible understanding, by the rights set out in Articles 3-18. For example, the Article 11 right to be presumed innocent until proven guilty in a public trial with all guarantees necessary for a meaningful defense must surely entail a right against coerced self-incrimination. Absent such a right, the Article 11 right would be of little benefit to those holding it. Thus, it would be unreasonable to suppose that Rawls does not regard the right against coerced self-incrimination to be also a basic human right, notwithstanding the fact that it does not explicitly appear in Articles 3-18 of the *UDHR*.¹¹ Undoubtedly, careful reflection on Articles 3-18 would generate further examples of additional human rights necessarily entailed by the rights specified in those Articles. Rawls’s list of human rights is, then, rather more robust than many readers have been

willing to acknowledge.

Still, there is no getting around the fact that Rawls does not include among his basic human rights a general right to nondiscrimination. Indeed, he excludes from his list of basic human rights the Article 23 right to nondiscrimination in employment and the Article 21 right to universal and equal suffrage.¹² But, again, Rawls's position is not quite what his critics have sometimes claimed. The human rights he does explicitly affirm set important limits to the range of discrimination his position allows. In addition to those rights already mentioned, Rawls explicitly affirms the rights specified in the conventions on genocide and on apartheid.¹³ And he makes it clear that all peoples must respect the rights of minority populations.¹⁴ Further, while he does not think that basic human rights prohibit gender discrimination in political, economic or social life, he does insist that women have a basic human right, *inter alia*, to have their interests represented in consultative political processes and to express dissent.¹⁵

There is also no getting around the fact that Rawls does not include on his list of basic human rights many of the economic and social rights affirmed by the *UDHR*. He appears purposefully to exclude Articles 24, 25, 26 and 27. He explicitly identifies Article 22 as excluded.¹⁶ In Section 8.2.2.a., the only economic rights Rawls lists as among the basic human rights are the right to subsistence and to personal property. If this were all he said, of course, his would be a pretty thin conception of social and economic rights. But this is not all he says.

Rawls also says that all peoples have a duty of assistance to insure that the basic needs of all persons are met and that these basic needs must be understood in terms of the economic and institutional resources necessary for persons to take meaningful advantage of the rights, liberties and opportunities of their (liberal or decent) society, whatever they may be.¹⁷ Now, admittedly,

this is not quite the same thing as saying that all persons have a basic human right to have their basic needs met in this sense. But even when Rawls focuses directly on the basic human rights possessed by individual persons, he interprets the right to subsistence as a right to a “minimum economic security” including “general all-purpose economic means” sufficient to make “sensible and rational use” of the liberties afforded within one’s own domestic political order.¹⁸ Moreover, he maintains that the moral status of a people depends on its organizing itself as a mutually advantageous system of cooperation (even if not liberal and democratic). This justifies not just a right against slavery or servitude, but also a right against systemic exploitation, for systemic exploitation is simply the institutionalized but avoidable failure of mutual advantage. A more charitable reading, then, would have Rawls committed to a human right to an economic and social minimum relative to the decent or liberal democratic domestic order to which one belongs, a minimum (in all cases except perhaps the atypical case of an isolated and primitive indigenous people) beyond what typically comes to mind when one thinks of mere subsistence.¹⁹

While Rawls does not say as much, his human rights doctrine may be understood as answering to a single basic human interest in recognition and membership as a person or moral agent in a well-ordered body politic or people. Such recognition and membership is ordinarily a necessary condition for individuals to live and reproduce and understand and respect themselves as persons or moral agents (though not necessarily “free and equal” persons or moral agents in the liberal democratic sense). The law of peoples aims at a world within which this basic human interest is universally met as a matter of right.²⁰

While minimalist when assessed against the *UDHR* or other familiar benchmarks, Rawls’s conception of human rights is not nearly as minimalist in its content as many critics

suggest. Still, to be sure, important liberal democratic rights are left out. Rawls does not recognize a basic human right to democratic government or universal suffrage, to the robust freedom of assembly or expression typically secured in liberal democracies (including the right to form trade unions), to nondiscrimination in political, economic and social life, or to free and universal public education, social security or other welfare programs familiar from contemporary liberal democracies. These are significant omissions. But here several points must be kept in mind if we're to be clear about how significant a departure these omissions mark from the orthodox understanding of contemporary human rights discourse and practice.

First, the rights Rawls identifies as basic human rights or human rights proper represent the moral core of each of the six categories of rights listed in the *UDHR* and two *Covenants*. These categories are: 1) rights governing the physical security and psychological integrity persons (e.g., rights against slavery, torture, etc.), 2) rights governing basic freedoms (e.g., freedom thought, expression, movement, etc.), 3) rights governing political participation (e.g., right to dissent, to demand and receive public justifications for state actions, to vote for representatives, etc.), 4) due process rights insuring nonarbitrary state action (e.g., the right to be treated as innocent until proved guilty, etc.), 5) equality rights (e.g., the right to formal equality or equality before the law, nondiscrimination rights, etc.), and 6) social and economic rights (e.g., the right to a minimal level of material well-being, to form trade unions, to a basic education at public expense, etc.).²¹ While the *UDHR* and two *Covenants* include within several of these categories rights Rawls does not recognize as basic human rights, Rawls does include on his own list the morally most fundamental rights within each of these categories. And these rights on Rawls's list bind all peoples and populations regardless of their consent or voluntary

undertaking, something that is not true of the rights on the *UDHR* and two *Covenants*.²²

Second, strictly speaking, the *UDHR* is not a legally binding document and all the parties signatory to it knew that when they signed. Moreover, the Preamble to the *UDHR* explicitly states that its purpose is to set an aspirational standard to be used in measuring the progress or development of bodies politic, progress or development to be secured at the international level through teaching and education. This is, of course, just how Rawls understands the *UDHR*, even if he also thinks some of its provisions set out genuine or proper basic human rights specifying threshold conditions of recognitional legitimacy within the international order eligible for legitimate coercive enforcement.²³

Third, while the two *Covenants* implementing the *UDHR* are legally binding on party signatories, many state parties signed stating explicit reservations to particular provisions, often on just the matters set out above. The practice of signing treaties with reservations is legally recognized and accepted within international law.²⁴ To get a sense, then, of what is taken for granted in contemporary human rights discourse and practice, it is not enough simply to read the two *Covenants*, or any particular list of human rights documents (including the *Convention on the Elimination of All Forms of Discrimination Against Women* [*CEDAW*], etc.). The international public political culture of which human rights discourse and practice is a part is vastly more complicated and less unified than any such reading would suggest.

Fourth, much of contemporary human rights discourse and practice is concerned with human rights either binding on particular states because they have already consented to them as such or urged on states as obligations they ought to take on by giving their consent. But Rawls's concern in *LoP* is not primarily with what we might call the politics of human rights, but rather

with those human rights binding on states regardless of and prior to any consent they may or may not give, with those human rights that must be secured for there to be anything like a morally acceptable international politics of human rights.

This accounts for much of the gap between Rawls's minimalist list of basic human rights and the list one arrives at through a quick review of contemporary human rights documents or human rights advocacy NGO webpages. It should not surprise that many of Rawls's critics do not notice these explanatory bases for the gap. For those who have aligned themselves with the international human rights movement as advocates (and there's nothing wrong with that), there are strategic and political disincentives attached to distinguishing sharply between human rights binding regardless of consent and those binding only with or because of consent. Nevertheless, for philosophical purposes, or at least Rawls's philosophical purposes, the distinction must be made.

Two final points. First, Rawls explicitly recognizes the empirical connections between many basic rights. For example, the basic rights to dissent and to freedom of movement are instrumentally necessary as an empirical matter to secure the basic right to subsistence within any developed state occupying a relatively large territory. In this context, Rawls allows that there may be good empirical reasons for affirming either democratic political participation rights or gender nondiscrimination rights as instrumentally necessary to the basic human rights he already recognizes. Whether these empirical connections will be vindicated by research and experience, however, remains to be seen.²⁵

Second, nothing in Rawls's account of basic human rights binding on all states regardless of their consent is at odds with a political commitment to realizing an international order within

which a much wider range of human rights are binding on all states by virtue of their consent and ultimately customary practice. One may affirm Rawls's account and also continue to think it important that liberal democratic and other well-ordered peoples as well as NGOs and individuals of goodwill work toward the universal but voluntary affirmation by all states of the two *Covenants*, *CEDAW*, and other significant human rights documents without reservation and with meaningful enforcement.

III. Basic Human Rights: Their Nature

Basic human rights are universal in scope. They are necessary conditions to be met by any body politic to be recognized as legitimate within the international order and thus entitled to self-determination or autonomy. They are binding on all states. And when a state honors them it secures for itself within the international order a right against coercive intervention, whether in the softer form of diplomatic or economic sanctions, or the harder form of military intervention.²⁶

Basic human rights are, then, are a practical component of the international order best understood in terms of their function.²⁷ In this sense, they are not timeless, natural rights belonging to the moral fabric of the universe or to some timeless human nature. This they could not be, since they presuppose a world of distinct peoples, individual bodies politic organized as corporate moral agents and prepared to interact with one another from their self-understanding as such. They presuppose a world within which questions of foreign policy and international relations are moral questions to be taken up by distinct peoples as peoples. And this world is itself a contingent, historical achievement. Once this world arrives, however, basic human rights arrive as universal human rights. Their moral force reaches even to long-isolated, territorially remote, indigenous peoples.²⁸

As a practical component of the international order best understood in terms of their function, basic human rights are not best understood primarily as rights possessed by individuals against all other individuals or against the world at large. They are rather rights possessed by individuals against the particular bodies politic to which they belong. They are the rights essential to any social order properly characterizable as a corporate moral agent structured as a genuine (and hence mutually advantageous) system cooperation between persons.²⁹ To put it differently, they are rights that must be secured if the particular bodies politic to which individuals belong are to enjoy within the international order a moral right to recognition and independence, and hence immunity from coercive intervention by other states.

In the ideal, then, basic human rights are enjoyed always as domestic civil or constitutional rights within particular bodies politic. And it is toward that ideal that the international order is oriented. Thus, enforcement efforts aim always at the realization of a domestic political order faithful to basic human rights and thus entitled to recognitional legitimacy (and with it self-determination or autonomy) within the international order. Basic human rights presuppose not a single, unified system of global political authority, but rather an international (con)federation of distinct, individual systems of political authority. They are necessary, and, when conjoined with such ordinarily concomitant institutional properties as officials acting in good faith from a public conception of justice, sufficient to the legitimacy within the international order of any body politic's claim to political authority over its members.³⁰

Within that federation and for all its members, basic human rights constitute a foreign policy imperative of the first order.³¹ All well-ordered peoples ought to, and would agree to,

monitor and secure human rights not only at home, but also abroad. States that violate basic human rights pose a fundamental threat to the international order. Because they lack genuine political authority over their members, well-ordered peoples cannot rely upon them, at least not as a moral matter, to keep their populations from aggressive, violent or criminal activities. And because they do not honor basic human rights, their populations, or significant portions thereof, are not likely to be sufficiently satisfied with their domestic condition to refrain from aggressive, violent or criminal activities. States that violate basic human rights, outlaw states, are likely, then, to pose a real threat to international peace and security. Accordingly, well-ordered peoples have good reason to insure that basic human rights are honored by all states.

Of course, well-ordered peoples have a good reason to insist on universal compliance with basic human rights even against outlaw states that pose no direct threat to the international order, for example, nonaggressive and weak outlaw states. Well-ordered peoples are not obligated to and will not recognize as legitimate members of the international order states that violate basic human rights. Accordingly, well-ordered peoples will have no moral obligations toward such outlaw states as states or peoples or corporate moral agents. A well-ordered people confronts a state in violation of basic human rights as nothing more than an aggregate of individual persons, perhaps arranged as a system of domination, or terror, or exploitation, or whatever, but without the corporate moral status necessary to participate in an international system of moral obligations and duties. At the level of corporate agency, a confrontation between a well-ordered people and a state in violation of basic human rights is a confrontation between a corporate moral agent and a corporate agent *simpliciter*. It is analogous to a confrontation between an individual moral agent or person and an individual sociopath or agent

simpliciter. Such confrontations are destabilizing to the moral order proper to moral agents, whether the international order of corporate moral agents, or the moral order of individual persons, precisely because they take place beyond the borders of shared moral ground. Thus, well-ordered peoples have good reasons for insisting on basic human rights everywhere. These reasons derive from their fundamental interest as corporate moral agents in securing a stable international order *as a moral order*.

It does not follow that these are the only reasons well-ordered peoples have for insisting on basic human rights. The basic interests common to all individual human persons, at a fundamental level the basic interest of each and every person in belonging to a well-ordered polity, whether decent or liberal democratic, surely give well-ordered peoples yet another reason to act on basic human rights as a foreign policy imperative. Rawls nowhere denies this. From the fact that he recognizes as legitimate within the international order only bodies politic structured as genuine systems of cooperation, we may reasonably infer that he believes bodies politic exist for and ought to serve the good of their members. About this, I think, there can be no doubt. Rawls emphasizes the important interest well-ordered peoples have in an international order that is stable as a moral order, and thus in securing universally basic human rights so that all international relations take place between corporate moral agents, not because he thinks the interests of peoples have some normative or metaphysical priority over the interests of individual persons, but rather because the question of basic human rights arises for him within the practical and political context of a liberal democratic people assessing its own foreign policy agenda as it confronts other peoples claiming for themselves recognition and respect within the international order as corporate moral agents. As a practical matter, liberal democratic peoples need to know

when they are confronting another people with a right to collective self-determination, the same right liberal democratic peoples claim for themselves.

I wish to highlight just one final feature of Rawls's treatment of the nature of human rights. While basic human rights constitute a foreign policy imperative of all well-ordered peoples, it does not follow that all well-ordered peoples must aim at securing a world within which basic human rights are everywhere enjoyed as rights of individuals in the "rights as trumps" sense familiar from liberal jurisprudence. This is an important point to keep in mind as one thinks about how basic human rights are to be taken up within a more adequate international legal order.

Rawls recognizes, and thinks liberal democratic peoples must recognize, the possibility of nonliberal, nondemocratic but nevertheless decent peoples entitled to recognitional legitimacy within a morally acceptable and stable international order.³² Some of these decent but not liberal or democratic peoples Rawls characterizes as affirming a "common good" conception of justice.³³ Now, such peoples are not likely to find congenial a liberal jurisprudence of rights of individuals functioning as "trumps." How, then, can they honor basic human rights? How ought the emergent international legal order interact with these domestic "common good" legal systems within which the liberal ideal of rights of individuals as trumps is not at home?

The question here is what is meant by "securing basic human rights." Rawls is not altogether clear about this. He indicates, for example, that benevolent absolutisms honor basic human rights.³⁴ But he cannot mean by this that benevolent absolutisms honor basic human rights *as rights*, since the subjects in such a regime lack the political participation rights necessary to be able to insist on the content of basic human right as a matter of right, or as a

matter of their rights. They enjoy that content only through the good will of their benevolent ruler. And it is for this reason that benevolent absolutisms are not well-ordered and do not constitute corporate moral agents: there is no reciprocity at all between ruler and ruled as parts of the body politic.

What distinguishes a decent people from a benevolent absolutism is that in a decent people there are things citizens or subjects can do, legally recognized and supported things, to insist on the content of their basic human rights, or to criticize or dissent from violations or failures to deliver that content. Citizens or subjects are constituted and recognized as political agents, even if not the free and equal citizen-agents of a liberal democracy, and they stand in a relationship of at least minimal reciprocity with their ruler(s). And so constituted as political agents, there are things they can do, actions they can perform, to insist on the content of basic human rights within the constitutional framework of their decent political order with its common good conception of justice.³⁵ Of course, the official jurisprudential discourse within a decent people may not look much like the jurisprudential rights-talk of a liberal democracy. Citizens or subjects may not think of themselves as insisting on their rights as individuals as “trumps” over any conception of the common good. But what they are able to do and to insist on as political agents is sufficiently close to warrant treating their circumstance as one in which basic human rights are secured or honored.³⁶ This, Rawls’s view would seem to suggest, the international legal order must accommodate in its jurisprudence. It need not similarly accommodate the circumstance characteristic of a benevolent absolutism, even if it is nevertheless the case that the well-ordered peoples participating in a just international order have no good reason to intervene into a benevolent absolutism so long as it remains benevolent.³⁷ For in a benevolent absolutism,

there are only subjects, even if happy or content subjects, there are no political agents. A benevolent absolutism is not a constitutional republic, no matter how benevolent.

The moral status and agency of a body politic, a well-ordered people, is derivative. It derives from the moral status and agency of its individual members taken as political agents. Basic human rights secure that status and agency. To do so, however, they need not be affirmed and maintained in the familiar liberal form of the rights of individuals as trumps over and against the common good. What is crucial is that they be affirmed and maintained consistent with the status of all individual members as political agents rather than mere passive subjects, even if not the free and equal citizen-agents of a liberal democracy.

IV. Basic Human Rights: Their Justification.

The law of peoples sets out the basic moral principles to govern a just international order and hence the foreign policies of all full and genuine members of, the primary moral actors in, that order.³⁸ As such, the law of peoples must be publicly justifiable to those members or actors. At least it must be so when viewed from the point of view of liberal democratic peoples, since they all share a practical commitment to reciprocity between moral agents, whether corporate moral agents or individual persons. Reciprocity is, for Rawls, a root moral norm. It requires of moral agents that they restrict themselves in their other-regarding conduct to acting in accord with principles others also could reasonably affirm from their own point of view and without being manipulated or lied to and so on. Liberal democratic peoples distinguish between that which can be justified to oneself, whether as an individual or people, through the theoretical exercise of reason and that which can be justified to another, again whether an individual or people, in the practical exercise of reason. And given the burdens of judgment and the

reasonable disagreements they engender, liberal democratic peoples accept the possibility that some of what they can justify to themselves theoretically may prove unacceptable to others to whom they practically owe reciprocity in their mutual interactions. If decent, well-ordered, nonliberal and nondemocratic peoples or corporate moral agents are possible, and I think Rawls is correct to insist that they are at least possible, then liberal democratic peoples must insure that the law of peoples they affirm can be publicly justified both between themselves as liberal democratic peoples, and also to all other decent and well-ordered peoples.³⁹

Many readers of *LoP* pay too little attention to Rawls's commitment to reciprocity and accordingly assume that it is his desire to avoid parochialism or charges of Western imperialism that best explains the minimalism of his human rights doctrine.⁴⁰ To be sure, Rawls desires to avoid such charges.⁴¹ But it is not this desire that leads to his somewhat minimalist conception of human rights. Rather, it is his commitment to reciprocity. Indeed, Rawls gives every impression that, given this commitment, his conception of human rights is the conception that would be morally appropriate (at the level of first principles binding on peoples regardless of consent or voluntary undertaking) even in a world of only liberal democratic peoples. Of course, Rawls endeavors to show that in a world of both liberal democratic and other decent peoples his conception of human rights will still satisfy the demands of reciprocity liberal democratic peoples affirm. Liberal democratic and decent peoples may interpret or apply basic human rights in distinctive ways; but they do not substantially disagree over the nature or content of basic human rights, on Rawls's view. But while this is a crucial part of his argument for including his human rights conception within the law of peoples, and while it deflects charges of parochialism or Western imperialism, it does not substantially determine the shape of that conception.

Rawls regards basic human rights as one focal point of an overlapping consensus within the public political culture of international relations. But he does not justify or arrive at his conception of basic human rights by way only of an empirical search for such a focal point of consensus. That would make his conception of basic human rights “political in the wrong way,” to recall the phrase from *Political Liberalism*.⁴² The point is not to inquire into the perhaps hidden commitments already shared as a matter of fact between liberal democratic and decent Islamic or Confucianist peoples. The point rather is first to inquire into what liberal democratic peoples ought to affirm regarding basic human rights, and then to inquire into whether other decent peoples could reasonably affirm those same commitments from their own points of view without manipulation, coercion and so on. That this is Rawls’s view is more or less clear from his invocation of two international original position arguments, one within which the agents represent only liberal democratic peoples, and the other within which the agents represent only decent peoples, each leading in its own way to the same conception of basic human rights and the same law of peoples.⁴³

But how is it that liberal democratic peoples would arrive themselves, without any compromise to their self-understanding or commitments, at Rawls’s minimalist conception of human rights, roughly the same conception as affirmed by decent peoples? The answer is to be found, I think, in a reconstruction of Rawls’s justification for the law of peoples generally, and basic human rights in particular.

Liberal democratic peoples regard themselves, by virtue of their shared political culture, their institutional structure and territorial integrity, and their moral commitments and capacities, as corporate moral agents. They are, to be sure, corporate moral agents of a particular sort:

corporate agents the members of which understand themselves to stand as individual persons in a basic and unmediated relationship with their body politic. This is what liberal democratic peoples mean when they speak of their citizens as free and equal. They mean that citizenship is for them an irreducible moral relationship between the individual person and the body politic unmediated by any antecedent obligations or memberships. In a liberal democracy, citizens are, *vis a vis* political authority or the authority of their body politic, free and equal. And it is this status, and the fundamental interests of citizens so understood, that Rawls's domestic original position argument models.

As with the domestic case, Rawls's international original position argument constitutes a contractualist, constructivist justification for principles of justice. Out of a shared moral self-understanding, a social contract heuristic is constructed and deployed to render more determinate and ordered our intuitions and judgments about justice. But how, in particular, does Rawls's contractualist, constructivist international original position argument justify his human rights doctrine? Why wouldn't representatives of liberal democratic peoples simply agree to recognize liberal democratic rights as basic human rights binding on all regardless of consent or voluntary undertaking? After all, liberal democratic peoples have a fundamental interest in realizing liberal democratic justice.

Suppose an original position within which agents represent only liberal democratic peoples. They know that the peoples they represent are liberal and democratic, yet they also know that none are perfectly just and that all differ in various important ways, both in terms of how they understand the demands of liberal democratic justice and in terms of how far along they are in realizing liberal democratic justice. Further, they know that the peoples they

represent all have a fundamental interest in their own political autonomy and thus in realizing liberal democratic justice on their own terms in their own way. It should be clear enough that such agents will find themselves unable to agree to any particular scheme of liberal democratic rights as setting out the basic human rights binding on all regardless of consent. Any such agreement would unacceptably intrude on the political self-determination of the peoples represented. (Is the United States system of rights to be preferred over the Norwegian or British?)

But wouldn't agents in this international original position be able to agree at least to a generic conception of liberal democratic rights as setting out the conception of basic human rights to be binding on all regardless of consent? Again, these agents represent only parties liberal and democratic, even if in various senses and to varying degrees.

Let us suppose for the sake of argument that they would. That is, let us suppose that agents representing liberal democratic peoples only, those invoked in Rawls's first international original position, would affirm as binding on all not only Rawls's basic human rights, but also a modest conception of generically liberal democratic rights.

The core function of a conception of basic human rights, on Rawls's view, is to set an important minimal condition necessary to full and genuine membership within a just society of peoples, one that when met is sufficient to secure for a people its recognition internationally and right to self-determination. But if basic human rights are essentially those rights constitutive of a generically liberal democratic order, then the path to liberal democracy is not one in principle lying within a people's right to collective self-determination. There is something odd about this, since liberal democratic peoples, at least in the paradigm cases, regard their own domestic orders

as their own achievements as peoples. Affirming generically liberal democratic rights as basic human rights suggests, for example, that England and the United States had no right against coercive intervention, diplomatic, economic, perhaps even military, by other states keen to see that women get the right to vote within a one person, one vote, majority rule system of representative democracy, or that certain Church privileges be abolished. Liberal democratic peoples have a fundamental interest in securing liberal democratic domestic orders, securing justice, but they also have a fundamental interest in doing so on their own terms and in their own time. But this suggests that no scheme of liberal democratic rights, not even a generically liberal democratic scheme, can serve as basic human rights binding on all regardless of consent or voluntary undertaking and setting a necessary condition to be met for a people to enjoy within the international order any right to self-determination.

Agents representing liberal democratic peoples, then, will be driven to asking what rights each people must honor in order to secure a right to self-determination or political autonomy. Liberal democratic peoples regard themselves as corporate moral agents entitled to self-determination or autonomy and thus possessed of a right against coercive intervention. Agents representing liberal democratic peoples would agree, accordingly, to regard as basic human rights those rights necessary and sufficient to their status as corporate moral agents possessed of a right to self-determination or autonomy and against coercive intervention. But what is the connection between basic human rights and corporate moral agency and with it the right to self-determination?⁴⁴

The answer, I think, turns on the nature of political authority or obligation. Rawls suggests as much in his reference to Philip Soper's work on the same topic.⁴⁵ But Rawls's

thinking here starts with H.L.A. Hart (to whom Soper's work is responsive).⁴⁶ Hart sets out the conditions necessary and sufficient for legal obligations. Famously, these are two. First, legal rules valid within the system must be generally obeyed. Second, officials must accept and honor in their official conduct the criteria of legal validity.⁴⁷ Hart goes on to note that there can be no legal obligations in the absence of formal or natural justice (since treating like cases alike is essential to rule-following and rule-following, at least by officials, is essential to legal obligation).⁴⁸ With respect to substantive justice, Hart argued that a viable legal system must extend a minimum natural law content to a large enough portion of the population to secure stability.⁴⁹ But this content Hart thought only contingently necessary to a viable legal system and in any case not content that must be distributed equally or even minimally to all (since treating like cases alike was fully compatible with regarding different classes of persons as constituting different cases). For Hart, a slave-holding society might be stable and possess a genuine legal system and impose genuine legal obligations (though surely obligations too weak to overcome the opposing moral obligations).

Soper rejects Hart's analysis of legal obligations on the grounds that it fails to explain why citizens or subjects have even a *prima facie* moral obligation to obey the law because it is the law. Hart's view requires only that legal officials secure general obedience to the law and hold themselves accountable to certain internalized rules of legal validity and the like. On his view, legal obligations require no reciprocity at all between officials and citizens or subjects. It is, accordingly, on Soper's view, to invoke language used by Rawls, only a theory of how officials can satisfy themselves that they are acting properly.⁵⁰ It cannot account for even a *prima facie* moral obligation on the part of citizens or subjects to obey the law. From the point

of view of citizens or subjects, Hart's legal obligations may present themselves as having no more authority than commands backed by force.

Rawls cautiously refrains from endorsing Soper's rejection of Hart's theory as a theory of law or legal obligation.⁵¹ But he does endorse Soper's claim that Hart's theory cannot account for political obligation, the *prima facie* moral obligation to obey the law because it is the law, or its corollary, political authority. To account for that, Rawls and Soper agree, one must press beyond Hart's analysis of legal obligations *qua* legal obligations.

Soper argues that citizens or subjects have *prima facie* moral obligations to obey the law, political obligations, only if the system of law overall is at least aimed at the good or advantage of all members and enforced by officials prepared to enforce and defend it in such terms. Citizens or subjects have no *prima facie* moral obligation to obey the law as the law, no political obligations, unless the political-legal system meets this minimum standard of reciprocity. It is aimed at and defended in terms of the good of all or the common good. It is not enough that officials believe themselves to be properly exercising their authority pursuant to the relevant rules. They must be prepared and able to defend that authority and their exercise of it to citizens or subjects by reference to the common good or good of all. Acting as the body politic, officials must act from reasons they're prepared to give all persons belonging to it. Of course, for this condition to obtain, citizens or subjects must be able to demand of officials reasons for their official actions or exercises of authority. Hence, citizens or subjects must have some basic human right to dissent and to public justification for state action and to other essential elements of the rule of law. And the political-legal system must over the long term credibly constitute a system of mutually advantageous cooperation. Hence, subsistence and security rights (roughly

Hart's minimum natural law content) must be universally honored, as well as personal property rights, and an economic regime able to sustain long-term mutual advantage must be maintained.⁵² And, of course, natural or formal justice must be secured, but within this context (rather than the more permissive Hartian context). This delivers Rawls's basic human rights. Political obligations and authority are possible only where these conditions, Rawls's basic human rights, are met. These conditions, not those set out by Hart in his theory of legal obligation, mark the minimum reciprocity between persons necessary to a body politic organized as a self-contained or self-generated system of political obligations and authority of *prima facie* moral force, a constitutional (even if not liberal and democratic) republic.

Where Rawls's basic human rights are secured, there are good reasons to give *prima facie* moral recognition to legal obligations (understood in the Hartian sense of being normative but having no necessary moral character). Where basic human rights are secured, the other conditions of well-orderedness are met, and there is no threat of external aggression, these *prima facie* reasons are decisive. That is, a peaceful, well-ordered people that honors basic human rights ought morally to be recognized as a self-generating, self-contained, independent system of political and legal obligation and authority, a body politic, entitled to self-determination.

It is this conception of the minimal necessary conditions to a system of political obligation or authority, a conception properly belonging to liberal democratic peoples' self-understanding as corporate moral agents entitled to recognition respect, to self-determination, and to resist coercive intervention, that leads agents, even agents representing only liberal democratic peoples, to Rawls's somewhat minimalist human rights doctrine as an ingredient in the law of peoples. Agents representing only liberal democratic peoples might initially

contemplate identifying basic human rights with a generically liberal democratic scheme of rights, as for the sake of argument we did above. But they would, I submit, be driven in their deliberations back toward Rawls's more modest account of basic human rights as the rights ingredient in a constitutional republic entitled to recognition and self-determination within the international order.

To be sure, through exercises of their own self-determination, liberal democratic peoples will impose on themselves additional conditions necessary, from their own internal domestic point of view, to political obligation and authority. They may affirm Rawls's liberal principle of legitimacy or some similar principled expression of the demands of reciprocity within a legitimate liberal democratic polity.⁵³ But when they think of themselves as corporate moral agents entitled to recognition respect within the international arena, to self-determination and a right to resist coercive intervention, they will fall back to this more modest list of necessary conditions. There is nothing inconsistent in this. And indeed there would be something hypocritical in liberal democratic peoples making generically liberal democratic rights a necessary condition to full recognition and thus self-determination within the international order.

Of course, agents representing liberal democratic peoples will want to reserve for the parties they represent the right to engage in a diplomatic international politics of persuasion and moral criticism aimed at encouraging all peoples to more fully perfect themselves as liberal democracies, either through their own internal self-development or through voluntary and shared political undertakings through treaty and the like. But persuasion and moral criticism are different from force, coercion, or sanction. There is a difference between telling your neighbor that you disapprove of how he runs his house and trying to persuade him to run it differently, on

the one hand, and refusing to talk to him, banding with other neighbors to isolate him, refusing him membership within the neighborhood association, or entering his house to correct matters yourself.

The foregoing analysis and conclusions depend in no way on invoking the second international original position within which agents represent only decent peoples. To be sure, Rawls conjectures that the agents in this second international original position would affirm the same law of peoples affirmed by the agents representing only liberal democratic peoples in the first international original position. Thus, any really existing decent peoples (if there are any) could affirm the same law of peoples as liberal democratic peoples work out from the point of view of their own self-understanding. This is important. Liberal democratic peoples seek principles of international justice that satisfy the demands of reciprocity and are thus capable of being stable for the right reasons and falling comfortably within the limits of an overlapping consensus within international public reason. Rawls aims to show that his law of peoples with its conception of basic human rights meets this demand, whether there are only liberal democratic peoples, or liberal democratic and other decent peoples.

Rawls's conception of basic human rights does not depend on a particular religious doctrine or philosophical understanding of the moral nature of persons (though it most certainly assumes that all human beings capable of being rational, responsible, and reasonable are moral persons). It draws instead on an account of political authority and obligations, an account latent within the self-understanding of liberal democratic peoples and presumably acceptable to other decent peoples seeking recognitional respect and a right to self-determination as corporate moral agents in the international order. In this way, Rawls offers a human rights doctrine that

addresses the practical foreign policy issues faced by liberal democratic peoples while also satisfying their commitment to reciprocity and thus the demand for a human rights doctrine public justifiable within an international public reason.

V. The Politics of Human Rights.

Basic human rights are those binding on all states regardless of their consent. They constitute a foreign policy imperative for all well-ordered peoples and thus for a just society of peoples. With respect to basic human rights, what is politically on the table is only how best to secure their universal realization through unilateral, coordinated, and cooperative efforts by well-ordered peoples. This is one aspect of the politics of human rights. When well-ordered peoples of good will debate in good faith how best to secure basic human rights in the Darfur region of the Sudan, for example, they are engaged in the politics of human rights in this sense.

Liberal democratic peoples, of course, will rightly seek a world within which all states honor more than basic human rights and increasingly approximate liberal democratic ideals within their domestic orders. One means to this end, of course, is for liberal democratic states, and for those individuals and associations belonging to or affiliated with them, to undertake various international political initiatives aimed at bringing not yet liberal or democratic states to voluntarily take on the liberal democratic ideal. When liberal democratic states press for the universal affirmation and honoring of liberal democratic rights as human rights, or of treaties such as CEDAW, for example, they are engaged in the politics of human rights in this second sense. This is a politics that must proceed on terms faithful to the recognition respect and self-determination rights properly claimable by all well-ordered peoples, even peoples as yet not liberal and democratic. Coercion, whether military or not, has no place in such a politics.

It does not follow that treaty-making is the only path open to expanding the range of human rights enforceable under international law. As persuasion and (noncoercive) practice develop into custom, custom may be integrated into and enforced as international law. There is, therefore, much to be gained simply by drawing not yet liberal and not yet democratic peoples into an international conversation and practice within which liberal democratic peoples play a substantial and visible and perhaps leading role.

By insisting on a politics of human rights that honors the foregoing, Rawls offers an approach to basic nonnegotiable human rights and to the universal though voluntary development of a more robust human rights regime within the international law of treaty and custom that is consistent with the free development of peoples as corporate moral agents. In this way, he marks a path through which free peoples may, following their own historical paths and faithful to the limits of international right, arrive at a world within which (at least generically) liberal democratic rights are recognized and enforced as human rights.

Endnotes

1. I want to thank Alyssa Bernstein, Allen Buchanan, Rex Martin, Jim Nickel, Walter Riker, and Kok-Chor Tan for conversations about or comments on earlier drafts of this paper.
2. John Rawls, *The Law of Peoples*, Harvard University Press, 1999. Hereafter cited as *LoP*.
3. *LoP*, pg. 68.
4. *LoP*, pg. 80.
5. See, e.g., *LoP*, pgs. 27, 78-81.
6. *LoP*, pg. 81. Rawls's remark reflects United Nations practice insofar as under the United Nations Charter only the Security Council can authorize coercive intervention, including economic sanctions, and then only in the interests of peace and security.

7. *LoP*, pg. 65.

8. *LoP*, pg. 80. Michael Ignatieff also offers a minimalist conception of human rights, though it differs in important ways from Rawls's conception. See, e.g., Michael Ignatieff, *Human Rights as Politics and Idolatry*, Princeton University Press, 2001.

9. The critical literature assessing *LoP* generally and its human rights doctrine in particular is large and still growing. For critical treatment of *LoP*'s human rights doctrine, see, e.g., Charles Beitz, "Rawls's Law of Peoples," *Ethics*, v. 110(4), 2000, pgs. 669-696, and "Human Rights as Common Concerns," *American Political Science Review*, v. 95(2), 2001, pgs. 269-282; Allen Buchanan, "Rawls's Law of Peoples: Rules for a Vanishing Westphalian World," *Ethics*, v. 110(4), 2000, pgs. 697-721; Simon Caney, "Cosmopolitanism and the Law of Peoples," *The Journal of Political Philosophy*, v. 10, n. 1, 2002, pgs. 95-123; Eric Cavallero, "Popular Sovereignty and the Law of Peoples," *Legal Theory*, v. 9, n. 3, 2003, pgs. 181-200; David Ingram, "Between Political Liberalism and Postnational Cosmopolitanism: Toward an Alternative Theory of Human Rights," *Political Theory*, v. 31, n. 3, 2003, pgs. 359-391; Andrew Kuper, "Rawlsian Global Justice: Beyond the Law of Peoples to a Cosmopolitan Law of Persons," *Political Theory*, v. 28(5), 2000, pgs. 640-674; Darrel Moellendorf, "Constructing the Law of Peoples," *Pacific Philosophical Quarterly*, v. 77, 1996, pgs. 132-154; Thomas Pogge, "An Egalitarian Law of Peoples," *Philosophy and Public Affairs*, v. 23(3), 1994, pgs. 195-224, and "The International Significance of Human Rights," *Journal of Ethics*, v. 4(1), 2000, pgs. 45-69; and Kok-Chor Tan, *Toleration, Diversity and Global Justice*, Penn State University Press, 2000, esp. ch. 4, and "Critical Notice: Rawls's *The Law of Peoples*," *Canadian Journal of Philosophy*, v. 31, n. 1, 2001, pgs. 113-132;

10. *LoP*, pg. 80.

11. The right to be free of coerced self-incrimination is included, along with other rights essential to the right to be presumed innocent, in Article 14 of the 1966 International Covenant on Civil and Political Rights. I conjecture that by explicitly including in his *LoP* presentation the rights entailed by the rights covered in Articles 3-18 of the UDHR, Rawls meant to direct his readers to the two Covenants, and especially the first Covenant (on Civil and Political Rights), for it is there one finds set out more specifically the essential ingredients of the rights specified in the *UDHR*.

12. Article 23 is explicitly excluded at *LoP*, pg. 80. Article 21 is clearly excluded by implication since decent peoples need not have representative democratic forms of government making use of universal equal suffrage.

13. *LoP*, pg. 80.

14. See, e.g., *LoP*, pg. 38.

15. *LoP*, pgs. 75, 78.

16. *LoP*, pg. 80.

17. See, *LoP*, pg. 38, note 47.

18. See, *LoP*, pg. 65, note 1.

19. It is tempting here to think that there must also be a basic human right to a rising social minimum over time within the decent or liberal democratic domestic order to which one belongs. After all, well-ordered peoples, decent or liberal, must organize themselves as genuine systems of cooperation and thus secure mutual advantage over time for all classes of participants or members. But affirming a basic human right to a rising social minimum would be largely pointless. Even the slightest rise in a society's guaranteed social minimum would satisfy its demands. Rawls's emphasis on genuine cooperation for mutual advantage is better understood in terms of requiring an adequate social minimum and prohibiting such clear failures of mutual advantage as slavery, serfdom, systemic exploitation, and so on. So long as a people secures and maintains over time for all its members a social minimum adequate relative to its decent or liberal democratic domestic order, it secures the basic human rights of its members; the internal distribution of its cooperative surplus is after that point a matter of its own political self-determination.

20. See, *LoP*, e.g., pgs. 89, 93, 113.

21. James Nickel and I make use of these six categories in our "Relativism, Self-Determination and Human Rights," in *Globalization, Development and Democracy*, Deen Chatterjee, ed., Rowman and Littlefield, forthcoming, 2005.

22. Rights specified in the two *Covenants* binding on state parties by virtue of their consent or voluntary undertaking may over time be so integrated into the general background landscape of international relations that they come within international law to have general force as a matter of customary practice. For discussion, see Henry Steiner and Philip Alston, *International Human Rights in Context*, 2nd Ed., Oxford University Press, 2000, pgs. 69-72. Arguably, many of the rights Rawls identifies as basic human rights have recently become or are likely to soon become part international law as a matter of general customary practice. That is all to the good and consistent with Rawls's position in *LoP* that irrespective of custom, treaty, and so on, these rights must be secured within any morally acceptable regime of international law.

23. For a useful discussion of recognitional legitimacy, see Allen Buchanan, "Recognitional Legitimacy and the State System," *Philosophy and Public Affairs*, v. 28, n. 1, 1999, pgs. 46-78.

24. For a summary of the legality of reservations within international human rights law, see Louis Henkin, et al., *Human Rights*, Foundation Press, 1999, pgs. 307-311. A related practice (insofar as it presupposes a commitment to the self-determination of well-ordered bodies politic or peoples) recognized in international human rights law is the judicially applied "margin of appreciation" doctrine according to which human rights tribunals (such as the European Court) afford state parties a significant degree of latitude or discretion in meeting their voluntarily assumed human rights obligations. For discussion and defense of the "margin of appreciation"

doctrine, see Burleigh Wilkins, "International Human Rights and National Discretion," *The Journal of Ethics*, v. 6, 2002, pgs. 373-382. In general, Rawls would seem to reject these practices as appropriate to his short list of essentially non-negotiable basic human rights binding on states regardless of their consent, but permit them with respect to the fuller range of human rights obligations voluntarily taken on by states through such consent-giving political processes as treaty-making or customary practice.

25. For Rawls's discussion of these matters, see *LoP*, pgs. 109-111, including the notes therein.

26. See, e.g., *LoP*, pg. 80. Rawls's treatment of benevolent absolutisms is confusing here. Benevolent absolutisms are not well-ordered. See, e.g., *LoP*, pgs. 4 and 63, where Rawls emphasizes their lack of well-orderedness. Presumably, then, they are not entitled to full recognition and membership within a just society of peoples. But benevolent absolutisms are benevolent because they honor or secure for their members the content of basic human rights, or at least most basic human rights. And this, Rawls maintains, is sufficient to underwrite their right to self-defense against a military intervention. See, *LoP*, pg. 92. But it is apparently not sufficient to underwrite a right to immunity against all sanctions, since withholding full recognition and membership within the international order is presumably itself a kind of diplomatic sanction. Here I find significant Jim Nickel's claim (in his essay in this volume) that Rawls's view would profit from a more nuanced and multivalent account of international recognition or legitimacy, degrees of human rights compliance, and types of permissible sanctions. My point in the text, however, still stands: no state has a right forcefully to intervene, whether through diplomatic or economic sanction or military action, in the internal affairs of a (nonaggressive) well-ordered people that honors basic human rights. This is the paradigm case.

27. This point is powerfully advanced by Charles Beitz in his "Human Rights and the Law of Peoples," in *The Ethics of Assistance*, Deen Chatterjee, ed., Cambridge University Press, 2004. Beitz contrasts this "practical" view of human rights with more "orthodox" views that understand human rights in terms of timeless individual natural rights possessed by persons by virtue of some morally salient fact about them as human persons.

28. Though whether and if so what kind of intervention is justified in such cases may be more complex than in more familiar cases of modern outlaw states in violation of basic human rights. See, *LoP*, pg. 93, note 6.

29. See, *LoP*, pg. 68.

30. In a closely reasoned recent article, Allen Buchanan distinguishes between political legitimacy, political authority, and the authoritativeness of law. I do not mean here to be invoking the specific senses Buchanan attaches to each of these terms. See Allen Buchanan, "Political Legitimacy and Democracy," *Ethics*, v. 112, 2002, pgs. 689-719.

31. For a helpful discussion of this aspect of human rights more or less consistent with the Rawlsian approach as I'm presenting it, see Erin Kelly, "Human Rights as Foreign Policy Imperatives," in *The Ethics of Assistance*, Deen Chatterjee, ed., Cambridge University Press,

2004.

32. For a defense of Rawls's position on this matter, see my "Rawls on International Justice: A Defense," *Political Theory*, v. 32, n. 3, 2004, pgs. 291-319.

33. See, e.g., *LoP*, pg. 66.

34. See *LoP*, pgs. 4, 63, 92. As indicated above, Rawls's treatment of benevolent absolutisms is confusing. I set these difficulties aside for present purposes. The key point for present purposes is that given the lack of any political participation rights in a benevolent absolutism, basic human rights are not honored or enjoyed *as rights*. Subjects have no right to insist on the content of their rights; they enjoy that content only through the good grace of their benevolent ruler.

35. For a useful discussion of what it means to enjoy basic human rights as rights, see Henry Shue, *Basic Rights: Subsistence, Affluence and U.S. Foreign Policy*, 2nd Edition, Princeton University Press, 1996, especially Chapter 3, pgs. 74f.

36. I owe a debt to Rex Martin for illuminating discussion on this point.

37. Rawls seems to share Walzer's view that the basic rights to political participation essential to that minimal reciprocity between ruler and ruled ingredient in even the thinnest notion of constitutional republicanism must be won largely through the efforts of those denied those rights within their own body politic. In any case, assuming an otherwise benevolent, or at least benign, rule, intervention is not justified so as to bring political participation rights to a people not themselves already taking steps to secure those rights. For Walzer's view, see *Just and Unjust Wars*, 3rd Edition, Basic Books, 2000, pgs. 87-91.

38. For useful discussion of the primacy of peoples within the international order, see the essays by Wenar and Freeman in this volume.

39. See, e.g., *LoP*, pgs. 57, 121.

40. The significance of Rawls's commitment to reciprocity cannot be overstated. Reciprocity demands that force and power be subordinated to a shared reason. Without reciprocity the history of *Homo sapiens* will never be a genuinely human (or moral) history.

41. See, *LoP*, pg. 68.

42. Rawls uses the phrase regularly. See, e.g., John Rawls, *Political Liberalism*, Columbia University Press, 1996 paperback edition, pg. 142.

43. See, *LoP*, pgs. 63, 69-70.

44. I set aside here the issues raised by so-called benevolent absolutisms. See *supra*, note 27, for discussion.

45. See, *LoP*, pg. 66, 67, and 72. The relevant work by Philip Soper is his *A Theory of Law*, Harvard University Press, 1984.
46. See, *Political Liberalism*, *supra*, pgs. 109-110, note 15.
47. See, H.L.A. Hart, *The Concept of Law*, 2nd Edition, Oxford University Press, 1997, pgs. 116-117.
48. H.L.A. Hart, *The Concept of Law*, 2nd Edition, Oxford University Press, 1997, pg. 159-160.
49. *Ibid.*, pgs. 193-200.
50. See *Political Liberalism*, *supra*, pgs. 143-144.
51. See *LoP*, pg. 66, note 5.
52. Rawls develops these points, albeit in the most cursory way, in *LoP*, pgs. 65-72.
53. For discussion and criticism of Rawls's liberal principle of legitimacy, see my "Reciprocity and Reasonable Disagreement: From Liberal to Democratic Legitimacy," *Philosophical Studies*, forthcoming.