note: sorry that this is longer and denser than what you had asked for: the moral politics of Kant's and Rawls' philosophies—neither of whom I have read before—coincide both with my own conception of justice and with the topic of my senior thesis (a nightmarishly vast and open-ended analysis in which I am attempting to reconcile the moral utopianism of the 1968 student movement with its own violent tendencies, looking specifically at French film pre-'68 and Italian literature/terrorism post-'68. [The reason that all of this is relevant to Rawls is:] I am arguing that the 'postmaterialist' student movement was a response to the iniquities bred both by classical liberalism's exclusive focus on freedom and by Soviet communism's exclusive focus on communal justice).

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1ˢᵗ Reaction Paper
Unit IV (Rawls)
Global Justice
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3/9/04

On the Merits of Justice as Fairness
(and its necessary limitations)

John Rawls' conception of international justice is both brilliant and laudable in its attempt to reconcile Kant's universal liberal principles with the toleration of (certain) non-liberal peoples.[*] By demanding that universalizability be in no way grounded in aprioristic foundationalism Rawls constructs a justice that is well-attuned to political consensus and ethical plurality, but which necessarily falls short of acknowledging Kant's transcendental *noumena* (be they deduced, as for Kant, or intuited, as for Socrates and his *daemon*). Although it is, in this context, problematically difficult to determine exactly where the dividing line between tolerance and justified intolerance—between moral autonomy and criminal behavior—should be placed, to accept both plurality and the individuals' right to moral autonomy is to understand the difficulties that necessarily inhere in modern society. When the *Law of Peoples* outlines a "realistic utopia", its possible attainability—given the conditions of contemporary international society—is what argues in favor of its application; while Rawls' utopia is rightly desirable as an

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[*] This follows both from the very existence of ethical plurality and from the admitted fact that Rawls' conception of justice is precisely that: one possible conception (while Rawls feels—as do I—that, as his conception, it is a good one, its constructed nature implies the *possible* viability of other conceptions).

approachable goal, it is *not* a utopia if we follow More's original pun: it is neither purely *outopos* (no place) nor purely *eutopos* (good place[*]).

As a political (read: non-transcendent, phenomenal) conception, Rawls' realistic utopia lays an excellent foundation for a just social order, but *as a political conception*[†] it cannot rely on the intuitionism that would be inherent to a 'real' utopia; rather, it is precisely because Rawls' conception respects and values the individual's (potentially intuited) moral agency that a just political order need allow for a certain degree of ethical plurality. Thus, "political liberalism does not dismiss spiritual questions as unimportant, but on the contrary, because of their importance, it leaves them for each citizen to decide for himself or herself."[1] Instead, "the final political end of society is to become fully just and stable for the right reasons"[2] Thanks both to an individual moral monopoly—which by definition cannot be depersonalized—and to the demonstrable incompatibility of Hobbist egoism and Rousseauian 'popular sovereignty',[‡] all a fully just society can seek to do is to guarantee the proper conditions in which freedom (moral and otherwise) can best coexist with social justice and the toleration of acceptable difference.

The political organization of the fully just social order therefore cannot be utopian in an ethically monolithic sense, for the good—following Kant's *Perpetual Peace*, and as against Plato's *Republic*—must, at least in public, bend its knee to the right. To be realistically utopian rejects the futility and counterproductivity of utopianism as it is

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[*] For "it may be a social world many of whose members may suffer considerable misfortune and anguish, and may be distraught by spiritual emptiness." (*Law of Peoples*, 127)

[†] Writes Rawls: "A liberal society with a constitutional regime does not, *as a liberal society*, have a *comprehensive* conception of the good. Only the citizens and associations within the civic society in the domestic case have such conceptions." (*LP*, 34)

[‡] Respectively, Fascism and Marxist-Leninist Communism represent the dangers of disregarding these two irreconcilabilities. Whereas the former, following Cesare Pavese, effectively forced a perennial happiness on the citizen-subject, the latter attempted—both unjustifiably and unrealistically— to 'do away with' egoism.

pejoratively understood: "Readers might charge me with baseless utopianism, but I disagree . . . Kazanistan is the best we can realistically—and coherently—hope for . . . The alternative is a fatalistic cynicism which conceives the good of life solely in terms of power."[3] But this is not to accuse Rawls of Hobbist 'realism': on the contrary, he rejects the power politics of Foucauldian near-nihilism while holding both 'just constitutional democratic peoples' and 'decent hierarchical peoples' to a supremely high (and probably unattainable) standard.[*]

That said, I would personally argue that Rawls' social constructivism is largely premised upon—rather than opposed to—personal intuitionism. As Nythamar Fernandes de Oliveira writes,

> Since Rawls seeks not to do injustice to Kant, constructivism is conceived as a more defensible model of morality than intuitionism, and yet seems doomed to its metaphysical dualism. According to political constructivism, a theory of justice as fairness is the most appropriate one for pluralist, democratic societies precisely because it turns out to be the most reasonable of all, the one which best translates the idea of an overlapping consensus. political constructivism does not aim at opposing intuitionism as such, but only proves to be more fundamental and comprehensive from a conceptual standpoint.[4]

Accepting pluralism makes justice as fairness a laudable revision of Kant's pacific federation (itself archetypally praiseworthy, even if it is often misinterpreted as a blueprint for moral imperialism).

But even if the social appropriation of individual moral intuitionism is demonstrably unjustifiable in a plural modernity, difficult questions remain as to how

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[*] The particulars of his argument, which focus on human rights, political participation, and the toleration of acceptable difference, are too many to address here. Suffice it to abstractly state that "the Law of Peoples does not presuppose the existence of actual decent hierarchical peoples any more than it presupposes the existence of actual reasonably just constitutional democratic peoples. If we set the standards very high, neither exists. In the case of democratic peoples, the most we can say is that some are closer than others to a reasonably just constitutional regime. The case of decent hierarchical peoples is even less clear." (*LP,* 75)

competing interpretations of the normative idea(l) can be reconciled.[*] Extrapolating from *The Law of Peoples*,[†] Rawls' conception of justice as fairness hinges on three "normative ideas"[5] constitutive of practical reason: reasonableness, decency, and rationality. As against Kant, "the criteria for these three normative ideas are not deduced, but enumerated and characterized in each case."[6] I applaud Rawls' attempt to universalize justice without imposing moral absolutism, but implicit in the very existence of these normative ideas (only the *criteria* of which are being questioned)—joined with the fact that Rawls nowhere specifically rejects the *basic* unity of morality—is the existence of a superstructure of universal morality (albeit one, following Walzer, with a highly contested substructure). That is, a foundational moral ideal.

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[1] John Rawls, *The Law of Peoples, with "The Idea of Public Reason Revisited."* Cambridge, Mass.: Harvard University Press, 1999, p. 127.

[2] Ibid, p. 119.

[3] Ibid, p. 78.

[4] Nythamar Fernandes de Oliveira, "Critique of Public Reason Revisited: Kant as Arbiter Between Rawls and Habermas", originally from *Veritas* 45/4 (2000): 583-606, online at http://www.geocities.com/nythamar/debate.html (pp. 1-16), p. 14.

[5] Rawls, p. 67.

[6] Ibid, p. 87.

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[*] Generally agreeing with Rawls, I would argue that this difficulty is not a valid excuse either for resigned despair (which, to follow in the sadly decaying footsteps of Kant's idealism, for Hegel is the 'unhappy consciousness' and, more tangentially, for Kierkegaard is the 'Knight of Resignation') or for a political realism of the Machiavelli-Hobbes variety. Rather, such issues need to be constantly tackled and updated as precisely what they are: difficult problems (which, to offer a final tangential tidbit, can often be related to Aristotle's definition of tragedy: a need to reconcile the warring exigencies of two competing goods).

[†] I have not read *A Theory of Justice*.