[A] constructivist view such as justice as fairness, and more general liberal ideas, do not begin from universal first principles having authority in all cases. In justice as fairness the principles of justice for the basic structure of society are not suitable as fully general principles: They do not apply to all subjects... or to the basic structures of all societies, or to the law of peoples. Rather, they are constructed by way of a reasonable procedure in which rational parties adopt principles of justice for each kind of subject as it arises.¹

Rawls’ Trajectory

The political philosopher John Rawls made his first significant foray into the field of public international law (or, in his own terminology, the “law of peoples”),² with an article published in the 1993 collection of Oxford Amnesty Lectures entitled On Human Rights. In it, he gave a brief (and, for many, provocative) outline of how he saw his own theory, as developed in A Theory of Justice³ and Political Liberalism,⁴ when taken from its domestic model and applied to the international sphere. It was not until 1999, however, that these ideas received a lengthier elaboration, in his last major publication: The Law of Peoples.⁵ It may, perhaps, be objected that I am mistaken to include Rawls’ contribution to the debate in this field in a book concerned with post-foundationalism in ethics; after all, many of the admirers that Rawls attracted after the publication of A Theory of Justice were drawn to him pre-

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² Ibid.
ciscely because he seemed to hold out the promise of some sort of objective, universal validity for the laws and institutions of liberal society. Many of these were, however, disenchanted by his apparent shift, in *Political Liberalism*, away from universal principles of justice and rights held by all, towards notions of tolerance for non-liberal standpoints – inasmuch as they were “reasonable”. The reasoning behind the move is clear: if not all citizens within one society are (or even should be) necessarily liberal – and Rawls is explicit in his acceptance of the notion of “reasonable moral pluralism” – then liberal theory needs to find ways of incorporating tolerance for such viewpoints. Rawls then extends this concern to the international sphere – if not all citizens need be liberal, then it follows *a fortiori* that not all “peoples” need be – and develops a notion of a society of well-ordered peoples that transcends the liberal/non-liberal dichotomy, whilst at the same time never pretending to be all-inclusive. This task, however, took him some considerable distance from the theory of justice that he had first expounded in the book of the same name in 1971, much to the anguish of many of his early supporters. As Wojciech Sadurski has noted:

The universalist theme of *TJ* [A Theory of Justice], already qualified and diluted by *PL* [Political Liberalism], seemed to be further weakened by the arguments in *LP* [The Law of Peoples]. A liberal, initially convinced by *TJ*, must now abandon all of her missionary zeal and dispense with the universalistic ideal of certain robust liberal rights that should be conferred upon everyone. A deep set of individual benefits deducible from the hypothetical social contract has been watered down; not just because of the fact of moral pluralism – as in *PL* – but also due to factors usually regarded as much more arbitrary from a moral point of view, such as the geographical location at which a person happened to be born.

This move away from universalism into some form of political relativism is evident in the particular methodology that Rawls uses in order to advance his arguments in *The Law of Peoples*. Drawing on his earlier works, he again posits an “original

6 He defines this in the following manner: “Citizens are reasonable when, viewing one another as free and equal in a system of social cooperation over generations, they are prepared to offer one another fair terms of cooperation according to what they consider the most reasonable conceptions of political justice”. See Rawls, “The Idea of Public Reason Revisited”, 64 *University of Chicago Law Review* (1997) 765-809, at p. 770.