

The Law of Peoples

John Rawls

One aim of this essay is to sketch in a short space—I can do no more than that—how the law of peoples may be developed out of liberal ideas of justice similar to but more general than the idea I called justice as fairness and presented in my book *A Theory of Justice*.¹ By the law of peoples I mean a political conception of right and justice that applies to the principles and norms of international law and practice.² In section 58 of the

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1. See John Rawls, *A Theory of Justice* (Cambridge, Mass., 1971). The phrase “law of peoples” derives from the traditional *ius gentium*, and the way I use it is closest to its meaning in the phrase *ius gentium intra se*. In this meaning it refers to what the laws of all peoples had in common. See R. J. Vincent, *Human Rights and International Relations* (Cambridge, 1986), p. 27. Taking these laws as a core and combining them with principles of justice applying to the laws of peoples everywhere gives a meaning related to my use of the law of peoples.

2. A political conception of justice has the following three features: (1) it is framed to apply to basic political, economic, and social institutions; in the case of domestic society, to its basic structure, in the present case, to the law and practices of the society of political peoples; (2) it is presented independently of any particular comprehensive religious, philo-

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above work I indicated how from justice as fairness the law of peoples might be developed for the limited purpose of addressing several questions of just war. In this essay my sketch of that law covers more ground and includes an account of the role of human rights. Even though the idea of justice I use to do this is more general than justice as fairness, it is still connected with the idea of the social contract. The procedure of construction, and the various steps gone through, are much the same in both cases.

A further aim of this essay is to set out the bearing of political liberalism once a liberal political conception of justice is extended to the law of peoples. In particular, we ask: What form does the toleration of nonliberal societies take in this case? Surely tyrannical and dictatorial regimes cannot be accepted as members in good standing in a reasonable society of peoples. But equally not all regimes can be reasonably required to be liberal; otherwise, the law of peoples itself would not express liberalism's own principle of toleration for other reasonable ways of ordering society nor further its attempt to find a shared basis of agreement among reasonable peoples. Just as a citizen in a liberal society is to respect other persons' comprehensive religious, philosophical, and moral doctrines, provided they are pursued in accordance with a reasonable political conception of justice, so a liberal society is to respect other societies organized by comprehensive doctrines, provided their political and social institutions meet certain conditions that lead the society to adhere to a reasonable law of peoples.

More specifically, we ask: Where are the reasonable limits of toleration to be drawn? It turns out that a well-ordered, nonliberal society will accept the same law of peoples that well-ordered, liberal societies accept. Here I understand a well-ordered society as being peaceful and not expansionist; its legal system satisfies certain requisite conditions of legitimacy in the eyes of its own people; and, as a consequence of this, it honors basic human rights (see section 4). One kind of nonliberal society satisfying these conditions is illustrated by what I call, for lack of a better term, a well-ordered hierarchical society. This example makes the point, central for this essay, that while any society must honor basic human rights, such

sophical, or moral doctrine, and though it may be derived from or related to several such doctrines, it is not worked out in that way; (3) its content is expressed in terms of certain fundamental ideas seen as implicit in the public political culture of a liberal society. See Rawls, *Political Liberalism* (New York, 1993), pp. 11–15.

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a society need not be liberal. It also indicates the role of human rights as part of a reasonable law of peoples.

1. How a Social Contract Doctrine Is Universal in Its Reach

1. Every society must have a conception of how it is related to other societies and of how it is to conduct itself towards them. It lives with them in the same world and except for the very special case of isolation of a society from all the rest—long in the past now—it must formulate certain ideals and principles for guiding its policies towards other peoples. Like justice as fairness, the more general liberal conception I have in mind—as specified in section 3, part 1 below—begins with the case of a hypothetically closed and self-sufficient liberal democratic society and covers only political values and not all of life. The question now arises as to how that conception can be extended in a convincing way to cover a society's relations with other societies to yield a reasonable law of peoples. In the absence of this extension to the law of peoples, a liberal conception of political justice would appear to be historicist and to apply only to societies whose political institutions and culture are liberal. In making the case for justice as fairness, and for similar, more general liberal conceptions, it is essential to show that this is not so.

The law of peoples is only one of several problems of extension for these ideas of justice. In addition there is the problem of extending them to future generations, under which falls the problem of just savings. Also, since these ideas of justice regard persons as normal and fully cooperating members of society over a complete life, and thus having the requisite capacities for this, there arises the problem of what is owed to those who fail to meet this condition, either temporarily or permanently, all of which gives rise to several problems of justice in health care. Finally, there is the problem of what is owed to animals and the rest of nature.

While we would eventually like an answer to all these questions, I doubt that we can do this within the scope of these ideas of justice understood as political conceptions. At best they may yield reasonable answers to the first three problems of extension: to other societies, to future generations, and to certain cases of health care. With regard to the problems on which these liberal ideas of justice fail, there are several things we might say. One is that the idea of political justice does not cover everything, and we should not expect it to. Or the problem may indeed be one of political justice, but none of these ideas is correct for the question at hand, however well they may do for other questions. How deep a fault this shows must wait until the question itself can be examined. But we should not expect these ideas, or I think any account of political justice, to handle all these matters.

2. Let us return to our problem of extending liberal ideas of justice

similar to but more general than justice as fairness to the law of peoples. There is a clear contrast between these and other familiar views in the way they are universal in reach. Take, for example, Leibniz's or Locke's doctrine: these are universal both in their source of authority and in their formulation. By that I mean that their source is God's authority or the divine reason, as the case may be; and they are universal in that their principles are stated so as to apply to all reasonable beings everywhere. Leibniz's doctrine is an ethics of creation. It contains the idea of morals as the *imitatio Dei* and applies to us straightway as God's creatures endowed with reason. In Locke's doctrine, God having legitimate authority over all creation, the natural law—that part of God's law that can be known by our natural powers of reason—everywhere has authority and binds us and all peoples.

Most familiar philosophical views—such as rational intuitionism, (classical) utilitarianism, and perfectionism—also are formulated in a general way to apply to us directly in all cases. While not theologically grounded, let us say their source of authority is (human) reason, or an independent realm of moral values, or some other proposed basis of universal validity. In all these views the universality of the doctrine is the direct consequence of its source of authority and of how it is formulated.

3. By contrast, a constructivist view such as justice as fairness, and liberal ideas more general than it, do not begin from universal first principles having authority in all cases.³ 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: not to churches and universities, 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. Typically, a constructivist doctrine proceeds by taking up a series of subjects, starting say with principles of political justice for the basic structure of a closed and self-contained democratic society. That done, it then works forward to principles for the claims of future generations, outwards to principles for the law of peoples, and inwards to principles for special social questions. Each time, the constructivist procedure is modified to fit the subject in question. In due course all the main principles are on hand, including those needed for the various political duties and obligations of individuals and associations.⁴ Thus, a constructivist liberal doctrine is universal in its reach once it is extended to give principles

3. In this and the next two paragraphs I draw on the first section of Rawls, "The Basic Structure as Subject," *American Philosophical Quarterly* 14 (Apr. 1977): 159–65.

4. For a detailed example of how this is done in the case of the four-stage sequence of original position, constitutional convention, the legislature, and the courts, see Rawls, *A Theory of Justice*, pp. 195–201. A briefer statement is found in Rawls, "The Basic Liberties and Their Priority," in *The Tanner Lectures on Human Values*, ed. Sterling M. McMurrin, 13 vols. to date (Salt Lake City, Utah, 1980–), 3:55.

for all politically relevant subjects, including a law of peoples for the most comprehensive subject, the political society of peoples. Its authority rests on the principles and conceptions of practical reason but always on these as suitably adjusted to apply to different subjects as they arise in sequence, and always assuming as well that these principles are endorsed on due reflection by the reasonable agents to whom the corresponding principles apply.

At first sight a constructivist doctrine of this kind appears hopelessly unsystematic. For how are the principles that apply to different cases tied together? And why do we proceed through the series of cases in one order rather than another? Constructivism assumes, however, that there are other forms of unity than that defined by completely general first principles forming a consistent scheme. Unity may also be given by an appropriate sequence of cases and by supposing that the parties in an original position (as I have called it) are to proceed through the sequence with the understanding that the principles for the subject of each later agreement are to be subordinate to those of subjects of all earlier agreements or else coordinated with and adjusted to them by certain priority rules. I shall try out a particular sequence and point out its merits as we proceed. There is in advance no guarantee that it is the most appropriate sequence, and much trial and error may be needed.

I add that in developing a conception of justice for the basic structure or for the law of peoples, or indeed for any subject, constructivism does not view the variation in numbers of people alone as accounting for the appropriateness of different principles in different cases. That families are smaller than constitutional democracies does not explain why different principles apply to them. Rather, it is the distinct structure of the social framework, and the purpose and role of its various parts and how they fit together, that explains there being different principles for different kinds of subjects. Thus, it is characteristic of a constructivist idea of justice to regard the distinctive nature and purpose of the elements of society, and of the society of peoples, as requiring persons, within a domain where other principles leave them free, to act from principles designed to fit their peculiar roles. As we shall see as we work out the law of peoples, these principles are identified in each case by rational agents fairly, or reasonably, situated given the cases at hand. They are not derived from completely general principles, such as the principle of utility or the principle of perfectionism.

2. Three Preliminary Questions

1. Before showing how the extension to the law of peoples can be carried out, it is important first to distinguish between two parts of justice as fairness or of any other similar liberal and constructivist conception of

justice. One part is worked up to apply to the domestic institutions of democratic societies, their regime and basic structure, and to the duties and obligations of citizens; the other part is worked up to apply to the society of political societies itself and thus to the political relations between peoples.⁵ After the principles of justice have been adopted for domestic justice, the idea of the original position is used again at the next higher level.⁶ As before, the parties are representatives, but now they are representatives of peoples whose basic institutions satisfy the principles of justice selected at the first level. We start with the family of societies each well ordered by some liberal view meeting certain conditions (justice as fairness is an example) and then work out principles to govern their relations with one another. Here I mention only the first stage of working out the law of peoples. As we see in a moment (in the second paragraph of section 3, part one), we must also develop principles that govern the relations between liberal and what I shall call hierarchical societies. It turns out that liberal and hierarchical societies can agree on the same law of peoples, and so this law does not depend on aspects peculiar to the Western tradition.

It may be objected that to proceed in this way is to accept the state as traditionally conceived, with all its familiar powers of sovereignty. These powers include, first, the right to go to war in pursuit of state policies—Clausewitz's pursuit of politics by other means—with the ends of politics given by a state's rational prudential interests.⁷ They include, second, the right to do as it likes with people within its own borders. The objection is incorrect for this reason. In the first use of the original position domestic society is seen as closed, since we abstract from relations with other societies. There is no need for armed forces, and the question of the government's right to be prepared militarily does not arise and would be denied if it did. The principles of domestic justice allow a police force to keep domestic order, but that is another matter; and though those domestic principles are consistent with a qualified right of war in a society of peoples, they do not of themselves support that right. That is up to the

5. By peoples I mean persons and their dependents seen as a corporate body and as organized by their political institutions, which establish the powers of government. In democratic societies persons will be citizens; in hierarchical and other societies they will be members.

6. See Rawls, *A Theory of Justice*, p. 376, where this process is very briefly described.

7. It would be unfair to Clausewitz not to add that for him the state's interests can include regulative moral aims of whatever kind, and thus the aims of war may be to defend democratic societies against tyrannical regimes, somewhat as in World War II. For him the aims of politics are not part of the theory of war, although they are ever present and may properly affect the conduct of war. On this, see the instructive remarks of Peter Paret, "Clausewitz," in *The Makers of Modern Strategy: From Machiavelli to the Nuclear Age*, ed. Peter Paret, Gordon A. Craig, and Felix Gilbert (Princeton, N. J., 1986), pp. 209–13. The view in the text characterizes the *raison d'état* as pursued by Frederick the Great. See Gerhard Ritter, *Frederick the Great*, trans. Paret (Berkeley, 1968), chap. 10 and the statement on p. 197.

law of peoples itself, still to be constructed. And, as we shall see, this law will also restrict a state's internal sovereignty, its right to do as it likes to people within its own borders.

Thus, it is important to see that in this working out of the law of peoples, a government as the political organization of its people is not, as it were, the author of its own power. The war powers of governments, whatever they should be, are only those acceptable within a reasonable law of peoples. By presuming the existence of a government whereby a people is domestically organized with institutions of background justice, we do not prejudge these questions. We must reformulate the powers of sovereignty in light of a reasonable law of peoples and get rid of the right to war and the right to internal autonomy, which have been part of the (positive) international law for the two and a half centuries following the Thirty Years' War as part of the classical states system.⁸

Moreover, these ideas accord with a dramatic shift in how international law is now understood. Since World War II international law has become far more demanding than in the past. It tends to restrict a state's right to wage war to cases of self-defense (this allows collective security), and it also tends to limit its right of internal sovereignty.⁹ The role of human rights connects most obviously with the latter change as part of the effort to provide a suitable definition of, and limits on, a government's internal sovereignty, though it is not unconnected with the first. At this point I leave aside the many difficulties of interpreting these rights and limits and take their general meaning and tendency as clear enough. What is essential is that our elaboration of the law of peoples should fit—as it turns out to do—these two basic changes and give them a suitable rationale.

2. The second preliminary matter concerns the question: In working out the law of peoples, why do we start (as I said above) with those societies well ordered by liberal views somewhat more general than justice as fairness? Wouldn't it be better to start with the world as a whole, with a global original position, so to speak, and discuss the question whether, and in what form, there should be states, or peoples, at all? Some writers (whom I mention later) think that a social contract constructivist view should proceed in this manner and that it gives an appropriate universality from the start.

I think there is no clear initial answer to this question. We should try various alternatives and weigh their pluses and minuses. Since in working out justice as fairness I begin with domestic society, I shall continue from there as if what has been done so far is more or less sound. So I simply

8. Charles R. Beitz characterizes these powers as belonging to what he calls the morality of states in part 2 of his *Political Theory and International Relations* (Princeton, N.J., 1979). They depend, he argues, on a mistaken analogy between individuals and states.

9. See Stanley Hoffman, *Janus and Minerva: Essays in the Theory and Practice of International Politics* (Boulder, Colo., 1987), p. 374.

build on the steps taken until now, as this seems to provide a suitable starting point for the extension to the law of peoples. A further reason for proceeding thus is that peoples as corporate bodies organized by their governments now exist in some form all over the world. Historically speaking, all principles and standards proposed for the law of peoples must, to be feasible, prove acceptable to the considered and reflective public opinion of peoples and their governments.

Suppose, then, that we are (even though we are not) members of a well-ordered society. Our convictions about justice are roughly the same as those of citizens (if there are any) in the family of societies well ordered by liberal conceptions of justice and whose social and historical conditions are similar to ours. They have the same kind of reasons for affirming their mode of government as we do for affirming ours. This common understanding of liberal societies provides an apt starting point for the extension to the law of peoples.

3. Finally, I note the distinction between the law of peoples and the law of nations, or international law. The latter is an existing, or positive, legal order, however incomplete it may be in some ways, lacking say an effective scheme of sanctions that normally characterizes domestic law. The law of peoples, by contrast, is a family of political concepts along with principles of right, justice, and the common good that specify the content of a liberal conception of justice worked up to extend to and apply to international law. It provides the concepts and principles by reference to which that law is to be judged.

This distinction between the law of peoples and the law of nations should be straightforward. It is no more obscure than the distinction between the principles of justice that apply to the basic structure of domestic society and the existing political, social, and legal institutions that actually realize that structure.

3. The Extension to Liberal Societies

1. With these three preliminary matters settled, I turn to the extension of liberal ideas of justice to the law of peoples. I understand these ideas of justice to contain three main elements: (i) a list of certain basic rights and liberties and opportunities (familiar from constitutional democratic regimes); (ii) a high priority for these fundamental freedoms, especially with respect to claims of the general good and of perfectionist values; and (iii) measures assuring all citizens adequate, all-purpose means to make effective use of their freedoms. Justice as fairness is typical of these conceptions except that its egalitarian features are stronger. To some degree the more general liberal ideas lack the three egalitarian features: the fair value of political liberties, fair equality of opportunity, and the difference principle. These features are not needed

for the construction of a reasonable law of peoples, and by not assuming them our account has greater generality.

The extension to the law of peoples proceeds in two main stages, and each stage has two steps. The first stage of the extension I call ideal, or strict compliance, theory, and unless otherwise stated, we work entirely in this theory. This means that the relevant concepts and principles are strictly complied with by all parties to the agreements made and that the requisite favorable conditions for liberal or hierarchical institutions, as the case may be, are on hand. Our first aim is to see what a reasonable law of peoples, fully honored, would require and establish in this case.

To make the account manageable, we suppose there are only two kinds of well-ordered domestic societies: liberal societies and hierarchical societies. I discuss at the first step the case of well-ordered liberal democratic societies. This leads to the idea of a well-ordered political society of societies of democratic peoples. After this I turn to societies that are well ordered and just, often religious in nature, and not characterized by the separation of church and state. Their political institutions specify a just consultation hierarchy, while their basic social institutions satisfy a conception of justice expressing an appropriate conception of the common good. Fundamental for our rendering of the law of peoples is that both liberal and hierarchical societies accept it. Together they are members in good standing of a well-ordered society of the just peoples of the world.

The second stage in working out the law of peoples is that of nonideal theory, and it also includes two steps. The first step is that of noncompliance theory. Here falls an account of the predicament of just societies, both democratic and hierarchical, as they confront states that refuse to comply with a reasonable law of peoples. The second step is that of unfavorable conditions. It poses the different problem of how the poorer and less technologically advanced societies of the world can attain historical and social conditions that allow them to establish just and workable institutions, either liberal or hierarchical. In actual affairs, nonideal theory is of first practical importance and deals with problems we face every day. Yet for reasons of space, I shall say very little about them (see sections 6–7).

2. Before beginning the extension we need to be sure that the original position with the veil of ignorance is a device of representation for the case of liberal societies. Now, in the first use of the original position, being a device of representation means that it models what we regard—you and I, here and now¹⁰—as fair conditions for the parties, as representatives of free and equal citizens, to specify the terms of cooperation regulating the basic structure of their society. And since that position includes the veil of ignorance, it also models what we regard as acceptable restric-

10. Note: “you and I” are “here and now” citizens of the same liberal democratic society, and we are working out the liberal conception of justice in question.

tions on reasons for adopting a political conception of justice. Therefore, the conception the parties would adopt identifies the conception of justice that we regard—you and I, here and now—as fair and supported by the best reasons.

Here three conditions are essential: first, the original position represents the parties (or citizens) fairly, or reasonably; second, it represents them as rational; and third, it represents them as deciding between available principles by appropriate reasons. We check that these three conditions are satisfied by observing that citizens are indeed represented fairly, or reasonably, in virtue of the symmetry and equality of their representatives' situation in the original position. Next, citizens are represented as rational in virtue of the aim of their representatives to do the best they can for their essential interests as persons. Finally, they are represented as deciding by appropriate reasons; the veil of ignorance prevents their representatives from invoking reasons deemed unsuitable, given the aim of representing citizens as free and equal persons.

3. Now similarly, at the next level, when the original position is used to extend a liberal conception to the law of peoples, it is a device of representation because it models what we would regard—you and I, here and now¹¹—as fair conditions under which the parties, this time as representatives of societies well ordered by liberal conceptions of justice, are to specify the law of peoples and the fair terms of their cooperation.

The original position is a device of representation because, as before, free and equal peoples are represented as both reasonably situated and rational and as deciding in accordance with appropriate reasons. The parties as representatives of democratic peoples are symmetrically situated, and so the peoples they represent are represented reasonably. Moreover, the parties deliberate among available principles for the law of peoples by reference to the fundamental interests of democratic societies in accordance with, or as presupposed by, the liberal principles of domestic justice. And finally, the parties are subject to a veil of ignorance: they do not know, for example, the size of the territory, or the population, or the relative strength of the people whose fundamental interests they represent. While they know that reasonably favorable conditions obtain that make democracy possible, they do not know the extent of their natural resources, or the level of their economic development, or any such related information. As members of societies well ordered by liberal conceptions of justice, these conditions model what we would accept as fair—here and now—in specifying the basic terms of cooperation among peoples who, as peoples, regard themselves as free and equal. This makes the use of the original position at the second level a device of representation just as it is at the first level.

11. In this case “you and I” are citizens of some liberal democratic society but not of the same one.

4. I assume that the outcome of working out the law of peoples for liberal democratic societies only will be the adoption of certain familiar principles of justice and will also allow for various forms of cooperative association among democratic peoples and not for a world state. Here I follow Kant's lead in *Perpetual Peace* (1795) in thinking that a world government—by which I mean a unified political regime with the legal powers normally exercised by central governments—would be either a global despotism or else a fragile empire torn by frequent civil strife as various regions and peoples try to gain their political autonomy.¹² On the other hand, it may turn out, as I sketch below, that there will be many different kinds of organizations subject to the judgment of the law of democratic peoples and charged with regulating cooperation among them and meeting certain recognized duties. Some of these organizations (like the United Nations) may have the authority to express the society of democratic peoples' condemnation of domestic institutions that violate human rights and in certain severe cases to try to correct them by economic sanctions, or even by military intervention. The scope of these powers belongs to all peoples and covers their domestic affairs.

If all this is sound, I believe the principles of justice between free and democratic peoples will include certain familiar principles long recognized as belonging to the law of peoples, among them the following:

1. Peoples (as organized by their governments) are free and independent, and their freedom and independence is to be respected by other peoples.

2. Peoples are equal and parties to their own agreements.

3. Peoples have the right of self-defense but no right to war.

4. Peoples are to observe a duty of nonintervention.

5. Peoples are to observe treaties and undertakings.

6. Peoples are to observe certain specified restrictions on the conduct of war (assumed to be in self-defense).

7. Peoples are to honor human rights.

12. Kant writes, "The idea of international law presupposes the separate existence of many independent but neighboring states. Although this condition is itself a state of war (unless a federative union prevents the outbreak of hostilities), this is rationally preferable to the amalgamation of states under one superior power, as this would end in one universal monarchy, and laws always lose in vigor what government gains in extent; hence a soulless despotism falls into anarchy after stifling the seeds of the good" (Immanuel Kant, *Perpetual Peace*, trans. Lewis White Beck [1795; Indianapolis, 1957], p. 31). This attitude toward universal monarchy was shared by other writers of the eighteenth century. See for example David Hume, "Of the Balance of Power," *Essays Moral, Political, and Literary*, ed. Eugene F. Miller (1752; Indianapolis, 1987), pp. 332–41. F. H. Hinsley also mentions Montesquieu, Voltaire, and Gibbon in his *Power and the Pursuit of Peace: Theory and Practice in the History of Relations between States* (Cambridge, 1967), p. 162. He has an instructive discussion of Kant's ideas in chapter 4. See as well Patrick Riley, *Kant's Political Philosophy* (Totawa, N. J., 1983), chaps. 5 and 6. Thomas Nagel gives strong reasons for supporting the same conclusion in his *Equality and Partiality* (New York, 1991), pp. 169–74.

This statement of principles is of course incomplete; other principles would need to be added. Further, they require much explanation and interpretation, and some of them are superfluous in a society of well-ordered democratic peoples, namely, the sixth regarding the conduct of war and the seventh regarding human rights. Yet the main point is that, given the idea of a society of free and independent democratic peoples who are ready to recognize certain basic principles of political justice governing their conduct, principles of this kind constitute the charter of their association.¹³ Obviously, a principle such as the fourth—that of nonintervention—will have to be qualified in the general case. While suitable for a society of well-ordered democratic peoples who respect human rights, it fails in the case of a society of disordered societies in which wars and serious violations of human rights are endemic. Also, the right to independence, and equally the right to self-determination, holds only within certain limits yet to be specified by the law of peoples for the general case. Thus, no people has the right to self-determination, or a right to secession, at the expense of the subjugation of another people;¹⁴ nor can a people protest their condemnation by the world society when their domestic institutions violate the human rights of certain minorities living among them. Their right to independence is no shield from that condemnation, nor even in grave cases from coercive intervention by other peoples.

There will also be principles for forming and regulating federations (associations) of peoples and standards of fairness for trade and other cooperative arrangements. Beyond this, they will include certain provisions for mutual assistance among peoples in times of famine and drought and, should it be feasible, as it should be, provisions for ensuring that in all reasonably developed liberal societies a people's basic needs are met.¹⁵ These provisions will specify duties of assistance in certain situations, and they will vary in stringency depending on the severity of the case.

5. An important role of a people's government, however arbitrary a society's boundaries may appear from a historical point of view,¹⁶ is to be the representative and effective agent of a people as they take responsibil-

13. Terry Nardin stresses this point in his *Law, Morality, and the Relations of States* (Princeton, N.J., 1983), p. 269.

14. A clear example regarding secession is whether the South had a right to secede in 1860–61. By this test it had no such right, since it seceded to perpetuate its domestic institution of slavery. This is as severe a violation of human rights as any, and it extended to nearly half the population.

15. By basic needs I mean roughly those that must be met if citizens are to be in a position to take advantage of the rights, liberties, and opportunities of their society. They include economic means as well as institutional rights and freedoms.

16. From the fact that boundaries are historically arbitrary it does not follow that their role in the law of peoples cannot be justified. To wit, that the boundaries between the several states of the United States are historically arbitrary does not argue to the elimination of our

ity for their territory and the size of their population as well as for maintaining its environmental integrity and its capacity to sustain them. The idea here appeals to the point of the institution of property; unless a definite agent is given responsibility for maintaining an asset and bears the loss for not doing so, that asset tends to deteriorate. In this case the asset is the people's territory and its capacity to sustain them in perpetuity; the agent is the people themselves as politically organized. They are to recognize that they cannot make up for their irresponsibility in caring for their land and conserving their natural resources by conquest in war or by migrating into other peoples' territory without their consent.¹⁷

These remarks belong, of course, to ideal theory and indicate some of the responsibilities of peoples in a just society of well-ordered liberal societies. Since the boundaries of peoples are often historically the outcome of violence and aggression, and some peoples thereof are wrongly subjected to others, the law of peoples in its nonideal part should, as far as possible, contain principles and standards—or at least some guidelines—for coping with these matters.

6. To complete this sketch of the law of peoples for well-ordered liberal societies only, let's consider under what conditions we can reasonably accept this part of the law of peoples and regard it as justified.

There are two conditions beyond the three requirements earlier noted in discussing the original position as a device of representation. These requirements were that the parties (as representatives of free and equal peoples) be represented as reasonably situated, as rational, and as deciding in accordance with appropriate reasons. One of the two further conditions is that the political society of well-ordered democratic peoples should itself be stable in the right way.¹⁸ This condition means that, given the existence of a political society of such peoples, its members will tend increasingly over time to accept its principles and judgments as they come to understand the ideas of justice expressed in the law among them and appreciate its benefits for all liberal peoples.

More fully, to say that the society of democratic peoples is stable in the right way is to say that it is stable with respect to justice, that is, that the institutions and practices among peoples always more or less satisfy the relevant principles of justice, although social conditions are presumably always changing. It is further to say that the law of peoples is hon-

federal system, one way or the other. To fix on their arbitrariness is to fix on the wrong thing. The right question concerns the political values served by the several states in a federal system as compared with the values served by a central system. The answer is given by the states' function and role, that is, by the political values they serve as subunits, and whether their boundaries can be, or need to be, redrawn, and much else.

17. This remark implies that a people has at least a qualified right to limit immigration. I leave aside here what these qualifications might be.

18. See Rawls, "The Domain of the Political and Overlapping Consensus," *New York University Law Review* 64 (May 1989): sec. 7.

ored not simply because of a fortunate balance of power—it being in no people’s interest to upset it—but because, despite the possibly shifting fortunes of different peoples, all are moved to adhere to their common law accepting it as just and beneficial for all. This means that the justice of the society of democratic peoples is stable with respect to the distribution of fortune among them. Here fortune refers not, of course, to a society’s military success or the lack of it but to other kinds of success: to its achievement of political and social freedom, the fullness and expressiveness of its culture, and the economic well-being of its citizens.

7. The historical record suggests that, at least so far as the principle against war is concerned, this condition of stability would be satisfied in a society of just, democratic peoples. Though democratic societies have as often been involved in war as nondemocratic states¹⁹ and have often vigorously defended their institutions, Michael Doyle points out that since 1800 firmly established liberal societies have not gone to war with one another.²⁰ And in wars in which a number of major powers were engaged, such as the two world wars, democratic states have fought as allies on the same side. Indeed, the absence of war between democracies is as close as anything we know to an empirical law in relations between societies.²¹ This being so, I shall suppose that a society of democratic peoples, all of whose basic institutions are well ordered by liberal conceptions of justice (though not necessarily by the same conception), will be stable in the right way as above specified. The sketch of the law of such peoples seems, then, to meet the condition of political realism given by that of stability for the right reasons.

The last condition for us to accept as sound this sketch of the law of democratic peoples is that we can, as citizens of liberal societies, endorse

19. See Jack S. Levy, “Domestic Politics and War,” in *The Origin and Prevention of Major Wars*, ed. Robert I. Rotberg and Theodore K. Rabb (Cambridge, 1989), p. 87. Levy refers to several historical studies that have confirmed the finding of Melvin Small and J. David Singer in “The War-Proneness of Democratic Regimes, 1816–65,” *The Jerusalem Journal of International Relations* 1 (Summer 1976): 50–69.

20. See Michael W. Doyle’s two-part article, “Kant, Liberal Legacies, and Foreign Affairs,” *Philosophy and Public Affairs* 12 (Summer and Fall 1983): 205–35, 323–53. A survey of the evidence is in the first part, pp. 206–32. Doyle writes:

These conventions [those based on the international implications of liberal principles and institutions] of mutual respect have formed a cooperative foundation for relations among liberal democracies of a remarkably effective kind. *Even though liberal states have become involved in numerous wars with nonliberal states, constitutionally secure liberal states have yet to engage in war with one another.* No one should argue that such wars are impossible; but preliminary evidence does appear to indicate a significant predisposition against warfare between liberal states. [p. 213]

21. In these studies most definitions of democracy are comparable to that of Small and Singer as listed by Levy: “1) regular elections and the free participation of opposition parties, 2) at least 10% of the adult population being able to vote for 3) a parliament that either controlled or shared parity with the executive branch” (Levy, “Domestic Politics and War,” p. 88). Our definition of a liberal democratic regime goes well beyond this definition.

the principles and judgments of this law on due reflection. We must be able to say that the doctrine of the law of peoples for such societies, more than any other doctrine, ties together our considered political convictions and moral judgments at all levels of generality, from the most general to the more particular, into one coherent view.

4. Extension to Hierarchical Societies

1. Recall from section 3, part 1, that the extension of liberal ideas of justice to the law of peoples proceeds in two stages, each stage having two steps. The first stage is that of ideal theory, and we have just completed the first step of that, namely, the extension of the law of peoples to well-ordered liberal societies only. The second step of ideal theory is more difficult. It requires us to specify a second kind of society—a hierarchical society, as I shall say—and then to state when such a society is well ordered. Our aim is to extend the law of peoples to these well-ordered hierarchical societies and to show that they accept the same law of peoples liberal societies do. Thus, this shared law of well-ordered peoples, both liberal and hierarchical, specifies the content of ideal theory. It specifies the kind of society of well-ordered peoples all peoples should want, and it sets the regulative end of their foreign policy. It has the obvious corollary that nonliberal societies also honor human rights.

To show all this, first, we state three requirements for any well-ordered hierarchical regime. It will be clear that satisfying these requirements does not entail that a regime is liberal. Next, we confirm that, in an original position with a veil of ignorance, the representatives of well-ordered hierarchical regimes are reasonably situated as well as rational and that they are moved by appropriate reasons. In this case also, then, the original position is a device of representation for the adoption of law among hierarchical peoples. Finally, we show that in the original position the representatives of well-ordered hierarchical societies would adopt the same law of peoples that the representatives of liberal societies do. That law serves, then, as a common law of a just political society of well-ordered peoples.

The first requirement for a hierarchical society to be well ordered is that it must be peaceful and gain its legitimate aims through diplomacy, trade, and other ways of peace. It follows that its religious doctrine, assumed to be comprehensive and influential in government policy, is not expansionist in the sense that it fully respects the civic order and integrity of other societies. If it seeks wider influence, it does so in ways compatible with the independence of, and the liberties within, other societies. This feature of its religion supports the institutional basis of its peaceful conduct and distinguishes it from leading European states during the religious wars of the sixteenth and seventeenth centuries.

2. A second fundamental requirement uses an idea of Philip Soper. It has several parts. It requires, first, that a hierarchical society's system of law be such as to impose moral duties and obligations on all persons within its territory.²² It requires further that its system of law be guided by a common good conception of justice, meaning by this a conception that takes impartially into account what it sees not unreasonably as the fundamental interests of all members of society. It is not the case that the interests of some are arbitrarily privileged while the interests of others go for naught. Finally, there must be sincere and not unreasonable belief on the part of judges and other officials who administer the legal order that the law is indeed guided by a common good conception of justice. This belief must be demonstrated by a willingness to defend publicly the state's injunctions as justified by law. (Courts are an efficient way of doing this.)²³ These aspects of a legal order are necessary to establish a regime's legitimacy in the eyes of its own people.

The second requirement can be spelled out further by adding that the political institutions of a well-ordered hierarchical society constitute a reasonable consultation hierarchy. They include a family of representative bodies, or other assemblies, whose task is to look after the important interests of all elements of society. Though in hierarchical societies persons are not regarded as free and equal citizens as they are in liberal societies, they are seen as responsible members of society who can recognize their moral duties and obligations and play their part in social life.

With a consultation hierarchy there is an opportunity for different voices to be heard, not, to be sure, in a way allowed by democratic institutions, but appropriately in view of the religious and philosophical values

22. Here I draw upon Philip Soper's *A Theory of Law* (Cambridge, Mass., 1984), esp. pp. 125–47. Soper holds that a system of law, as distinct from a system of mere commands coercively enforced, must be such as to give rise, as I indicate above, to moral duties and obligations on all members of society, and judges and other officials must sincerely and reasonably believe that the law is guided by a common good conception of justice. The content of a common good conception of justice is such as to impose morally binding obligations on all members of society. I mention some of the details of Soper's view here, but I do so rather freely and not with the intent of explaining his thought. As the text shows, my aim is to indicate a conception of justice that, while not a liberal conception, still has features that give to societies regulated accordingly the moral standing required to be members of a political society adhering to a reasonable law of peoples. However, we must be careful in understanding this second requirement. For Soper it is part of the definition of a system of law. It is a requirement that a scheme of rules must satisfy to be a system of law properly thus called. See Soper, *A Theory of Law*, pp. 91–100. I do not follow Soper in this respect; but I do not reject this idea either, as Soper makes a strong case for it. Rather, I put it aside and adopt the requirement as a substantive moral principle explicable as part of the law of peoples worked up from a liberal conception of justice. I thus avoid the long-debated jurisprudential problem of the definition of law. Moreover, I do not have to argue that the antebellum South, say, did not have a system of law. I am indebted to Samuel Freeman for valuable discussion of these points.

23. See Soper, *A Theory of Law*, pp. 118, 112.

of the society in question. Thus, individuals do not have the right of free speech as in a liberal society. But as members of associations and corporate bodies they have the right at some point in the process of consultation to express political dissent, and the government has an obligation to take their dissent seriously and to give a conscientious reply. That different voices can be heard is necessary because the sincere belief of judges and other officials has “two components: honest belief in fact and respect for the possibility of dissent.”²⁴ Judges and officials must be willing, then, to address objections. They cannot refuse to listen to them on the grounds that they think those expressing them are incompetent and cannot understand. Then we would not have a consultation hierarchy but a purely paternalistic regime.

3. In view of this account of the institutional basis of a hierarchical society, we can say that its conception of the common good of justice secures for all persons at least certain minimum rights to means of subsistence and security (the right to life),²⁵ to liberty (freedom from slavery, serfdom, and forced occupations), and (personal) property, as well as to formal equality as expressed by the rules of natural justice (for example, that similar cases be treated similarly).²⁶ This shows that a well-ordered hierarchical society also meets a third requirement: it respects basic human rights.

The argument for this conclusion is that the second requirement rules out the violation of these rights. For to satisfy it, a society’s legal order must impose moral duties and obligations on all persons in its territory, and it must embody a reasonable consultation hierarchy that will protect those rights. Moreover, a sincere and reasonable belief on the part of judges and other officials that the system of law is guided by a common good conception of justice has the same result. Such a belief is simply unreasonable, if not irrational, when those rights are infringed.

There is a question about religious toleration that calls for explicit mention. Though in hierarchical societies a state religion may be on some questions the ultimate authority within society and control government policy on certain important matters, that authority is not (as I have said) extended politically to other societies. Further, their (comprehensive) religious or philosophical doctrines are not unreasonable. By that I mean, among other things, that they admit a measure of liberty of conscience

24. *Ibid.*, p. 141.

25. See Henry Shue, *Basic Rights: Substance, Affluence, and U.S. Foreign Policy* (Princeton, N.J., 1980), p. 23. Shue as well as Vincent, *Human Rights and International Relations*, interprets subsistence as including certain minimum economic security, and both hold that subsistence rights are basic. One must agree with this since the reasonable and rational exercise of all liberties, of whatever kind, as well as the intelligent use of property, always implies the having of certain general all-purpose economic means.

26. On the rules of natural justice, see H. L. R. Hart, *The Concept of Law* (Oxford, 1961), p. 156.

and freedom of thought, even if these freedoms are not in general equal for all members of society as they are in liberal regimes.²⁷ A hierarchical society may have an established religion with certain privileges. Still, it is essential to its being well ordered that no religions are persecuted or denied civic and social conditions that permit their practice in peace and, of course, without fear.²⁸ Also essential, and this because of the inequality of religious freedom, if for no other reason, is that a traditional society is to allow for the right of emigration.²⁹ The rights noted here are counted as human rights. In the following section we return to the role and status of these rights.

An institutional basis that realizes the three requirements can take many forms. This deserves emphasis, as I have indicated only the religious case. We are not trying to describe all possible forms of social order consistent with membership in good standing in a reasonable society of peoples. Rather, we have specified three necessary conditions for membership in a reasonable society of peoples and then shown by example that these conditions do not require a society to be liberal.

4. Given these three requirements, then, we must now confirm that an agreement on a law of peoples ensuring human rights is not an agreement only liberal societies can make. Hierarchical societies, as we have said, are well ordered in terms of their own conceptions of justice.³⁰ This being so, their representatives in an appropriate original position would adopt, I believe, the same principles as those sketched above that would, we said, be adopted by the representatives of liberal societies. Each hierarchical society's interests are understood by its representatives in accordance with or as presupposed by its conception of justice. This enables us to say in this case also that the original position is a device of representation.

Two considerations confirm this: first, in view of the common good conception of justice held in a hierarchical society, the parties care about the good of the society they represent and so about its security as assured by the laws against war and aggression. They also care about the benefits

27. One might raise the question here as to why religious or philosophical doctrines that deny full and equal liberty of conscience are not unreasonable. I did not say, however, that they are reasonable, but rather that they are not fully unreasonable. One should allow, I think, a space between the reasonable or the fully reasonable, which requires full and equal liberty of conscience, and the fully unreasonable, which denies it entirely. Doctrines that allow a measure of liberty of conscience but do not allow it fully are views that lie in that space and are not fully unreasonable. On this see my *Political Liberalism*, pp. 58–65.

28. On the importance of this, see Judith Shklar, *Ordinary Vices* (Cambridge, Mass., 1984), in which she presents what she calls the “liberalism of fear” (p. 5). See especially the introduction and chaps. 1 and 6. She once called this kind of liberalism that of “permanent minorities” (Shklar, *Legalism: Laws, Morals, and Political Trials* [Cambridge, Mass., 1964], p. 224).

29. Subject to certain qualifications, liberal societies must also allow for this right.

30. These are not political conceptions of justice in my sense; see n. 2 above.

of trade and assistance between peoples in time of need, all of which helps to protect human rights. In view of this, we can say that the representatives of hierarchical societies are rational. Second, traditional societies, as we have seen, do not try to extend their religious and philosophical doctrines to other peoples by war or aggression, and they respect the civic order and integrity of other societies. Hence, they accept—as you and I would accept³¹—the original position as fair between peoples and would endorse the law of peoples adopted by their representatives as specifying fair terms of political cooperation between them and other societies. Thus, the representatives are reasonably situated, and this suffices for the use of the original position as a device of representation in extending the law of peoples to hierarchical societies.³²

5. Note that I have supposed that the parties as representatives of peoples are to be situated equally, even though the conception of justice of the hierarchical society they represent allows basic inequalities between its members because, for example, as we saw above, some of its members are not granted, say, equal liberty of conscience. There is, however, no inconsistency in this. For a people sincerely affirming a nonliberal conception of justice may still think their society is to be treated equally in a just law of peoples, even though its members accept basic inequalities among themselves. Though a society lacks basic equality, it is not unreasonable for that society to insist on equality in making claims against other societies.

About this last point, two observations. One is that although the original position at the first level, that of domestic justice, incorporates a political conception of the person rooted in the public culture of a liberal society, the original position at the second level, that of the law of peoples, does not. I emphasize this fact, since it enables a liberal conception of justice to be extended to yield a more general law of peoples without prejudging the case against nonliberal societies.

This connects with a second observation. As mentioned earlier, the law of peoples might have been worked out by starting with an all-inclusive original position with representatives of all the individual persons of the world.³³ When proceeding this way, the question whether there are to be separate societies at all, and what the relations are between them, is to be settled by the parties behind a veil of ignorance. Offhand it is not clear why proceeding this way should lead to different results

31. Here “you and I” are members of hierarchical societies but again not the same one.

32. Here I am indebted to Lea Brilmayer of New York University for pointing out to me that in an earlier sketch of the law of peoples I failed to state these conditions satisfactorily.

33. Brian Barry, in his splendid *Theories of Justice* (Berkeley, 1989), discusses the merits of doing this. See p. 235. Along the way he raises serious objections to what he takes to be my view of the principles of distributive justice for the law of peoples. I do not discuss these important criticisms here, but I do mention questions related to them below.

than proceeding, as I have done, from separate societies outwards. All things considered, one might reach the same law of peoples in either case. Still, the difficulty with an all-inclusive, or global, original position is that its use of liberal ideas is much more troublesome. For in this case it might be said that we are treating all persons, regardless of their society and culture, as individuals who are free and equal, and as reasonable and rational, and so according to liberal conceptions. This makes the basis of the law of peoples too narrow.

Hence I think it best to follow the two-level, bottom-up procedure, beginning first with the principles of justice for the basic structure of domestic society and then moving upwards and outwards to the law of peoples.³⁴ By so doing, our knowledge of how peoples and their governments have acted historically gives us guidance in how to proceed and suggests questions and possibilities we might not otherwise have thought of. But this is simply a point of method and settles no questions of substance. These depend on what can actually be worked out.

6. One might well be skeptical that a liberal social contract and constructivist idea of justice can be worked out to give a conception of the law of peoples universal in its reach and applicable to nonliberal societies.³⁵ Our discussion of hierarchical societies should put these doubts to rest. In section 3, part 6, I noted the conditions under which the law of liberal peoples we had sketched could be accepted by us as sound and justified. It was in this connection that we considered whether that law was stable with respect to justice and whether, on due reflection, we could accept the judgments that its principles and precepts led us to make. If both these things hold, we said, the law of liberal peoples as laid out could, by the criteria we can now apply, be accepted as justified.

Parallel remarks hold for the wider law of peoples including well-ordered hierarchical societies. Here I simply add, without argument or evidence, but hoping it seems plausible, that these societies will honor a just law of peoples for much the same reasons liberal peoples will do so and that both we and they will find the judgments to which it leads acceptable to our convictions, all things considered. I believe that what is of importance here is that well-ordered hierarchical societies are not expansionist and that their legal order is guided by a common good conception of justice ensuring that it honors human rights. After all, these societies

34. We can go on to third and later stages once we think of groups of societies joining together into regional associations or federations of some kind, such as the European Community or a commonwealth of the republics in the former Soviet Union. It is natural to envisage future world society as in good part comprised of such federations together with certain institutions, such as the United Nations, capable of speaking for all the societies of the world.

35. Justice as fairness is such an idea. For our purposes, other, more general liberal ideas of justice fit the same description. Their lacking the three egalitarian elements of justice as fairness noted in the first paragraph of sec. 3, pt. 1 does not affect this.

also affirm a peaceful society of peoples and benefit therefrom as liberal societies do. All have a common interest in changing the way in which politics among peoples—war and threats of war—has hitherto been carried on.

These things being so, we may view this wider law of peoples as sound and justified. This fundamental point deserves emphasis. There is nothing relevantly different between how, say, justice as fairness is worked out for the domestic case in *A Theory of Justice* and how, in the sketch we have laid out above, the law of peoples is worked out from more general liberal ideas of justice. In both cases we use the same fundamental idea of a reasonable procedure of construction in which rational agents fairly situated (the parties as representatives of citizens in one case and of members of societies in the other) select principles of justice for the relevant subject, either their separate domestic institutions or the shared law of peoples. As always, the parties are guided by the appropriate reasons as specified by a veil of ignorance. Thus, obligations and duties are not imposed by one society on another; instead, reasonable societies agree on what these bonds will be. Once we confirm that a domestic society, or a society of peoples, when regulated by the corresponding principles of justice, is stable with respect to justice (as defined in section 3, part 6), and once we have checked that we can endorse those principles on due reflection, then in both domains the ideals, laws, and principles of justice are justified in the same way.³⁶

5. *Human Rights*

1. A few of the features of human rights as we have described them are these. First, these rights do not depend on any particular comprehensive moral doctrine or philosophical conception of human nature, such as, for example, that human beings are moral persons and have equal worth or that they have certain particular moral and intellectual powers

36. There are, however, some differences. The three requirements of legitimacy discussed in this section are to be seen as necessary conditions for a society to be a member in good standing in a reasonable society of peoples; and many religious and philosophical doctrines with their different conceptions of justice may lead to institutions satisfying these conditions. In specifying a reasonable law of peoples, societies with such institutions are viewed as well ordered. However, those requirements do not specify a political conception of justice in my sense (see n. 2, above). For one thing, I suppose that a society's common-good conception of justice is understood as part of its comprehensive religious or philosophical doctrine. Moreover, I do not suggest that such a conception of justice is constructivist, and I assume it is not. Whether the three requirements for legitimacy can themselves be constructed within a social contract view is another question. I leave it open here. The point, though, is that none of these differences affect the claim in the text that in both domains the ideals and principles of justice are justified in the same way.

that entitle them to these rights. To show this would require a quite deep philosophical theory that many if not most hierarchical societies might reject as liberal or democratic or else as in some way distinctive of Western political tradition and prejudicial to other cultures.

So we take a different tack and say that basic human rights are to express a minimum standard of well-ordered political institutions for all peoples who belong, as members in good standing, to a just political society of peoples.³⁷ Any systematic violation of these rights is a serious matter and troubling to the society of peoples as a whole, both liberal and hierarchical. Since they are to express a minimum standard, the requirements that yield these rights should be quite weak.

2. Recall from section 4, part 2, that the requirement we laid down was that a society's system of law must be such as to impose moral duties and obligations on all its members and be regulated by what judges and other officials reasonably and sincerely believe is a common good conception of justice. We then say that for this condition to hold, the law must at least uphold such basic rights as the right to life and security, to personal property and the elements of the rule of law, as well as the right to a certain liberty of conscience and freedom of association and the right to emigration. These rights we refer to as human rights.

Next we consider what the imposition of these duties and obligations implies, including (1) a common good conception of justice and (2) good faith on the part of officials to explain and justify the legal order to those bound by it. For these things to hold does not require the liberal idea that persons are first citizens and as such free and equal members of society who have those basic rights as the rights of citizens. Rather, it requires only that persons be responsible and cooperating members of society who can recognize and act in accordance with their moral duties and obligations. It would be hard to reject these requirements of a common good conception of justice and of a good faith official justification of the law as too strong for an idea of a minimally decent regime. Human rights, understood as resulting from these requirements, could not be rejected as peculiarly liberal or special to our Western tradition. In that sense, they are politically neutral.³⁸

To confirm this last point, I consider an alleged difficulty. Many societies have political traditions that are different from Western individualism in its many forms. In considering persons from a political point of

37. Here I draw upon Thomas M. Scanlon's instructive discussion in "Human Rights as a Neutral Concern," in *Human Rights and U.S. Foreign Policy*, ed. Peter G. Brown and Douglas MacLean (Lexington, Mass., 1979), pp. 83–92.

38. Scanlon emphasizes this point. See *ibid.*, pp. 83, 89–92. It is relevant when we note later in secs. 6–7 that the support for human rights should be part of the foreign policy of well-ordered societies.

view, these traditions are said to regard persons not as all being citizens first with the rights of citizens but rather as being first members of groups: communities, associations, or corporations.³⁹ On this alternative, let us say, associationist view, whatever rights persons have arise from this prior membership and are normally enabling rights, that is, rights that enable persons to perform their duties in the groups—communities, associations, or corporations—to which they belong. To illustrate with respect to political rights: Hegel rejects the idea of one person, one vote on the grounds that it expresses the democratic and individualistic idea that each person, as an atomic unit, has the basic right to participate equally in political deliberation.⁴⁰ By contrast, in the well-ordered rational state, as Hegel presents it in *The Philosophy of Right*, persons belong first to estates, corporations, and associations. Since these social forms represent the rational interests of their members in what Hegel views as a just consultation hierarchy (described in that work), some persons will take part in politically representing these interests in the consultation process, but they do so as members of estates and corporations and not as individuals, and not all individuals are involved.⁴¹

The essential point here is that the basic human rights as we have described them can be protected in a well-ordered hierarchical state with its consultation hierarchy. We say that what holds in Hegel's scheme of political rights holds for all rights.⁴² Its system of law can fulfill the conditions laid down and ensure the right to life and security, to personal property, and to the elements of the rule of law, as well as the right to a certain freedom of conscience and freedom of association. Admittedly it ensures these rights to persons as members of estates and corporations and not as citizens. But that does not matter. These rights are guaranteed and the requirement that a system of law must be such as to impose moral rights and duties is met. Human rights understood in the light of that condition cannot be rejected as peculiar to our Western tradition.

3. Finally, human rights are a special class of rights designed to play a special role in a reasonable law of peoples for the present age. Recall

39. See R. J. Vincent, "The Idea of Rights in International Ethics," in *Traditions of International Ethics*, ed. Nardin and David Mapel (Cambridge, 1992), pp. 262–65.

40. See G. W. F. Hegel, *The Philosophy of Right*, trans. T. M. Knox (1821; Oxford, 1942), sec. 308.

41. The meaning of *rational* here is closer to *reasonable* than to *rational* as I have used these terms. The German is *vernünftig*, and this has the full force of reason in the German philosophical tradition. It is far from the economist's meaning of *rational*, given by *zweckmäßig* or *rationnell*.

42. There is a complication about Hegel's view in that some rights are indeed rights of individuals. For him the rights to life, security, and (personal) property are grounded in personhood; and liberty of conscience follows from being a moral subject with the freedom of subjectivity. I am indebted to Frederick Neuhouser for discussing these points with me.

that the accepted ideas about international law changed in two basic ways following World War II, and this change in basic moral beliefs is comparable to other profound historical changes.⁴³ War is no longer an admissible means of state policy. It is only justified in self-defense and a state's internal sovereignty is now limited. One role of human rights is precisely to specify limits to that sovereignty.

Thus, human rights are distinct, say, from constitutional rights or the rights of democratic citizenship, or from other kinds of rights that belong to certain kinds of political institutions, both individualist and associationist.⁴⁴ They are of a special class of rights of universal application and hardly controversial in their general intention. They are part of a reasonable law of peoples and specify limits on the domestic institutions required of all peoples by that law. In this sense they specify the outer boundary of admissible domestic law of societies in good standing in a just society of peoples.⁴⁵

Human rights have, then, these three roles:

1) Their being fulfilled is a necessary condition of a regime's legitimacy and of the decency of its legal order.

2) Their fulfillment is also sufficient to exclude justified and forceful intervention by other peoples, say by economic sanctions or, in grave cases, by military force.

3) "They set a moral limit to pluralism" among peoples.⁴⁶

43. See Keith Thomas, *Man and the Natural World: A History of the Modern Sensibility* (New York, 1983) for an account of the historical change in attitudes towards animals and nature.

44. See Shklar's illuminating discussion of these in her *American Citizenship: The Quest for Inclusion* (Cambridge, Mass., 1991), with her emphasis on the historical significance of slavery.

45. This fact about human rights can be clarified by distinguishing among the rights that have been listed as human rights in various international declarations. Consider the United Nations' Universal Declaration of Human Rights of 1948. First, there are human rights proper, illustrated by Article 3, "Everyone has a right to life, liberty and security of person," and by Article 5, "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment." Articles 3 to 18 may fall under this heading of human rights proper, pending certain questions of interpretation. Then there are human rights that are obvious implications of these rights. These are the extreme cases described by the special conventions on genocide (1948) and on apartheid (1973). These two classes comprise the human rights.

Of the other declarations, some seem more aptly described as stating liberal aspirations, such as Article 1: "All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood" (The General Assembly of the United Nations, *The Universal Declaration of Human Rights* [1948; New York, 1962], p. 34). Others appear to presuppose specific kinds of institutions, such as the right to social security in Article 22 and the right to equal pay for equal work in Article 23.

46. David Luban, "The Romance of the Nation State," *Philosophy and Public Affairs* 9 (Summer 1980): 396; quoted in Nardin, *Law, Morality, and the Relations of States*, p. 240.

6. *Nonideal Theory: Noncompliance*

1. To this point we have been concerned solely with ideal theory. By developing a liberal conception of justice we have reviewed the philosophical and moral grounds of an ideal conception of a society of well-ordered peoples and of the principles that apply to its law and practices. That conception is to guide the conduct of peoples towards one another and their design of common institutions for their mutual benefit.

However, before our sketch of the law of peoples is at all complete, we must take note of, even though we cannot properly discuss, the questions arising from the highly nonideal conditions of our world with its great injustices and widespread social evils. Nonideal theory asks how the ideal conception of the society of well-ordered peoples might be achieved, or at least worked toward, generally in gradual steps; it looks for policies and courses of action that are likely to be effective and politically possible as well as morally permissible for that purpose. So conceived, nonideal theory presupposes that ideal theory is already on hand. For until the ideal is identified, at least in outline, nonideal theory lacks an objective—a goal—by reference to which its questions can be answered. And while the specific conditions of our world at any given time—the status quo—do not determine the ideal conception of the society of well-ordered peoples, those conditions do affect answers to the questions of nonideal theory. For these questions are questions of transition; in any given case, they start from where a society is and seek effective ways permitted by the law of peoples to move the society some distance towards the goal.

We may distinguish two kinds of nonideal theory. One kind deals with conditions of noncompliance, that is, with conditions in which certain regimes refuse to acknowledge a reasonable law of peoples. These we may call outlaw regimes. The other kind of nonideal theory deals with unfavorable conditions, that is, with the conditions of peoples whose historical, social, and economic circumstances make their achieving a well-ordered regime, whether liberal or hierarchical, difficult if not impossible.

2. I begin with noncompliance theory. As we have said, a reasonable law of peoples guides the well-ordered regimes in facing outlaw regimes by specifying the goal they should always have in mind and indicating the means they may use or must avoid in doing so.

Outlaw regimes are a varied lot. Some are headed by governments that seem to recognize no conception of right and justice at all, and often their legal order is at bottom a system of coercion and terror. The Nazi regime is a demonic example of this. Another more common case, philosophically more interesting and historically more respectable, are those societies—they would scoff at being referred to as outlaw regimes—whose rulers affirm comprehensive doctrines that recognize no geographic limits to the legitimate authority of their established religious or

philosophical views. Spain, France, and the Hapsburgs all tried at some time to subject much of Europe and the world to their will.⁴⁷ They hoped to spread true religion and culture and sought dominion and glory, not to mention wealth and territory. Such societies are checked only by a balance of power; because, however, this balance changes and is unstable, the hegemonic theory of war, so-called, fits nicely.⁴⁸

Now, the law-abiding societies—both liberal and hierarchical—can at best establish a *modus vivendi* with the outlaw expansionist regimes and defend the integrity of their societies as the law of peoples allows. In this situation the law-abiding societies exist in a state of nature with the outlaw regimes, and they have a duty to their own and to one another's societies and well-being, as well as a duty to the well-being of peoples subjected to outlaw regimes, though not to their rulers and elites. These several duties are not all equally strong, but there is always a duty to consider the more extensive long-term aims and to affirm them as overall guides of foreign policy. Thus, the only legitimate grounds of the right to war against outlaw regimes is the defense of the society of well-ordered peoples and, in grave cases, of innocent persons subject to those regimes and the protection of their human rights. This accords with Kant's idea that our first political duty is to leave the state of nature and to submit ourselves along with others to the rule of a reasonable and just law.⁴⁹

3. The defense of well-ordered peoples is, however, only their first and most urgent task. Another long-term aim, as specified by the law of peoples, is to bring all societies to honor eventually that law, to be full and self-standing members of the society of well-ordered peoples, and so to secure human rights everywhere. How to do this is a question of foreign policy; these things call for political wisdom, and success depends in part on luck. These are not matters to which political philosophy has much to add. I venture several familiar points.

For well-ordered peoples to achieve this long-term aim they should establish among themselves new institutions and practices to serve as a kind of federative center and public forum of their common opinion and policy towards the other regimes. This can either be done separately or within institutions such as the United Nations by forming therein an alliance of well-ordered peoples on certain issues. This federative center may be used both to formulate and to express the opinion of the well-ordered societies. There they may expose to public view the unjust and cruel institutions of oppressive and expansionist regimes and their violations of human rights.

47. On this see Ludwig Dehio, *The Precarious Balance* (London, 1963).

48. See Robert Gilpin, "The Theory of Hegemonic War," in *The Origin and Prevention of Major Wars*, pp. 15–38.

49. Kant, *The Theory of Right*, pt. 1 of *The Metaphysics of Morals*, in *Kant: Political Writings*, trans. H. B. Nisbet, ed. Hans Reiss, 2d ed. (Cambridge, 1991), secs. 44, 61.

Even these regimes are not altogether indifferent to this kind of criticism, especially when the basis of it is a reasonable and well-founded law of peoples that cannot be easily dismissed as simply liberal or Western. Gradually over time, then, the well-ordered peoples may pressure the outlaw regimes to change their ways; but by itself this pressure is unlikely to be effective. It needs to be backed up by the firm denial of all military aid or of economic and other assistance. Further, well-ordered peoples should not admit outlaw regimes as members in good standing into their mutually beneficial cooperative practices.

7. *Nonideal Theory: Unfavorable Conditions*

1. A few words about the second kind of nonideal theory, that of unfavorable conditions. By these conditions I mean the conditions of societies that lack the political and cultural traditions, the human capital and know-how, and the resources, material and technological, that make well-ordered societies possible. In noncompliance theory we saw that the goal of well-ordered societies is somehow to bring the outlaw states into the society of well-ordered peoples. The outlaw societies in the historical cases we mentioned above were not societies burdened by unfavorable resources, material and technological, or in their human capital and know-how; on the contrary, they were among the most politically and socially advanced and economically developed societies of their day. The fault in those societies lay in their political traditions and the background institutions of law, property, and class structure, with their sustaining beliefs and culture. These things must be changed before a reasonable law of peoples can be accepted and supported.

In parallel fashion, we must ask: What is the goal specified by nonideal theory for the case of unfavorable conditions? Here the answer is clear: eventually each society now burdened by unfavorable conditions is to be raised to, or assisted towards, conditions that make a well-ordered society possible.

2. Some writers have proposed that the difference principle, or some other liberal principle of distributive justice, be adopted to deal with this problem and to regulate accordingly the economic inequalities in the society of peoples.⁵⁰ While I think the difference principle is reasonable for domestic justice in a democratic society, it is not feasible, I believe, as the way to deal with the general problem of unfavorable conditions among societies. For one thing, it belongs to the ideal theory for a democratic society and is not framed for our present case. More serious, there are

50. Beitz makes such a proposition and gives a sustained discussion of it in *Political Theory and International Relations*, pt. 3. The difference principle is defined in *A Theory of Justice*, pp. 75–82. I do not review the principle here because, as the text says, I believe all liberal distributive principles are unsuitable for the case we are considering.

various kinds of societies in the society of peoples and not all of them can reasonably be expected to accept any particular liberal principle of distributive justice; and even different liberal societies adopt different principles for their domestic institutions. For their part, the hierarchical societies reject all liberal principles of domestic justice. We cannot suppose, then, that they will find such principles acceptable to deal with the relations among peoples. So in our construction of the liberal law of peoples, liberal principles of domestic distributive justice are not generalized to answer questions about unfavorable conditions.

Confirming this is the fact that in a constructivist conception there is no reason to think that the principles that apply to domestic justice are also appropriate for regulating inequalities in a society of peoples. As we saw at the outset, each kind of subject—whether an institution or an individual, whether a political society or a society of political societies—may be governed by its own characteristic principles. What these principles are is to be worked out by a suitable procedure beginning from a correct starting point. We ask how rational representatives suitably motivated, and reasonably situated with respect to one another, would be most strongly moved to select among the feasible ideals and principles to apply to the subject in question. Since the problem and subject are different in each case, the ideals and principles adopted likewise may be different. As always, the whole procedure and the principles it yields must be acceptable on due reflection.

3. Even though no liberal principle of distributive justice would be adopted for dealing with unfavorable conditions, that certainly does not mean that the well-ordered and wealthier societies have no duties and obligations to societies burdened by such conditions. For the ideal conception of the society of peoples that well-ordered societies affirm directs that all societies are in due course to reach, or to be assisted to, the conditions that make a well-ordered society possible. This implies that human rights are to be recognized and secured everywhere and that basic human needs are to be met. Thus, the basis of the duty of assistance is not some liberal principle of distributive justice. Rather, it is the ideal conception of the society of peoples itself as consisting of well-ordered societies, with each people, as I have said, a full and self-standing member of the society of peoples and capable of taking charge of their political life and maintaining decent political and social institutions.⁵¹

I shall not attempt here to discuss how this might be done, as the

51. With much of Beitz's view the law of peoples agrees. It seems that he thinks of the difference principle between societies as "a resource redistribution principle that would give each society a fair chance to develop just political institutions and an economy capable of satisfying its members' basic needs" and that the resource distribution principle "provides assurance to persons in resource-poor societies that their adverse fate will not prevent them from realizing economic conditions sufficient to support social institutions and to protect human rights" (Beitz, *Political Theory and International Relations*, pp. 141–42). The law of

problem of giving economic and technological aid so that it makes a sustained contribution is highly complicated and varies from country to country. Moreover, the problem is often not the lack of natural resources. Many societies with unfavorable conditions do not lack for resources. Well-ordered societies can get on with very little; their wealth lies elsewhere: in their political and cultural traditions, in their human capital and knowledge, and in their capacity for political and economic organization. Rather, the problem is commonly the nature of the public political culture and the religious and philosophical traditions that underlie its institutions. The great social evils in poorer societies are likely to be oppressive government and corrupt elites and the subjection of women abetted by unreasonable religion, all with the resulting overpopulation relative to what the economy of the society can decently sustain. Perhaps there is no society anywhere in the world that, were its people reasonably and rationally governed and their numbers sensibly adjusted to their economy and resources, could not have a decent and worthwhile life.

These general remarks indicate what is so often the source of the problem, namely, the public political culture and its roots in the background social structure. The duty and obligation of wealthier societies to try to rectify matters is in no way diminished, only made more difficult. Here too, in ways I need not describe, an emphasis on human rights may work, when backed up by other kinds of assistance, to moderate, albeit slowly, oppressive government, the corruption of elites, and the subjection of women.⁵²

peoples accepts Beitz's goals for just institutions, securing human rights, and meeting basic needs. But as I suggest in the next paragraph, the welfare of persons is more often at risk from a distorted and corrupt political culture than from a country's lack of resources. The only principle that does away with that misfortune is to make the political traditions and culture of all peoples reasonable and able to sustain just political and social institutions that secure human rights. It is this principle that gives rise to the duties and obligations of assistance. We do not need a liberal principle of distributive justice for this purpose.

52. That the insistence on human rights may help here is suggested by Amartya Sen's work on famines. He has shown in *Poverty and Famines: An Essay on Entitlement and Deprivation* (Oxford, 1981), by an empirical study of four well-known historical cases (Bengal, 1943; Ethiopia, 1972–74; Sahel, 1972–73; and Bangladesh, 1974), that food decline need not be the main cause of famine, or even a cause, or even present. But sometimes it can be an important cause of famine, for example, in Ireland in the 1840s and in China in 1959–61. In the cases Sen studies, though a drop in food production may have been present, it was not great enough to lead to famine given a decent government that cares for the well-being of all of its people and has in place a reasonable scheme of backup entitlements provided through public institutions. For Sen, "famines are economic disasters, not just food crises" (p. 162). In the well-known historical cases they revealed faults of the political and social structure and its failure to institute appropriate policies to remedy the effects of shortfalls in food production. After all, there would be massive starvation in any modern Western democracy were there not schemes in place to remedy the losses in income of the unem-

8. Concluding Reflections

1. In this essay I have not said much about what might be called the philosophical basis of human rights. Despite their name, human rights are a special class of rights to be explained by their role in a liberal conception of the law of peoples acceptable to both well-ordered liberal and hierarchical societies. For this reason I have sketched how such a law of peoples might be worked out on the basis of a liberal conception of justice.⁵³ Within this framework I have indicated how respect for human rights is one of the conditions imposed on any political regime to be admissible as a member in good standing into a just political society of peoples. Once we understand this, and once we understand how a reasonable law of peoples is developed out of the liberal conception of justice and how this conception can be universal in its reach, then it is perfectly clear why those rights hold across cultural and economic boundaries, as well as the boundaries between nation-states or other political units. With our two other conditions, these rights determine the limits of toleration in a reasonable society of peoples.

About these limits, we can make the following observation: If we start with a well-ordered liberal society that realizes an egalitarian conception of justice, such as justice as fairness, the members of that society will nevertheless accept other liberal societies into the society of peoples whose institutions are considerably less egalitarian.⁵⁴ This is implicit in our beginning with liberal conceptions more general than justice as fairness. But citizens in a well-ordered egalitarian society will still view the domes-

ployed. Since a government's allowing people to starve when it is preventable is a violation of their human rights, and if well-ordered regimes as we have described them will not allow this to happen, then insisting on human rights is exerting pressure in the direction of decent governments and a decent society of peoples. Sen and Jean Drèze's book, *Hunger and Public Action* (Oxford, 1989), confirms these points and stresses the success of democratic regimes in coping with these problems. See their summary statement, pp. 257-79. I assume the same would be true of well-ordered hierarchical regimes as specified in the text. See also Partha Dasgupta, *On Well-Being and Destitution* (Oxford, 1993), chap. 5.

53. It might be asked why the law of peoples as here constructed is said to be liberal when it is also accepted by well-ordered hierarchical societies. I have called it liberal because the law of peoples is presented as an extension from liberal conceptions of domestic justice; see above, sec. 1, pt. 1. I do not mean to deny, however, that a well-ordered hierarchical society may have conceptions of justice that can be extended to the law of peoples and that its content would be the same as that of liberal conceptions. For the present I leave this question open. I would hope that there are such conceptions in all well-ordered hierarchical societies, as this would widen and strengthen the support for the law of peoples.

54. Three egalitarian elements are the fair value of equal political rights and liberties, fair equality of opportunity, and the difference principle, all to be understood as specified in Rawls, *A Theory of Justice*.

tic regimes of those societies as less congenial to them than the regime of their own society.

This illustrates what happens whenever the scope of toleration is extended: the criteria of being reasonable are relaxed.⁵⁵ Now in the case we have considered we seek to include other than liberal societies as members in good standing in a reasonable society of peoples. Hence when we move to these societies, their domestic regimes are even less, often much less, congenial to us. This poses the problem of the limits of toleration: Where are these limits to be drawn? Clearly, tyrannical and dictatorial regimes must be outlawed, and also, for basic liberal reasons, expansionist states conducting wars of religion. The three necessary conditions for a well-ordered regime—that it respect the principles of peace and not be expansionist, that its system of law meet the essentials of legitimacy in the eyes of its own people, and that it honor basic human rights—are proposed as an answer as to where those limits lie. These conditions indicate the region of bedrock beyond which we cannot go.

2. We have discussed how far many societies of the world have always been, and are today, from meeting these three conditions for being a member in good standing in a reasonable society of peoples. The law of peoples provides the basis for judging the conduct of any existing regime, liberal as well as nonliberal. And since our account of the law of peoples was developed out of a liberal conception of justice, we must address the question whether the liberal law of peoples is ethnocentric and merely Western.

To address this question, recall that in working out the law of peoples we assumed liberal societies to look at how they are to conduct themselves towards other societies from the point of view of their own liberal political conception. Regarding this conception as sound, and as meeting all the criteria they are now able to apply, to proceed thus is not then necessarily ethnocentric or merely Western. Whether it is so turns on the content of the political conception that liberal societies embrace once it is worked up to provide at least an outline of the law of peoples.

Looking at that outline of that law, we should note the difference between it and the law of peoples as it might be understood by religious and expansionist states that reject the liberal conception. The liberal conception asks of other societies only what they can reasonably grant without submitting to a position of inferiority, much less to domination. Here it is crucial that a liberal conception of the law of peoples does not ask well-ordered hierarchical societies to abandon their religious institutions, and adopt liberal ones. True, in our sketch we supposed that traditional societies would affirm the law of peoples that would hold among just lib-

55. In the domestic case we are led in parallel fashion to count many comprehensive doctrines reasonable that we would not, in our own case, regard as worthy of serious consideration. See Rawls, *Political Liberalism*, pp. 48–53.

eral societies. For this reason, that law is universal in its reach. Yet it is so because it asks of other societies only what they can accept once they are prepared to stand in a relation of equality with all other societies and once their regimes accept the criterion of legitimacy in the eyes of their own people. And in what other relations can a society and its regime reasonably expect to stand?

Moreover, the liberal law of peoples does not justify economic sanctions or military pressure on well-ordered hierarchical societies to change their ways, provided that they respect the rules of peace and their political institutions satisfy the essential conditions we have reviewed. If however these conditions are violated, external pressure of one kind or another may be justified depending on the severity and the circumstances of the case. At this point a concern for human rights should be a fixed part of the foreign policy of liberal and hierarchical societies.

3. Looking back at the course of our discussion, let's recall that besides sketching how the law of peoples might be developed from a liberal conception of right and justice, a further aim was to set out the bearing of political liberalism for a wider world society once a liberal political conception of justice is extended to the law of peoples. In particular, we asked: What form does the toleration of nonliberal societies take in this case? Although tyrannical and dictatorial regimes cannot be accepted as members in good standing in a reasonable society of peoples, not all regimes can be reasonably required to be liberal. If so, the law of peoples itself would not express liberalism's own principle of toleration for other reasonable ways of ordering society. A liberal society is to respect other societies organized by comprehensive doctrines, provided their political and social institutions meet certain conditions that lead the society to adhere to a reasonable law of peoples.

I did not try to present an argument to this conclusion. I took it as clear that if other nonliberal societies honored certain conditions, such as the three requirements (discussed in section 4), they would be accepted by liberal societies as members in good standing in a society of peoples governed by a reasonable law of peoples. There would be no political case to attack these nonliberal societies militarily or to bring economic or other sanctions against them to revise their institutions. Critical commentary in liberal societies would be fully consistent with the civic liberties and integrity of those societies.

4. What conception of toleration of other societies does the law of peoples express? And how is it connected with political liberalism? If it should be asked whether liberal societies are, morally speaking, better than hierarchical societies and therefore whether the world would be a better place if all societies were liberal, those holding a comprehensive liberal view could think it would be. But that opinion would not support a claim to rid the world of nonliberal regimes. It could have no operative force in what, as a matter of right, they could do politically. The situation

is parallel to the toleration of other conceptions of the good in the domestic case. Someone holding a comprehensive liberal view can say that their society would be a better place if everyone held such a view. They might be wrong in this judgment as, given the larger background of belief and conviction, other doctrines may play a moderating and balancing role and give society's culture a certain depth and richness. The point is that to affirm the superiority of a particular comprehensive view is fully compatible with affirming a political conception of justice that does not impose it, and so with political liberalism itself.

Political liberalism holds that comprehensive doctrines have but a restricted place in liberal democratic politics in this sense: fundamental constitutional questions and matters concerning basic rights and liberties are to be settled by a public political conception of justice, exemplified by the liberal political conceptions, and not by these wider doctrines. For given the pluralism of democratic societies—a pluralism that is best seen as the outcome of the exercise of human reason under free institutions and that can only be undone by the oppressive use of state power—affirming such a public conception and the basic political institutions it supports is the most reasonable basis of social unity available to us.

The law of peoples, as I have sketched it, is simply the extension of these same ideas to the political society of well-ordered peoples. For that law, which settles fundamental constitutional questions and matters of basic justice as they arise for that society, must also be based on a public political conception of justice and not on a comprehensive religious, philosophical, or moral doctrine. I have sketched the content of such a political conception and tried to explain how it could be endorsed by well-ordered societies, both liberal and hierarchical. Except as a basis of a *modus vivendi*, expansionist religious societies could not endorse it; but in principle there is no peaceful solution in this case except the domination of one side or the peace of exhaustion.