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THE LAW OF PEOPLES

WHAT SELF-GOVERNING PEOPLES OWE TO ONE ANOTHER: UNIVERSALISM, DIVERSITY, AND THE LAW OF PEOPLES

*Stephen Macedo**

[A] people sincerely affirming a nonliberal idea of justice may still reasonably think its society should be treated equally in a reasonably just Law of Peoples. Although full equality may be lacking within a society, equality may be reasonably put forward in making claims against other societies.¹

Do efforts to extend and enforce human rights unfairly impose Western liberal and individualistic values on societies whose varying traditions deserve greater respect? Are supposedly “universal” human rights “just another cunning exercise in Western moral imperialism,” as Michael Ignatieff pointedly asks?²

Liberal academics and intellectuals in the West often argue, with Martha Nussbaum, that “there are no obstacles to justifying the same norms, in the area of basic entitlements, for all the world’s people.”³ According to liberal cosmopolitans, we can think of individuals around the globe as having the same basic interests in freedom and equality that we ascribe to persons within Western societies when we

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1. John Rawls, *The Law of Peoples* 70 (1999).

2. Michael Ignatieff, *Human Rights as Politics and Idolatry* 58 (2001).

3. Martha Nussbaum, *Women and the Law of Peoples*, 1 *Pol. Phil. & Econ.* 283, 286 (2002).

think about fundamental principles of justice. John Rawls, arguably the greatest political philosopher of the twentieth century and the most important academic exponent of liberalism since John Stuart Mill, has rejected this liberal cosmopolitan view.⁴ Rawls conceives of the subjects of international justice not as individual persons but as independent “peoples.” Liberal societies should be tolerant and fully respectful of decent and well-ordered societies that reject some liberal principles of justice familiar in the United States, such as complete civil and political equality for women and the separation of church and state. Rawls’s prime example of a non-liberal but decent and fully respectable society is a hypothetical Islamic society that he calls “Kazanistan.” Progressive liberals in the West have criticized this qualified embrace of diversity. Allen Buchanan charges that Rawls, by focusing on peoples rather than individuals, “gives short shrift to dissenting individuals and minorities.”⁵

What, if anything, justifies Rawls’s reluctance in *The Law of Peoples* to extend his principles of liberal justice to all the world’s persons? Is it because when we move to the relations among states or peoples we encounter forms of cultural and religious pluralism that are wider and deeper than we encounter at home? The greater diversity that we encounter on the world stage might well seem to necessitate that we settle for an “overlapping consensus” on shared political principles that are thinner and less substantial than we are able to generate at home. The formula seems simple and straightforward: As we move from domestic justice to the international case, we encounter greater diversity, and that means that some domestic principles of justice must be jettisoned to accommodate societies that are less individualistic and more “communitarian” than those of the West, societies that may deny full equality of rights to women, religious minorities, and others.⁶ The *problem of greater diversity* would seem to neatly explain why shared principles of international justice will be thinner and less substantial than principles of domestic justice.

The problem with the diversity-based case for distinguishing justice within political societies and justice across political societies is that it is

4. With respect to justice in pluralistic modern Western societies, Rawls has argued for two principles of justice:

(a) Each person has the same indefeasible claim to a fully adequate scheme of equal basic liberties, which scheme is compatible with the same scheme of liberties for all; and (b) Social and economic inequalities are to satisfy two conditions: first, they are to be attached to offices and positions open to all under conditions of fair equality of opportunity; and second, they are to be to the greatest benefit of the least-advantaged members of society (the difference principle).

John Rawls, *Justice as Fairness: A Restatement* 42-43 (Erin Kelly ed., 2001).

5. Allen Buchanan, *Rawls’s Law of Peoples*, 110 *Ethics* 691, 698 (2000).

6. See Daniel A. Bell, *East Meets West: Human Rights and Democracy in East Asia* (2000).

non-moral. According to this explanation, the substance of justice is held hostage to the brute facts of global diversity. Some will say that it is altogether consistent with the diminished moral ambitions of Rawls's "political liberalism," founded as it is on the insistence that political theory must accommodate itself to the permanent fact of deep religious and philosophical pluralism.⁷ This seems to me to be an error, though not one that I can pursue here.⁸

In this Essay I offer a *moral* defense for Rawls's conditional accommodation of diversity among peoples: a defense that rests not on the fact of global diversity but on the *moral significance of collective self-governance*. Collective self-governance yields a moral basis for respecting global diversity and also moral standards or criteria for discerning which peoples merit our respect. The criteria of respect are in fact quite demanding, though not equivalent to liberal justice. Liberal cosmopolitans like Nussbaum have raised important concerns, but have not sufficiently acknowledged that in order to qualify for full respect a people or state must do more than "obey certain minimal human rights norms."⁹ Decent and well-ordered peoples qualify for full respect when they are genuinely collectively self-governing. Their governing structures must provide inclusion and voice for dissenters, minorities, and the most disadvantaged, and those who wield power must be genuinely responsive to these voices. The laws of such a community are understood by its members to impose genuine moral obligations on its members; non-liberal but decent and well-ordered societies are moral communities. Political systems that rest on overt or veiled forms of tyranny and oppression do not qualify for this respect. Rawls's argument thus reflects the moral significance of membership in well-ordered, self-governing and self-responsible political communities.

I. THE PUZZLING LAW OF PEOPLES

Scholars such as Charles Beitz and Thomas Pogge applied the ideas of John Rawls's *A Theory of Justice* to the international arena by reworking the thought experiment of the original position, and broadening it to include the people of the world.¹⁰ This approach in effect generalized and extended the individualistic and egalitarian premises of liberal justice worked out in the domestic context—based

7. See, e.g., Michael J. Sandel, *Political Liberalism*, 107 Harv. L. Rev. 1765 (1994) (book review).

8. See generally John Rawls, *Political Liberalism* (1996). The argument of political liberalism seems to me a fully moral argument, as I have argued in Stephen Macedo, *Diversity and Distrust: Civic Education in a Multicultural Democracy* (2000).

9. Nussbaum, *supra* note 3, at 283.

10. See Charles R. Beitz, *Political Theory and International Relations* (1999); Thomas Pogge, *World Poverty and Human Rights* (2002).

on the interests of individual persons understood as free and equal—to offer “liberal cosmopolitan” accounts of international justice which generalize the sorts of individual rights claims and entitlements justified within societies such as the United States.

The Law of Peoples rejects liberal cosmopolitanism: the relevant subjects of international justice are “peoples,” not individuals.¹¹ Rawls stresses the sorts of concerns that animate *Political Liberalism*: We encounter in the world a variety of forms of diversity far broader than we encounter at home. In formulating their foreign policies, liberal peoples should not simply extend and apply their domestic liberal convictions to other societies. They should seek fair terms of cooperation that are reciprocally acceptable and fair to liberal and to non-liberal but decent peoples.

Decent but non-liberal societies may deny full equality to women or to members of religious minorities by, for example, excluding them from higher political offices. Decent peoples are satisfied, non-aggressive, and prepared to cooperate and live in peace with one another. Rawls considers one category of decent non-liberal peoples, namely, decent hierarchical peoples.

Behind a hypothetical “veil of ignorance,” representatives of these decent (liberal and non-liberal) peoples should be assumed not to know the size of their territory, its strength, or its relative level of development. Peoples strive to protect their political independence and their culture, as well as the proper respect due them as independent peoples.¹² Rawls asserts that decent peoples (liberal and non-liberal) would agree to at least eight principles that reflect a baseline of equality among peoples:

- (1) Peoples are free and independent, and their freedom and independence are to be respected by other peoples.
- (2) Peoples are to observe treaties and undertakings.
- (3) Peoples are equal and parties to the agreements that bind them.
- (4) Peoples are to observe a duty of non-intervention.
- (5) Peoples have the right of self-defense but no right to instigate war for reasons other than self-defense.
- (6) Peoples are to honor human rights.
- (7) Peoples are to observe certain specified restrictions in their conduct of war.
- (8) Peoples have a duty to assist other people living under unfavorable conditions that prevent their having a just or decent political and social regime.¹³

11. “Peoples” is meant to avoid some of the connotations of “nation” and “state.” The groups that compose self-governing peoples are often of diverse ethnic and national backgrounds. Peoples do not simply seek rationally to maximize their interests or power. Unlike “states” in much international relations theory, they can be collectively motivated by moral principles. “Peoples” are characterized internally by common sympathies and governments responsive to their members. Rawls, *The Law of Peoples*, *supra* note 1, at 23-27.

12. *Id.* at 34-35.

13. *Id.* at 37. I have quoted these eight principles. Rawls allows that these

Rawls, like Michael Ignatieff, affirms that “human rights proper”—that peoples must respect as a condition of their right to non-intervention—are the subset of the most urgent rights contained in the Universal Declaration, including means to “subsistence and security . . . sufficient measure of liberty of conscience to ensure freedom of religion and thought,” personal property, and equality before the law.¹⁴ In addition, Rawls asserts that decent peoples would formulate guidelines for cooperative organizations, including fair standards for trade, a cooperative banking system, and a confederation such as the United Nations. Rawls argues that these principles should be affirmed by decent liberal and non-liberal peoples as a stable basis for international cooperation.

Liberal and non-liberal decent peoples are both referred to as “well-ordered” because they endorse the principles stated above, and because they give their members a meaningful role in making political decisions. The Law of Peoples “does not require decent societies to abandon or modify their religious institutions and adopt liberal ones.”¹⁵ Rawls goes so far as to insist that liberal peoples should refrain from non-coercive sanctions or even official criticisms with respect to these societies:

[I]t is not reasonable for a liberal people to adopt as part of its own foreign policy the granting of subsidies to other peoples as incentives to become more liberal . . . [S]elf-determination, duly constrained by appropriate conditions, is an important good for a people . . . Decent societies should have the opportunity to decide their future for themselves.¹⁶

It should be noted, finally, that there are various additional types of societies with respect to whom liberal societies do not seek fair terms of cooperation. These include aggressive *outlaw states*, which violate human rights, societies *burdened by unfavorable conditions*, and *benevolent absolutisms*, that honor human rights and are non-aggressive but which also deny members a “meaningful role in making political decisions,”¹⁷ and so who are considered not “well-ordered.”¹⁸ None of these societies are considered well-ordered and none are party to the Law of Peoples.

II. WHAT DO PEOPLES OWE EACH OTHER?

Peoples owe a “duty of assistance” to “burdened societies”: impoverished societies that lack the political culture or human capital

principles are subject to multiple and competing interpretations. *Id.* at 42-43.

14. *Id.* at 65; see also Ignatieff, *supra* note 2. Unlike Ignatieff, Rawls includes positive and not only negative rights.

15. Rawls, *The Law of Peoples*, *supra* note 1, at 63, 121.

16. *Id.* at 85.

17. *Id.* at 4.

18. *Id.*

or the resources to be well-ordered or decent. Fulfilling this duty would require countries like the United States to substantially increase their foreign aid. Once a society attains a level where it is capable of running its own affairs and governing itself in light of its shared ideals and providing a decent common life for its people, this duty of assistance is fulfilled and no further transfers of aid are required. Unlike justice in the domestic case, there is no principle of distributive justice among decent peoples.¹⁹

The duty of assistance is qualified by the fact that when societies are desperately poor, it is not primarily because they lack a fair share of the world's natural resources, but because of disorders rooted in political culture and institutions.²⁰ Countries with few natural resources (such as Japan) may prosper, and countries rich in natural resources (such as Argentina) may remain poor. According to Rawls, national prosperity depends on good government. "I would further conjecture," he says, "that there is no society anywhere in the world" excepting certain marginal cases such as the "Arctic Eskimos" "with resources so scarce, that it could not, were it reasonably and rationally organized and governed, become well-ordered."²¹

There can be little doubt that some countries remain poor on account of oppressive political institutions or the rule of a corrupt "kleptocracy." It may not be easy to help a burdened society reform its institutions and culture, aspects of which may be deeply embedded. Giving money to poor but corrupt and oppressive regimes may do more harm than good.

Nevertheless, I would be reluctant to give too much weight to these particular empirical generalizations. The persistence of poverty in substantial regions of the world may be due not to corrupt or ineffective institutions (as Rawls argues), nor to colonial exploitation (as others argue), but rather to geographical factors. Dire and persistent poverty in sub-Saharan Africa and the Andean region of South America—the two most extensive global "poverty traps"—is explained, according to Jeffrey Sachs, by geographical factors that include the distance of the population from navigable waterways (inhibiting the development of markets), and the prevalence of diseases with especially high morbidity rates (which inhibit the growth of human capital).²² Sachs suggests, in effect, that Rawls is right not to

19. *Id.* at 106. For the principles of justice that apply domestically, see *supra* note 4.

20. Rawls says in a typical remark that "[b]urdened societies . . . lack the political and cultural traditions, the human capital and know-how, and, often, the material and technological resources needed to be well-ordered." Rawls, *Law of Peoples*, *supra* note 1, at 106. Of course, tyrannical rule, colonialism, and oppression often also play a substantial role.

21. *Id.* at 108.

22. Jeffrey Sachs, *Institutions Don't Rule: Direct Effects of Geography on Per Capita Income* (January 2003) (NBER Working Paper 9490), available at

attribute much of the most persistent global poverty to exploitation, but wrong to attribute it to bad culture and faulty institutions: The poorest regions of the world are victims of unfortunate geographical circumstances. According to Sachs's hopeful account, international aid (directed at developing transportation infrastructures and treating diseases), and reduced trade barriers in the developed world (especially the United States) could help make these regions participants in global market institutions.

It is also important to keep in mind that Rawls is addressing "ideal theory": the proper relations among decent liberal and non-liberal peoples, understood for these purposes without regard to particular relations of past or present exploitation. He does not address the additional obligations that arise from particular relations of colonial exploitation, interference in the political affairs of other societies, the use of military or economic power to extract unfair advantages in international trade, unfair advantages in international trade, or trade and economic policies that allow rich countries and their corporations to exploit their advantages by making unfair rules of trade.²³ The Law of Peoples cannot be considered a complete account of what actual countries owe to one another; it is at most a baseline account of what peoples owe to one another abstracted away from particular histories of exploitation, domination, and unfairness, which often call out for specific forms of rectification and reform.

Why is there no analog of the domestic principle of justice that calls for the "basic structure" of international affairs to be arranged such that inequalities are to the advantage of the least well-off and the less well-off are compensated for the arbitrariness of fortune? Persons are morally equal, and whether I am born a member of one society or another seems morally arbitrary, just as arbitrary as the position into which I am born within my society, a point that is so crucial to Rawlsian domestic justice. So why shouldn't international justice make direct comparisons of the relative well-being of individuals within different societies?

The domestic and international cases are, in fact, quite different. Partly this difference is because of the diversity of cultures and values, as Rawls emphasizes, but I believe the fundamental point is respect for self-governing peoples understood as independent (though cooperating) and responsible.

Within a society such as the United States, we can properly posit that citizens in general want more of certain primary goods, which include income and wealth, and we can use the relative standing of

<http://www.earth.columbia.edu/about/director/publicat.html> (along with related papers).

23. On the importance of trade barriers, see Pogge, *supra* note 10; see also Rawls, *Law of Peoples*, *supra* note 1, at 42-43.

different social positions in terms of the opportunity to acquire wealth and income (and other primary goods) to assess which social positions are worse-off and which are better-off. There is, however, no reason to assume that societies or peoples in general desire ever greater amounts of aggregate wealth.²⁴ A decent and well-ordered people—one capable of providing a decent life for all members and of living up to its own ideals of justice—may decide that it has accumulated enough, or it may give a low priority to saving and investing for the sake of growing its capital stock and national wealth in favor of other priorities such as subsidizing culture or learning. Rawls emphasizes that duties of assistance across peoples should be targeted to permit every society to become a well-ordered and decent member of the international society of free and equal peoples, capable of setting its own collective priorities and making policy choices in light of these.

The United States and France, for example, make different collective choices reflecting different priorities with respect to work, leisure, and provision of social services, and different levels of economic growth may be a consequence. France may be worse-off in term of income and wealth, but not in terms of the variety of public and private goods as a whole. We cannot compare societies in terms of wealth and income and say that one is “better-off” all things considered.

One might concede much of the foregoing but still argue that nations’ overall well-being is affected not only by values and choices but also by morally arbitrary luck and fortune. We have collective obligations to compensate for ill-fortune in the name of greater fairness and based on the fundamental moral equality of all persons.

Consider for example the enormous benefit that is being conferred on English speakers because English is becoming the international lingua franca. Though non-English speakers presumably benefit from the emergence of an international lingua franca, they bear and will bear substantial costs relative to English speakers for, as it were, the joint production of this common good. Here is an arbitrary distribution of benefits and burdens arising directly from the fact of international cooperation. Philipp Van Parijs argues that English speakers owe remuneration to compensate non-English speakers for the costs that they bear.²⁵

Moreover, the well-being of everyone is increasingly dependent on an international “basic structure” of trade relations and regulations, global movements of goods, money, people, and ideas, as well as a regime of international law, and environmental regulation. Globalization, on this argument, is collapsing the difference between

24. Rawls stresses that such an assumption characterizes the business classes of commercial societies, but is by no means axiomatic for peoples in general. Rawls, *The Law of Peoples*, *supra*, note 1, at 107 n.33.

25. See Philipp Van Parijs, *Linguistic Justice*, 1 *Pol. Phil. & Econ.* 59 (2002).

domestic and international society. Insofar as Rawls confines the demands of distributive justice to domestic society, isn't he, as Allen Buchanan has charged, offering rules for a vanished "Westphalian world"?²⁶ Surely this argues for the superiority of a cosmopolitan view of global distributive justice that focuses on what wealthy countries owe to the poorer (and not just the destitute) people of the world.

In fact, however, cosmopolitan justice runs counter to a great deal of common sense and practice.

III. SELF-GOVERNING AND SELF-RESPONSIBLE PEOPLES

While international cooperation is quite important and while we properly seek to enhance it, the most extensive powers of collective self-governance are concentrated at the level of independent (but cooperating) peoples. Collective self-government depends on a division of the world into self-governing units, and few seek to change this fundamental fact. Self-governing peoples may or may not share a common language and they are extremely likely to be ethnically, racially, and religiously diverse. Their geographical borders are likely the result of historical accident. Nevertheless, borders acquire moral significance on account of the fact that they form limits to self-governance: Americans take responsibility for what happens in North Dakota and Mississippi in a way they do not for what happens in Chihuahua and Ontario.

Citizens look to one another to jointly establish collective programs concerning health and welfare: they view themselves as jointly responsible for their unlimited future. Impoverished countries look to outsiders for help, but what they typically want is help to get on their own feet so they can establish their own collective self-rule. Federations of states such as Europe may voluntarily enter into increasing cooperative relations, but we understand European peoples to be doing this as a matter of joint convenience and choice, not as an obligation of justice.

Cosmopolitan liberals underrate the moral significance of political communities. Martha Nussbaum, for example, charges that "Rawls's argument permits certain groups to have great power over the lives of individuals, wherever those groups have geographical concentration and power such that they are able to form an independent state."²⁷ These "'peoples' . . . have a mysterious sort of unity, different from the bonds that hold together members of religions and other groups that

26. See Buchanan, *supra* note 5. Charles R. Beitz has also emphasized and elaborated this point to "illustrate the instability of a theory resting on a sharp distinction between the domestic and the international realm." Charles R. Beitz, *Rawls's Law of Peoples*, 110 *Ethics* 669, 694 (2000).

27. Nussbaum, *supra* note 3, at 295.

exist within nations. . . . Rawls has given no reason why the same group should be treated differently when it manages to form a state”²⁸

The moral significance of peoples is not really so mysterious, but let us remind ourselves what a people does in assuming the powers of self-government. They form a union usually understood as perpetual, and assert permanent control over a given territory, perhaps as the result of a violent struggle for independence. They adopt a constitution and declare a set of fundamental values. They establish political institutions empowered to make binding law and to protect basic rights. They make rules of property, family life, and association, create systems of taxation and criminal punishment, and institute projects to advance the collective welfare, all subject to ongoing collective deliberation and revision. They constitute executive agencies to maintain domestic order, to enforce the law, and to protect the people’s interests abroad, by the use of deadly force if necessary. For the sake of the common defense, young adults may be drafted to fight and possibly to die. They consider civil war to be the ultimate calamity. Within this created political framework individuals, families, and associations of all sorts define and pursue their purposes and projects. Citizens have powerful obligations of mutual concern and respect to one another because the political institutions for which they are responsible determine patterns of opportunities and rewards for all.²⁹

All of this could not simultaneously be true of the international society, and it is not. Being a member of a political community is a great good. We consider it a great misfortune to be “stateless.” Membership in international bodies has nothing like the same significance: that membership is mediated by membership in primary political units, namely the “Member States” of the U.N. or its Peoples.³⁰

Citizens of countries that are capable of decently conducting their own affairs do not want to be deprived of their political independence.

28. *Id.* at 294.

29. For a nice related account, see Ronald Dworkin, *Sovereign Virtue: The Theory and Practice of Equality* 1-2 (2000).

30. The U.N. Charter and the Universal Declaration of Human Rights are instruments created by “the peoples of the United Nations” or “Member States.” U.N. Charter pmbl.; United Nations, *Universal Declaration of Human Rights*, G.A. Res. 217, U.N. GAOR, 3d Sess., at 71, U.N. Doc. A/810 (1948), available at <http://www.un.org/Overview/rights.html>. Contrast the phrasing “We the peoples of the United Nations” and “We the people of the United States,” which open the preambles to the U.N. Charter and the United States Constitution. See U.S. Const. pmbl. The U.N. Charter closes, “IN FAITH WHEREOF the representatives of the Governments of the United Nations have signed the present Charter.” These matters cannot, of course, be resolved by these textual or historical facts alone. Provinces and states within nations, autonomous territories, and plural or consociational regimes raise additional issues not covered here.

It is, moreover, hard to understand the reasonableness of making people responsible for the welfare of others without also making them responsible for their governance. It would be strange and unreasonable to sever responsibilities for the provision of health and welfare from responsibilities for governance. We have strong common obligations as fellow citizens because we collectively assert control over each other. A self-governing political society is a hugely significant joint venture, and we understand it as such. Cosmopolitan distributive justice (as opposed to a duty to assist other peoples to become self-governing) makes no sense absent a cosmopolitan state and a cosmopolitan political community, for which hardly anyone seriously argues (and which Rawls, following Kant, rightly rejects).

What is morally basic, therefore, is not simply that societies place different values on goods, such as wealth, leisure, or learning, but that we make different collective choices about how to produce various goods, how to implement policies, how to administer programs, and how to organize and manage social relations.

But, returning to a point made above, granting that societies make different political choices, are not all also subject to brute luck and fortune? Shouldn't we compensate for arbitrary fortune *across societies* as we do *within societies*? But here again, the pooling of risk does not make much sense aside from institutions of mutual governance and regulation. We can plan for bad luck and ill fortune. Earthquakes may be a matter of luck, but building codes are not. It is likewise true that the vagaries of international trade often produce winners and losers by luck and accident, not desert, both at home and internationally. But we collectively debate and decide on economic policies in light of what can be known about such contingencies: deciding whether to focus or diversify the economy.

Persons' relations with global institutions are largely mediated through their political collectivities, and it does not appear that this will change any time soon. Of course there should be limits. I support the International Criminal Court and even the universal jurisdiction of national courts over heinous international crimes. International cooperative relations and trade relations are themselves regulated by states or by agencies created by states. There is a tendency to exaggerate the declining relevance of states. International organizations and regulatory regimes are important tools of cooperation among peoples, and peoples may decide to participate in collective insurance schemes, but international institutions have never assumed anything like the range of responsibilities and authority of well-ordered domestic political societies.

There seem good reasons for confining the extensive obligation of distributive justice to self-governing and self-responsible political communities: peoples who share a common political life and who exercise extensive authority over one another. The fundamental fact

is not the diversity of cultures and values but the respect that is owed to self-governing and self-responsible decent and well-ordered peoples.

Of course, again, this is all a matter of ideal theory and considers only the most general duties of peoples taken in the abstract. If particular nations have engaged in unfair trade practices, if they have prospered through colonial domination, if they have used their military or political power to gain unfair advantages for their own business interests at the expense of others, if they engage in unfair trade practices or refuse to support reasonable common arrangements to control harmful pollution or otherwise to safeguard the planet, then they may well accumulate additional debts and obligations of compensation and redress.

IV. FULL RESPECT FOR DECENT NON-LIBERAL PEOPLES?

Perhaps the most surprising aspect of Rawls's argument is, as I have mentioned, the insistence that liberal peoples should fully respect the equal standing of non-liberal but decent and well-ordered peoples. These societies may be ones that deny full equality to women or to members of religious minorities by, for example, excluding them from the higher political offices. Liberal peoples should, Rawls insists, refrain from military or coercive intervention and also from non-coercive sanctions or even official criticisms with respect to these societies.

If we are convinced of certain principles of basic justice and apply them to limit our own institutions of self-government, why should we not affirm these same values in our official relations with other states? The great puzzle of Rawls's Law of Peoples is this insistence that liberal peoples should fully respect non-liberal but decent peoples, not on grounds of prudence, and not simply to restrain interventionist impulses, but on grounds of basic principle.³¹

The position Rawls defends has a familiar ring. Lee Kuan Yew argues for a distinctive set of Asian values: Asian societies give more weight to communal and familial obligations than do the individualistic societies of the West, and they give a higher priority to economic and social rights than to freedom of expression.³² It is unreasonable to expect East Asian societies like Singapore to adhere to the same set of fundamental rights as Western societies like the United States.³³

The obvious problem with such arguments is that it is all too

31. See Blake, *Distributive Justice*, *supra* note *.

32. See text accompanying *infra* note 51.

33. Rawls explicitly includes communitarian convictions similar to these as among the features of decent non-liberal societies that ought to be respected. Rawls, *The Law of Peoples*, *supra* note 1, at 73.

convenient for authoritarians like Lee to claim to speak for the culture of his people. As Jack Donnelly puts it, “if the differences between East and West are truly as claimed, Asians can be trusted to exercise internationally recognized human rights in responsible ways that make the proper allowances for their cultural values. Asian autocrats, it seems, think much less of the inclinations and capabilities of their people.”³⁴

The question is whether we can reconcile two convictions: First, that respect for the diversity of cultures and traditions means that we cannot simply universalize the liberal conception of justice worked out within Western societies. Second, that we must not bow to cultural diversity as a way of rationalizing the oppression of some by others.

The crucial question is: What are the criteria for meriting full respect as a decent and well-ordered people? Rawls advances criteria that respond directly to the worry that cultural pluralism can be used to rationalize tyranny and oppression. Decent and well-ordered societies are not fully just by liberal rights but they meet extensive criteria of inclusion, voice, and responsiveness that insure, in effect, that if these societies go wrong, the mistake is “theirs to make.”³⁵

A decent non-liberal society may be based on some official religious or other doctrine that shapes its government structure and social policy: it may have a ruling hierarchy rather than principles of political equality, or there may be religious restrictions on who may hold the higher governmental offices. The society must be non-aggressive and respectful of the independence of other societies.³⁶ These decent hierarchical peoples respect human rights proper, which include the right to life, understood to include the “means of subsistence and security,” to liberty, which includes freedom from “slavery, serfdom, and forced occupation, to a sufficient measure of liberty of conscience to ensure freedom of religion and thought,” the right to personal property, and to formal equality before the law.³⁷ The established religion may enjoy a variety of privileges, but no religion is persecuted and all religions can be practiced “in peace and without fear.”³⁸ Because of the privileges enjoyed by the favored religion, the society must allow and even provide assistance for a right of emigration.³⁹

These decent hierarchical societies may be “associationist” in form, says Rawls, the members are viewed in public life first as members of

34. Jack Donnelly, *Universal Human Rights in Theory and Practice* 119 (2d ed. 2003).

35. As Arthur Applbaum put it to me.

36. Rawls, *The Law of Peoples*, *supra* note 1, at 64, 74.

37. *Id.* at 65. Human rights proper “cannot be rejected as peculiarly liberal or special to the Western tradition.” *Id.*

38. *Id.* at 74.

39. *Id.*

different groups, not as individuals.⁴⁰ But to qualify as well-ordered, such societies must provide for the political representation of all groups via a “decent consultation hierarchy.” Political power is exercised only after real consultation with members of society, who have a substantial political role. The “common good idea of justice . . . takes into account what it sees as the fundamental interests of everyone in society.”⁴¹ The rulers “do not allow themselves to be corrupted, either by favoring the rich or by enjoying the exercise of power for itself.”⁴²

A decent political society is transparent: society’s members understand the authoritative conception of the common good. The judges and other public officials of this society administer the laws conscientiously; the official ideology is not a sham or a ruse. The consultation procedure genuinely matters to political decisions: it constrains the pursuit of the society’s ideal end. If a group such as women have long been oppressed, special measures must be taken to insure that their interests are truly articulated: For example, a majority of the body that represents them should be “chosen from among those whose rights have been violated.”⁴³

A decent society respects the rights of dissent. Public officials must respond to dissent and their responses must address the merits. A spirit of conscientious reciprocal reason giving and reason demanding permeates the political order of a decent society, and this precludes public officials from taking a patronizing or paternalistic attitude toward societies’ dissenting members: “Judges and other officials . . . cannot refuse to listen, charging that the dissenters are incompetent and unable to understand,” indeed, “dissenters are not required to accept the answer given to them; they may renew their protests, provided they explain why they are still dissatisfied, and their explanation in turn ought to receive a further and fuller reply.”⁴⁴ The society is governed not on the basis of naked power or fear but rather on the open and critical exchange of public reasons. As a consequence, decent hierarchical societies have systems of laws that impose “*bona fide* moral duties and obligations . . . on all persons” within the territory.⁴⁵

Rawls says we might think of this non-liberal but decent society as an “idealized Islamic people” which he calls “Kazanistan.” To all that has been said already, Rawls adds that we can imagine that non-Muslims have lived in the territory for generations, and “have been loyal subjects of society, and then are not subjected to arbitrary

40. *Id.* at 64, 68.

41. *Id.* at 67.

42. *Id.* at 75.

43. *Id.* at 64-66, 71.

44. *Id.* at 72.

45. *Id.* at 65-66.

discrimination, or treated as inferior by Muslims in public or social relations.” Non-Muslims may be excluded from some higher government offices but they may serve in the armed forces and the “higher ranks of command;” they freely respect the “special priorities” of their government’s religious conception and they are prepared freely to defend their society in times of danger. A decent society is based on mutual public reasonableness and fair cooperation. As a consequence, laws impose “duties and obligations on all members of society.”⁴⁶

Decent hierarchical societies are capable of self-reform, and indeed Rawls insists that their capacity for reform may be enhanced if we respect them as equal members of the international society of peoples. Such societies enjoy the good of popular attachment to their own political society and culture. Liberal societies should encourage them. If liberalism is superior to their hierarchical conception of the good, we can expect decent societies to recognize this for themselves.⁴⁷ By respecting societies like the idealized Islamic society of Kazanistan, we respect the right of self-determination of peoples who meet high standards of reciprocity and mutual reasonableness: “Decent societies should have the opportunity to decide their future for themselves.”⁴⁸

CONCLUSION

Rawls defends two sorts of limits to universalism in *The Law of Peoples*, and I have tried to suggest why. He argues that principles of distributive justice that apply within a society do not apply across societies: Wealthier societies fulfill their obligations to poorer societies insofar as they help them become decently self-governing. In addition, he argues that a liberal society should adopt a foreign policy of full respect for societies that are decent and well-ordered (if not fully liberal), when these criteria are understood to require a political order that is inclusive and responsive to the good of all groups. There are both principled and prudential reasons for these constraints.

The crucial principled consideration is that *we ought to respect the right to collective self-rule, so long as the people—all of them—are collectivity ruling over themselves*. There are other conditions as well, including respect for human rights proper. Political societies do not qualify as decent and worthy of full respect, on this understanding, if particular groups are not allowed to express and represent their interests in the political process. The system of binding law must take seriously the expressed reasonable interests of all. Rawls insists in effect that a system of mutual and inclusive self-governance can be consistent with the maintenance of a religious establishment, so long

46. *Id.* at 78.

47. *Id.* at 61-62.

48. *Id.* at 85.

as the establishment is tolerant and responsive in the ways I have indicated. To respect such political societies is to respect distinctive forms of collective self-rule.

There are also prudential reasons for restraining our interventions in other societies. Even humanitarian interventions in the affairs of distant and poorly understood peoples is fraught with danger. Well-intended efforts have often gone horribly awry on account of ignorance of local cultures and institutions.⁴⁹ So there are both principled and prudential grounds to respect local processes for negotiating change locally on the basis of local understandings and interpretations of shared values.

We may properly worry about the full legitimacy of locally negotiated change when particular groups such as women are situated unequally vis-à-vis men. While Rawls offers only sketchy examples of genuine and respectable "consultation hierarchies," the spirit of his discussion is clear enough: Representative institutions must allow groups of women to express their own interests, and those in power must listen and take what they hear seriously. The details of how this process is worked out are, of course, important. Nevertheless, in fact, women who are disadvantaged within traditional but modernizing cultures often seem to want to negotiate the tensions between received cultural norms and their unequal status in ways that allow for gradualism and compromise. They may not wish simply to renounce their traditions; they may prize both their continued membership and the goal of increased empowerment. Given adequate opportunities to speak and be taken seriously, women in traditionalistic societies may not be eager for outside intervention.⁵⁰

We should also keep in mind the relative historical positions of those states that may be disposed to press for full adherence to liberal rights, and those that resist this in the name of their own distinctive values and traditions. Resentment of "Westernization" is keenly felt among some people in less developed societies, especially those who have been subject to colonial rule and exploitation. When these societies are on the path toward becoming decent, respectful cooperation may be the best strategy for encouraging further change.

Virtually all societies do seem to be moving in the direction of

49. Efforts by UNICEF and others to help people in Bangladesh obtain well water have resulted in massive arsenic poisoning that could result in the death of millions. See Daniel A. Bell & Joseph Carens, *The Ethical Dilemmas of International Human Rights and Humanitarian NGO's: Reflections on a Dialogue Between Practitioners and Theorists* (unpublished paper, on file with author).

50. See Susan Okin's paper, *Multiculturalism and Feminism: No Simple Question, No Simple Answers* (unpublished paper, on file with author), especially the penultimate section discussing Monique Deveaux's deliberative approach, and her discussion of tensions between tribal traditions and women's equality in South Africa. See Monique Deveaux, *A Deliberative Approach to Conflicts of Culture*, 31 *Pol. Theory* 780 (2003).

constitutionalism, representative institutions, and markets. So encouragement and “leading by example” are not to be scorned. Even Lee Kuan Yew has argued:

The system of government in China will change. It will change in Korea, Taiwan, Vietnam. It is changing in Singapore. But it will not end up like the American or British or French or German systems. What are we seeking? A form of government that will be comfortable, because it meets our needs, is not oppressive, and maximizes our opportunities. And whether you have one-man, one-vote or some-men, one vote or other men, two votes, those are forms which should be worked out. I'm not intellectually convinced that one-man, one-vote is the best. . . . [W]e would have a better system if we gave every man over the age of 40 who has a family two votes because he's likely to be more careful, voting also for his children.⁵¹

If Lee Kuan Yew's rejection of “one person one vote” offends American liberals, it is worth recalling that John Stuart Mill also advocated giving extra votes to the well-educated. We should also keep in mind that different peoples who are quite close exhibit important constitutional variations on matters pertaining to basic justice. The United Kingdom has a monarch, an aristocracy, and an established religion. Protections for civil liberties vary considerably across Western societies: Britain has a blasphemy law and Canada has laws against group libel. The German constitution bans anti-constitutional political parties that are constitutionally protected in the United States. Most Western societies have long permitted public subsidies for religious schools that have until recently been considered unconstitutional in the United States. Europeans are appalled that the United States has capital punishment and no national right to basic health insurance.

Peoples who are quite close may nevertheless differ with respect to fundamental constitutional commitments. And the same country may change fairly quickly and drastically with respect to its understanding of, or adherence to, basic principles of justice. In the latter half of the twentieth century the United States experienced a veritable revolution with respect to race and gender relations, family life, and sexuality. Over the last twenty years its economic policies have moved away from principles of liberal distributive justice. These are not trivial variations.

Given the recent history of political reform in the West, it is not surprising that many Western readers of *The Law of Peoples* have found unacceptable its willingness to respect some non-liberal regimes, in particular those that do not extend full equality to women.

51. Fareed Zakaria, *Culture is Destiny: A Conversation with Lee Kuan Yew*, 73 *Foreign Aff.* 109, 119 (1994).

On the other hand, non-liberal political societies must satisfy stringent criteria of inclusion, voice, and responsiveness in order to qualify as decent and well-ordered. When political regimes comply with these conditions, it is far from obvious that women and other dissenters would welcome outside interference. Due respect for the project of collective self-governance requires that just societies resist the impulse simply to universalize principles arrived at within the horizons of one people's institutions, history, and culture.