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principles and standards of the Law of Peoples highly plausible and capable of further support. The account of stability for the right reasons must strike us as equally convincing.

(ii) The view of democratic peace should also be plausible and well-supported by the historical record of the conduct of democratic peoples. It must also be confirmed by the guiding hypothesis that democracies fully satisfying the essential supporting conditions, (a) through (e), remain at peace with one another.

(iii) Finally, we must be able, as citizens of liberal societies, to endorse, on due reflection, the principles and judgments of the Law of Peoples. The social contract conception of that law, more than any other conception known to us, should tie together, into one coherent view, our considered political convictions and political (moral) judgments at all levels of generality.

In the next part, I discuss decent hierarchical peoples in §§8-9. In Part III I discuss the two steps of *nonideal* theory. The reason for going on to consider the point of view of decent hierarchical peoples is not to prescribe principles of justice for *them*, but to assure ourselves that liberal principles of foreign policy are also reasonable from a decent nonliberal point of view. The desire to achieve this assurance is intrinsic to the liberal conception.

PART II

The Second Part of Ideal Theory

§7. Toleration of Nonliberal Peoples

7.1. Meaning of Toleration. A main task in extending the Law of Peoples to nonliberal peoples is to specify how far liberal peoples are to tolerate nonliberal peoples. Here, to tolerate means not only to refrain from exercising political sanctions—military, economic, or diplomatic—to make a people change its ways. To tolerate also means to recognize these nonliberal societies as equal participating members in good standing of the Society of Peoples, with certain rights and obligations, including the duty of civility requiring that they offer other peoples public reasons appropriate to the Society of Peoples for their actions.

Liberal societies are to cooperate with and assist all peoples in good standing. If all societies were required to be liberal, then the idea of political liberalism would fail to express due toleration for other acceptable ways (if such there are, as I assume) of ordering society. We recognize that a liberal society is to respect its citizens' comprehensive doctrines—religious, philosophical, and moral—provided that these doctrines are pursued in ways compatible with a reasonable political conception of justice and its public reason. Similarly, we say that, provided a nonliberal society's basic institutions meet certain specified conditions of political right and justice and lead its people to honor a

reasonable and just law for the Society of Peoples, a liberal people is to tolerate and accept that society. In the absence of a better name, I call societies that satisfy these conditions *decent* peoples (§8.2).

7.2. Need for Conception of Toleration. Some may say that there is no need for the Law of Peoples to develop such an idea of toleration. The reason they might give is that citizens in a liberal society should judge other societies by how closely their ideals and institutions express and realize a reasonable liberal political conception. Given the fact of pluralism, citizens in a liberal society affirm a family of reasonable political conceptions of justice and will differ as to which conception is the most reasonable. But they agree that nonliberal societies fail to treat persons who possess all the powers of reason, intellect, and moral feeling as truly free and equal, and *therefore*, they say, nonliberal societies are always properly subject to some form of sanction—political, economic, or even military—depending on the case. On this view, the guiding principle of liberal foreign policy is gradually to shape all not yet liberal societies in a liberal direction, until eventually (in the ideal case) all societies are liberal.

The italicized “therefore” several lines back marks, however, an inference that begs the following question: how do we know, before trying to work out a reasonable Law of Peoples, that nonliberal societies are always, other things being equal, the proper object of political sanctions? As we have seen in discussing the arguments in the second original position in which the principles of the Law of Peoples are selected for liberal peoples, the parties are the representatives of equal peoples, and equal peoples will want to maintain this equality with each other. Moreover, what the representatives of peoples select among are interpretations of the eight principles listed in §4. No people will be willing to count the losses to itself as outweighed by gains to other peoples; and therefore the principle of utility, and other moral principles discussed in moral philosophy, are not even candidates for a Law of Peoples. As I explain later, this consequence, which is implied by the very procedure of extending the liberal conception of political justice from the domestic case to the Law of Peoples, will also hold for the further extension to decent peoples.

7.3. Basic Structure of Society of Peoples. A further important consideration is the following: if liberal peoples require that all societies be liberal and subject those that are not to politically enforced sanctions, then decent nonliberal peoples—if there are such—will be denied a due measure of respect by liberal peoples. This lack of respect may wound the self-respect of decent nonliberal peoples as peoples, as well as their individual members, and may lead to great bitterness and resentment. Denying respect to other peoples and their members requires strong reasons to be justified. Liberal peoples cannot say that decent peoples deny human rights, since (as we shall see in §§8–9 where the notion of decency is developed) such peoples recognize and protect these rights; nor can liberal peoples say that decent peoples deny their members the right to be consulted or a substantial political role in making decisions, since the basic structure of these societies will be seen to include a *decent consultation hierarchy* or its equivalent. Finally, decent peoples allow a right of dissent, and government and judicial officials are required to give a respectful reply, one that addresses the merits of the question according to the rule of law as interpreted by the judiciary. Dissenters may not be dismissed as simply incompetent or lacking in understanding. In this and other ways, the common good conception of justice held by decent peoples may gradually change over time, produced by the dissents of members of these peoples.

All societies undergo gradual changes, and this is no less true of decent societies than of others. Liberal peoples should not suppose that decent societies are unable to reform themselves in their own way. By recognizing these societies as *bona fide* members of the Society of Peoples, liberal peoples encourage this change. They do not in any case stifle such change, as withholding respect from decent peoples might well do. Leaving aside the deep question of whether some forms of culture and ways of life are good in themselves (as I believe they are), it is surely, *ceteris paribus*, a good for individuals and associations to be attached to their particular culture and to take part in its common public and civic life. In this way political society is expressed and fulfilled.

This is no small thing. It argues for preserving significant room for the idea of a people's self-determination and for some kind of loose or confederative form of a Society of Peoples. Recall that peoples (as op-

posed to states) have a definite moral nature (§2.1). This nature includes a certain proper pride and sense of honor; peoples may take a proper pride in their histories and achievements, as what I call a "proper patriotism" allows (§5.1). The due respect they ask for is a due respect consistent with the equality of all peoples. The interests that move peoples (and distinguish them from states) are congruent with a fair equality and a due respect for other peoples. Liberal peoples must try to encourage decent peoples and not frustrate their vitality by coercively insisting that all societies be liberal. Moreover, if a liberal constitutional democracy is, in fact, superior to other forms of society, as I believe it to be, a liberal people should have confidence in their convictions and suppose that a decent society, when offered due respect by liberal peoples, may be more likely, over time, to recognize the advantages of liberal institutions and take steps toward becoming more liberal on its own.

In the last three paragraphs I have tried to suggest the great importance of all decent peoples' maintaining their self-respect and having the respect of other liberal or decent peoples. Certainly the social world of liberal and decent peoples is not one that, by liberal principles, is fully just. Some may feel that permitting this injustice and not insisting on liberal principles for all societies requires strong reasons. I believe that there are such reasons. Most important is maintaining mutual respect among peoples. Lapsing into contempt on the one side, and bitterness and resentment on the other, can only cause damage. These relations are not a matter of the internal (liberal or decent) basic structure of each people viewed separately. Rather, maintaining mutual respect among peoples in the Society of Peoples constitutes an essential part of the basic structure and political climate of that society. The Law of Peoples considers this wider background basic structure and the merits of its political climate in encouraging reforms in a liberal direction as overriding the lack of liberal justice in decent societies.

§8. Extension to Decent Hierarchical Peoples

8.1. *Procedural Remarks.* Recall that, in ideal theory, the extension of liberal political ideas of right and justice to the Law of Peoples pro-

ceeds in two steps. The first step we completed in §§3-5: namely, the extension of the Law of Peoples to liberal societies only. The second step of ideal theory is more difficult: it challenges us to specify a second kind of society—a decent, though not a liberal society—to be recognized as a *bona fide* member of a politically reasonable Society of Peoples and in this sense "tolerated." We must try to formulate the criteria for a decent society. Our aim is to extend the Law of Peoples to decent societies and to show that they accept the same Law of Peoples that liberal societies do. This shared law describes the kind of Society of Peoples that all liberal and decent societies want, and it expresses the regulative end of their foreign policies.

In the Introduction I wrote that, in the political and social world I consider, there are five types of domestic societies: the first of these is *liberal peoples*, and the second, *decent peoples*. The basic structure of one kind of decent people has what I call a "decent consultation hierarchy," and these peoples I call "decent hierarchical peoples"; the other kind of decent people is simply a category I leave in reserve, supposing that there may be other decent peoples whose basic structure does not fit my description of a consultation hierarchy, but who are worthy of membership in a Society of Peoples. I do not try to describe these possible societies. (Liberal peoples and decent peoples I refer to together as "well-ordered peoples.") In addition, there are, third, *outlaw states* and, fourth, *societies burdened by unfavorable conditions*. Finally, fifth, we have societies that are *benevolent absolutisms*: they honor most human rights, but because they deny their members a meaningful role in making political decisions, they are not well-ordered.

In this section I first state two criteria for any decent hierarchical regime. Although these criteria would also be satisfied by a liberal democratic regime, it will become clear as we proceed that they do not require that a society be liberal. Next, we confirm that, in an appropriate original position (at the second level) with a veil of ignorance, the parties representing these decent hierarchical peoples are fairly situated, rational, and moved by appropriate reasons. Once again, the original position functions here as a model of representation, only in this case for working out a Law of Peoples among decent hierarchical peoples. Finally, given their fundamental interests as specified by the two criteria,

the parties representing decent hierarchical societies adopt the same Law of Peoples that the parties representing liberal societies adopt. (As I have said, I shall not discuss other possible kinds of decent peoples.)

In §9.3 I give an example of an imaginary decent hierarchical Muslim people whom I have named "Kazakhstan." Kazanistan honors and respects human rights, and its basic structure contains a decent consultation hierarchy, thereby giving a substantial political role to its members in making political decisions.

8.2. Two Criteria for Decent Hierarchical Societies. These societies may assume many institutional forms, religious and secular. All these societies, however, are what I call *associationist* in form: that is, the members of these societies are viewed in public life as members of different groups, and each group is represented in the legal system by a body in a decent consultation hierarchy. The two criteria discussed below specify the conditions for a decent hierarchical society to be a member in good standing in a reasonable Society of Peoples. (Many religious and philosophical doctrines with their different ideas of justice may lead to institutions satisfying these conditions. Yet, because these ideas of justice are part of a comprehensive religious or philosophical doctrine, they do not specify a political conception of justice in my sense.)

1. First, the society does not have aggressive aims, and it recognizes that it must gain its legitimate ends through diplomacy and trade and other ways of peace. Although its religious or other underlying doctrine is assumed to be comprehensive and to have influence on the structure of government and its social policy, the society respects the political and social order of other societies. If it does seek wider influence, it does so in ways compatible with the independence of other societies, including their religious and civil liberties. This feature of the society's comprehensive doctrine supports the institutional basis of its peaceful conduct and distinguishes it from the leading European states during the religious wars of the sixteenth and seventeenth centuries.

2. The second criterion has three parts.

(a) The first part is that a decent hierarchical people's system of law, in accordance with its common good idea of justice (see §9), secures for all members of the people what have come to be called human rights. A social system that violates these rights cannot specify a decent scheme of political and social cooperation. A slave society lacks a decent system of law, as its slave economy is driven by a scheme of commands imposed by force. It lacks the idea of social cooperation. (In §9 below I discuss the common good idea of justice in more detail in connection with the idea of a decent consultation hierarchy.)

Among the human rights are the right to life (to the means of subsistence and security);¹ to liberty (to freedom from slavery, serfdom, and forced occupation, and to a sufficient measure of liberty of conscience to ensure freedom of religion and thought);² to property (personal property); and to formal equality as expressed by the rules of natural justice (that is, that similar cases be treated similarly).³ Human rights, as thus understood, cannot be rejected as peculiarly liberal or special to the Western tradition. They are not politically parochial.⁴ These matters will be taken up again in §10.

(b) The second part is that a decent people's system of law must be such as to impose *bona fide* moral duties and obligations

1. See Henry Shue, *Basic Rights: Substance, Affluence, and U.S. Foreign Policy* (Princeton: Princeton University Press, 1980). Shue, p. 23, and R. J. Vincent, in his *Human Rights and International Relations*, interpret subsistence as including minimum economic security, and both hold subsistence rights as basic. I agree, since the sensible and rational exercise of all liberties, of whatever kind, as well as the intelligent use of property, always implies having general all-purpose economic means.

2. As discussed in §9.2, this liberty of conscience may not be as extensive nor as equal for all members of society: for instance, one religion may legally predominate in the state government, while other religions, though tolerated, may be denied the right to hold certain positions. I refer to this kind of situation as permitting "liberty of conscience, though not an equal liberty."

3. On the rules of natural justice, see Hart, *The Concept of Law*, pp. 156ff.

4. T. M. Scanlon emphasizes this point in "Human Rights as a Neutral Concern," in *Human Rights and U.S. Foreign Policy*, ed. P. Brown and D. MacLean (Lexington, Mass.: Lexington Books, 1979), pp. 83, 89-92. It is relevant when we note that the support for human rights should be part of the foreign policy of well-ordered societies.

(distinct from human rights) on all persons within the people's territory.⁵ Since the members of the people are viewed as decent and rational, as well as responsible and able to play a part in social life, they recognize these duties and obligations as fitting with their common good idea of justice and do not see their duties and obligations as mere commands imposed by force. They have the capacity for moral learning and know the difference between right and wrong as understood in their society. In contrast to a slave economy, their system of law specifies a decent scheme of political and social cooperation.

A decent hierarchical society's conception of the person, as implied by the second criterion, does not require acceptance of the liberal idea that persons are citizens first and have equal basic rights as equal citizens. Rather it views persons as responsible and cooperating members of their respective groups. Hence, persons can recognize, understand, and act in accordance with their moral duties and obligations as members of these groups.

(c) Finally, the third part of the second criterion is that there must be a sincere and not unreasonable belief on the part of judges and other officials who administer the legal system that the law is indeed guided by a common good idea of justice. Laws supported merely by force are grounds for rebellion and resistance. It would be unreasonable, if not irrational, for judges and other officials to think that the common good idea of justice, which assigns human rights to all members of a people, is being

5. Here I draw upon Philip Soper's *A Theory of Law* (Cambridge, Mass.: Harvard University Press, 1984), especially pp. 125-147. Soper holds that a system of law, as distinct from a system of mere commands coercively enforced, must be such as to give rise to moral duties and obligations for all members of society. For a system of law to be maintained, judges and other officials must sincerely and reasonably believe that the law is guided by a common good idea of justice. I don't, however, follow Soper in all respects. A scheme of rules must satisfy his definition to qualify as a proper system of law; see chapter IV, pp. 91-100. But I want to avoid the long-debated jurisprudential problem of the definition of law, and I also don't want to argue that the antebellum South, say, didn't have a system of law. So I see the second part of the above criterion—that a decent people's system of law must be such as to impose *bona fide* moral duties and obligations—as following from a liberal conception of justice extended to the Law of Peoples. I am indebted to Samuel Freeman for valuable discussion of these points.

followed when those rights are systematically violated. This sincere and reasonable belief on the part of judges and officials must be shown in their good faith and willingness to defend publicly society's injunctions as justified by law. The courts serve as a forum for this defense.⁶

8.3. *Basis of the Two Criteria.* Just as with the idea of the reasonable in political liberalism, there is no definition of decency from which the two criteria can be deduced (see §12.2). Instead we say that the two criteria seem acceptable in their general statement.⁷ I think of decency as a normative idea of the same kind as reasonableness, though weaker (that is, it covers less than reasonableness does). We give it meaning by how we use it. Thus, a decent people must honor the laws of peace; its system of law must be such as to respect human rights and to impose duties and obligations on all persons in its territory. Its system of law must follow a common good idea of justice that takes into account what it sees as the fundamental interests of everyone in society. And, finally, there must be a sincere and not unreasonable belief on the part of judges and other officials that the law is indeed guided by a common good idea of justice.

This account of decency, like that of reasonableness, is developed by setting out various criteria and explaining their meaning. The reader has to judge whether a decent people, as given by the two criteria, is to be tolerated and accepted as a member in good standing of the Society of Peoples. It is my conjecture that most reasonable citizens of a liberal society will find peoples who meet these two criteria acceptable as peoples in good standing. Not all reasonable persons will, certainly, yet most will.

The two ideas of justice we have discussed stand at opposite poles. The liberal conception is the one from which we start in our own society and regard as sound on due reflection. The decent common good idea of hierarchical peoples is a minimal idea. Its being realized by a

6. Here I adapt Soper's idea, in *A Theory of Law*, pp. 118, 112.

7. A decent consultation hierarchy is discussed in §9.

society renders its institutions worthy of toleration. There may be a wide range of institutional forms satisfying decent hierarchical ideas, but I shall not try to survey them. My aim has been to outline an idea of justice that, though distant from liberal conceptions, still has features that give to societies so regulated the decent moral status required for them to be members in good standing of a reasonable Society of Peoples.

The features of human rights as I have so far described them have been accounted for in two ways. One is to view them as belonging to a reasonably just liberal political conception of justice and as a proper subset of the rights and liberties secured to all free and equal citizens in a constitutional liberal democratic regime. The other is to view them as belonging to an associationalist social form (as I have called it) which sees persons first as members of groups—associations, corporations, and estates. As such members, persons have rights and liberties enabling them to meet their duties and obligations and to engage in a decent system of social cooperation. What have come to be called human rights are recognized as necessary conditions of any system of social cooperation. When they are regularly violated, we have command by force, a slave system, and no cooperation of any kind.

These rights do not depend on any particular comprehensive religious doctrine or philosophical doctrine of human nature. The Law of Peoples does not say, for example, that human beings are moral persons and have equal worth in the eyes of God; or that they have certain moral and intellectual powers that entitle them to these rights. To argue in these ways would involve religious or philosophical doctrines that many decent hierarchical peoples might reject as liberal or democratic, or as in some way distinctive of Western political tradition and prejudicial to other cultures. Still, the Law of Peoples does not deny these doctrines.

It is important to see that an agreement on a Law of Peoples ensuring human rights is not an agreement limited only to liberal societies. I shall now try to confirm this point.

8.4. Original Position for Decent Hierarchical Peoples. Decent hierarchical peoples are well-ordered in terms of their own ideas of justice,

which satisfy the two criteria. This being so, I submit that their representatives in an appropriate original position would adopt the same eight principles (§4.1) as those I argued would be adopted by the representatives of liberal societies. The argument for this is as follows: decent hierarchical peoples do not engage in aggressive war; therefore their representatives respect the civic order and integrity of other peoples and accept the symmetrical situation (the equality) of the original position as fair. Next, in view of the common good ideas of justice held in decent hierarchical societies, the representatives strive both to protect the human rights and the good of the people they represent and to maintain their security and independence. The representatives care about the benefits of trade and also accept the idea of assistance among peoples in time of need. Hence, we can say that the representatives of hierarchical societies are decent and rational. In view of this reasoning, we can also say that the members of decent hierarchical societies would accept—as you and I would accept⁸—the original position as fair among peoples, and would endorse the Law of Peoples adopted by their representatives as specifying fair terms of political cooperation with other peoples.

As I noted earlier in discussing the need for an idea of toleration (§7.2–3), some may object that treating the representatives of peoples equally when equality does not hold within their domestic societies is inconsistent, or unfair. The intuitive force of equality holds, it might be said, only between individuals, and treating societies equally depends on their treating their members equally. I don't agree. Instead, equality holds between reasonable or decent, and rational, individuals or collectives of various kinds when the relation of equality between them is appropriate for the case at hand. An example: in certain matters, churches may be treated equally and are to be consulted as equals on policy questions—the Catholic and the Congregational churches, for instance. This can be sound practice, it seems, even though the first is hierarchically organized, while the second is not. A second example: universities also may be organized in many ways. Some may choose their presidents by a kind of consultation hierarchy including all rec-

8. Here you and I are members of decent hierarchical societies, but not the same one.

ognized groups, others by elections in which all their members, including undergraduates, have a vote. In some cases the members have only one vote; other arrangements allow plural voting depending on the voter's status. But the fact that universities' internal arrangements differ doesn't rule out the propriety of treating them as equals in certain circumstances. Further examples can easily be imagined.⁹

Clearly, I have supposed that the representatives of peoples are to be situated equally, even though the ideas of justice of the decent nonliberal societies they represent allow basic inequalities among their members. (For example, some members may not be granted what I call "equal liberty of conscience"; see note 2 above.) There is, however, no inconsistency: 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.

Note that, in the case of a decent hierarchical society, there is no original position argument deriving the form of its basic structure. As it is used in a social contract conception, an original position argument for domestic justice is a liberal idea, and it does not apply to the domestic justice of a decent hierarchical regime. That is why the Law of Peoples uses an original position argument only three times: twice for liberal societies (once at the domestic level and once at the Law of Peoples level), but only once, at the second level, for decent hierarchical societies. Only equal parties can be symmetrically situated in an original position. Equal peoples, or their representatives, are equal parties at the level of the Law of Peoples. At another level, it makes sense to think of liberal and decent peoples together in an original position when joining together into regional associations or federations of some kind, such as the European Community, or the commonwealth of the republics in the former Soviet Union. It is natural to envisage future world society as in good part composed of such federations together with certain institutions, such as the United Nations, capable of speaking for all the societies of the world.

9. I am indebted to Thomas Nagel for discussion of this question.

§9. Decent Consultation Hierarchy

9.1. Consultation Hierarchy and Common Aim. The first two parts of the second criterion require that a decent hierarchical society's system of law be guided by what I have called a common good idea of justice.¹⁰ But the meaning of such an idea is not yet clear. I try to spell it out further, first, by distinguishing it from the common aim of a people (if they have one) and, second, by insisting that the legal system of a decent hierarchical people must contain a decent consultation hierarchy. That is, the basic structure of the society must include a family of representative bodies whose role in the hierarchy is to take part in an established procedure of consultation and to look after what the people's common good idea of justice regards as the important interests of all members of the people.

The common aim or end (should there be one) is what the society as a whole tries to achieve for itself or its members. The common aim or end affects what persons receive and their well-being. In the common good idea of justice the pursuit of this common aim is to be encouraged, but is not to be maximized in and of itself, but rather maximized consistent with the restrictions specified by honoring the steps in the consultation procedure, which provides the institutional basis for protecting the rights and duties of the members of the people. (Many societies do not have a common aim but rather what I shall call "special priorities" [§9.3]. In this case also, these priorities must be pursued in a manner consistent with the restrictions specified by the consultation procedure.)

Although all persons in a decent hierarchical society are not regarded as free and equal citizens, nor as separate individuals deserving equal representation (according to the maxim: one citizen, one vote), they are seen as decent and rational and as capable of moral learning as recognized in their society. As responsible members of society, they can recognize when their moral duties and obligations accord with the people's common good idea of justice. Each person belongs to a group

10. Well-ordered societies with liberal conceptions of political justice also have a common good conception in this sense: namely, the common good of achieving political justice for all its citizens over time and preserving the free culture that justice allows.

represented by a body in the consultation hierarchy, and each person engages in distinctive activities and plays a certain role in the overall scheme of cooperation.

In political decisions a decent consultation hierarchy allows 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 of the society as expressed in its idea of the common good. Persons as members of associations, corporations, and estates have the right at some point in the procedure of consultation (often at the stage of selecting a group's representatives) to express political dissent, and the government has an obligation to take a group's dissent seriously and to give a conscientious reply. It is necessary and important that different voices be heard, because judges' and other officials' sincere belief in the justice of the legal system must include respect for the possibility of dissent.¹¹ Judges and other officials must be willing to address objections. They cannot refuse to listen, charging that the dissenters are incompetent and unable to understand, for then we would have not a decent consultation hierarchy, but a paternalistic regime.¹² Moreover, should the judges and other officials listen, the dissenters are not required to accept the answer given to them; they may renew their protest, provided they explain why they are still dissatisfied, and their explanation in turn ought to receive a further and fuller reply. Dissent expresses a form of public protest and is permissible provided it stays within the basic framework of the common good idea of justice.

9.2. Three Observations. Many points need to be examined before the idea of a decent consultation hierarchy is sufficiently clear. I note three. A first observation concerns why there are groups represented by bodies in the consultation hierarchy. (In the liberal scheme, separate citizens are so represented.) One answer is that a decent hierarchical society might hold a view similar to Hegel's, which goes as follows: in

11. See Soper, *A Theory of Law*, p. 141.

12. The procedure of consultation is often mentioned in discussions of Islamic political institutions; yet it is clear that the purpose of consultation is often so that the Caliph can obtain a commitment of loyalty from his subjects, or sometimes so that he can discern the strength of the opposition.

the well-ordered decent society, persons belong first to estates, corporations, and associations—that is, groups. Since these groups represent the rational interests of their members, some persons will take part in publicly representing these interests in the consultation process, but they do so as members of associations, corporations, and estates, and not as individuals. The justification for this arrangement is as follows: whereas, so the view goes, in a liberal society, where each citizen has one vote, citizens' interests tend to shrink and center on their private economic concerns to the detriment of the bonds of community, in a consultation hierarchy, when their group is so represented, the voting members of the various groups take into account the broader interests of political life. Of course, a decent hierarchical society has never had the concept of one person, one vote, which is associated with a liberal democratic tradition of thought that is foreign to it, and perhaps would think (as Hegel did) that such an idea mistakenly expresses an individualistic idea that each person, as an atomistic unit, has the basic right to participate equally in political deliberation.¹³

13. See Hegel, *Philosophy of Right* (1821), §308. Hegel's main objection to the Constitution of Württemberg presented by the liberal King in 1815–1816 fixes on its idea of direct suffrage. His objection is found in part in the following passage from the essay of 1817, "The Proceedings of the Estates Assembly in the Kingdom of Württemberg, 1815–1816": "The electors appear otherwise in no bond or connexion with the civil order and the organization of the state. The citizens come to the scene as isolated atoms, and the electoral assemblies as unordered inorganic aggregates; the people as a whole are dissolved into a heap. This is a form in which the community should never have appeared at all in undertaking any enterprise; it is a form most unworthy of the community and most in contradiction with its concepts as a spiritual order. Age and property are qualities affecting only the individual himself, not characteristically constituting his worth in the civil order. Such worth he has only on the strength of his office, his position, his skill in craftsmanship which, recognized by his fellow citizens, entitles him accordingly to be described as master of his craft" (p. 262). The passage continues along these lines and concludes by saying: "On the other hand, of one who is only twenty-five years old and the owner of real estate that brings him 200 or more guilders a year, we say 'he is nothing.' If the constitution nevertheless makes him something, a voter, it grants him lofty political right without any tie with other civic bodies and introduces one of the most important matters in a situation which has more in common with the democratic, even anarchical, principle of separation than with that of an organic order" (pp. 262–263). Despite these objections, Hegel took the side of the liberal constitution of the King against the conservative estates. I cite the translation of Hegel's essay in *Hegel's Political Writings*, trans. T. M. Knox with an introduction by Z. A. Pelczynski (Oxford: Clarendon Press, 1964).

Second, the nature of a decent people's view of religious toleration needs explicit mention. Although in decent hierarchical societies a state religion may, on some questions, be the ultimate authority within society and may control government policy on certain important matters, that authority is not (as I have already stressed) extended politically to relations with other societies. Further, a decent hierarchical society's (comprehensive) religious or philosophical doctrines must not be fully unreasonable. By this I mean, among other things, that these doctrines must admit a sufficient measure of liberty of conscience and freedom of religion and thought, even if these freedoms are not as extensive nor as equal for all members of the decent society as they are in liberal societies. Although the established religion may have various privileges, it is essential to the society's being decent that no religion be persecuted, or denied civic and social conditions permitting its practice in peace and without fear.¹⁴ Moreover, in view of the possible inequality of religious freedom, if for no other reason, it is essential that a hierarchical society allow and provide assistance for the right of emigration.¹⁵

The question might arise here as to why religious or philosophical doctrines that deny full and equal liberty of conscience are not unreasonable. I do not say that they are reasonable, but rather that they are not fully unreasonable; one should allow, I think, a space between the fully unreasonable and the fully reasonable. The latter requires full and equal liberty of conscience, and the former denies it entirely. Traditional doctrines that allow a measure of liberty of conscience but do

14. On the importance of this stipulation, see Judith Shklar's *Ordinary Vices* (Cambridge, Mass.: Harvard University Press, 1984), in which she presents what she calls the "liberalism of fear." See especially the introduction and chapters 1 and 6. Shklar once called this kind of liberalism that of "permanent minorities"; see her *Legalism* (Cambridge, Mass.: Harvard University Press, 1964), p. 224.

15. Subject to certain qualifications, liberal societies must also allow for this right. It may be objected that the right of emigration lacks a point without the right to be accepted somewhere as an immigrant. But many rights are without point in this sense: to give a few examples, the right to marry, to invite people into one's house, or even to make a promise. It takes two to make good on these rights. Another complex question is how far the right to emigration should extend. Whatever the answer, certainly the right to emigration for religious minorities should not be merely formal, and a people should provide assistance for emigrants when feasible.

not allow it fully are views that I believe lie in that space and are not fully unreasonable.

A third observation concerns the representation in a consultation hierarchy of members of society, such as women, who may have long been subjected to oppression and abuse, amounting to the violation of their human rights. One step to ensure that their claims are appropriately taken into account may be to arrange that a majority of the members of the bodies representing the (previously) oppressed be chosen from among those whose rights have been violated. As we have seen, one condition of a decent hierarchical society is that its legal system and social order do not violate human rights. The procedure of consultation must be arranged to stop all such violations.¹⁶

9.3. *Kazakhstan: A Decent Hierarchical People.* The Law of Peoples does not presuppose the existence of actual decent hierarchical peoples any more than it presupposes the existence of actual reasonably just constitutional democratic peoples. If we set the standards very high, neither exists. In the case of democratic peoples, the most we can say is that some are closer than others to a reasonably just constitutional regime. The case of decent hierarchical peoples is even less clear. Can we coherently describe its basic social institutions and political virtues?

Guided by §§8-9, I now describe a hypothetical decent hierarchical people. The purpose of this example is to suggest that a decent government is viable provided that its rulers do not allow themselves to be corrupted, either by favoring the rich or by enjoying the exercise of power for itself. Imagine an idealized Islamic people named "Kazakhstan." Kazakhstan's system of law does not institute the separation of church and state. Islam is the favored religion, and only Muslims can hold the upper positions of political authority and influence the government's main decisions and policies, including foreign affairs. Yet

16. I return to this point in §10. It should be noted here that some writers maintain that full democratic and liberal rights are necessary to prevent violations of human rights. This is stated as an empirical fact supported by historical experience. I do not argue against this contention, and indeed it may be true. But my remarks about a decent hierarchical society are conceptual. I ask, that is, whether we can imagine such a society; and, should it exist, whether we would judge that it should be tolerated politically.

other religions are tolerated and may be practiced without fear or loss of most civic rights, except the right to hold the higher political or judicial offices. (This exclusion marks a fundamental difference between Kazanistan and a liberal democratic regime, where all offices and positions are, in principle, open to each citizen.) Other religions and associations are encouraged to have a flourishing cultural life of their own and to take part in the civic culture of the wider society.¹⁷

As I imagine it, this decent people is marked by its enlightened treatment of the various non-Islamic religions and other minorities who have been living in its territory for generations, originating from conquests long ago or from immigration which the people permitted. These minorities have been loyal subjects of society, and they are not subjected to arbitrary discrimination, or treated as inferior by Muslims in public or social relations. To try to strengthen their loyalty, the government allows that non-Muslims may belong to the armed forces and serve in the higher ranks of command. Unlike most Muslim rulers, the rulers of Kazanistan have not sought empire and territory. This is in part a result of its theologians' interpreting *jihad* in a spiritual and moral sense, and not in military terms.¹⁸ The Muslim rulers have long held the view that all members of society naturally want to be loyal members of the country into which they are born; and that, unless they are unfairly treated and discriminated against, they will remain so. Following this idea has proved highly successful. Kazanistan's non-

17. Many paths can lead to toleration; on this see Michael Walzer's *On Toleration* (New Haven: Yale University Press, 1997). The doctrine I have attributed to the rulers of Kazanistan was similar to one found in Islam some centuries ago. (The Ottoman Empire tolerated Jews and Christians; the Ottoman rulers even invited them to come to the capital city of Constantinople.) This doctrine affirms the worthiness of all decent religions and provides the essentials of what realistic utopia requires. According to this doctrine: (a) all religious differences between peoples are divinely willed, and this is so whether the believers belong to the same or different societies; (b) punishment for wrong belief is for God alone; (c) communities of different beliefs are to respect one another; (d) belief in natural religion is inborn in all people. These principles are discussed by Roy Mottahedeh in his "Toward an Islamic Theory of Toleration," in *Islamic Law Reform and Human Rights* (Oslo: Nordic Human Rights Publications, 1993).

18. The spiritual interpretation of *jihad* was once common in Islamic countries; under this interpretation, *jihad* was understood to be an obligation of every individual Muslim. See Bernard Lewis, *The Middle East* (New York: Scribner, 1995), pp. 233ff.

Muslim members and its minorities have remained loyal and supported the government in times of danger.

I think it is also plausible to imagine Kazanistan as organized in a decent consultation hierarchy, which has been changed from time to time to make it more sensitive to the needs of its people and the many different groups represented by legal bodies in the consultation hierarchy. This hierarchy satisfies quite closely the following six guidelines. First, all groups must be consulted. Second, each member of a people must belong to a group. Third, each group must be represented by a body that contains at least some of the group's own members who know and share the fundamental interests of the group. These first three conditions ensure that the fundamental interests of all groups are consulted and taken into account.¹⁹ Fourth, the body that makes the final decision—the rulers of Kazanistan—must weigh the views and claims of each of the bodies consulted, and, if called upon, judges and other officials must explain and justify the rulers' decision. In the spirit of the procedure, consultation with each body may influence the outcome. Fifth, the decision should be made according to a conception of the special priorities of Kazanistan. Among these special priorities is to establish a decent and rational Muslim people respecting the religious minorities within it. Here we may expect non-Muslim minorities to be less wedded to certain of the priorities than Muslims, but we may reasonably conjecture, I believe, that both Muslims and non-Muslims will understand and regard these priorities as significant. Sixth and last—but highly important—these special priorities must fit into an overall scheme of cooperation, and the fair terms according to which the group's cooperation is to be conducted should be explicitly specified.²⁰ This conception is not precise; yet it serves as a guide for decision-making against the background of actual situations and established expectations.

19. This seems closest to John Finnis's first sense of the common good in his *Natural Law and Natural Rights* (Oxford: Clarendon Press, 1980), pp. 155ff.

20. This conception of the common good is close to Finnis's third sense. See again *Natural Law and Natural Rights*, pp. 155ff. Here I reiterate that a consultation hierarchy does not strive simply to maximize achievement of the common aim. Rather, it tries to maximize this achievement consistent with honoring all the restrictions enshrined in the procedure of consultation itself. This is what distinguishes a just or decent society from others.

Finally, I imagine the basic structure of Kazanistan as including assemblies where the bodies in the consultation hierarchy can meet. Here representatives can raise their objections to government policies, and members of the government can express their replies, which the government is required to do. Dissent is respected in the sense that a reply is due that spells out how the government thinks it can both reasonably interpret its policies in line with its common good idea of justice and impose duties and obligations on all members of society. I further imagine, as an example of how dissent, when allowed and listened to, can instigate change, that in Kazanistan dissent has led to important reforms in the rights and role of women, with the judiciary agreeing that existing norms could not be squared with society's common good idea of justice.

I do not hold that Kazanistan is perfectly just, but it does seem to me that such a society is decent. Moreover, even though it is only imagined, I do not think it is unreasonable that a society like Kazanistan might exist, especially as it is not without precedent in the real world (as note 18 above indicates). Readers might charge me with baseless utopianism, but I disagree. Rather, it seems to me that something like Kazanistan is the best we can realistically—and coherently—hope for. It is an enlightened society in its treatment of religious minorities. I think enlightenment about the limits of liberalism recommends trying to conceive a reasonably just Law of Peoples that liberal and nonliberal peoples could together endorse. The alternative is a fatalistic cynicism which conceives the good of life solely in terms of power.

§10. Human Rights

10.1. Law of Peoples Sufficiently Liberal. It may be objected that the Law of Peoples is not sufficiently liberal. This objection might take two forms. For one, some think of human rights as roughly the same rights that citizens have in a reasonable constitutional democratic regime; this view simply expands the class of human rights to include all the rights that liberal governments guarantee. Human rights in the Law of

10. Human Rights

Peoples, by contrast, express a special class of urgent rights, such as freedom from slavery and serfdom, liberty (but not equal liberty) of conscience, and security of ethnic groups from mass murder and genocide. The violation of this class of rights is equally condemned by both reasonable liberal peoples and decent hierarchical peoples.

A second claim of those who hold that the Law of Peoples is not sufficiently liberal is that only liberal democratic governments are effective in protecting even those human rights specified by the Law of Peoples. According to critics who take this line, this is a fact confirmed by the history of many different countries around the world. Should the facts of history, supported by the reasoning of political and social thought, show that hierarchical regimes are always, or nearly always, oppressive and deny human rights, the case for liberal democracy is made.²¹ The Law of Peoples assumes, however, that decent hierarchical peoples exist, or could exist, and considers why they should be tolerated and accepted by liberal peoples as peoples in good standing.

10.2. Role of Human Rights in the Law of Peoples. Human rights are a class of rights that play a special role in a reasonable Law of Peoples: they restrict the justifying reasons for war and its conduct, and they specify limits to a regime's internal autonomy. In this way they reflect the two basic and historically profound changes in how the powers of sovereignty have been conceived since World War II. First, war is no longer an admissible means of government policy and is justified only in self-defense, or in grave cases of intervention to protect human rights. And second, a government's internal autonomy is now limited.

Human rights are distinct from constitutional rights, or from the rights of liberal democratic citizenship,²² or from other rights that belong to certain kinds of political institutions, both individualist and

21. The Copenhagen Convention of 1990 defended democratic rights as instrumental in this way.

22. See Judith Shklar's illuminating discussion of the rights of democratic citizenship in her *American Citizenship* (Cambridge, Mass.: Harvard University Press, 1991), with her emphasis on the historical significance of slavery.

associationist. Human rights set a necessary, though not sufficient, standard for the decency of domestic political and social institutions. In doing so they limit admissible domestic law of societies in good standing in a reasonably just Society of Peoples.²³ Hence the special class of human rights has these three roles:

1. Their fulfillment is a necessary condition of the decency of a society's political institutions and of its legal order (§§8-9).
2. Their fulfillment is sufficient to exclude justified and forceful intervention by other peoples, for example, by diplomatic and economic sanctions, or in grave cases by military force.
3. They set a limit to the pluralism among peoples.²⁴

10.3. Human Rights in Outlaw States. The list of human rights honored by both liberal and decent hierarchical regimes should be understood as universal rights in the following sense: they are intrinsic to the Law of Peoples and have a political (moral) effect whether or not they are supported locally. That is, their political (moral) force extends to all societies, and they are binding on all peoples and societies, includ-

23. This statement can be clarified by distinguishing among the rights that have been listed as human rights in various international declarations. Consider the 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, degrading treatment or punishment." Articles 3 to 18 may all be put under this heading of human rights proper, pending certain questions of interpretation. Second, there are human rights that are obvious implications of the first class of rights. The second class of rights covers the extreme cases described by the special conventions on genocide (1948) and on apartheid (1973). These two classes comprise the human rights connected with the common good, as explained in the text above.

Of the other declarations, some seem more aptly described as stating liberal aspirations, such as Article 1 of the Universal Declaration of Human Rights of 1948: "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." 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.

24. See Terry Nardin, *Law, Morality, and the Relations of States* (Princeton: Princeton University Press, 1983), p. 240, citing Luban's "The Romance of the Nation-State," PAPA, vol. 9 (1980): p. 306.

ing outlaw states.²⁵ An outlaw state that violates these rights is to be condemned and in grave cases may be subjected to forceful sanctions and even to intervention. The propriety of enforcing the Law of Peoples is already clear from our reflections on the two traditional powers of sovereignty (§2.2), and what I shall say later about the duty of assistance will confirm the right to intervention.

It may be asked by what right well-ordered liberal and decent peoples are justified in interfering with an outlaw state on the grounds that this state has violated human rights. Comprehensive doctrines, religious or nonreligious, might base the idea of human rights on a theological, philosophical, or moral conception of the nature of the human person. That path the Law of Peoples does not follow. What I call human rights are, as I have said, a proper subset of the rights possessed by citizens in a liberal constitutional democratic regime, or of the rights of the members of a decent hierarchical society. As we have worked out the Law of Peoples for liberal and decent peoples, these peoples simply do not tolerate outlaw states. This refusal to tolerate those states is a consequence of liberalism and decency. If the political conception of political liberalism is sound, and if the steps we have taken in developing the Law of Peoples are also sound, then liberal and decent peoples have the right, under the Law of Peoples, not to tolerate outlaw states. Liberal and decent peoples have extremely good reasons for their attitude. Outlaw states are aggressive and dangerous; all peoples are safer and more secure if such states change, or are forced to change, their ways. Otherwise, they deeply affect the international climate of power and violence. I return to these matters in Part III on nonideal theory.²⁶

25. Peter Jones, "Human Rights: Philosophical or Political," in *National Rights, International Obligations*, ed. Simon Caney, David George, and Peter Jones (Boulder: Westview Press, 1996), interprets my account of human rights in "The Law of Peoples" as published in *On Human Rights: The Oxford Amnesty Lectures* (New York: Basic Books, 1993) in a way that I believe is mistaken. He is correct in seeing that I interpret human rights as a group of rights that both liberal and decent hierarchical peoples would enforce and recognize. It is not clear that he thinks of them as universal and applying to outlaw states.

26. We must at some point face the question of interfering with outlaw states simply for their violation of human rights, even when these states are not dangerous and aggressive, but indeed quite weak. I come back to this serious question in §§14-15, in my discussion of nonideal theory.

§11. Comments on Procedure of the Law of Peoples

11.1. *The Place of Cosmopolitan Justice.* Having completed the two parts of ideal theory, I pause to make a few comments on the way the Law of Peoples has been set out using a liberal social contract political conception of justice.

Some think that any liberal Law of Peoples, particularly any social contract such law, should begin by first taking up the question of liberal cosmopolitan or global justice for all persons. They argue that in such a view all persons are considered to be reasonable and rational and to possess what I have called "the two moral powers"—a capacity for a sense of justice and a capacity for a conception of the good—which are the basis of political equality both in comprehensive liberalism, as found in Kant or J. S. Mill, and in political liberalism. From this starting point they go on to imagine a global original position with its veil of ignorance behind which all parties are situated symmetrically. Following the kind of reasoning familiar in the original position for the domestic case,²⁷ the parties would then adopt a first principle that all persons have equal basic rights and liberties. Proceeding this way would straightforwardly ground human rights in a political (moral) conception of liberal cosmopolitan justice.²⁸

To proceed in this way, however, takes us back to where we were in §7.2 (where I considered and rejected the argument that nonliberal societies are always properly subject to some form of sanctions), since it amounts to saying that all persons are to have the equal liberal rights of citizens in a constitutional democracy. On this account, the foreign policy of a liberal people—which it is our concern to elaborate—will be to act gradually to shape all not yet liberal societies in a liberal direction, until eventually (in the ideal case) all societies are liberal. But this foreign policy simply assumes that only a liberal democratic soci-

27. See *A Theory of Justice*, §§4, 24.

28. Brian Barry, in his *Theories of Justice* (Berkeley: University of California Press, 1989), discusses the merits of this procedure. See also Charles Beitz, *Political Theory and International Relations* (Princeton: Princeton University Press, 1979), part III; Thomas Pogge, *Realizing Rawls* (Ithaca, N.Y.: Cornell University Press, 1990), part 3, chaps. 5–6; and David Richards, "International Distributive Justice," *Nomos*, vol. 24 (1982). All seem to have taken this path.

ety can be acceptable. Without trying to work out a reasonable liberal Law of Peoples, we cannot know that nonliberal societies cannot be acceptable. The possibility of a global original position does not show that, and we can't merely assume it.

The Law of Peoples proceeds from the international political world as we see it, and concerns what the foreign policy of a reasonably just liberal people should be. To elaborate this foreign policy, the Law of Peoples discusses two kinds of well-ordered peoples, liberal democratic peoples and decent hierarchical peoples. The law also discusses outlaw states and states suffering from unfavorable conditions. I recognize that my account involves great simplification. Nevertheless, it allows us to examine in a reasonably realistic way what should be the aim of the foreign policy of a liberal democratic people.

11.2. *Clarifications about Decent Societies.* To repeat, I am not saying that a decent hierarchical society is as reasonable and just as a liberal society. For judged by the principles of a liberal democratic society, a decent hierarchical society clearly does not treat its members equally. A decent society does, however, have a common good political conception of justice (§8.2), and this conception is honored in its decent consultation hierarchy (§9.1). Moreover, it honors a reasonable and just Law of Peoples, the same law that liberal peoples do. That law applies to how peoples treat each other as *peoples*. How peoples treat each other and how they treat their own members are, it is important to recognize, two different things. A decent hierarchical society honors a reasonable and just Law of Peoples even though it does not treat its own members reasonably or justly as free and equal citizens, since it lacks the liberal idea of citizenship.

A decent hierarchical society meets moral and legal requirements sufficient to override the political reasons we might have for imposing sanctions on, or forcibly intervening with, its people and their institutions and culture. It is important to emphasize that the reasons for not imposing sanctions do not boil down solely to the prevention of possible error and miscalculation in dealing with a foreign people. The danger of error, miscalculation, and also arrogance on the part of those who propose sanctions must, of course, be taken into account; yet de-