

THE LAW OF PEOPLES

with "The Idea of Public Reason Revisited"



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Preface

Since the late 1980s I have thought occasionally of developing what I have called “The Law of Peoples.” I first chose the name “peoples” rather than “nations” or “states” because I wanted to conceive of peoples as having different features from those of states, since the idea of states, as traditionally conceived with their two powers of sovereignty (see §2.2), was unsuitable. In the next years I devoted more time to the topic, and on February 12, 1993—Lincoln’s birthday—I delivered an Oxford Amnesty Lecture entitled “The Law of Peoples.” The lecture provided an occasion on which to remind the audience of Lincoln’s greatness (which I did in my conclusion), but I was never satisfied with what I said or did with the published essay (the original version was published in the volume *On Human Rights: The Oxford Amnesty Lectures, 1993*, ed. Stephen Shute and Susan Hurley [New York: Basic Books, 1993]). It wasn’t feasible to try to cover so much in a single lecture, and what I did cover was not fully developed and was open to misinterpretation. The present version, completed during 1997–1998 (a rewriting of three seminars I gave at Princeton University in April 1995), is fuller and more satisfactory.

Prior to the final reworking of the manuscript, I completed “The Idea of Public Reason Revisited,” which originally appeared in the *University of Chicago Law Review*, 64 (Summer 1997), and subsequently was included in my *Collected Papers* published by Harvard

Introduction

1. By the "Law of Peoples"¹ I mean a particular political conception of right and justice that applies to the principles and norms of international law and practice. I shall use the term "Society of Peoples" to mean all those peoples who follow the ideals and principles of the Law of Peoples in their mutual relations. These peoples have their own internal governments, which may be constitutional liberal democratic or non-liberal but decent² governments. In this book I consider how the content of the Law of Peoples might be developed out of a liberal idea of justice similar to, but more general than, the idea I called *justice as fairness*³

1. The term "law of peoples" derives from the traditional *ius gentium*, and the phrase *ius gentium intra se* refers to what the laws of all peoples have in common. See R. J. Vincent, *Human Rights and International Relations* (Cambridge and New York: Cambridge University Press, 1986), p. 27. I do not use the term "law of peoples" with this meaning, however, but rather to mean the particular political principles for regulating the mutual political relations between peoples, as defined in §2.

2. I use the term "decent" to describe nonliberal societies whose basic institutions meet certain specified conditions of political right and justice (including the right of citizens to play a substantial role, say through associations and groups, in making political decisions) and lead their citizens to honor a reasonably just law for the Society of Peoples. The idea is discussed at length in Part II. My use of the term differs from that of Avishai Margalit, who emphasizes consideration of social welfare in *The Decent Society* (Cambridge, Mass.: Harvard University Press, 1996).

3. By the italics I mean to signify that "justice as fairness" is the name of a particular conception of justice. Subsequently italics will not be used.

in *A Theory of Justice* (1971). This idea of justice is based on the familiar idea of the social contract, and the procedure followed before the principles of right and justice are selected and agreed upon is in some ways the same in both the domestic and the international case. I shall discuss how such a Law of Peoples⁴ fulfills certain conditions, which justify calling the Society of Peoples a *realistic utopia* (see §1), and I shall also return to and explain why I have used the term "peoples" and not "states."⁵

In §58 of *A Theory of Justice* I indicated how justice as fairness can be extended to international law (as I called it there) for the limited purpose of judging the aims and limits of just war. Here my discussion covers more ground. I propose considering five types of domestic societies. The first is *reasonable liberal peoples*; the second, *decent peoples* (see note 2 above). 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." Other possible kinds of decent peoples I do not try to describe, but simply leave in reserve, allowing 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. (Liberal peoples and decent peoples I refer to together as "well-ordered peoples.")⁶ There are, third, *outlaw states* and, fourth, *societies burdened by unfavorable conditions*. Finally, fifth, we have societies that are *benevolent absolutisms*: they honor human rights; but, because their members are denied a meaningful role in making political decisions, they are not well-ordered.

The account of the extension of a general social contract idea to a Society of Peoples will unfold in three parts, covering both what I have called ideal and nonideal theory. The first part of ideal theory in Part I concerns the extension of the general social contract idea to the

4. Throughout this book I will sometimes refer to a Law of Peoples, and sometimes to the Law of Peoples. As will become clear, there is no single possible Law of Peoples, but rather a family of reasonable such laws meeting all the conditions and criteria I will discuss, and satisfying the representatives of peoples who will be determining the specifics of the law.

5. In §2 I explain the meaning of "peoples" more fully.

6. The term "well-ordered" comes from Jean Bodin, who at the beginning of his *Six Books of the Republic* (1576) refers to the "*République bien ordonnée*."

society of liberal democratic peoples. The second part of ideal theory in Part II concerns the extension of the same idea to the society of decent peoples, which, though they are not liberal democratic societies, have certain features making them acceptable as members in good standing in a reasonable Society of Peoples. The ideal theory part of the extension of the social contract idea is completed by showing that both kinds of societies, liberal and decent, would agree to the same Law of Peoples. A Society of Peoples is reasonably just in that its members follow the reasonably just Law of Peoples in their mutual relations.

An aim of Part II is to show that there may exist decent nonliberal peoples who accept and follow the Law of Peoples. To this end I give an imagined example of a nonliberal Muslim people I call "Kazani-*stan*." This people satisfies the criteria for decent hierarchical peoples I set forth (§§8–9): Kazanistan is not aggressive against other peoples and accepts and follows the Law of Peoples; it honors and respects human rights; and its basic structure contains a decent consultation hierarchy, the features of which I describe.

Part III takes up the two kinds of nonideal theory. One kind deals with conditions of noncompliance, that is, with conditions in which certain regimes refuse to comply with a reasonable Law of Peoples. These we may call outlaw states, and I discuss what measures other societies—liberal peoples or decent peoples—may justifiably take to defend themselves against them. The other kind of nonideal theory deals with unfavorable conditions, that is, with the conditions of societies whose historical, social, and economic circumstances make their achieving a well-ordered regime, whether liberal or decent, difficult if not impossible. In regard to these burdened societies we must ask how far liberal or decent peoples owe a duty of assistance to these societies so that the latter may establish their own reasonably just or decent institutions. The aim of the Law of Peoples would be fully achieved when all societies have been able to establish either a liberal or a decent regime, however unlikely that may be.

2. This monograph on the Law of Peoples is neither a treatise nor a textbook on international law. Rather, it is a work that focuses strictly on certain questions connected with whether a realistic utopia is pos-

sible, and the conditions under which it might obtain. I begin and end with the idea of a realistic utopia. Political philosophy is realistically utopian when it extends what are ordinarily thought of as the limits of practical political possibility. Our hope for the future of our society rests on the belief that the nature of the social world allows reasonably just constitutional democratic societies existing as members of the Society of Peoples. In such a social world peace and justice would be achieved between liberal and decent peoples both at home and abroad. The idea of this society is realistically utopian in that it depicts an achievable social world that combines political right and justice for all liberal and decent peoples in a Society of Peoples. Both *A Theory of Justice* and *Political Liberalism* try to say how a liberal society might be possible.⁷ *The Law of Peoples* hopes to say how a world Society of liberal and decent Peoples might be possible. Of course, many would say that it is not possible, and that utopian elements may be a serious defect in a society's political culture.⁸

On the contrary, though I would not deny that such elements can be misconceived, I believe the idea of a realistic utopia is essential. Two main ideas motivate the Law of Peoples. One is that the great evils of

7. See *Political Liberalism* (New York: Columbia University Press, 1993) and the paperback edition of 1996 with a second introduction and the "Reply to Habermas," first published in the *Journal of Philosophy*, March 1995. My present remarks draw on the closing paragraphs of the second introduction.

8. I am thinking here of E. H. Carr's *The Twenty Year Crisis, 1919–1939: An Introduction to the Study of International Relations* (London: Macmillan, 1951) and his well-known criticism of utopian thought. (My citations are from the Harper Torchbook edition of 1964.) Carr may have been right that utopian thinking, in his sense, played an adverse role in the policies of England and France in the interwar period and contributed to bringing about World War II. See his chapters 4 and 5, which criticize the idea of a "harmony of interests." Carr's idea of the harmony of interests, however, refers not to philosophy, but rather to the wishful thinking of powerful politicians. So, for example, Winston Churchill once remarked that "the fortunes of the British Empire and its glory are inseparably interwoven with the fortunes of the world" (p. 82). Though criticizing utopianism, Carr never questioned the essential role of moral judgment in forming our political opinions; he presented reasonable political opinions as a *compromise* between both realism (power) and utopianism (moral judgment and values). In contradistinction to Carr, my idea of a realistic utopia doesn't settle for a compromise between power and political right and justice, but sets limits to the reasonable exercise of power. Otherwise, power itself determines what the compromise should be, as Carr recognized (p. 222).

human history—unjust war and oppression, religious persecution and the denial of liberty of conscience, starvation and poverty, not to mention genocide and mass murder—follow from political injustice, with its own cruelties and callousness. (Here the idea of political justice is the same as that discussed by political liberalism,⁹ out of which the Law of Peoples is developed.) The other main idea, obviously connected with the first, is that, once the gravest forms of political injustice are eliminated by following just (or at least decent) social policies and establishing just (or at least decent) basic institutions, these great evils will eventually disappear. I connect these ideas to the idea of a realistic utopia. Following Rousseau's opening thought in *The Social Contract* (quoted below in Part I, §1.2), I shall assume that his phrase "men as they are" refers to persons' moral and psychological natures and how that nature works within a framework of political and social institutions;¹⁰ and that his phrase "laws as they might be" refers to laws as they should, or ought, to be. I shall also assume that, if we grow up under a framework of reasonable and just political and social institutions, we shall affirm those institutions when we in our turn come of age, and they will endure over time. In this context, to say that human nature is good is to say that citizens who grow up under reasonable and just institutions—institutions that satisfy any of a family of reasonable liberal political conceptions of justice—will affirm those institutions and act to make sure their social world endures. (As a distinguishing feature, all members of this family of conceptions satisfy the criterion of *reciprocity*.)¹¹ There may not be many such institutions, but, if there are, they must be ones that we can understand and act on, approve, and endorse. I contend that this scenario is realistic—it could and may exist. I say it is also utopian and highly desirable because it joins reasonableness and justice with conditions enabling citizens to realize their fundamental interests.

9. See "The Idea of Public Reason Revisited" in the present volume, especially pp. 131–148.

10. Rousseau also said: "The limits of the possible in moral matters are less narrow than we think. It is our weaknesses, our vices, our prejudices, that shrink them. Base souls do not believe in great men. Vile slaves smile mockingly at the word freedom." See *The Social Contract*, book II, chap. 12, para. 2.

11. See "The Idea of Public Reason Revisited," pp. 132, 136–138.

that, in developing the Law of Peoples within a liberal conception of justice, we work out the ideals and principles of the *foreign policy* of a reasonably just *liberal* people. This concern with the foreign policy of a liberal people is implicit throughout. The reason we go on to consider the point of view of decent peoples is not to prescribe principles of justice for *them*, but to assure ourselves that the ideals and principles of the foreign policy of a liberal people are also reasonable from a decent nonliberal point of view. The need for such assurance is a feature inherent in the liberal conception. The Law of Peoples holds that decent nonliberal points of view exist, and that the question of how far nonliberal peoples are to be tolerated is an essential question of liberal foreign policy.

The basic idea is to follow Kant's lead as sketched by him in *Perpetual Peace* (1795) and his idea of *foedus pacificum*. I interpret this idea to mean that we are to begin with the social contract idea of the liberal political conception of a constitutionally democratic regime and then extend it by introducing a second original position at the second level, so to speak, in which the representatives of liberal peoples make an agreement with other liberal peoples. This I do in §§3–4, and again later with nonliberal though decent peoples in §§8–9. Each of these agreements is understood as hypothetical and nonhistorical, and entered into by equal peoples symmetrically situated in the original position behind an appropriate veil of ignorance. Hence the undertaking between peoples is fair. All this also accords with Kant's idea that a constitutional regime must establish an effective Law of Peoples in order to realize fully the freedom of its citizens.¹⁴ I cannot be sure in advance that this approach to the Law of Peoples will work out, nor do I maintain that other ways of arriving at the Law of Peoples are incorrect. Should there be other ways to arrive at the same place, so much the better.

14. See *Theory and Practice*, part III: Ak:VIII:308–310, where Kant considers theory in relation to the practice of international right, or as he says, from a cosmopolitan point of view; and *Idea for a Universal History*, Seventh Proposition, Ak:VIII:24ff.

PART I

The First Part of Ideal Theory

§1. The Law of Peoples as Realistic Utopia

1.1. Meaning of Realistic Utopia. As I stated in the Introduction, political philosophy is realistically utopian when it extends what are ordinarily thought to be the limits of practicable political possibility and, in so doing, reconciles us to our political and social condition. Our hope for the future of our society rests on the belief that the social world allows a reasonably just constitutional democracy existing as a member of a reasonably just Society of Peoples. What would a reasonably just constitutional democracy be like under reasonably favorable historical conditions that are possible given the laws and tendencies of society? And how do these conditions relate to laws and tendencies bearing on the relations between peoples?

These historical conditions include, in a reasonably just domestic society, the fact of reasonable pluralism.¹ In the Society of Peoples, the parallel to reasonable pluralism is the diversity among reasonable peoples with their different cultures and traditions of thought, both religious and nonreligious. Even when two or more peoples have liberal constitutional regimes, their conceptions of constitutionalism may diverge and express different variations of liberalism. A (reasonable) Law

1. See the definition on p. 36 of *Political Liberalism*. See also "The Idea of Public Reason Revisited" in the present volume.

of Peoples must be acceptable to reasonable peoples who are thus diverse; and it must be fair between them and effective in shaping the larger schemes of their cooperation.

This fact of reasonable pluralism limits what is practicably possible here and now, whatever may have been the case in other historical ages when, it is often said, people within a domestic society were united (though perhaps they never really have been) in affirming one comprehensive doctrine. I recognize that there are questions about how the limits of the practicably possible are discerned and what the conditions of our social world in fact are. The problem here is that the limits of the possible are not given by the actual, for we can to a greater or lesser extent change political and social institutions and much else. Hence we have to rely on conjecture and speculation, arguing as best we can that the social world we envision is feasible and might actually exist, if not now then at some future time under happier circumstances.

Eventually we want to ask whether reasonable pluralism within or between peoples is a historical condition to which we should be reconciled. Though we can imagine what we sometimes think would be a happier world—one in which everyone, or all peoples, have the same faith that we do—that is not the question, excluded as it is by the nature and culture of free institutions. To show that reasonable pluralism is not to be regretted, we must show that, given the socially feasible alternatives, the existence of reasonable pluralism allows a society of greater political justice and liberty. To argue this cogently would be to reconcile us to our contemporary political and social condition.

1.2. Conditions of the Domestic Case. I begin with a sketch of a reasonably just constitutional democratic society (hereafter sometimes referred to simply as a liberal society) as a realistic utopia and review seven conditions that are necessary for such a realistic utopia to obtain. Then I check whether parallel conditions would hold for a society of reasonably just and decent peoples who honor a Law of Peoples. Should those conditions also hold, the Society of Peoples is also a case of realistic utopia.

(i) There are two necessary conditions for a liberal conception of justice to be *realistic*. The first is that it must rely on the actual laws of nature and achieve the kind of stability those laws allow, that is, stabil-

ity for the right reasons.² It takes people as they are (by the laws of nature), and constitutional and civil laws as they might be, that is, as they would be in a reasonably just and well-ordered democratic society. Here I follow Rousseau's opening thought in *The Social Contract*:

My purpose is to consider if, in political society, there can be any legitimate and sure principle of government, taking men as they are and laws as they might be. In this inquiry I shall try always to bring together what right permits with what interest requires so that justice and utility are in no way divided.

The second condition for a liberal political conception of justice to be realistic is that its first principles and precepts be workable and applicable to ongoing political and social arrangements. Here an example may be helpful: consider primary goods (basic rights and liberties, opportunities, income and wealth, and the social bases of self-respect) as used in justice as fairness. One of their main features is that they are workable. A citizen's share of these goods is openly observable and makes possible the required comparisons between citizens (so-called interpersonal comparisons). This can be done without appealing to such unworkable ideas as a people's overall utility, or to Sen's basic capabilities for various functionings (as he calls them).³

2. Stability for the right reasons means stability brought about by citizens acting correctly according to the appropriate principles of their sense of justice, which they have acquired by growing up under and participating in just institutions.

3. It doesn't follow, however, that Sen's idea of basic capabilities is not important here; and indeed, the contrary is the case. His thought is that society must look to the distribution of citizens' effective basic freedoms, as these are more fundamental for their lives than what they possess in primary goods, since citizens have different capabilities and skills in using those goods to achieve desirable ways of living their lives. The reply from the side of primary goods is to grant this claim—indeed, any use of primary goods must make certain simplifying assumptions about citizens' capabilities—but also to answer that to apply the idea of effective basic capabilities without those or similar assumptions calls for more information than political society can conceivably acquire and sensibly apply. Instead, by embedding primary goods into the specification of the principles of justice and ordering the basic structure of society accordingly, we may come as close as we can in practice to a just distribution of Sen's effective freedoms. His idea is essential because it is needed to explain the propriety of the use of primary goods. For Amartya Sen's view see his *Inequality Reexamined* (Cambridge, Mass.: Harvard University Press, 1992), esp. chapters 1–5.

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(ii) A necessary condition for a political conception of justice to be *utopian* is that it use political (moral) ideals, principles, and concepts to specify a reasonable and just society. There is a family of reasonable liberal conceptions of justice, each of which has the following three characteristic principles:

- the first enumerates basic rights and liberties of the kind familiar from a constitutional regime;
- the second assigns these rights, liberties, and opportunities a special priority, especially with respect to the claims of the general good and perfectionism values; and
- the third assures for all citizens the requisite primary goods to enable them to make intelligent and effective use of their freedoms.

The principles of these conceptions of justice must also satisfy the criterion of reciprocity. This criterion requires that, when terms are proposed as the most reasonable terms of fair cooperation, those proposing them must think it at least reasonable for others to accept them, as free and equal citizens, and not as dominated or manipulated or under pressure caused by an inferior political or social position.⁴ Citizens will differ as to which of these conceptions they think the most reasonable, but they should be able to agree that all are reasonable, even if barely so. Each of these liberalisms endorses the underlying ideas of citizens as free and equal persons and of society as a fair system of cooperation over time. Yet since these ideas can be interpreted in various ways, we get different formulations of the principles of justice and different contents of public reason.⁵ Political conceptions differ also in how they order, or balance, political principles and values even when they specify the same principles and values as significant. These liberalisms contain substantive principles of justice, and hence cover more than procedural justice. The principles are re-

4. See *Political Liberalism*, II: §1, pp. 48–54, and “The Idea of Public Reason Revisited,” pp. 136ff.

5. Of these liberalisms, justice as fairness is the most egalitarian. See *Political Liberalism*, pp. 6ff.

quired to specify the religious liberties and freedoms of artistic expression of free and equal citizens, as well as substantive ideas of fairness assuring fair opportunity and adequate all-purpose means, and much else.⁶

(iii) A third condition for a realistic utopia requires that the category of the political must contain within itself all the essential elements for a political conception of justice. For example, in political liberalism persons are viewed as citizens, and a political conception of justice is built up from political (moral) ideas available in the public political culture of a liberal constitutional regime. The idea of a free citizen is determined by a liberal political conception and not by any comprehensive doctrine, which always extends beyond the category of the political.

(iv) Because of the fact of reasonable pluralism, constitutional democracy must have political and social institutions that effectively lead its citizens to acquire the appropriate sense of justice as they grow up and take part in society. They will then be able to understand the principles and ideals of the political conception, to interpret and apply them to cases at hand, and they will normally be moved to act from them as circumstances require. This leads to stability for the right reasons.

Insofar as liberal conceptions require virtuous conduct of citizens, the necessary (political) virtues are those of political cooperation, such as a sense of fairness and tolerance and a willingness to meet others halfway. Moreover, liberal political principles and ideals can be satisfied by the basic structure of society even if numerous citizens lapse on occasion, provided that their conduct is outweighed by the appropriate conduct of a sufficient number of others.⁷ The structure of political institutions remains just and stable (for the right reasons) over time.

6. Some may think that the fact of reasonable pluralism means that the forms of fair adjudication among comprehensive doctrines must be only procedural and not substantive. This view is forcefully argued by Stuart Hampshire in *Innocence and Experience* (Cambridge, Mass.: Harvard University Press, 1989). In the text above, however, I assume that the several forms of liberalism are each substantive conceptions. For a thorough treatment of the issues, see the discussion by Joshua Cohen, “Pluralism and Proceduralism,” *Chicago-Kent Law Review*, vol. 69, no. 3 (1994).

7. Liberal conceptions are also what we may call “liberalisms of freedom.” Their three principles guarantee the basic rights and liberties, assign them a special priority, and assure to all citizens sufficient all-purpose means so that their freedoms are not purely formal. In this they stand with Kant, Hegel, and less obviously J. S. Mill. See further §7.3.

This idea of realistic utopia is importantly institutional. In the domestic case it connects with the way citizens conduct themselves under the institutions and practices within which they have grown up; in the international case with the way a people's character has historically developed. We depend on the facts of social conduct as historical knowledge and reflection establish them: for example, the facts that, historically, political and social unity do not depend on religious unity, and that well-ordered democratic peoples do not engage in war with one another. These observations and others will be essential as we proceed.

(v) Because religious, philosophical, or moral unity is neither possible nor necessary for social unity, if social stability is not merely a *modus vivendi*, it must be rooted in a reasonable political conception of right and justice affirmed by an overlapping consensus of comprehensive doctrines.

(vi) The political conception should have a reasonable idea of toleration derived entirely from ideas drawn from the category of the political.⁸ This condition might not always be necessary, however, as we can think of cases when all the comprehensive doctrines held in society themselves provide for such a view. Nevertheless, the political conception will be strengthened if it contains a reasonable idea of toleration within itself, for that will show the reasonableness of toleration by public reason.

8. See *Political Liberalism*, pp. 60ff. The main points of this conception of toleration can be set out in summary fashion as follows: (1) Reasonable persons do not all affirm the same comprehensive doctrine. This is said to be a consequence of the "burdens of judgment." (2) Many reasonable doctrines are affirmed, not all of which can be true or right as judged from within any one comprehensive doctrine. (3) It is not unreasonable to affirm any one of the reasonable comprehensive doctrines. (4) Others who affirm reasonable doctrines different from ours are reasonable also. (5) In affirming our belief in a doctrine we recognize as reasonable, we are not being unreasonable. (6) Reasonable persons think it unreasonable to use political power, should they possess it, to repress other doctrines that are reasonable yet different from their own. These points may seem too narrow; for I recognize that every society also contains numerous unreasonable doctrines. In regard to this point, however, what is important to see is that how far unreasonable doctrines can be active and tolerated is not decided by what is said above, but by the principles of justice and the kinds of actions they permit. I am indebted to Erin Kelly for discussion of this point.

1.3. *Parallel Conditions of Society of Peoples.* Assuming that §1.2 above adequately indicates the conditions required for a reasonably just constitutional democracy, which I have called "a realistic utopia," what are the parallel conditions for a reasonably just Society of Peoples? This is too big a matter to discuss at this point in any detail. Yet it might be fruitful to note some of the parallels before we proceed, since doing so will foreshadow the argument to follow.

The first three conditions, I believe, are as strong in one case as in the other:

(i*) The reasonably just Society of well-ordered Peoples is *realistic* in the same ways as a liberal or decent domestic society. Here again we view peoples as they are (as organized within a reasonably just domestic society) and the Law of Peoples as it might be, that is, how it would be in a reasonably just Society of just and decent Peoples. The content of a reasonable Law of Peoples is ascertained by using the idea of the original position a second time with the parties now understood to be the representatives of peoples (§3). The idea of peoples rather than states is crucial at this point: it enables us to attribute moral motives—an allegiance to the principles of the Law of Peoples, which, for instance, permits wars only of self-defense—to peoples (as actors), which we cannot do for states (§2).⁹

The Law of Peoples is also realistic in a second way: it is *workable* and may be applied to ongoing cooperative political arrangements and relations between peoples. That this is the case cannot be shown until the content of the Law of Peoples is sketched (§4). For now, suffice it to say that the Law is expressed in the familiar terms of the freedom and equality of peoples, and it involves numerous jurisprudential and political (moral) ideas.

(ii*) A reasonably just Law of Peoples is *utopian* in that it uses political (moral) ideals, principles, and concepts to specify the reasonably

9. A question sure to be asked is: Why does the Law of Peoples use an original position at the second level that is fair to peoples and not to individual persons? What is it about peoples that gives them the status of the (moral) actors in the Law of Peoples? Part of the answer is given in §2, in which the idea of peoples is specified; but the fuller explanation is given in §11. Those who are troubled by this question should turn to it now.

right and just political and social arrangements for the Society of Peoples. In the domestic case, liberal conceptions of justice distinguish between the reasonable and the rational, and lie between altruism on one side and egoism on the other. The Law of Peoples duplicates these features. For example, we say (§2) that a people's interests are specified by their land and territory, their reasonably just political and social institutions, and their free civic culture with its many associations. These various interests ground the distinctions between the reasonable and the rational and show us how the relations among peoples may remain just and stable (for the right reasons) over time.

(iii*) A third condition requires that all the essential elements for a political conception of justice be contained within the category of the political. This condition will be satisfied for the Law of Peoples once we extend a liberal political conception for a constitutional democracy to the relations among peoples. Whether this extension can be carried out successfully has yet to be shown. But in any event, the extensions of the political always remain political, and comprehensive doctrines, religious, philosophical, and moral, always extend beyond it.

(iv*) The degree to which a reasonably just, effective institutional process enables members of different well-ordered societies to develop a sense of justice and support their government in honoring the Law of Peoples may differ from one society to another in the wider Society of Peoples. The fact of reasonable pluralism is more evident within a society of well-ordered peoples than it is within one society alone. An allegiance to the Law of Peoples need not be equally strong in all peoples, but it must be, ideally speaking, sufficient. I consider this question later in §15.5 under the heading of affinity, and I suggest there that the institutional process may be importantly weaker when allegiance to the Law of Peoples is also weaker.

This brings us to the remaining two conditions.

(v*) The unity of a reasonable Society of Peoples does not require religious unity. The Law of Peoples provides a content of public reason for the Society of Peoples parallel to the principles of justice in a democratic society.

(vi*) The argument for toleration derived from the idea of the reasonable holds equally in the wider Society of Peoples; the same reason-

ing applies in one case as in the other. The effect of extending a liberal conception of justice to the Society of Peoples, which encompasses many more religious and other comprehensive doctrines than any single people, makes it inevitable that, if member peoples employ public reason in their dealings with one another, toleration must follow.

These conditions are discussed in more detail as we proceed. How likely it is that such a Society of Peoples can exist is an important question, yet political liberalism asserts that the possibility is consistent with the natural order and with constitutions and laws as they might be. The idea of public reason¹⁰ for the Society of Peoples is analogous to the idea of public reason in the domestic case when a shared basis of justification exists and can be uncovered by due reflection. Political liberalism, with its ideas of realistic utopia and public reason, denies what so much of political life suggests—that stability among peoples can never be more than a *modus vivendi*.

The idea of a reasonably just society of well-ordered peoples will not have an important place in a theory of international politics until such peoples exist and have learned to coordinate the actions of their governments in wider forms of political, economic, and social cooperation. When that happens, as I believe, following Kant, it will, the society of these peoples will form a group of satisfied peoples. As I shall maintain (§2), in view of their fundamental interests being satisfied, they will have no reason to go to war with one another. The familiar motives for war would be absent: such peoples do not seek to convert others to their religions, nor to conquer greater territory, nor to wield political power over another people. Through negotiation and trade they can fulfill their needs and economic interests. A detailed account of how and why all this takes shape over time will be an essential part of the theory of international politics.

1.4. *Is Realistic Utopia a Fantasy?* Some seem to think that this idea is a fantasy, particularly after Auschwitz. But why so? I wouldn't deny either the historical uniqueness of the Holocaust, or that it could

10. This idea is discussed in §7 of Part II. For the idea of public reason, see "The Idea of Public Reason Revisited" in this volume.

somewhere be repeated. Yet nowhere, other than German-occupied Europe between 1941 and 1945, has a charismatic dictator controlled the machinery of a powerful state so focused on carrying out the final and complete extermination of a particular people, hitherto regarded as members of society. The destruction of the Jews was carried out at great cost in men and equipment (use of railroads and the building of concentration camps, and much else) to the detriment of the desperate German war effort, especially during its last years. People of all ages, the elderly, children, and infants, were treated the same. Thus the Nazis pursued their aim to make German-occupied Europe *Judenrein* as an end in itself.¹¹

Not to be overlooked is the fact that Hitler's demonic conception of the world was, in some perverse sense, religious. This is evident from its derivation and its leading ideas and hatreds. His "redemptive anti-semitism," as Saul Friedländer calls it, is one which includes not merely racial elements. "Redemptive anti-semitism," Friedländer writes, "is born from the fear of racial degeneration and the religious belief in redemption."¹² In Hitler's mind, a source of degeneration was intermarriage with Jews, which sullied the German bloodstream. In permitting this to happen, he thought, Germany was on the way to perdition. Redemption could come only with liberation from the Jews, with their expulsion from Europe, or, failing that, with their extermination. At the end of the second chapter of *Mein Kampf*, Hitler writes: "Today I be-

11. Here I draw on Raul Hilburg, *The Destruction of the European Jews*, 3 vols. (Chicago: University of Chicago Press, 1961), students' abbreviated edition in 1 vol. (New York: Holmes and Meier, 1985); and Hannah Arendt, *Eichmann in Jerusalem* (New York: Viking Press, 1963). For the source of Hitler's power, see Ian Kershaw, *The Hitler Myth: Image and Reality in the Third Reich* (New York: Oxford University Press, 1987), and Peter Fritzsche, *Germans into Nazis* (Cambridge, Mass.: Harvard University Press, 1998). See also Charles Maier, *The Unmasterable Past* (Cambridge, Mass.: Harvard University Press, 1988), especially pp. 80ff. Chapter 3 considers the question of the uniqueness of the Holocaust. See also Philippe Burrin, *Hitler and the Jews: Genesis of the Holocaust*, with an introduction by Saul Friedländer (London: Edward Arnold, 1994). Burrin believes that the Holocaust, with the aim of the final and complete extermination of the European Jews, begins roughly in September of 1941 with the increasing difficulties of the Russian campaign.

12. Saul Friedländer, *Nazi Germany and the Jews* (New York: HarperCollins, 1997), vol. 1, p. 87.

lieve that I am acting in accordance with the will of the Almighty Creator: by defending myself against the Jew I am fighting for the work of the Lord."¹³

The fact of the Holocaust and our now knowing that human society admits this demonic possibility, however, should not affect our hopes as expressed by the idea of a realistic utopia and Kant's *foedus pacificum*. Dreadful evils have long persisted. Since the time of the Emperor Constantine in the fourth century, Christianity punished heresy and tried to stamp out by persecution and religious wars what it regarded as false doctrine. To do so required the coercive powers of the state. The inquisition instituted by Pope Gregory IX was active throughout the Wars of Religion in the sixteenth and seventeenth centuries. In September of 1572, Pope Pius V went to the French Church of St. Louis in Rome where, joined by thirty-three Cardinals, he attended a Mass of thanksgiving to God for the religiously motivated massacre of fifteen thousand Protestant French Huguenots by Catholic factions on St. Bartholomew's Day that summer.¹⁴ Heresy was widely regarded as worse than murder. This persecuting zeal has been the great curse of the Christian religion. It was shared by Luther and Calvin and the Protestant Reformers, and was not radically confronted in the Catholic Church until Vatican II.¹⁵

13. A police report has Hitler saying in 1926 in a speech in Munich: "Christmas was significant precisely for National Socialism, as Christ was the greatest precursor of the struggle against the Jewish world enemy. Christ had not been the Apostle of Peace that the Church afterward made of him, but rather the greatest fighting personality that ever lived. For millennia the teaching of Christ has been fundamental in the fight against the Jew as the enemy of humanity. The task that Christ has started, I will fulfill. National Socialism is nothing but the practical fulfillment of the teaching of Christ." See Friedländer, *Nazi Germany and the Jews*, p. 102.

14. Lord Acton, "The Massacre of St. Bartholomew," *North British Review* (October 1869). This description is from vol. II of Acton's *Collected Works* (Indianapolis: Liberty Classics, 1985), p. 227. It is noteworthy that at a ceremony in Paris, in August 1997, Pope John Paul II apologized for the church on the occasion of the anniversary of the massacre. See the *New York Times*, August 24, 1997, p. A3.

15. In the Council's *Declaration of Religious Freedom—Dignitatis Humanae* (1965), the Catholic Church committed itself to the principle of religious freedom as found in constitutional democracy. It declared the ethical doctrine of religious freedom resting on the dignity of the human person; a political doctrine with respect to the limits of government in religious matters; and a theological doctrine of the freedom of the

Were these evils greater or lesser than the Holocaust? We need not make such comparative judgments. Great evils are sufficient unto themselves. But the evils of the Inquisition and the Holocaust are not unrelated. Indeed, it seems clear that without Christian anti-semitism over many centuries—especially harsh in Russia and Eastern Europe—the Holocaust would not have happened.¹⁶ That Hitler's "redemptive anti-semitism" strikes us as demonic madness—how could one believe such fantasies?—doesn't change this fact.

Yet we must not allow these great evils of the past and present to undermine our hope for the future of our society as belonging to a Society of liberal and decent Peoples around the world. Otherwise, the wrongful, evil, and demonic conduct of others destroys us too and seals their victory. Rather, we must support and strengthen our hope by developing a reasonable and workable conception of political right and justice applying to the relations between peoples. To accomplish this we may follow Kant's lead and begin from the political conception of a rea-

church in its relations to the political and social world. According to this declaration, all persons, whatever their faith, have the right of religious liberty on the same terms. As John Courtney Murray, S. J., said: "A longstanding ambiguity had finally been cleared up. The Church does not deal with the secular world in terms of a double standard—freedom for the Church when Catholics are in the minority—privilege for the Church and intolerance of others when Catholics are a majority." See the *Documents of Vatican II*, ed. Walter Abbott, S. J. (New York: American Press, 1966), p. 673.

16. In a radio address to the United States on April 4, 1933, the prominent Protestant clergyman Bishop Otto Dibelius defended the new German regime's April 1, 1933, boycott of the Jews (originally scheduled to last five days). In a confidential Easter message to the pastors in his province, he said: "My Dear Brethren! We all not only understand but are fully sympathetic to the recent motivations out of which the *völkisch* movement has emerged. Notwithstanding the evil sound the term has frequently acquired, I have always considered myself an anti-semite. One cannot ignore that Jewry has played a leading role in all the destructive manifestations of modern civilization." Dietrich Bonhoeffer, who later was to play a heroic role in the resistance and who became a leader of the Confessional Church, himself said in regard to the April Boycott: "In the Church of Christ, we have never lost sight of the idea that the 'Chosen People,' who nailed the Savior of the world to the cross, must bear the curse of the action through a long history of suffering." For both quotes see Friedländer, *Nazi Germany and the Jews*, pp. 42 and 45 respectively. It would stand to reason that in a decent society any such boycott organized by the state should be considered a blatant violation of freedom of religion and liberty of conscience. Why didn't these clergymen think so?

sonably just constitutional democracy that we have already formulated. We then proceed to extend that conception outward to the Society of liberal and decent Peoples (§4). Proceeding this way assumes the reasonableness of political liberalism; and developing a reasonable Law of Peoples out of political liberalism confirms its reasonableness. This Law is supported by the fundamental interests of constitutional democracies and other decent societies. No longer simply longing, our hope becomes reasonable hope.

§2. Why Peoples and Not States?

2.1. *Basic Features of Peoples.* This account of the Law of Peoples conceives of liberal democratic peoples (and decent peoples) as the actors in the Society of Peoples, just as citizens are the actors in domestic society. Starting from a political conception of society, political liberalism describes both citizens and peoples by political conceptions that specify their nature, a conception of citizens in one case, of peoples acting through their governments in the other. Liberal peoples have three basic features: a reasonably just constitutional democratic government that serves their fundamental interests; citizens united by what Mill called "common sympathies";¹⁷ and finally, a moral nature. The first is institutional, the second is cultural, and the third requires

17. At this initial stage, I use the first sentences of chapter XVI of J. S. Mill's *Considerations* (1862) in which he uses an idea of nationality to describe a people's culture. He says: "A portion of mankind may be said to constitute a Nationality, if they are united among themselves by common sympathies, which do not exist between them and any others—which make them cooperate with each other more willingly than with other people, desire to be under the same government, and desire that it should be government by themselves, or a portion of themselves, exclusively. This feeling of nationality may have been generated by various causes. Sometimes it is the effect of identity of race and descent. Community of language, community of religion, greatly contribute to it. Geographical limits are one of its causes. But the strongest of all is identity of political antecedents; the possession of national history, and consequent community of recollections; collective pride and humiliation, pleasure and regret, connected with the same incidents in the past. None of these circumstances, however, are necessarily sufficient by themselves." *Considerations on Representative Government*, ed. J. M. Robson (Toronto: University of Toronto Press, 1977), in *Collected Works*, vol. XIX, chap. XVI, p. 546.

a firm attachment to a political (moral) conception of right and justice.¹⁸

By saying that a people have a reasonably just (though not necessarily a fully just) constitutional democratic government I mean that the government is effectively under their political and electoral control, and that it answers to and protects their fundamental interests as specified in a written or unwritten constitution and in its interpretation. The regime is not an autonomous agency pursuing its own bureaucratic ambitions. Moreover, it is not directed by the interests of large concentrations of private economic and corporate power veiled from public knowledge and almost entirely free from accountability. What institutions and practices might be necessary to keep a constitutional democratic government reasonably just, and to prevent it from being corrupted, is a large topic I cannot pursue here, beyond noting the truism that it is necessary to frame institutions in such a way as to motivate people sufficiently, both citizens and government officers, to honor them, and to remove the obvious temptations to corruption.¹⁹

As for a liberal people being united by common sympathies and a desire to be under the same democratic government, if those sympathies were entirely dependent upon a common language, history, and political culture, with a shared historical consciousness, this feature would rarely, if ever, be fully satisfied. Historical conquests and immigration have caused the intermingling of groups with different cultures and historical memories who now reside within the territory of most contemporary democratic governments. Notwithstanding, the Law of Peoples starts with the need for common sympathies, no matter what their source may be. My hope is that, if we begin in this simplified way,

18. I am much indebted to John Cooper for instructive discussion about these features.

19. An example worth mentioning is public financing of both elections and forums for public political discussion, without which sensible public politics is unlikely to flourish. When politicians are beholden to their constituents for essential campaign funds, and a very unequal distribution of income and wealth obtains in the background culture, with the great wealth being in the control of corporate economic power, is it any wonder that congressional legislation is, in effect, written by lobbyists, and Congress becomes a bargaining chamber in which laws are bought and sold?

we can work out political principles that will, in due course, enable us to deal with more difficult cases where all the citizens are not united by a common language and shared historical memories. One thought that encourages this way of proceeding is that within a reasonably just liberal (or decent) polity it is possible, I believe, to satisfy the reasonable cultural interests and needs of groups with diverse ethnic and national backgrounds. We proceed on the assumption that the political principles for a reasonably just constitutional regime allow us to deal with a great variety of cases, if not all.²⁰

Finally, liberal peoples have a certain moral character. Like citizens in domestic society, liberal peoples are both reasonable and rational, and their rational conduct, as organized and expressed in their elections and votes, and the laws and policies of their government, is similarly constrained by their sense of what is reasonable. As reasonable citizens in domestic society offer to cooperate on fair terms with other citizens, so (reasonable) liberal (or decent) peoples offer fair terms of cooperation to other peoples. A people will honor these terms when assured that other peoples will do so as well. This leads us to the principles of political justice in the first case and the Law of Peoples in the other. It will be crucial to describe how this moral nature comes about and how it can be sustained from one generation to the next.

2.2. *Peoples Lack Traditional Sovereignty.* Another reason I use the term "peoples" is to distinguish my thinking from that about political states as traditionally conceived, with their powers of sovereignty included in the (positive) international law for the three centuries after the Thirty Years' War (1618–1648). These powers include the right to go to war in pursuit of state policies—Clausewitz's pursuit of politics by other means—with the ends of politics given by a state's rational prudential interests.²¹ The powers of sovereignty also grant a state a

20. Here I think of the idea of nation as distinct from the idea of government or state, and I interpret it as referring to a pattern of cultural values of the kind described by Mill in note 17 above. In thinking of the idea of nation in this way I follow Yael Tamir's highly instructive *Liberal Nationalism* (Princeton: Princeton University Press, 1993).

21. It would be unfair to Clausewitz not to add that for him the state's interests can include regulative moral aims of whatever kind, and thus the aims of war may be to defend democratic societies against tyrannical regimes, somewhat as in World War II.

certain autonomy (discussed below) in dealing with its own people. From my perspective this autonomy is wrong.

In developing the Law of Peoples the first step is to work out the principles of justice for domestic society. Here the original position takes into account only persons contained within such a society, since we are not considering relations with other societies. That position views society as closed: persons enter only by birth, and exit only by death. There is no need for armed forces, and the question of the government's right to be prepared militarily does not arise and would be denied if it did. An army is not to be used against its own people. The principles of domestic justice allow a police force to keep domestic order and a judiciary and other institutions to maintain an orderly rule of law.²² All this is very different from an army that is needed to defend against outlaw states. Although domestic principles of justice are consistent with a qualified right to war, they do not of themselves establish that right. The basis of that right depends on the Law of Peoples, still to be worked out. This law, as we shall see, will restrict a state's internal sovereignty or (political) autonomy, its alleged right to do as it wills with people within its own borders.

Thus, in working out the Law of Peoples, a government as the political organization of its people is not, as it were, the author of all of its own powers. The war powers of governments, whatever they might be, are only those acceptable within a reasonable Law of Peoples. Presuming the existence of a government whereby a people is domestically organized with institutions of background justice does not pre-judge these questions. We must reformulate the powers of sovereignty

For him the aims of politics are not part of the theory of war, although they are ever-present and may properly affect the conduct of war. On this, see the instructive remarks of Peter Pareto, "Clausewitz," in *The Makers of Modern Strategy*, ed. Peter Pareto (Princeton: Princeton University Press, 1986), pp. 209–213. The view I have expressed in the text above characterizes the *raison d'état* as pursued by Frederick the Great. See Gerhard Ritter, *Frederick the Great*, trans. Peter Pareto (Berkeley: University of California Press, 1968), chap. 10 and the statement on p. 197.

22. I stress here that the Law of Peoples does not question the legitimacy of government's authority to enforce the rule of democratic law. The supposed alternative to the government's so-called monopoly of power allows private violence for those with the will and the means to exercise it.

in light of a reasonable Law of Peoples and deny to states the traditional rights to war and to unrestricted internal autonomy.

Moreover, this reformulation accords with a recent dramatic shift in how many would like international law to be understood. Since World War II international law has become stricter. It tends to limit a state's right to wage war to instances of self-defense (also in the interests of collective security), and it also tends to restrict a state's right to internal sovereignty. The role of human rights connects most obviously with the latter change as part of the effort to provide a suitable definition of, and limits on, a government's internal sovereignty. At this point I leave aside the many difficulties of interpreting these rights and limits, and take their general meaning and tendency as clear enough. What is essential is that our elaboration of the Law of Peoples should fit these two basic changes, and give them a suitable rationale.²³

The term "peoples," then, is meant to emphasize these singular features of peoples as distinct from states, as traditionally conceived, and to highlight their moral character and the reasonably just, or decent, nature of their regimes. It is significant that peoples' rights and duties in regard to their so-called sovereignty derive from the Law of Peoples itself, to which they would agree along with other peoples in suitable circumstances. As just or decent peoples, the reasons for their conduct accord with the corresponding principles. They are not moved solely by their prudent or rational pursuit interests, the so-called reasons of state.

2.3. *Basic Features of States.* The following remarks show that the character of a people in the Law of Peoples is different from the character of what I refer to as states. States are the actors in many theories of international politics about the causes of war and the preservation

23. Daniel Philpott in his "Revolutions in Sovereignty," Ph.D. dissertation (Harvard University, 1995), argues that the changes in the powers of sovereignty from one period to another arise from the changes that occur in peoples' ideas of right and just domestic government. Accepting this view as roughly correct, the explanation for the shift would seem to lie in the rise and acceptance of constitutional democratic regimes, their success in World Wars I and II, and the gradual loss of faith in Soviet communism.

of peace.²⁴ They are often seen as rational, anxiously concerned with their power—their capacity (military, economic, diplomatic) to influence other states—and always guided by their basic interests.²⁵ The typical view of international relations is fundamentally the same as it was in Thucydides' day and has not been transcended in modern times, when world politics is still marked by the struggles of states for power, prestige, and wealth in a condition of global anarchy.²⁶ How far states differ from peoples rests on how rationality, the concern with power, and a state's basic interests are filled in. If *rationality* excludes the *reasonable* (that is, if a state is moved by the aims it has and ignores the criterion of reciprocity in dealing with other societies); if a state's concern with power is predominant; and if its interests include such things as converting other societies to the state's religion, enlarging its empire and winning territory, gaining dynastic or imperial or national prestige and glory, and increasing its relative economic strength—then the difference between states and peoples is enormous.²⁷ Such inter-

24. See Robert Gilpin's *War and Change in World Politics* (Cambridge: Cambridge University Press, 1981), chap. 1, pp. 9–25. See also Robert Axelrod's *The Complexity of Cooperation* (Princeton: Princeton University Press, 1997), chap. 4, "Choosing Sides," with its account of the alignments of countries in World War II.

25. Lord Palmerston said: "England has no eternal friends, and no eternal enemies; only eternal interests." See Donald Kagan, *Origins of War and the Preservation of Peace* (New York: Doubleday, 1995), p. 144.

26. Gilpin's main thesis is that "the fundamental nature of international relations has not changed over the millennia. International relations continue to be a recurring struggle for wealth and power among independent actors in a state of anarchy. The history of Thucydides is as meaningful a guide to the behavior of states today as when it was written in the fifth century B.C." See Gilpin, *War and Change in World Politics*, p. 7. He presents his reasons for this thesis in chapter 6.

27. In his great *History of the Peloponnesian War*, trans. Rex Warner (London: Penguin Books, 1954), Thucydides tells the story of the fated self-destruction of the Greek city-states in the long war between Athens and Sparta. The history ends in midstream, as if it is broken off. Did Thucydides stop, or was he unable to finish? It is as if he said: "and so on . . ." The tale of folly has gone on long enough. What moves the city-states is what makes the increasing self-destruction inevitable. Listen to the Athenians' first speech to the Spartans: "We have done nothing extraordinary, contrary to human nature in accepting empire when it was offered to us, then refusing to give it up. Very powerful motives prevent us from doing so—security, honor and self-interest. And we were not the first to act this way, far from it. It was always the rule that the weaker should be subject to the stronger, and, besides, we consider that we are worthy of our

ests as these tend to put a state at odds with other states and peoples, and to threaten their safety and security, whether they are expansionist or not. The background conditions also threaten hegemonic war.²⁸

A difference between liberal peoples and states is that just liberal peoples limit their basic interests as required by the reasonable. In contrast, the content of the interests of states does not allow them to be stable for the right reasons: that is, from firmly accepting and acting upon a just Law of Peoples. Liberal peoples do, however, have their fundamental interests as permitted by their conceptions of right and justice. They seek to protect their territory, to ensure the security and safety of their citizens, and to preserve their free political institutions and the liberties and free culture of their civil society.²⁹ Beyond these interests, a liberal people tries to assure reasonable justice for all its citizens and for all peoples; a liberal people can live with other peoples of like character in upholding justice and preserving peace. Any hope we have of reaching a realistic utopia rests on there being reasonable lib-

power. Up to the present moment you too used to think that we were; but now, after calculating your interests, you are beginning to talk in terms of right and wrong. Considerations of this kind have never turned people aside from opportunities of aggrandizement offered by superior strength. Those who really deserve praise are those who, while human enough to enjoy power, nevertheless pay more attention to justice than compelled to by their situation. Certainly we think that if anyone were in our position, it would be evident whether we act in moderation or not" (Book I: 76).

It is clear enough how the cycle of self-destruction goes. Thucydides thinks that, if the Athenians had followed Pericles' advice not to expand their empire as long as the war with Sparta and its allies lasted, they might well have won. But with the invasion of Melos and the folly of the Sicilian adventure urged on by Alcibiades' advice and persuasion, they were doomed to self-destruction. Napoleon is reputed to have said, commenting on his invasion of Russia: "Empires die of indigestion." But he wasn't candid with himself. Empires die of gluttony, of the ever-expanding craving for power. What makes peace among liberal democratic peoples possible is the internal nature of peoples as constitutional democracies and the resulting change of the motives of citizens. For the purposes of our story of the possibility of realistic utopia it is important to recognize that Athens was not a liberal democracy, though it may have thought of itself as such. It was an autocracy of the 35,000 male members of the assembly over the total population of about 300,000.

28. Gilpin, *War and Change in World Politics*, esp. chap. 5, discusses the features of hegemonic war.

29. See the reasoning in §14, where I discuss a liberal people's right to war in self-defense.

eral constitutional (and decent) regimes sufficiently established and effective to yield a viable Society of Peoples.

§3. Two Original Positions

3.1. Original Position as Model of Representation. This part describes the first step of ideal theory. Before beginning the extension of the liberal idea of the social contract to the Law of Peoples, let us note that the original position with a veil of ignorance is a model of representation for liberal societies.³⁰ In what I am now calling the first use of the original position, it models what we regard—you and I, here and now³¹—as fair and reasonable conditions for the parties, who are rational representatives of free and equal, reasonable and rational citizens, to specify fair terms of cooperation for regulating the basic structure of this society. Since the original position includes the veil of ignorance, it also models what we regard as appropriate restrictions on reasons for adopting a political conception of justice for that structure. Given these features, we conjecture that the conception of political justice the parties would select is the conception that you and I, here and now, would regard as reasonable and rational and supported by the best reasons. Whether our conjecture is borne out will depend on whether you and I, here and now, can, on due reflection, endorse the principles adopted. Even if the conjecture is intuitively plausible, there are different ways of interpreting the reasonable and the rational, and of specifying restrictions on reasons and explaining the primary goods. There is no *a priori* guarantee that we have matters right.

Here five features are essential: (1) the original position models³² the parties as representing citizens fairly; (2) it models them as ra-

30. See the discussion of the original position and the veil of ignorance in *Political Liberalism*, I: §4.

31. Note: "you and I" are "here and now" citizens of the same liberal democratic society working out the liberal conception of justice in question.

32. What is modeled is a *relation*, in this case, the relation of the parties representing citizens. In the second original position at the second level, what is modeled is the relation of the parties representing peoples.

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tional; and (3) it models them as selecting from among available principles of justice those to apply to the appropriate subject, in this case the basic structure. In addition, (4) the parties are modeled as making these selections for appropriate reasons, and (5) as selecting for reasons related to the fundamental interests of citizens as reasonable and rational. We check that these five conditions are satisfied by noting that citizens are indeed represented fairly (reasonably), in view of the symmetry (or the equality) of their representatives' situation in the original position.³³ Next, the parties are modeled as rational, in that their aim is to do the best they can for citizens whose basic interests they represent, as specified by the primary goods, which cover their basic needs as citizens. Finally, the parties decide for appropriate reasons, because the veil of ignorance prevents the parties from invoking inappropriate reasons, given the aim of representing citizens as free and equal persons.

I repeat here what I have said in *Political Liberalism*, since it is relevant below.³⁴ Not allowing the parties to know people's comprehensive doctrines is one way in which the veil of ignorance is thick as opposed to thin. Many have thought a thick veil of ignorance to be without justification and have queried its grounds, especially given the great significance of comprehensive doctrines, religious and nonreligious. Since we should justify features of the original position when we can, consider the following. Recall that we seek a political conception of justice for a democratic society, viewed as a system of fair cooperation among free and equal citizens who willingly accept, as politically autonomous, the publicly recognized principles of justice determining the fair terms of that cooperation. The society in question, however, is one in which there is a diversity of comprehensive doctrines, all perfectly reasonable. This is the fact of reasonable pluralism, as opposed to the fact of pluralism as such. Now if all citizens are freely to endorse the political conception of justice, that conception must be able to

33. The idea here follows the precept of similar cases: persons equal in all relevant respects are to be represented equally.

34. This paragraph restates a long footnote on pp. 24–25 of the 1996 paperback edition of *Political Liberalism*. This footnote draws on an essay by Wilfried Hinsch, to whom I am much indebted, presented by him at Bad Homburg, in July 1992.

gain the support of citizens who affirm different and opposing, though reasonable, comprehensive doctrines, in which case we have an overlapping consensus of reasonable doctrines. I suggest that we leave aside how people's comprehensive doctrines connect with the content of the political conception of justice and, instead, regard that content as arising from the various fundamental ideas drawn from the public political culture of a democratic society. Putting people's comprehensive doctrines behind the veil of ignorance enables us to find a political conception of justice that can be the focus of an overlapping consensus and thereby serve as a public basis of justification in a society marked by the fact of reasonable pluralism. None of what I am arguing here puts in question the description of a political conception of justice as a freestanding view, but it does mean that to explain the rationale of the thick veil of ignorance we must look to the fact of reasonable pluralism and the idea of an overlapping consensus of reasonable comprehensive doctrines.

3.2. Second Original Position as Model. At the next level, the idea of the original position is used again, but this time to extend a liberal conception to the Law of Peoples. As in the first instance, it is a model of representation, since it models what we would regard—you and I, here and now³⁵—as fair conditions under which the parties, this time the rational representatives of liberal peoples, are to specify the Law of Peoples, guided by appropriate reasons. Both the parties as representatives and the peoples they represent are situated symmetrically and therefore fairly. In addition, peoples are modeled as rational, since the parties select from among available principles for the Law of Peoples guided by the fundamental interests of democratic societies, where these interests are expressed by the liberal principles of justice for a democratic society. Finally, the parties are subject to a veil of ignorance properly adjusted for the case at hand: they do not know, for example, the size of the territory, or the population, or the relative strength of the people whose fundamental interests they represent. Though they

35. In this case "you and I" are citizens of some liberal democratic society, but not of the same one.

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do know that reasonably favorable conditions obtain that make constitutional democracy possible—since they know they represent liberal societies—they do not know the extent of their natural resources, or the level of their economic development, or other such information.

As members of societies well-ordered by liberal conceptions of justice, we conjecture that these features model what we would accept as fair—you and I, here and now—in specifying the basic terms of cooperation among peoples who, as liberal peoples, see themselves as free and equal. This makes the use of the original position at the second level a model of representation in exactly the same way it is at the first. Any differences are not in how the model of representation is used but in how it needs to be tailored given the agents modeled and the subject at hand.

Having said this, let us check that all five features are covered for the second original position. Thus, people's representatives are (1) reasonably and fairly situated as free and equal, and peoples are (2) modeled as rational. Also their representatives are (3) deliberating about the correct subject, in this case the content of the Law of Peoples. (Here we may view that law as governing the basic structure of the relations between peoples.) Moreover, (4) their deliberations proceed in terms of the right reasons (as restricted by a veil of ignorance). Finally, the selection of principles for the Law of Peoples is based (5) on a people's fundamental interests, given in this case by a liberal conception of justice (already selected in the first original position). Thus, the conjecture would appear to be sound in this case as in the first. But again there can be no guarantee.

Two questions, though, may arise. One is that in describing peoples as free and equal, and so as fairly and reasonably represented, it may appear that we have proceeded differently than in the domestic case. There we counted citizens as free and equal because that is how they conceive of themselves as citizens in a democratic society. Thus, they think of themselves as having the moral power to have a conception of the good, and to affirm or revise that conception if they so decide. They also see themselves as self-authenticating sources of claims, and capable of taking responsibility for their ends.³⁶ In the Law of Peoples

36. See *Political Liberalism*, pp. 29–35.

we do somewhat the same: we view *peoples* as conceiving of themselves as free and equal *peoples* in the Society of Peoples (according to the political conception of that society). This is parallel to, but not the same as, how in the domestic case the political conception determines the way citizens are to see themselves according to their moral powers and higher-order interests.

The second question involves another parallel to the domestic case. The original position denied to the representatives of citizens any knowledge of citizens' comprehensive conceptions of the good. That restriction called for a careful justification.³⁷ There is also a serious question in the present case. Why do we suppose that the representatives of liberal peoples ignore any knowledge of the people's comprehensive conception of the good? The answer is that a liberal society with a constitutional regime does not, *as a liberal society*, have a *comprehensive* conception of the good. Only the citizens and associations within the civic society in the domestic case have such conceptions.

3.3. *Fundamental Interests of Peoples.* In thinking of themselves as free and equal, how do peoples (in contrast to states) see themselves and their fundamental interests? These interests of liberal peoples are specified, I said (§2.3), by their reasonable conception of political justice. Thus, they strive to protect their political independence and their free culture with its civil liberties, to guarantee their security, territory, and the well-being of their citizens. Yet a further interest is also significant: applied to peoples, it falls under what Rousseau calls *amour-propre*.³⁸ This interest is a people's proper self-respect of themselves as a people, resting on their common awareness of their trials during their history and of their culture with its accomplishments. Altogether distinct from

37. See the long footnote on pp. 24–25 of the 1996 paperback edition of *Political Liberalism*, restated above.

38. My account here follows N. J. H. Dent in his *Rousseau* (Oxford: Basil Blackwell, 1988) and Frederick Neuhauser's essay "Freedom and the General Will," *Philosophical Review*, July 1993. Donald Kagan in his *Origins of War and the Preservation of Peace* notes two meanings of honor. As I describe them in the text (above and in the next section), one is compatible with satisfied peoples and their stable peace, whereas the other is not, setting the stage for conflict. I believe Kagan underestimates the great difference between the two meanings of honor.

4. The Principles of the Law of Peoples

their self-concern for their security and the safety of their territory, this interest shows itself in a people's insisting on receiving from other peoples a proper respect and recognition of their equality. What distinguishes peoples from states—and this is crucial—is that just peoples are fully prepared to grant the very same proper respect and recognition to other peoples as equals. Their equality doesn't mean, however, that inequalities of certain kinds are not agreed to in various cooperative institutions among peoples, such as the United Nations, ideally conceived. This recognition of inequalities, rather, parallels citizens' accepting functional social and economic inequalities in their liberal society.

It is, therefore, part of a people's being reasonable and rational that they are ready to offer to other peoples fair terms of political and social cooperation. These fair terms are those that a people sincerely believes other equal peoples might accept also; and should they do so, a people will honor the terms it has proposed even in those cases where that people might profit by violating them.³⁹ Thus, the criterion of reciprocity applies to the Law of Peoples in the same way it does to the principles of justice for a constitutional regime. This reasonable sense of due respect, willingly accorded to other reasonable peoples, is an essential element of the idea of peoples who are satisfied with the status quo for the right reasons. It is compatible with ongoing cooperation among them over time and the mutual acceptance and adherence to the Law of Peoples. Part of the answer to political realism is that this reasonable sense of proper respect is not unrealistic, but is itself the outcome of democratic domestic institutions. I will come back to this argument later.

§4. The Principles of the Law of Peoples

4.1. *Statement of the Principles.* Initially, we may assume that the outcome of working out the Law of Peoples only for liberal democratic societies will be the adoption of certain familiar principles of

39. This account parallels the idea of the reasonable used in a liberal society. See *Political Liberalism*, II: §1.

equality among peoples. These principles will also, I assume, make room for various forms of cooperative associations and federations among peoples, but will not affirm a world-state. Here I follow Kant's lead in *Perpetual Peace* (1795) in thinking that a world government—by which I mean a unified political regime with the legal powers normally exercised by central governments—would either be a global despotism or else would rule over a fragile empire torn by frequent civil strife as various regions and peoples tried to gain their political freedom and autonomy.⁴⁰ As I discuss below, it may turn out that there will be many different kinds of organizations subject to the judgment of the Law of Peoples and charged with regulating cooperation among them and meeting certain recognized duties. Some of these organizations (such as the United Nations ideally conceived) may have the authority to express for the society of well-ordered peoples their condemnation of unjust domestic institutions in other countries and clear cases of the violation of human rights. In grave cases they may try to correct them by economic sanctions, or even by military intervention. The scope of these powers covers all peoples and reaches their domestic affairs.

These large conclusions call for some discussion. Proceeding in a way analogous to the procedure in *A Theory of Justice*,⁴¹ let's look first

40. Kant says in Ak:VIII:367: "The idea of international law presupposes the separate existence of independent neighboring states. Although this condition is itself a state of war (unless federative union prevents the outbreak of hostilities), this is rationally preferable to the amalgamation of states under one superior power, as this would end in one universal monarchy, and laws always lose in vigor what government gains in extent; hence a condition of soulless despotism falls into anarchy after stifling seeds of good." Kant's attitude to universal monarchy was shared by other writers of the eighteenth century. See, for example, Hume's "Of the Balance of Power" (1752), in *Political Essays*, ed. K. Haakonssen (Cambridge: Cambridge University Press, 1994). F. H. Hinsley, *Power and the Pursuit of Peace* (Cambridge: Cambridge University Press, 1966), also mentions Montesquieu, Voltaire, and Gibbon, pp. 162ff., and he has an instructive discussion of Kant's ideas in chapter 4. See also Patrick Riley, *Kant's Political Philosophy* (Totowa, N.J.: Rowman and Littlefield, 1983), chaps. 5 and 6.

41. See *A Theory of Justice*, where chapter 2 discusses the principles of justice and chapter 3 gives the reasoning from the original position concerning the selection of principles. All references to *A Theory of Justice* are to the original edition (Harvard University Press, 1971).

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at familiar and traditional principles of justice among free and democratic peoples:⁴²

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 are 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 the conduct of war.
8. Peoples have a duty to assist other peoples living under unfavorable conditions that prevent their having a just or decent political and social regime.⁴³

4.2. *Comments and Qualifications.* This statement of principles is, admittedly, incomplete. Other principles need to be added, and the principles listed require much explanation and interpretation. Some are superfluous in a society of well-ordered peoples, for example, the seventh regarding the conduct of war and the sixth regarding human rights. Yet the main point is that free and independent well-ordered peoples are ready to recognize certain basic principles of political justice as governing their conduct. These principles constitute the basic charter of the Law of Peoples. A principle such as the fourth—that of non-intervention—will obviously have to be qualified in the general case of outlaw states and grave violations of human rights. Although suitable for a society of well-ordered peoples, it fails in the case of a so-

42. See J. L. Brierly, *The Law of Nations: An Introduction to the Law of Peace*, 6th ed. (Oxford: Clarendon Press, 1963), and Terry Nardin, *Law, Morality, and the Relations of States* (Princeton: Princeton University Press, 1983). Both Brierly and Nardin give similar lists as principles of international law.

43. This principle is especially controversial. I discuss it in §§15–16.

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-

types of societies

8. Extension to Decent Hierarchical Peoples

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 "Kazanistan." 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 associationist 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.