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Rawls and Cosmopolitanism

Peoples, Persons, and Human Rights

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*In man [as the sole rational creature on earth] those natural capacities directed toward the use of his reason are to be completely developed only in the species, not in the individual.*¹

In *The Law of Peoples* Rawls extends his social contract theory to the international realm, and with that tries to provide his recipe for a “realistic utopia”—a perpetual peace. In fact, he follows Kant’s “Perpetual Peace” in advocating not one centralized, “world-state,”² but rather an alliance of many independent, well-ordered member nations (Peoples).³ Rawls calls such an alliance a “Society of Peoples” and suggests that it, “is reasonably just in that its members follow the reasonably just Law of Peoples in their mutual relations.”⁴ This strategy also has unique implications for Rawls’s conception of human rights. But, his conception has recently come under fire for its emphasis on Peoples over persons. In this paper I will try to demonstrate that one such attack misses its mark, and that Rawls in fact provides what I argue to be an extremely plausible view of human rights, at least from a social contract perspective.

¹ Immanuel Kant’s *Second Thesis* in “Idea for a Universal History with a Cosmopolitan Intent,” (1784) in, *Perpetual Peace and other essays on Politics, History, and Morals*. Trans. Ted Humphrey. (Indianapolis: Hackett Publishing Co., Inc., 1988), p. 30.

² John Rawls, *The Law of Peoples*. (Cambridge, Mass.: Harvard University Press, 1999), 29-30, 36.

³ Immanuel Kant, “To Perpetual Peace: A Philosophical Sketch.” (1795) *Perpetual Peace and other essays on Politics, History, and Morals*. Trans. Ted Humphrey. (Indianapolis: Hackett Publishing Co., Inc., 1988), 117.

⁴ *Law of Peoples*, 5.

§ 1. Individual Rights or Social Rights?

A common idea is that human rights attach to each individual human being, simply because they are *human*. This provides an individualistic conception of human rights, which is the centerpiece of what Rawls calls the “cosmopolitan” view of justice.⁵ Rawls emphasizes this when he says, that, “The ultimate concern of a cosmopolitan view is the well-being of individuals and not the justice of societies.”⁶ This sentence also reveals Rawls’ contrasting belief that, “What is important to the Law of Peoples is the justice and stability for the right reasons of liberal and decent societies, living as members of a Society of well-ordered Peoples.”⁷ In *The Law of Peoples*, Rawls presents a unique approach to the question of human rights, one that shifts the focus from the needs of the individual to the maintenance and structuring of well-ordered societies or peoples.⁸

Rawls is quick to point out that his emphasis on Peoples over persons does not mean that human rights apply *only* to members of well-ordered peoples, as the cosmopolitan seems inclined to suggest.⁹ Rawls says that,

The list of human rights honored by both liberal and decent hierarchical regimes should be understood as *universal* rights in the following sense: they are intrinsic to the Law of Peoples and have a political (moral) effect whether or not they are supported locally. That is, their political (moral) force extends to all societies, and they are binding on all peoples and societies, including outlaw states.¹⁰

Ultimately then, the dispute between Rawls and the cosmopolitan does not so much involve *who*

⁵ Of course the cosmopolitan view is not the only individualistic account of human rights on the market, in fact, as Rawls conceives of it, it’s just another version of a social contract view (as noted below). Thus the present discussion should not be viewed as an attempt to rebut all individualistic accounts of human rights.

⁶ John Rawls, *The Law of Peoples*. (Cambridge, Mass.: Harvard University Press, 1999), 118.

⁷ *The Law of Peoples*, 120.

⁸ Much has been made of Rawls’s use of “Peoples” rather than “states” or “nations” or “societies”. This is an interesting issue, but not one directly relevant to the present discussion. In this paper I will not place any weight on the use of the term “Peoples”, in fact, as you may have already noticed, I play rather loose with it, occasionally substituting in “societies” or “states”. The important point, for my purposes, is not the appellation, but the idea of the *social unit*, as opposed to the individual, being the basis of global relations and foreign policy.

⁹ Later we’ll see Charles Beitz make this accusation.

¹⁰ *The Law of Peoples*, 80-1.

receives human rights, but *how* those rights are conceived. In fact, Rawls develops the cosmopolitan view as a rival liberal *social contract* view. And, on his construal, the main difference between the two is in how each one envisages the global original position. Rawls tells us that the cosmopolitan, in constructing *his* global original position, takes individual persons as representatives. Rawls's view, on the other hand, takes Peoples (or representative of peoples) to be the parties in his second (global) original position. Thus the cosmopolitan models his global position just like he models the domestic position, whereas Rawls models each of them differently. This difference, I think, is a crucial one.¹¹

Rawls says that on the *cosmopolitan* view, "all persons are considered to be reasonable and rational and to possess what I have called "the two moral powers"."¹² He then goes on to explain, that, "following the kind of reasoning familiar in the original position for the domestic case, the parties would then adopt a first principle that all persons have equal basic rights and liberties."¹³ This sounds like quite a plausible way to understand the concept of human rights from a social contract perspective, but Rawls does not accept it. Unfortunately, like many other topics in the rather short *Law of Peoples*, Rawls does not spend much time elaborating his position; in this case, his opposition to the use of persons rather than peoples in the global original position. In spite of this fact, I think that we can piece together a significant case for Rawls, against the cosmopolitan view, if we look to other aspects of his theory for additional support.

One thing however is clear and present in Rawls's discussion of the cosmopolitan view: he thinks that it fails the test of tolerance. That is, constructing cosmopolitan principles requires total agreement by all persons, which, Rawls thinks, would limit the range of allowable

¹¹ This importance will be more fully explained in the last section.

¹² *The Law of Peoples*, 82.

reasonable doctrines (to one!). Rawls on the other hand, seems to think that there can be more than one kind of reasonable constitutional society¹⁴, in fact he thinks that it is also possible for there to exist nonliberal, but reasonable, societies.¹⁵ Rawls's criticizes the cosmopolitan view from this perspective, claiming that it, "amounts to saying that all persons are to have the equal liberal rights of a citizen in a constitutional democracy...But this foreign policy simply *assumes* that only a liberal democratic society can be acceptable."¹⁶ Part of Rawls rejection of the cosmopolitan position, then, involves his commitment to expanding the list of acceptable societies to include "decent hierarchical regimes" alongside liberal constitutional democracies. The cosmopolitan, he thinks, attempts to impose a singular form of social organization onto diverse peoples with diverse interests. It would be "intolerant" to assume that *we* have come up with the definitive set of principles by which *all* people must live. Instead, Rawls fashions his global principles to be inclusive, not exclusive; he wants to allow for a *range* of acceptable societies.¹⁷

Charles Beitz rejects Rawls' argument from toleration, calling it a circular argument. He suggests that Rawls *already* accepts a principle of toleration: he only *assumes* but does not *show* that focusing on the interests of Peoples as opposed to individuals makes the case for toleration.¹⁸ He says, "If there are reasons for toleration, as no doubt there are, it would seem better to

¹³ *The Law of Peoples*, 82.

¹⁴ He says, "Even when two or more peoples have liberal constitutional regimes, their conceptions of constitutionalism may diverge and express different variations of liberalism." (*LP*, 11)

¹⁵ His fear may be that one group, the group of modern, industrial, Western nations, could be seen as imposing one set of standards on others who might prefer to follow different, non-Western (but still reasonable) standards.

¹⁶ *The Law of Peoples*, 83, (emphasis added).

¹⁷ The ideal of foreign policy on this view would be to bring all societies into this "range". Liberal societies would then not be charged with the task of converting all nonliberal societies into liberal ones exactly like their own. If there were only one acceptable way to organize a people, it would be difficult to attempt to make all the others fit the mold that one society has created. The goal is not to manufacture societies, but to give them the tools to *organize themselves* according to reasonable principles.

¹⁸ Charles Beitz, "Rawls's Law of Peoples", *Ethics*, Vol. 110. (July, 2000), 681.

articulate them within a theory rather than to presuppose them.”¹⁹ Like Rawls, Beitz does not develop this criticism in any detailed fashion, which is unfortunate, since here he seems to be mistaken. As I mentioned above, on the cosmopolitan view every single individual (representative) would have to agree to a set of international principles—applicable to *all*. This would limit (even in the *hypothetical* case) the number of acceptable sets of principles to *one*. In such a case there is no question of whether to tolerate other sets of principles, since there are no others. The idea of toleration cannot therefore be drawn out of the cosmopolitan doctrine. But, if there are going to be other sets, as Rawls suggests there will be (if we allow Peoples to freely guide and govern themselves²⁰), then the limitation to the viability of a given set will (only) be that it doesn’t conflict with other sets. Thus the standard of tolerance will track those sets of principles that are mutually compatible with one another (i.e., the “reasonable” ones), not the ones that are mutually exclusive. If a set of principles is fundamentally at odds with others, then it cannot be reasonable, since it will inevitably lead to conflict and thus instability (making it self-defeating). For this reason, Rawls should not be seen as presupposing toleration: it is a legitimate outgrowth of the idea that individuals may organize themselves as they see fit, so long as the organizing principles they follow don’t undermine the very ability to organize as such.²¹

Rawls also seems to suggest that he is being more *realistic* than the cosmopolitan about the exigencies of the global situation. He says, for example, “The Law of Peoples proceeds from the international political world as we see it...it allows us to examine in a reasonably realistic way what should be the aim of the foreign policy of a liberal democratic people.”²² Again,

¹⁹ Beitz, 681.

²⁰ The importance of this aspect to Rawls’s theory will be defended later.

²¹ Although Rawls himself does not advance this argument, it seems to be in line with the decidedly Kantian flavor of much of Rawls’s theorizing. What is, however, an apparent and essential (Kantian) ingredient of his theory is that individuals are autonomous and must willingly come to an (hypothetical) agreement with others (i.e. other autonomous actors).

²² *The Law of Peoples*, 83.

Rawls does not go to any lengths to describe how issues of political realism count against the cosmopolitan view, but perhaps his “realism” argument might run something like this. The cosmopolitan view is far-fetched because it simply cannot occur that we can take all the individual persons of the world, scrap their respective governments, and rebuild a global society from the ground up, with one central governing body to represent the interests of all individuals. It’s a pleasant thought, but, unfortunately, totally unrealistic. Perhaps another way to construe the argument is as suggesting that the cosmopolitan ignores certain realities inherent in the decision procedure of the domestic original position: e.g. that the veil restricts a representative’s awareness of the “larger”, international situation.

Either way, Beitz criticizes Rawls’s argument—this time for being a non sequitur. Again though, he too is short, saying, “considerations of political realism have to do with constraints imposed by the status quo on prospects for change, and thus they pertain to questions about institutional design and reform rather than to those about standards of moral appraisal.”²³ Although brief, this comment reflects, and depends upon, Beitz’s *main* criticism of Rawls’s Law of Peoples: its emphasis on the *moral* primacy of Peoples over persons or individuals.²⁴ This criticism, I will argue, is misplaced.

Beitz says that on Rawls’s view, “peoples are...ethically primary: it is peoples, not persons, which are represented in the international original position, and it is the *interests* of peoples considered as collective entities, not those of individual persons, that determine the

²³ Beitz, 681. By “short” I mean that he expends only one additional sentence in his proof that what Rawls gives us does not follow.

²⁴ See e.g., Beitz 680, where he says, “It is one thing...to hold that a global Society of Peoples would be a desirable goal of political and social change and another to hold that international political theory should begin with peoples—that is, that principles of international conduct should be founded on considerations about the legitimate interests of peoples rather than persons.”

choice of principle for the international conduct of states.”²⁵ It is unclear exactly what Beitz means by “interests”, but a common use of the term “interests” (which seems to be the one Beitz is using) refers to the good or bad consequences that may accrue in terms of the well-being (success or failure) of a given individual. From this perspective, his concern with the “ethical primacy” of peoples is that Rawls’s view will have a negative impact on the interests or well-being of individuals. However, if this is the operative interpretation—i.e. if the “interests” of persons (i.e. individuals) are going to be taken as the standard of “moral appraisal,”—then there may actually be *no* appreciable (“moral”) difference between the cosmopolitan and the Rawlsian.

Both theories purport to extend a protection (of well-being) to all individuals via human rights. Rawls, as quoted above, seems to make this clear in saying that human rights have a “political (moral) force,” that, “extends to all societies, and they are binding on all peoples and societies, including outlaw states.”²⁶ In fact, contrary to what Beitz says, Rawls’s view does not seem to discount the interests of persons at all. At most, what it does, is suggest or imply that the interests of persons are intimately bound up with the interests of, and organization of, Peoples, i.e. a person’s society. Such a view is certainly no novelty, and on a certain level it has an indubitable quality: *my interests and my society’s interests must converge at some point*. If Beitz cannot show that some putative moral privilege is denied to persons by Rawls’s emphasis on “Peoples” over “persons”, then his argument cannot succeed. This is because his case depends upon him showing an appreciable negative impact on individuals based on some moral criterion. (Here, for obvious reasons, I have assumed that Beitz takes this criterion to be “well-being”.)

It should be cautioned that the above remark, that “my interests and my society’s must

²⁵ Beitz, 678. (This is one of a number of comments from which I base my assumption that the moral measuring stick Beitz is relying on is “interests”.)

²⁶ *The Law of Peoples*, 81. (Rawls himself inserts the parenthetical emphasis on “moral” here, as he does in other places in the text.)

converge at some point”, may require the following qualification or caveat: *provided my society is a reasonable one*. It is here, perhaps, that Rawls might be said to be relying on a notion of political realism. It’s not clear, however, that it deserves the title “political realism”²⁷, but I think that Rawls’s point is the following. He admits that not all societies are reasonable and well-ordered. That problem, of course, should be rectified; yet, at the same time, there must be a limit to the amount of interference and pressure that well-ordered societies can impose on non-well-ordered ones in the name of this cause. Under certain conditions, interference may be necessary and called-for, but too much external interference can have a negative influence on the free development of well-ordered peoples. The ideal goal is to allow for individuals to willingly and reasonably create their own societies, and this, therefore, requires a delicate balance between isolation and interference—a balance that Rawls takes to be the central concern of the foreign policy of a liberal people. He thinks that such a foreign policy should have a “utopian” goal, viz. to bring all peoples into the Society of Peoples; but it also has to be “realistic”.

One of the conditions that Rawls sets, “for a liberal conception of justice to be *realistic*”, is that it promote “stability for the right reasons.”²⁸ This stability requires a proper respect for the autonomy of peoples.²⁹ In order for new, sustainable, liberal societies to take root, there must be a concerted willingness on the part of individuals to organize themselves into a just society. If there is not this eagerness and determination by individuals, then, perhaps, that society is not yet ready for entrance into the Society of Peoples. In such cases, there is still more work to be done on the part of liberal societies in helping that society’s individuals to see the value of the Law of Peoples. Of course even in poor and unstable societies there will be some individuals who are

²⁷ He in fact refers to his project as an attempt to establish an outline for a “Realistic Utopia”. The “utopia” part can certainly be seen as mitigating the “realistic” part: you might even go so far as to dub the phrase an oxymoron.

²⁸ *The Law of Peoples*, 12-13.

more advanced in their thinking than the common rank. They may have an acute sense of the ills and injustices of their society, and they may also have an understanding of what it takes to develop and maintain a more just society. However, many ordinary (poor) persons in backwards or burdened societies, having never experienced any other way of life, may have little or no awareness of the alternatives. In Rawls's terminology, these people have not yet adequately developed a "sense of justice". As unfortunate as this is for both types of individuals, we (liberal peoples) can't just go into that society and force all the dull ones to see the world as we see it, and we also can't just go in and *rescue* all the enlightened ones.³⁰ In fact, perhaps the only hope for changing the perceptions of the dull may be to have the enlightened individuals stay and spread their wisdom. There is a certain respect that an individual will more readily extend to the voices of those with whom he or she shares a common bond, as in common citizenship.³¹ It may be an altogether different matter however, if in a certain society enlightened voices are being quashed. If liberal peoples judge that that society imposes a wide barrier to the legitimate development of its citizens, as in the case of policies that violate human rights, then emergency actions may be called-for. It is however only exceptional cases that would require forceful imposition; peaceful, non-invasive measures should be pursued first. Thus, even though Rawls is concerned about the autonomy of peoples, he does not take their autonomy to be unlimited. And, it is Rawls's unique conception of human rights that plays a role in restricting the internal autonomy of societies.

²⁹ Rawls is careful to point out that this autonomy is not unlimited. In fact, it is his view of human rights that places limits on the internal autonomy of a people.

³⁰ This, however, might be exactly what is called for on cosmopolitan grounds.

³¹ Consider for example the great disparity between the way Americans and non-Americans view Bush's policy toward Iraq.

§ 2. Human Rights as Standards

Rawls suggests that a proper respect for human rights is essential for social cooperation, and as such, reasonable peoples are compelled to defend these rights. He says, “What have come to be called human rights are recognized as necessary conditions of any system of social cooperation.”³² These rights must be defended on two fronts: at home and abroad. Of course decent peoples, being well ordered and reasonable, naturally protect and preserve the human rights of their citizens at home.³³ Non well-ordered societies, however, may not provide the same protections. This fact poses a threat to the greater society of peoples and is therefore condemned under the Law of Peoples. The Law of Peoples provides that human rights violations, *anywhere*, shall be met with “forceful sanctions” or “intervention”.³⁴ Thus, Rawls says, “Human rights set a necessary, though not sufficient, *standard* for the decency of domestic political and social institutions.”³⁵ Societies that fail to meet these standards forfeit their right not to be interfered with. Furthermore, human rights also impose restrictions or standards on the conduct of war, including wars of intervention. As standards, Rawls suggests that human rights play a “special role”. He says, “Human rights are a class of rights that play a *special role* in a reasonable Law of Peoples: they restrict the justifying reasons for war and its conduct, and they specify limits to a regime’s internal autonomy.”³⁶

On Rawls’s view, human rights can be seen as aspects of a liberal foreign policy—imposing limits on toleration and on the conduct of war. He thinks that those who violate human rights or permit such violations fail to meet the standards that would allow for their inclusion into

³² *The Law of Peoples*, 68.

³³ These would be affirmed by the first, domestic original position. They would however, strictly speaking, have to be called “civil” rights: they are determined according to a “closed” conception of the O.P..

³⁴ *The Law of Peoples*, 81.

³⁵ *The Law of Peoples*, 80.

³⁶ *The Law of Peoples*, 79.

the Society of Peoples. He says that such “Outlaw states are aggressive and dangerous; all peoples are safer and more secure if such states change, or are forced to change, their ways.”³⁷ Expansionist policies and human rights violations trigger a foreign policy alert mechanism that grants permission to liberal peoples to intervene in the affairs of non-liberal peoples. Of course, on this “standards” view, if a society is non-liberal, then it violates human rights, and conversely, if it violates human rights, then it is non-liberal.³⁸ Thus, putting a stop to human rights violations is an integral part of making all societies well-ordered. And, Rawls says that the “long-run aim” of liberal peoples, “is to bring all societies eventually to honor the Law of Peoples and to become full members in good standing of the society of well-ordered peoples.”³⁹

However, Rawls’s relegation of human rights to a position as mere “standards” in a liberal foreign policy might be viewed by some as a significant cheapening of these rights. Beitz, for one, sees it this way. He says, “it does not appear that human rights, in this view, are to play the broad political role envisioned in the conventional understanding—for example, as bases of claims by individuals against their own governments or as grounds of political action by the various nongovernmental organizations that compose international civil society.”⁴⁰ Beitz is concerned that, if human rights are conceived as foreign policy standards regulating the treatment of *Peoples*, then *individuals* will no longer have recourse to these rights—at least not those individuals that reside in non-decent societies. (This is another way of saying that in *The Law of Peoples* human rights are not *universal*.) Here again, Beitz’s objection echoes his main criticism of Rawls, that the emphasis on the moral primacy of Peoples over individuals gets

³⁷ *The Law of Peoples*, 81.

³⁸ Actually, Rawls suggests that human rights form a necessary, though not sufficient, standard (see e.g., fn. 32 & 35). This is because a society can uphold human rights yet not be well-ordered. “Benevolent absolutisms” would fall into this category. The point I wish to make by this comment is only that, if you make all societies well-ordered, then you will have also secured human rights for *all* individuals.

³⁹ *The Law of Peoples*, 93.

⁴⁰ Beitz, 684.

things in the wrong order. Beitz is worried that the result of associating human rights with Peoples will mean that those rights will no longer *engage* or involve the individual directly, but rather will be mediated through societies or governments. Consequently, it seems that on Rawls's view, the burdens and responsibilities for respecting human rights would also fall squarely on governments, not on individuals.

This individualistic emphasis by Beitz's shows his commitment to a cosmopolitan point of view, and, he criticizes Rawls's theory from this perspective. For example, he says,

We want to say that people are entitled to be treated in certain ways (partly) in virtue of their characteristics as human beings and independently of considerations that might be particular to their own institutions and political cultures. But these are essentially *cosmopolitan* considerations, and they do not register in an international original position in which the unit of representation is peoples rather than persons and agreement on principles is motivated by their corporate interests as social units rather than the interests of their members as individuals.⁴¹

As Beitz points out, the first sentence contains the central tenet of the cosmopolitan view of human rights, viz. that they apply on an individual basis, and because of this they apply to persons independently of their respective governments, so that even someone completely removed from the bounds of any society will continue to retain these rights. The second sentence contains a criticism of Rawlsian rights from this cosmopolitan point of view. The problem with Rawls's view, according to the cosmopolitan, is that it focuses on the interests or well-being of peoples or groups, not individuals.

Of course, Rawls does not deny that his focus is on establishing well-ordered societies. In fact he repeatedly emphasizes this aspect of his view in *The Law of Peoples*.⁴² What I think he would deny, however, is the charge that this aspect of his view *lowers* the prospects for the well-being of individuals. To the contrary, he clearly states that the only way to really raise the

⁴¹ Beitz, 686.

⁴² See e.g., *LP*, 119, 120.

prospects for individuals, i.e. in the *long-run*, is to give them the chance to take-part in a well-ordered society. Moreover, it is the goal of the liberal Law of Peoples to bring *all persons* into well-ordered societies, because this would be the most suitable and stable arrangement of Peoples.⁴³ Thus, it is not at all clear that Rawls’s view would exclude anyone from the possession of human rights—it simply links the causes of individuals to the causes of their respective societies. His belief is that, “Any hope we have of reaching a realistic utopia rests on there being reasonable liberal constitutional (and decent) regimes sufficiently established and effective to yield a viable Society of Peoples.”⁴⁴ From this it is evident that persons have not been underestimated by Rawls: the very crux of human rights is that they provide an atmosphere in which individuals can successfully organize, amongst themselves, a cooperative social enterprise—one that can guarantee and maintain these basic rights. In fact, he claims that the most basic terms of social living require respect for human rights, and so they are, contrary to what Beitz claims, *not* viewed by Rawls as limited to only well-ordered peoples. He says that the “political (moral) effect,” of human rights, “extends to all societies, and they are binding on all peoples and societies, including outlaw states.”⁴⁵ So, no matter what society you belong to, you are owed human rights. Here again, the Rawlsian strategy in reply to Beitz’s criticism is to deny that looking at Peoples has the negative *moral* consequences that Beitz suggests it has, viz., its failure to consider the well-being of individuals or persons.

The standards model of rights given by Rawls suggests that when human rights are violated, the “non-intervention” clause of the Law of Peoples gets waived and the “duty to assist

⁴³ Perhaps, it might be contested, this is a moral defect of the theory: viz. that it is self-interested or egocentric. But here, of course, the “self” refers to Peoples—so it’s Peoples-centric. Yet, I am still unable to locate a single argument that explains *how* uniting persons with peoples actually does moral harm to the prospects or interests of persons. This is certainly a cosmopolitan assumption, but it has remained just that, *an assumption*.

⁴⁴ *The Law of Peoples*, 29-30.

⁴⁵ *The Law of Peoples*, 80-1.

clause” implemented.⁴⁶ And, although Beitz admits that Rawls provides his Law of Peoples with duties to intervene in “societies” not complying with the human rights standards, he suggests that on Rawls’s view, such intervention is justified for the *wrong* reasons. Beitz says that Rawls, “argues that intervention would be justified by considerations of international stability: liberal and decent peoples do not tolerate states that violate human rights.”⁴⁷ He goes on to say that,

Whatever might be said about intervention, it is clear that the strategic interest in international stability does not bear on the moral status of human rights. For example, the reason why people have human rights not to be tortured does not seem to be that regimes that torture are dangerous to other regimes: although the latter fact (if it is a fact) might justify intervention, it does not imply anything about the moral situation of the tortured.⁴⁸

Here again, Beitz relies on the point that placing peoples before persons will result in unwanted moral implications that negatively affect individuals. Thus Beitz assumes that Rawls must not be concerned with the plight of the tortured individuals; instead, he is only concerned with rectifying the political situation that allows such torture. Of course, if a concern for the “moral situation” of the individual is cashed out in terms of “interests”, then it is not perfectly clear which so-called focus (i.e. either on peoples or on persons) is best able to protect those interests. And so, Rawls could easily retort that Beitz, the cosmopolitan, is so concerned with individuals that he fails to remedy or even address the institutions or political structures that allow systematic torture to occur in the first place. One might even object to the attempt to confront each and every violation of human rights one by one (i.e. on an individual basis) as an inefficient remedy that ignores the deeper reasons behind the persistence of such abuses. In this respect, it seems that Beitz’s criticisms miss their mark, for he is merely talking past Rawls. He tells us

⁴⁶ Principle of justice 4 and 8 respectively. (*Law of Peoples*, 37)

⁴⁷ Beitz, 685.

⁴⁸ Beitz, 685.

that Rawls's emphasis on peoples will have bad moral consequences⁴⁹, but he fails to respond to the underlying reasons why Rawls believes that the only viable conception of the international situation is one that takes peoples as representatives. I will now attempt to distill the basic reasons that guide Rawls to take this position.

§ 3. Human Rights and Civil Rights

As previously mentioned, Rawls, in direct contrast to the cosmopolitan, models his domestic and global original positions quite differently. He believes that a theory of justice must be worked out at the domestic level first, and only then, when we have a conception of a just civil society, can we work out principles for a global society. This priority is stressed throughout Rawls's works, and in fact the historical progression of the Rawls corpus embodies this ordering as well.⁵⁰ In *A Theory of Justice* Rawls anticipates the eventual need for principles of international relations, but says, "The conditions for the law of nations may require different principles arrived at in a somewhat different way."⁵¹ But, for Rawls, the first priority is to establish a domestic society that is just and self-sustaining, or self-reliant. The liberal cosmopolitan conception, on the other hand, has as its first priority the establishment of global principles to cover all individuals, viz. "human rights". Rawls says that the cosmopolitan thinks that the construction of a liberal law of peoples, "should begin by *first* taking up the question of liberal cosmopolitan or global justice for all persons."⁵² Thus the primary disagreement between Rawls and the

⁴⁹ As before, I am construing the moral dimension that Beitz refers to as a consequentialist concern for the well-being of individuals. He may be relying on some other conception of moral consideration, but he doesn't mention one. Moreover, I don't see how he could have any other conception in mind—the whole point of cosmopolitan human rights seems to be to protect the vital interests of individual human beings.

⁵⁰ By this I mean that Rawls's first major work, *A Theory of Justice*, works out a theory for a civil society, and his later works gradually bring in considerations of the larger, global picture, which is the main focus of his recent *Law of Peoples*.

⁵¹ *Theory of Justice*, 8. He means differently from the domestic case, and by "Law of Nations" he means that same as what he will later call the "Law of Peoples".

⁵² *The Law of Peoples*, 82 (emphasis added).

cosmopolitan involves which case, the domestic or the global, should be modeled first. The choice between priorities, I will argue, makes no small difference.

In responding to what he takes to be the cosmopolitan position on rights, Rawls is again rather short and says the following. “To proceed in this [cosmopolitan] way, however, takes us back to where we were in §7.2 (where I considered and rejected the argument that nonliberal societies are always properly subject to some form of sanctions), since it amounts to saying that all persons are to have the equal liberal rights of citizens in a constitutional democracy.”⁵³

Rawls’s argument here is a familiar one in *The Law of Peoples*. The argument is that it would be *intolerant* (of us) to suppose that everyone would be perfectly happy to live according to the rules that make us happy, viz. the rules of a constitutional democracy. He says that a foreign policy based on cosmopolitan principles, “simply assumes that only a liberal democratic society can be acceptable.”⁵⁴ Of course in *The Law of Peoples* Rawls sketches a possible society, which he calls “decent”, and includes it, along with liberal societies, as well-ordered and therefore also acceptable. Such a society may not grant its citizens the full and equal range of freedoms enjoyed in a liberal democratic society, but it is nonetheless a tolerable society (from a foreign policy perspective) because its aims are peaceful (or at least non-aggressive) and it respects human rights. From a “rights as standards” perspective, a “decent” society—just like a liberal one—meets all the standards of acceptable or tolerable societies. However, according to Rawls, on the (less tolerant) cosmopolitan model, such a decent society would not be seen as acceptable and might in fact be subject to some form of intervention or sanction.

As brief and as vague as it is, Rawls’s argument no doubt appears to be rather weak. And, as Beitz pointed out to us earlier, it is *Rawls*, not the cosmopolitan, who is being charged

⁵³ *The Law of Peoples*, 82. I will elaborate on the parenthetical remark presently.

⁵⁴ *The Law of Peoples*, 82-3.

with making the gratuitous assumption here, viz. that there cannot be one set of global principles that would be accepted by *all*. In spite of its apparent weakness, what Rawls gives us (in two small paragraphs) is, I will argue, more than meets the eye; or rather, to employ an equally insufficient metaphor, we get only the tip of an iceberg. In order to get the fuller picture however, we may need to help Rawls make his argument more poignant by filling it out and placing it in the context of his general argumentative strategy.

As mentioned earlier, Beitz objects that Rawls's argument is circular because he *already* accepts a principle of toleration. He says, "If there are reasons for toleration...it would seem better to articulate them within a theory rather than to presuppose them."⁵⁵ His criticism seems to suggest that Rawls only assumes, but does not prove, that there can be more than one acceptable kind of society. Apparently, Rawls is being accused of assuming "that all the individuals of the world will never be able to come to one agreement that would be satisfactory to them all." And, the cosmopolitan may continue, *even if* such unanimity is not possible in the real world, the original position is only *hypothetical*. The social contract theory does not pretend to conform to any *real* decision made between *real* parties, so why not envision it at a global level—so the initial agreement involves *everybody*—like the cosmopolitan does?

Beitz's argument, I think, relies on a fundamental mischaracterization of the assumption that Rawls makes. Beitz suggests that Rawls assumes that all individuals cannot *all* agree to the same set of principles—i.e. to come to *one* agreement. Rawls however *never* makes any such claim. His assumption, if it is to be called such, is only that every individual *may not* come to the same agreement, *not that they will not*. To speculate on the latter would be an egregious assumption, but the former just envisions an open possibility—it is non-speculative. Therefore, Beitz is wrong to accuse Rawls of holding the latter, a clearly prejudiced assumption. In fact,

Rawls says, “without trying to work out a reasonable liberal Law of Peoples, we cannot know that nonliberal societies cannot be acceptable. The possibility of a global original position does not show that, and we can’t merely *assume* it.”⁵⁵ Thus, Rawls himself is not relying on any assumption about what people will or will not be inclined to agree to. Rather, he is only granting that we should respect every individual’s autonomy and ability to decide for oneself. In the end, maybe everyone *will* come to the same conclusion and agree to the same things; Rawls does not deny this possibility: *but we cannot assume* that they will. To make such an assumption would actually commit the Rawlsian *faux pas* of imposing certain values on others rather than allowing them to choose their own. Thus, it is actually the cosmopolitan position that can be seen as relying too heavily on a gratuitous assumption, viz. that all individuals *will* agree to the same thing. Moreover, Rawls suggests that the “*will*” part of the cosmopolitan position involves the assumption that the set of principles that would be accepted by all *will* be that of a liberal constitutional democracy. Thus, it seems that the cosmopolitan assumption amounts to the idea that only one kind of society can be acceptable, a liberal, constitutional democracy. So, rather than succumbing to the charge of circularity, Rawls actually turns the tables on the *cosmopolitan* by showing that it is *his* position that relies upon a bold and unwarranted assumption.

The advantages of Rawls’s view over the cosmopolitan view can best be illustrated by imagining the circumstances surrounding the formation of groups of persons into societies. We might characterize Rawls’s view as a “society-first” view, whereas the cosmopolitan view should be considered an “individual-first” view. On its face, the cosmopolitan view seems innocuous. It may even sound, especially to a liberal ear, like the most promising route toward equal liberty for all individuals: That is, until cosmopolitanism is viewed in the light of individuals forming

⁵⁵ Charles Beitz, 681.

⁵⁶ *The Law of Peoples*, 83 (emphasis added).

their own civil societies. To put the point succinctly, there wouldn't be any civil rights in the domestic cosmopolitan society, only human rights. And this in turn affects the extent to which a civil society has the authority to impose sanctions against its own citizens.

From the cosmopolitan perspective, an individual's foremost allegiance will be to the global community, and, only secondarily to their own domestic society(d).⁵⁷ That larger community comes first, since it is responsible for establishing the basic protections needed for cooperative social living and for ensuring the well-being of all individuals.⁵⁸ Sure, there might be some further set of protections that could be guaranteed by a cosmopolitan society(d), and maybe those things even get called "civil" rights; but, whatever they are called, they would not include those basic principles which make social cooperation possible—those would have already been chosen and subsequently guaranteed according to the global agreement. On the cosmopolitan view the global arrangement is prior to any agreement between parties forming more particular groups or states, i.e., societies(d). Such formations must first respect the global conditions, which would obviously include stipulations regarding the formation and maintenance of societies(d); any further regulations imposed by that society(d) on its citizens would necessarily be more specific (than your basic social rules) and would be pertinent only to that particular society(d). And, most importantly, what we today call *civil* rights would no longer be regarded as domestic in nature or origin, rather, they would fall under the authority and jurisdiction of a broader global community or ("civic") body—perhaps a "world-state".

⁵⁷ Here the use of "society" may start to get confusing (this is partially due to the fact that the cosmopolitan view does not allow us to sharply distinguish the two original positions). By "cosmopolitan society" I here mean to refer not to the global community, but to a more limited community within that larger global group, i.e., a state or nation or People. In order to avoid confusion, when I wish to highlight this usage I will put a parenthetical (d) at the end of "society" to distinguish it from the global cosmopolitan society(g). Also, it may even turn out that there can be no such thing as a domestic society(d) in a cosmopolitan world—such a world (view) would seem to tend toward the establishment of one dominant global authority, or world-state.

⁵⁸ This would be true even if we are speaking of society formation *hypothetically*. The order of allegiance would seem to be unaffected by whether we conceive of the case hypothetically or realistically..

As it is now, we think of nations as responsible for the care and well-being of their individual citizens, and to have the authority to enforce and impose their own laws directed to this end. But, how can a cosmopolitan society(d) *enforce* sanctions against violations that it had no authority to enact in the first place? The answer is that it can't; a cosmopolitan society(d) will not have the ultimate authority to police itself on the most basic social issues, rather it will always yield to a higher authority, the global society(g). For example, if society(g) had a rule prohibiting one person from killing another person (period), then a society(d) *could enact* a law that also prohibits the killing of certain animals (i.e., a more specific law), but it *could not enact* a law that permits abortion or euthanasia or executions or killing in self-defense (partially repealing the original "parent" law).⁵⁹ Yet, as the cosmopolitan maintains, it is the greater society(g) that has the interests of individuals in mind; so, why should citizens look to society(d) as the guarantor of civil rights? Why would an individual look to his or her society(d) to follow up on a rights violation? Or, why would an individual even look to his society(d)'s police, or fire department, or justice system to protect his well-being, if these are already protected by the cosmopolitan society(g)? Perhaps a society(d) would have these departments, but it is not at all clear that they would be run by, or in the control of, society(d) if there is a society(g) already responsible for looking after the well-being of all individuals. Perhaps these things would be superfluous in a cosmopolitan civil society. In fact, what would be the relevance (at all!) of societies(d) in a world with a society(g)?

This last concern is one shared by both Rawls and Kant, and it is a concern for the unchecked power of a global super-state. The cosmopolitan view certainly leads us to the

⁵⁹ I suppose it would be possible for societies(d) to enact laws that alter the original form of the parent law, but they would certainly need to gain permission to do so. The constitution of a society(d) would be regulated by society(g), and so even if a society(d) were able to enact its own laws restricting social behavior, it would not have the *ultimate* authority to do so—it would not be sovereign in this respect.

question: why would one want to form a constitutional society(d) in the first place, since there is already an established society(g) that takes care of the basic social needs of individuals? And, if there is this cosmopolitan society(g), with the authority to enforce its rules with sanctions, then society(g) looks a lot like a global super-state, with sanction power that crosses all borders.

Perhaps the cosmopolitan has a way of showing that his position does not amount to an endorsement of a world state,⁶⁰ but his world-view at the very least blurs the distinction between the need for so-called “global justice for all” and the need for a global super-state to enforce it.

Unlike the rights as standards view, the cosmopolitan does not set any limits on the level or amount of intervention that outsiders may inflict upon a given society(d) in the name of global justice. In *The Law of Peoples*, Rawls picks out two cosmopolitan principles used by Beitz that show this, “the resource redistribution principle” and the “global distribution principle”.⁶¹

Both of these principles are unacceptable, according to Rawls, because they fail to set limits or “targets” on the amount of intervention that would be necessary for outsiders to impose on the internal structures of a civil society.⁶² For example, he says that, “Beitz views the resource redistribution principle as giving each society a fair chance to establish just political institutions and an economy that can fulfill its members’ basic needs.”⁶³ A similar case is made for the “global distribution principle”, which is the cosmopolitan’s global analogue of the domestic difference principle offered by Rawls in *A Theory of Justice*. The idea behind both of Beitz’s principles is that resource rich nations should redistribute their wealth to resource poor nations to ensure their political and economic success. This may sound like a fine deal for the

⁶⁰ I will consider this point later.

⁶¹ *The Law of Peoples*, 116.

⁶² By contrast, Rawls proposes a “duty of assistance” which permits interference, but only up to a point: the point at which that society is capable of becoming a member of the Society of Peoples.

⁶³ *The Law of Peoples*, 116. Rawls citing Charles Beitz, *Political Theory and International Relations* (Princeton: Princeton University Press, 1979)

resource poor countries, but the resource rich ones will have to make a sacrifice. And, Rawls's problem with these principles is that they would permit too much interference in the affairs of a nation or people. So, some may ask, "when does it stop?" Do the rich need to keep on giving indefinitely or until all nations have equal resources? If the cosmopolitan is concerned with the well-being of all individuals, then perhaps the interference will not cease until every individual is at an equal level of well-being? The point is that the cosmopolitan view offers no limit. Rawls also argues that it is not the amount of resources that a nation has that determines the legitimacy of its political institutions; for, there could be resource rich, yet evil, states. He says, "the crucial element in how a country fares is its political culture—its members' political and civic virtues—and not the level of its resources."⁶⁴

Buchanan and Beitz both scoff at the world picture that they see Rawls presenting here. They think that in today's world, with a global capitalist economy, electronic communication, etc., societies can never be fully independent or isolated from one another. In fact, Buchanan considers Rawls's view a throw-back to the Westphalian days, "in which many states were much more economically self-sufficient and distributionally autonomous."⁶⁵ They both think that Rawls is wrong to assume that being well-governed is adequate to "ensure either economic self-sufficiency or distributional autonomy". And again, they see this as an unjustified assumption on Rawls's part. Buchanan, for example, says, "Rawls simply *assumes* that it is only "the basic structure of *their* society" that is relevant to whether a people prospers or not."⁶⁶

Both are, however, mistaken to saddle Rawls with this assumption. With his "duty of assistance", Rawls clearly admits that some "burdened" societies may need help from well-ordered, resource rich nations in order to give them enough stability to construct their own well-

⁶⁴ *The Law of Peoples*, 117.

⁶⁵ Buchanan, "Rules for a Vanished Westphalian World," 702.

ordered society. But, he *does not assume* that once we have helped turn a burdened society into a well-ordered member of the society of people that that nation will magically become wealthy and prosperous. He says, “not all such [burdened] societies are poor, any more than all well-ordered societies are wealthy.”⁶⁷ Of course if a newly baptized well-ordered society continues to need assistance, then that issue would be addressed by the institutions of the Society of Peoples.⁶⁸ What Rawls does however suggest, is that it is rather unlikely that a society with the capabilities to become well-ordered would, for any extended period of time⁶⁹, fail to meet the most basic needs of its citizens. Though unlikely, this scenario is a possible one, and, Rawls has a way of dealing with it. If one member of the Society of Peoples continually struggles, it is the burden of the Society of Peoples to make the requisite adjustments to solve that problem. It would certainly not be in the interest of other members of the society of peoples to be constantly giving away resources to societies that perpetually struggle (i.e., giving away resources without solving the problem). There is of course no “easy recipe” for dealing with each such situation, but what Rawls does try to provide is a cooperative structure with the flexibility to address the various needs or problems that may arise.

Thus, it is simply *not true* that Rawls believes that all well-ordered societies are or ought to be totally self-sufficient and independent in every respect. Obviously, cooperation among member nations is vital to the health of a Society of Peoples. And naturally, international trade links the economies of nations in ways that form mutual dependencies (as well as asymmetric

⁶⁶ Buchanan, 705.

⁶⁷ *The Law of Peoples*, 106.

⁶⁸ I am referring to the so-called “cooperative organizations” that Rawls says will be set up by a Society of Peoples to assist and organize the relations between member states. He says, “the parties will formulate guidelines for setting up cooperative organizations and agree to standards of fairness for trade as well as certain provisions for mutual assistance.” (LOP, 42) He mentions: fair trade agreements, a cooperative banking system, and a United Nations.

⁶⁹ Certainly there are bound to be disasters like droughts which may temporarily render it incapable of meeting the needs of its citizens. But, if it continually failed to do so we could no longer count it as well-ordered.

dependencies). What Rawls does believe however, is that all well-ordered societies ought to be *politically* self-sufficient; and, it is here that I think both Beitz and Buchanan confuse what it means to be politically self-sufficient with what it means to be self-sufficient economically or otherwise. Political self-sufficiency, or political autonomy, must be carefully distinguished from self-sufficiency in other areas, and Rawls, I think, does this by sharply separating the two original positions.

The failure of the cosmopolitan position to adequately distinguish between political autonomy and (specifically) economic autonomy may come to light when we consider the workings of a redistribution effort in a cosmopolitan world. Beitz, as was mentioned, proposed a cosmopolitan resource redistribution principle. In the simplest case, there would be one society(d) that that is not self-sufficient economically and one that is. In fact, the latter would be more than self-sufficient since it can safely give away some of its resources. We can imagine then that resources would be diverted from the latter to the former in order to help balance the total distribution of resources. But, in this cosmopolitan world, neither society(d) would be *politically* self-sufficient, and so, in this case, neither would have fundamental control over how the redistribution effort imposes duties on the institutions of their respective societies. And, this is true regardless of whether or not the cosmopolitan world is envisioned as headed by a “world-state”. If we take the cosmopolitan position to entail the existence of a world-state or society(g), then that organization would have the ultimate authority to make the decisions and society(d) would clearly *not* be politically autonomous. Or, if we just have a global cosmopolitan agreement, with no accompanying world-state, all of the societies(d) would have to have made provisions (embodying that global agreement) *in their constitutions* that take into consideration the needs or influence of those not party to their constitution. Hence the constitution of a

society(d) cannot be considered a politically autonomous one. With regard to global redistribution, such constitutional requirements might include taxes that go to benefit burdened societies or other non-citizens. Or, in the case of less well-off societies, their constitutions may create institutions that depend, for their success or existence, on help or interference from outside entities (entities which would thereby have undue political “pull” in the affairs of that society). So, even without a world-state, neither the economically self-sufficient nations nor the struggling nations would be politically self-sufficient because their constitutions (or founding principles) would have to incorporate the needs of non-citizens as equal to the needs of citizens (representatives). This would be intrusive not only to the non-citizen, since he falls under the scope of an agreement that he was not party to, but, to the citizen as well, who must shape his social institutions to accommodate those who do not participate in (and may not even respect) his civil constitution. This intrusion and the resulting lack of domestic, political autonomy is the result of the cosmopolitan giving priority to a global agreement which must then be heeded by all societies(d)—interfering with their political society at even the most basic constitutional level.

In an effort to protect the political integrity of the civil society, Rawls first models a domestic original position; and only then, once a just, domestic society emerges, can we achieve a view of the rest of the world and formulate a foreign policy based on a *second* original position. In the second original position, peoples or states are recognized as representatives. But, in the first original position representatives are not supposed to be aware of the existence of other states; in fact, Rawls says that they should view their society as “closed”. He mentions this aspect of the first original position in each of his three books, but he does so most extensively in *Political Liberalism*, from which I will quote at length.

We have assumed that a democratic society, like any political society, is to be viewed as a complete and closed social system. It is complete in that it is self-sufficient and has a place for all the main purposes of human life. It is also closed, as I have said (§ 2.1), in

that entry into it is only by birth and exit from it is only by death. We have no prior identity before being in society: it is not as if we came from somewhere but rather we find ourselves growing up in this society in this social position, with its attendant advantages and disadvantages, as our good or ill fortune would have it. For the moment we leave aside entirely relations with other societies and postpone all questions of justice between peoples until a conception of justice for a well-ordered society is on hand. Thus, we are not seen as joining society at the age of reason, as we might join an association, but as being born into society where we will lead a complete life.

Think, then, of the principles of justice as designed to form the social world in which our character and our conception of ourselves as persons, as well as our comprehensive views and their conceptions of the good, are first acquired, and in which our moral powers must be realized, if they are to be realized at all. These principles must give priority to those basic freedoms and opportunities in background institutions of civil society that enable us to become free and equal citizens in the first place, and to understand our role as persons with that status.⁷⁰

As this quote makes clear, for Rawls, the basic rights that allow for cooperative social living must arise from within one's own society. That is, order cannot be imposed from above. But, to do this, parties to the initial agreement must divest themselves of the idea that *anything at all* exists outside the contract. Representatives are to be veiled from this information so that social order may freely grow-up by itself; and therefore that social order must be viewed by its participants as providing the key to a mutually sustainable life. Nothing can substitute for the willingness of persons to establish their own cooperative societies. All democratic societies acknowledge the fundamental importance of an individual's right to have a voice in his government. This idea is at the heart of Rawls's notion of political autonomy and so is also covered under Rawls's "rights as standards" view. The cosmopolitan conception, by contrast, in an effort to procure global equality and welfare, would seem to exclude this aspect of political autonomy from its list of "human rights". It may not exclude democracy *per se*, but an individual's voice in government would be limited, if that voice sought to secede from, or gain autonomy or independence from, society(g)—an act comparable to treason.

⁷⁰ *Political Liberalism*, 40-1.

At the very least, this shows that it is a mistake (made by the cosmopolitan) to charge Rawls with ignoring the complex and ubiquitous interrelations between peoples and individuals on the global stage. In fact his whole book, *The Law of Peoples*, is devoted to foreign policy issues. He does not ignore the other players on the international scene, he just doesn't think that considerations of their interests or influences should go into the process of designing the basic cooperative institutions of a just, *civil* society. Those institutions ought to have a chance of gaining self-sufficiency and autonomy, and thus *legitimacy*, on their own. Of course, the "standards" view sets limits to the capacity of a regime's internal autonomy, but it does so only in the name of autonomy itself. That is, the goal of these "limits" is to protect the right of citizens to be represented by their government. The cosmopolitan view, by contrast, would permit interventionist tactics that may actually undermine the very human rights that those tactics purport to be defending. By interfering at the wrong level, i.e. on the behalf of individuals, the cosmopolitan fails to respect the political autonomy of societies and individuals and thus actually endangers the rights of these same individuals to freely organize and control their own cooperative society.

The cosmopolitan claims to be looking out for the interests of individuals, but he cannot accuse Rawls of failing to do the same. Rawls's view is in no way opposed to the idea of providing aid to victims or imposing sanctions on violators. What he does maintain, however, is that our foreign policy efforts be primarily directed at preventing human rights abuses by providing an atmosphere in which well-ordered (non-human-rights-violating) societies can develop. Human rights are tied to our capacities and responsibilities as social individuals. As Rawls points out, different social individuals may formulate slightly different societies. The "rights as standards" view respects this possibility, but at the same time it does not permit

intolerant or unreasonable regimes that commit human rights abuses. There is no way to separate persons from their autonomy with regard to an agreement on principles of social cooperation without thereby eliminating the possibility for social cooperation altogether. And, this political autonomy is just as much an individual's right as his right not to live in an oppressive society.⁷¹ Unfortunately, in the real world, we can't expect (or *assume*) unanimity among persons any more than we can expect all societies to be good ones. But, we can't bend people to our will either. And, this I take to be the central concern of the "human rights as standards" view: it walks the fine line between too much and too little interference. In general, Rawls's view combines a recognition of the essentially social character of human principles with a recognition that it must be individual human beings themselves who adopt and live by these principles.

⁷¹ The current situation in Iraq is a perfect example of this. The Iraqis are, at one and the same time, both happy, to see the oppressive regime of Saddam Hussein fall, and sad or angry, to see their "liberators" standing in the way of their political autonomy—they don't want to be *told* how to govern their country.