

A Human Right to Democracy? Legitimacy and Intervention¹

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The philosophical question of whether there is a human right to democracy has gained practical relevance and urgency in recent years. Since the end of the Cold War, the USA and other states have undertaken a number of international military interventions which they have characterized as wholly or partly motivated by humanitarian concerns, and in more than one of these cases a declared aim was to protect or establish democratic governance.² According to some legal scholars, an enforceable right to democratic governance has emerged in international law.³ And according to some philosophers of international law, not only does justice require recognition of such a right, but the international community should not recognize as legitimate any non-democratic state or government.⁴ Such legal and philosophical arguments, together with political science research regarded by many as confirming the hypothesis of 'the democratic peace,' may seem to establish that there is a basic human right to democracy, and that, therefore, non-defensive international military action aiming to establish democratic political systems may be morally justifiable as humanitarian intervention.⁵

I will argue, to the contrary, that although the political rights of procedural democracy (e.g., voting rights) are among the basic rights of citizens of liberal democracies, and there is a strong case for regarding them as *derivative* human rights, they are not *basic* human rights; and that the aim of establishing procedurally democratic regimes, as distinct from the aim of stopping grave violations of basic human rights, is not by itself an adequate justification for non-defensive international military action. The

arguments I will develop are philosophical and moral, as distinct from legal. To support my position I will draw upon Rawls's political liberalism, in particular his work *The Law of Peoples* (LP),⁶ which I interpret differently from most of its critics.

As I understand it, *The Law of Peoples* outlines the moral basis of a just system of international law. It proposes a set of principles to constitute the foundation charter of a Society of Peoples (the nucleus of a law-governed international community that can develop into a fully just global order), as well as a list of basic human rights by reference to which these principles are to be interpreted. It also presents arguments (or essential elements of arguments) to justify this list and those principles, and to support the following theses.

- (1) All human individuals have basic human rights that the international community may legitimately enforce and should enforce worldwide (via appropriate procedures and measures), regardless of whether all states have legally committed themselves to respect and secure these rights.⁷
- (2) The aim of establishing procedurally democratic political institutions, as distinct from the aim of securing the basic human rights referred to in thesis (1), is not a morally acceptable justifying reason for using military force internationally.
- (3) The peoples of all states have obligations to provide each other with assistance, including but not limited to financial or material aid, in order that all states under governments willing but unable to secure their people's basic human rights be enabled to do so; and these obligations have a moral basis that is independent of the character of any current or past international political or economic relationships.

Since all three theses refer to basic human rights, in order to assess LP we need to consider what rights are to be so classified, and why.

1. Basic human rights

According to one plausible, familiar, simple, and widely appealing way of using the term, human rights are rights all human beings have just in virtue of being humans sharing the same vital needs and interests. However, rights must be grounded in

principles of justice (of one kind or another, depending on the kind of social cooperation in question). If by using the term "human rights" we intend to speak not only about needs and interests but indeed about rights, i.e., valid claims justifiable with reference to relevant principles of justice, we need to determine the relevant principles and show how they ground valid claims.

Some principles of justice apply to political practices and relationships, others to non-political ones. Some political principles of justice are fully general and fundamental, others are less so (e.g., those pertaining to political practices such as the making of laws and the rendering of judicial verdicts). In *A Theory of Justice*⁸ and *Political Liberalism*⁹ Rawls argued for two fully general, fundamental principles of societal justice, understood as fair social cooperation among individual human beings who are members of the same society under the same state government, all free citizens of equal political status. These principles are to guide and constrain the citizens of a democratic society in using the coercive powers of their government domestically. In *The Law of Peoples* Rawls argued for certain fully general, fundamental principles of fair social cooperation among legitimately governed states, which are to guide and constrain their international uses of their coercive powers.

The principles of LP are fully general and fundamental in the following respects. They use no proper names nor any descriptions of particulars, but instead spell out logical implications of the abstract idea of voluntary social cooperation among states aiming to establish the foundation of a just international legal order. These implications include the freedom and equality of the participating states, understood as follows.

A legal system consists of individuals and/or groups cooperating according to rules. The ability to cooperate presupposes the ability to act, i.e., to guide one's behavior by practical reasoning. States can act insofar as the policy decisions made by their political leaders constitute state actions (e.g., declaring war, signing treaties). Moreover, the ability to cooperate according to rules regarded as justifiable in terms of fairness and justice presupposes the ability to act not only on prudential but also on moral reasons. If states are to engage in voluntary cooperation together on terms they all accept as fair and just, they must ascribe these abilities to each other as well as to themselves, and must think of all of the participating states as equals insofar as all are capable of such cooperation and entitled to acceptable terms of cooperation.

If we suppose that the main reasons for establishing an international legal order include reducing international violence and instability and facilitating mutually beneficial cooperation, then the first five principles of LP can be understood as specifying the basic rights that states undertaking to establish such a legal order among themselves must ascribe to each other, simply as implications of so conceiving their cooperative activity. The remaining three principles require states also to acknowledge moral duties applying to conduct in war and to domestic government, as well as duties to help enable all states to secure their people's basic human rights and to become entitled to all of the rights of states enjoyed by members in good standing of the Society of Peoples.

The principles of LP constitute significant modifications of certain long-standing principles of international conduct, including the following: "States are to observe a duty of non-intervention." "States have the right of self-defense but no right to instigate war for reasons other than self-defense." Rawls argues that these principles must be revised

to allow for intervention in cases of "grave violations of human rights."¹⁰ He further modifies these principles by substituting the term "peoples" for the term "states;" thus, in place of the traditional idea of a state as a rational, self-interested collective agent that mainly aims to acquire and retain military, economic, and diplomatic power over other states, he puts the normative idea of a society under a legitimate government. He argues that only such societies are entitled to the rights traditionally ascribed to all states. Furthermore, he adds a principle stating: "Peoples are to honor human rights." But it will not be clear how these principles are to be interpreted until the criteria of legitimate government and of human rights are determined.

Rawls formulates two criteria of decency, such that states satisfying them count as well-ordered peoples entitled to membership in good standing in the Society of Peoples. The first criterion of decency states an international non-aggression condition; the second states three conditions of governmental legitimacy. These conditions are the criteria states are to use in deciding whether to regard the government of another state as legitimate, i.e., whether to recognize the state as entitled to the right of non-intervention and to respect for its sovereignty.

According to liberalism, societal justice requires that all members of a political society equally have all the rights of free citizens, and that the basis of equal citizenship be mere possession of the two moral powers (the capacity for a conception of one's good and the capacity for a sense of justice)¹¹ to the minimum degree necessary to enable them to understand and exercise their rights and fulfill their obligations. All who are held obligated to obey the law are presumed to possess these two powers. Normally all human beings do come to possess them as they become adults (as long as they don't suffer too

much deprivation, etc.). Liberals hold also that provisions should be made, in law and policy, to prevent or rectify the effects of such deprivation. Thus liberalism may seem to entail that all of the basic rights of free and equal citizens are basic human rights. But whether it does or not depends on how the term 'basic human rights' is being used, in particular, whether the rights are regarded as grounded in a liberal conception of a just society or in the criteria of governmental legitimacy appropriate to a Law of Peoples.

In both versions of his Law of Peoples (1993 and 1999), Rawls sometimes uses the term 'basic human rights' but most often uses the term 'human rights.' Given the roles these terms play in Rawls's argument, it seems clear that he uses them interchangeably to refer to a set of rights that satisfy all three of the following criteria (although these criteria do not constitute a definition): (a) urgent or especially important rights, (b) rights that are fundamental in the sense of being non-derivative or logically more basic than other rights (which are justified on the basis of the more fundamental rights, e.g., as means of securing them), and (c) rights that both can and should be enforced internationally regardless of whether countries have legally (or otherwise explicitly) committed themselves to secure those rights. For the sake of clarity I will henceforth use the cumbersome term 'internationally enforceable basic human rights' to refer to these rights.

Rawls presents his list of internationally enforceable basic human rights as incomplete, a mere sketch. Its function is mainly to indicate that the list of basic human rights appropriate for a Law of Peoples would largely agree with classic bills of rights, but would diverge from the Universal Declaration of Human Rights (UDHR) at certain points, for example, regarding the political rights of procedural democracy. A complete defense of Rawls's proposed list of internationally enforceable basic human rights would

not only justify including the included rights but also justify excluding the excluded rights. As I reconstruct it, LP provides both elements: a justification of the inclusions, which is directed mainly to non-liberals, and a justification of the exclusions, which is directed mainly to liberals. Here I will present the argument for excluding the political rights of procedural democracy from the list of internationally enforceable basic human rights. I address this argument to liberals.

All liberals hold that every individual human being is morally important and that the equality of everyone's basic moral status must, as a matter of justice, determine the structure of the main institutions of political society. In *A Theory of Justice* Rawls said that the two principles of societal justice for which he argued were "the principles that free and rational persons concerned to further their own interests would accept in an initial position of equality as defining the fundamental terms of their association," and that by accepting such principles people decide "what is to be the foundation charter of their society."¹² In *The Law of Peoples* Rawls proposes principles to constitute the foundation charter of a Society of Peoples. He argues that the basic structure of the system of global public law to be developed must recognize the basic moral equality of every individual human person by securing for everyone all of the basic human rights that can be adequately justified as such rights by public reason. His conception of public reason, and the role he assigns to states in developing the system of global public law, distinguish his interpretation of liberalism from those advanced by utilitarian or "cosmopolitan" liberals.¹³

Governments, i.e., political leaders and policymakers, are to employ the concept of internationally enforceable basic human rights in practical reasoning about using

coercive force internationally. This being so, the conception they employ, i.e., the specification of which rights are to count as belonging to the category of internationally enforceable basic human rights, should meet the requirements of public reason. If no justification for including in that category the political rights of procedural democracy meets these requirements, then these rights must be excluded. It appears that none can meet them, and that therefore Rawls was right to exclude them from that category.

2. Public reason

According to Rawls, arguments purporting to justify an internationally enforceable basic human right to democracy must identify universal human needs and interests such that justice requires governments to secure or provide for them and doing so requires democratic political institutions. Also, these needs and interests must be sufficiently important and urgent so as to provide grounds for international enforcement. Furthermore, the justification for the contention that those needs and interests provide grounds for international enforcement must meet the relevant requirements of public reason.

I will now briefly explain Rawls's idea of public reason in relation to his ideas of justice, reciprocity, reasonableness, and overlapping consensus. From the 1950s through the 1970s Rawls worked out in his writings the idea that a just society is such that its basic institutions can be justified by reference to a public conception of justice which all of the society's participants can find acceptable. In such a society, none of the participants has reason to feel merely coerced to obey the laws, and everyone can willingly take part in the social system they structure. During the 1980s Rawls came to recognize that the people of any free society, including the just liberal society he

envisioned, would over time naturally and reasonably come to hold a variety of different comprehensive doctrines, that is, they would come to believe various religious and secular views about what is valuable and why. In his second book, *Political Liberalism*, he asserted: "a continuing shared understanding on one comprehensive religious, philosophical, or moral doctrine can be maintained only by the oppressive use of state power."¹⁴ In this book he asked: under what conditions will someone properly accept her society's laws as legitimate, even if she thinks them unjust or otherwise faulty? For the rest of his career he focused on questions about political legitimacy and their relations to questions about societal justice.¹⁵

This led Rawls to develop the idea of an "overlapping consensus" on a conception of justice, endorsed by diverse comprehensive doctrines, each of which could therefore be regarded as "politically reasonable." A conception of societal justice can be the focus of an overlapping consensus if it is a "free-standing" political conception, i.e., if it can be presented and justified independently of any particular comprehensive doctrine. Such a conception can be justified either in terms of one of these politically reasonable doctrines, or independently of all of them and simply in terms of the political ideas of which the conception of justice consists. When an overlapping consensus obtains, the members of the society can use what Rawls calls "public reason" when offering justifications to one another for "laws and policies that invoke the coercive powers of government concerning fundamental political questions,"¹⁶ and for the basic structure of their shared social and political world. Such justifications can be offered to and freely accepted by all participants.¹⁷

2.1. Reasonableness and reciprocity

Rawls uses the term 'reasonable' in a precise, technical way. A conception of justice applicable to the basic structure of a system of social cooperation is reasonable only if its principles satisfy the criterion of reciprocity. According to this criterion, terms of cooperation may be regarded as fair only if those proposing them have good reason to regard them as acceptable to all of the participants, who are thought of as equals acting freely and not subject to domination, manipulation, or the pressures generated by an inferior social, economic, or political position. If the system of social cooperation to which a conception of justice is to apply is a single society, then a reasonable conception of justice for it is one that meets the criterion of reciprocity for equal citizens acting freely. If the system of social cooperation to which a conception of justice is to apply is a Society of Peoples, then a reasonable conception of justice for it is one that meets the criterion of reciprocity for equal peoples acting freely, not subject to domination, manipulation, or the pressures generated by an inferior social, economic, or political position.

Some of the differing moral doctrines, and their associated conceptions of justice and governmental legitimacy, that may arise over time in conditions of freedom, can coexist within a single constitutional democracy (whether as part of the overlapping consensus supporting a political liberal conception of justice, or as among the views that do not threaten it, e.g. because they have few adherents), while others cannot. Among those that cannot are non-liberal ones. Among non-liberal conceptions of justice, some cannot but others can govern societies that can be members in good standing of a Society of Peoples. Non-liberal societies of this latter kind are reasonable as regards relations between peoples, although they are less than reasonable as regards their domestic

structure of political and economic institutions.

2.2. Reasonable societies

A liberal society has a constitutional democratic government that answers to and protects the people's fundamental interests as specified in the constitution (whether written or unwritten) and its interpretation.¹⁸ A well-ordered liberal society is a fully reasonable society, in that its basic structure is ordered in accord with a conception of justice that meets the liberal criterion of reciprocity, which applies to social cooperation in which the participants regard themselves and each other as equal citizens acting freely. A non-liberal society is not a fully reasonable society in this technical sense. A non-liberal society may be a well-ordered society, i.e., its basic structure may be ordered according to the requirements of a conception of justice; however, this conception of justice does not meet the liberal criterion of reciprocity; if it did, the society should be classified as a liberal rather than a non-liberal society. Thus a non-liberal society is not a fully reasonable society in the above sense. Therefore every non-liberal society, whether well-ordered or not, is to some degree unjust, according to Rawls.

However, there is a significant moral difference between those non-liberal societies that are well-ordered in accord with some conception of justice, and those that are not. There is also a significant moral difference between those non-liberal societies that are well-ordered in accord with a conception of justice that requires that the society's basic structure of political and legal institutions provide for the good of all members by recognizing and securing their basic human rights, and those that are well-ordered in accord with a conception of justice that does not require this. And liberal political

philosophers need to take due account of these moral differences when developing the principles to guide states in using force internationally.

2.3. Kazanistan

If there were a society well ordered in accord with a conception of justice that required recognizing and securing the basic human rights of all its members, yet did not require a procedurally democratic political system; and if this society were able and willing to be a member of a Society of Peoples, then (from a liberal point of view) it would be reasonable as regards relations between peoples, although less than fully reasonable domestically. Should its government be regarded as legitimate, and should it be admitted as a member in good standing of the Society of Peoples?

According to Rawls, when shaping a conception of legitimate government that is to guide interpretation of the charter of a Society of Peoples, liberals should assign priority to whatever political rights and liberties are essential institutional means to secure the basic human rights. If diverse kinds of political structure may be able to secure them, liberals should acknowledge this. Rawls neither asserts nor denies the general empirical claim that only states with procedurally democratic regimes can secure the basic human rights and satisfy the other two conditions of governmental legitimacy, but he offers both intuitive and conceptual arguments against it.¹⁹ As he shows, a single actual instance of a state like his imaginary Kazanistan (a state that satisfies his second criterion of decency despite not having a procedurally democratic regime) would falsify that claim of empirical necessity. If such an instance is empirically possible, then the claim that only procedurally democratic regimes can satisfy the second criterion of decency is false.

Rawls's arguments appear to show that it cannot be proven that no such instance is empirically possible.

3. Sovereignty and self-determination

Liberals have reason to be cautious about classifying any right as an internationally enforceable basic human right. For the more inclusive the category, the more numerous are the available justifications for states to take action, and to require each other to take action, to compel other states to make changes in their domestic political institutions or practices. And if states constantly interfere in each other's internal affairs then the world cannot be at peace. So some caution is in order, since the goal is a world both just and stably peaceful.

Furthermore, liberals distinguish between, on the one hand, a citizen's having sufficient justification for civil disobedience or conscientious refusal to serve in the military, and on the other hand, there being sufficient justification for another state to intervene in order to support or oppose that citizen's protest. And they have good reason to do so: if it were the case that foreign states took sides and intervened every time the citizens of a liberal society engaged in a public dispute regarding the justice of some aspect of their government's domestic or foreign policy, then those citizens would not be free to express and work out their disagreements among themselves; yet such freedom is of central importance from a liberal point of view. And if the citizens are indeed to be self-governing, i.e., if their government is to be democratic in the sense of expressing and giving effect to popular sovereignty, then their state must be both independent of the political authority of any other state and free of interventions by other states. Therefore liberal states clearly have some reason to take the position that states must respect each

other's sovereignty and recognize a strong presumption against intervention in each other's affairs. But how strong must this presumption be? That is, how high must the threshold of justification be set, and what are the requirements of an acceptable justification for intervention?

Coercive intervention for the purpose of changing a country's form of government is liable to escalate into full-scale war, and in general it is difficult to justify the kinds of destruction, harms, and violations of rights that occur in wars. If there is a presumption in favor of respect for states' rights of self-determination and sovereignty, then the burden of justification is on the state(s) that undertake(s) intervention. Such a presumption, together with the general prohibition of non-defensive war (understood as allowing for humanitarian intervention only in cases of grave violations of human rights) and the possibility that the intervention would escalate into war, make the burden of justification quite heavy.

4. The DNSL argument and the minimum respect-for-justice condition

Some argue that only states with legitimate governments are entitled to the right of non-intervention, and that all and only democratic regimes are legitimate.²⁰ But is the fact that a state is democratic either necessary or sufficient to ensure the legitimacy of its government? I will argue that it is neither, if we distinguish between procedural and substantive democracy and understand governmental legitimacy in a way suited to the public reason of a Society of Peoples.

A proponent of an internationally enforceable basic human right to democracy might argue as follows. Democratic states are entitled to claim the right of non-intervention because they have (domestically) legitimate governments. Such states not

only secure all human rights but also meet *the minimum respect-for-justice condition*: they have the kind of political structure as well as the kind of civil society that are necessary if the citizens are to be free to express publicly their disagreements with the government on matters of justice and to claim what they take to be their rights, and if these conflicts are to get settled peacefully and fairly. Only if a state meets this condition should its government be regarded as legitimate and its sovereignty respected. And all and only democratic regimes meet this condition.

This argument (which I will call the "democracy is necessary and sufficient for legitimacy" argument, abbreviated DNSL) rests on the following premises, the justifications for which I will examine: (1) a state has a legitimate government only if the state meets *the minimum respect-for-justice condition* (this is a necessary but not sufficient condition; also necessary is that it secure human rights); (2) the sovereignty of a state should be respected only if its government is legitimate; (3) democratic governments necessarily meet *the minimum respect-for-justice condition*; and (4) only democratic governments meet this condition.

Whether the first and second premises of the DNSL argument should be granted depends on how *the minimum respect-for-justice condition* is to be interpreted. I will argue that premises (1) and (2) of the DNSL argument should be granted only if *the minimum respect-for-justice condition* is given a weak interpretation, and that premises (3) and (4) cannot be adequately justified.

4.1. How to avoid begging the question

If securing all human rights is a condition of governmental legitimacy, and if the set of human rights includes democratic political rights, then only states with democratic

regimes can have legitimate governments. But at this stage of the inquiry, the question of whether the set of human rights should include democratic political rights has not yet been answered. I will take it up below. Until that question is answered, we must make sure to interpret the requirement of securing human rights in a way that avoids committing the fallacy of begging the question. One way to do so is to distinguish between the disputed human right to democracy and the human rights that are not in dispute, and to designate the undisputed human rights ‘basic human rights.’ But this is not enough; one must also make sure, if possible, not to interpret the idea of basic human rights in a way that logically presupposes or requires democratic governmental institutions (nor, conversely, in a way that logically implies that they cannot require them); otherwise, the question gets begged.

According to the DNSL argument, a state has a legitimate government only if the *minimum respect-for-justice condition* is met. It seems reasonable to regard this as a necessary condition of a government’s legitimacy; therefore, it seems, one should grant premise (1) of the argument. If a government does not allow the people to protest publicly when they believe the government is treating them unjustly, but instead violently suppresses all such protest, then the people have reason to regard their government as illegitimate. The same holds if the government allows protest but does not pay attention to it and makes no evident good-faith attempt to settle the conflict in a way that the people can see as giving due weight to their claims. These points are quite weak or uncontroversial.²¹

If this is all there is to the claim (that a state has a legitimate government only if the state meets *the minimum respect-for-justice condition*), then this proposed condition

is plausible and avoids begging the question. But if the idea that the conflicts are to get settled 'fairly' presupposes a liberal conception of justice, and if the idea that the members of the society must be 'free' means that they must be fully free in all of the ways that equal participants in a fair system of liberal-democratic self-government are free, then the proposed condition is too strong and begs the question. The strong interpretation states liberal criteria of a just society. However, the question of whether a liberal state ought to regard the government of another state as legitimate, i.e., whether it ought to respect the other state's sovereignty and recognize it as entitled to the right of non-intervention, is not the same as the question of whether a society is just from a liberal point of view.

4.2. Legitimacy: internal versus external perspectives

The idea of 'a legitimate government' is clearly not the same as the idea of 'a just society:' to judge that a society has a legitimate government is not to judge that it is a just society, since the former is a necessary but not sufficient condition of the latter. For example, the United States of America is arguably a society which, although not fully just, has a legitimate government. Furthermore, even if a citizen of the U.S.A. were to judge that its injustices were so great, or that its political processes were so corrupt, as to call into question the legitimacy of its government, she would not therefore be committed to the view that its sovereignty need not be respected by foreign governments or that it had lost its right of non-intervention. A judgment of legitimacy as made about a government by another state (an 'external' judgment of its legitimacy) is not logically the same as a judgment of legitimacy as made by the people under that government (an 'internal' judgment of its legitimacy). The judgments are different in that they answer

different practical questions. They are posed by different agents who stand in different relations to the government in question and who are deliberating among different sets of alternative courses of action.

4.3. The value of procedural democracy

I have argued that the first two premises of the DNSL argument should be granted only if the *minimum respect-for-justice condition* is given a weak interpretation. Now recall that the DNSL argument claims (3) that all democratic governments are necessarily legitimate. Here we must distinguish procedural from substantive conceptions of democracy.

An example of a procedural conception of democracy is the view that a society is democratic if its political offices are filled through periodic public elections and legislative decisions are made by majority rule. An example of a substantive conception of democracy is the view that a society is democratic if its basic structure of institutions (political and economic) serves the fundamental interests of the people and functions so as to distribute liberties, opportunities, and economic goods among them on an egalitarian basis. A society with a procedurally democratic political system may have a government that violates its people's basic human rights. So liberals should not hold that procedural democracy is sufficient for legitimacy (whether judged internally or externally).²²

Premise (3) of the argument must be rejected. If it is understood to mean that all procedurally democratic governments are necessarily legitimate, it is false. And if it is understood to mean that all substantively democratic governments are necessarily legitimate, it may be true, but then we must interpret premise (4) as stating that only substantively democratic governments meet the *minimum respect-for-justice condition*,

which is false on the weak interpretation of that condition required for premises (1) and (2).

But can any non-democratic governmental structures secure the basic human rights? Are procedurally democratic political institutions necessary, even if not sufficient for legitimacy? Arguments purporting to show that procedurally democratic political institutions are necessary (even if not sufficient) to secure the basic human rights may claim either that such institutions are *instrumentally* valuable as necessary means of securing people's basic needs and interests, or else that living under democratic government and being able to participate in it has great value in itself, *non-instrumentally*, e.g., in the sense that a life of active participation in a self-governing political society is an especially valuable kind of life and that it develops especially valuable character traits and capacities.

But is it true that procedurally democratic political institutions are necessary means of securing the basic human rights? As noted above,²³ Rawls neither asserts nor denies the general empirical claim that only states with procedurally democratic regimes can secure the basic human rights and satisfy the other two conditions of governmental legitimacy; but he offers both conceptual and intuitive arguments against it. I find these arguments persuasive.

The foundation charter of a Society of Peoples must be suited to serve as a lasting foundation for its evolving legal and political system. The charter, including its list of basic human rights, is to become enforceable law. It is to provide a stable background for the actions of its participants: their particular decisions and agreements must take into consideration the empirical information that is specifically relevant to each situation or

case at the time it occurs, but the charter must not use such specific information. Its fundamental principles of right and its list of basic human rights should be developed mainly by analysis of the relevant concepts and should use only the most firmly established empirical facts and generalizations, i.e., those least likely to be invalidated by future events or research. Since it is in principle possible for a government that is not procedurally democratic to be legitimate, the political rights specific to procedural democracy (e.g., voting rights) do not belong on the list of internationally enforceable basic human rights that is to be included in the foundation charter of a system of international law.

It remains to ask whether participating in democratic self-government has sufficiently great value in itself that it should rank among the basic needs and interests grounding internationally enforceable basic human rights; and whether any answer to this question can satisfy the requirements of public reason.

5. Adequate justification

As Rawls said in 1958, persons engaged in a just or fair practice must be able to "face one another openly and support their respective positions, should they appear questionable, by reference to principles which it is reasonable to expect each to accept...otherwise their relations will appear to them as founded to some extent on force."²⁴ When laws and policies invoke the coercive powers of government concerning fundamental political questions, they must be justifiable by public reason. This requires that the justification be a sound argument proceeding by clearly valid inferences from premises which, whether empirical or non-empirical, are clearly relevant and minimally controversial.

5.1. Rawls's empirical premises

"The absence of war between major established democracies is as close as anything we know to a simple empirical regularity in relations among societies," says Rawls.²⁵ He notes that actual, allegedly constitutional democratic regimes (characterized by various failures in their supporting institutions and practices) have often intervened in weaker countries, including those exhibiting some aspects of democracy; and that there are historical examples of interventions by democratic governments motivated by economic interests but publicly claiming that their motivation was defense of their people's security. But still, he argues, if Kant's hypothesis of a *foedus pacificum* is correct, as Rawls believes it is, armed conflict between democratic peoples will tend to disappear as they approach the ideal of constitutional regimes.²⁶

Moreover, Rawls argues, following the Law of Peoples is the best way to bring into being a stably peaceful international society of decent peoples, thus securing everyone's basic human rights. And doing this is the best morally permissible way to increase the likelihood that non-liberal societies will become liberal democracies. All societies change over time, at least gradually, and since decent societies allow a right of dissent and require that governmental officials reply to criticism respectfully, by addressing the merits of the question,²⁷ such societies may well evolve in a liberal-democratic direction, unless impeded by liberal states' ill-justified coercive interventions.

By treating decent non-democratic societies as entitled to the same rights of non-intervention and self-determination as liberal-democratic ones, and by allowing them to follow their own paths of development (with appropriate forms of assistance), liberal-democratic societies could confidently expect that public political discussion in decent

non-liberal societies would lead to their liberalization. Also, and more importantly, liberal societies' properly respectful conduct would contribute to realizing a Society of Peoples by building its constitutive relationships of civility. In Rawls's words: mutual respect among peoples constitutes "an essential part of the basic structure and political climate" of a Society of Peoples.²⁸

5.2. Controversial non-empirical premises

Claims about the non-instrumental value of participation in democratic self-governance are to some extent controversial even among liberals (some of whom favor the "liberties of the moderns" over the "liberties of the ancients"). They are disputed also by many who contend that the basic human rights to life and to access to the goods and services necessary for a decent standard of living must be given higher ranking than democratic voting rights. And they are disputed by believers in various religions that conceive very differently the greatest human virtues and the best human lives.²⁹

Disagreements of these kinds can be among the most profound and hard to resolve. It is not merely the fact of disagreement that is significant to a Rawlsian liberal; it is the particular character of such disagreements: they are, or may be, rooted in people's most deeply held values and convictions, religious or secular, which are the very types of values and convictions that laws guaranteeing liberties of conscience, speech, assembly, and worship are designed to respect. Moreover, the classic liberal arguments for such liberties (by Locke, Kant, and Thomas Jefferson, among others) emphasize that force is an entirely inappropriate means of changing people's beliefs and values. Given the presumption against the justifiability of any non-defensive international military action, and the stringent requirements to be met by any justification for using coercive force

internationally, controversial conceptions of human needs and interests based on comprehensive doctrines (whether religious or secular) should not be made the basis of a conception of internationally enforceable basic human rights.

5.3. LP's most vulnerable points

The most vulnerable points of LP are its empirical or contingent premises, including in particular: those underlying Rawls's view that decent non-liberal societies might evolve in a liberal-democratic direction if allowed to follow their own path of development; that coercive interventions would tend on balance to impede such liberalization; that externally imposed democratic political structures are liable to lead to violations of human rights unless the society's culture is sufficiently liberal (in which case the democratic structures need not have been externally, coercively imposed); and that if liberal societies tolerate decent non-liberal ones, treating them with due respect, it is likely that the decent non-liberal societies will reciprocate, thus creating mutually respectful, civil international relationships. These empirical premises are the most vulnerable points, but they seem defensible. I leave it to others to judge whether they are sufficiently uncontroversial.

6. Rights of political participation

Rawls formulates conditions of governmental legitimacy which, while satisfiable in principle by some non-democratic regimes, ground broadly described rights of political participation. Any decent society's political and legal system will have the following features: its members have "a substantial political role in making decisions," in that they have a "right to be consulted" and "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."³⁰ They may not persecute or suppress dissenters, nor dismiss them as merely ignorant or incompetent; if they do, then they fail to demonstrate "their good faith and willingness to defend publicly society's injunctions as justified by law."³¹

Should such political rights be called human rights? After all, no government can qualify as legitimate unless it ascribes them. Yet they are not logically fundamental but derived. Nor are they internationally enforceable, according to Rawls; he holds that even a benevolent autocracy is immune from forceful intervention as long as it secures the rights on LP's list of basic human rights. However, even accepting this point one may reasonably hold that the broadly described rights of political participation grounded in LP's conditions of governmental legitimacy, although not internationally enforceable basic human rights, should be regarded as (derivative) human rights.

7. Post-war nation building

It is important to distinguish clearly the question of whether forceful intervention can be justified on the ground that its primary aim is to transform a decent society into a democratic society, from the related question of whether in rebuilding an invaded country it is permissible or even mandatory to establish a democratic political system. Suppose, for example, that a country's government has been violating basic human rights to such an extent that there is sufficient moral reason to depose it, and that the international community has decided, by appropriate procedures, to do this. Foreseeably there will be a power vacuum after the government is deposed. It will be necessary for appropriate agents to set up a new government of some form. Clearly the goal must be to set up a legitimate legal and political system, so that the society can meet the criteria of decency.

But it will be necessary to decide upon a particular form of legitimate government.

Would it be permissible in such a case to set up a democratic political system?

Before this question can be answered, it is necessary to ask: Who is to set up the government? What is the character of the society's culture? What are the alternative available courses of action? Suppose the society's culture and history make its people favor a system which is neither procedurally democratic nor very liberal, and does not fully satisfy the criteria of decency, whereas the international community of liberal states wants to ensure that the installed regime satisfies the criteria of decency. In such a case, if discussion and negotiation can yield a mutually acceptable modification of the traditional form, this might provide a solution; if it also leads to a further modification in the direction of democracy, then as long as this is sufficiently widely supported (as determined perhaps by polling), or seems highly likely to be, it may be permissible. But if democratic political structures would be too new or unfamiliar to be quickly understood and embraced by the people, and would unlikely work properly, then arguably they should not be imposed.³² Here the considerations are not only pragmatic and prudential but also moral; they include reasons deriving from the liberal moral and political ideal of self-government, the meaning of which is not entirely reducible to the idea of living under the legal and political structures of a liberal democracy.³³

Moreover, it is important to ensure that the resulting system would be workable, not unstable, and not liable to deteriorate. One way to ensure stability is to facilitate establishment of a government that not only meets the criteria of decency but also is perceived as legitimate by the people under it, for reasons deriving from the society's prevailing understanding(s) of justice. In certain cases, among the feasible alternative

forms of government that would satisfy the criteria of decency, a procedurally democratic system with liberal guarantees of rights might be the one most likely to work successfully, or one of those equally likely, given the facts of the particular situation. But in other cases, imposing a democratic system might be neither feasible nor justifiable.

8. Promoting political reform

Note that the argument of this paper does not prohibit promoting the spread of liberal democracy by non-violent means, nor does it rule out all ways of pressuring governments that secure the basic human rights yet do not meet the other two conditions of legitimate government constituting the second criterion of decency (e.g., benevolent autocracies). Such governments secure the basic human rights for the people they govern; therefore forceful intervention would not be justified. Yet such states are not entitled to full membership in good standing in the Society of Peoples. What exactly did Rawls mean by this? What should he have meant? I suggest we should take it to mean that such states are not entitled to full respectful toleration and cooperation from other states. When does non-cooperation amount to coercion? And are all forms of coercion ruled out, or only forceful intervention? These important questions require further exploration.³⁴

9. Conclusion

The Law of Peoples does not alone fully determine what presently-existing states are morally obligated or permitted to do as regards employing coercive force in order to secure basic human rights worldwide. A full consideration of the question of what the rights and duties of presently-existing states are, with regard to humanitarian intervention, would require taking into account a variety of historical and legal facts,

including the UN Charter and the UDHR, as well as treaties, customary law, and prevailing practices. Of course, the fact that a practice has become customary or prevalent does not alone make it morally justified, and there may be laws which ought not be obeyed. In order to assess existing practices and laws we must determine what moral principles apply to them; this is an aim of Rawls's political liberalism.

The Law of Peoples provides grounds for arguing that the basic human rights are so strongly justified that non-liberal societies cannot reasonably deny that they are indeed universal basic human rights, nor that enforcement of them by a Society of Peoples (via appropriate decisionmaking procedures and suitable penalties and other measures) would in principle be morally permissible. However, in this paper I have focused narrowly on the question of whether there is a basic human right to democracy that is permissibly enforceable whether or not states have specifically committed themselves to secure it. I have answered this question in the negative. The purported basic human right to democracy does not have as strong a philosophical or moral justification as do the basic human rights.

I support taking all morally permissible measures that are effective and feasible -- including provision of financial, material, and other forms of assistance -- in order to secure the basic human rights for everyone and bring about a just and stably peaceful world. What I oppose is unjustifiable use of coercive force in the name of democracy, specifically, non-defensive international military action with the aim of establishing procedurally democratic political institutions, as distinct from the aim of stopping grave violations of basic human rights.

If the Rawlsian arguments I have presented are sound, they answer an important question left unaddressed by other theorists about justice in relation to war. Moreover, unlike just-war theories based either on the Catholic religion or on some other comprehensive moral doctrine (religious or secular), these moral arguments are developed to satisfy the requirements of public reason. Furthermore, by showing that non-democratic societies meeting the criteria of decency would deserve membership in a Society of Peoples, the Law of Peoples transforms the idea of the democratic peace into the ideal of the Society of (decent) Peoples: an international order that is stably peaceful because its constituent societies are committed to building and maintaining, both at home and abroad, civil political relationships based on practices of offering mutually acceptable justificatory reasons for state conduct.

¹ I thank Joshua Cohen, Peter de Marneffe, Andreas Follesdal, Mark LeBar, Tienmu Ma, Frank Michelman, James Nickel, and Jeppe von Platz, each of whom gave me very helpful written comments. I presented earlier versions of this paper at the 2001 ILECS Conference, the 2003 IVR World Congress, the 2004 Conference of the Pacific Division of the American Philosophical Association, and the 2004 Conference of ISSEI; I thank the audiences on these occasions for their comments and criticisms. Also I thank the editors of this volume, Rex Martin and David Reidy. Research for this paper was funded partly by the Carr Center for Human Rights Policy at Harvard University's Kennedy School of Government, and partly by Ohio University's Institute for Applied and Professional Ethics.

² During the 1990s the Security Council several times approved the use of force for humanitarian reasons (in Iraq, Bosnia-Herzegovina, Somalia, Rwanda, and Albania), and in 1994 it authorized the use of force to return Haiti's elected but deposed president to power. In 2003 the G.W. Bush Administration declared that

one of its principal aims in invading Iraq was to turn it into a democracy; this was presented as (at least partly) a humanitarian justification for the war.

³ See, for example, Thomas M. Franck, "The Emerging Right to Democratic Governance," (1992) 86 *American Journal of International Law* and "Legitimacy and the democratic entitlement" in *Democratic Governance and International Law*, edited by Gregory H. Fox and Brad R. Roth (Cambridge University Press, 2000); also Reginald Ezetah, "The Right to Democracy: A Qualitative Inquiry," (1997) 22 *Brooklyn Journal of International Law*.

⁴ See, for example, Fernando Teson, *A Philosophy of International Law* (Westview Press, 1998), and Allen Buchanan, *Justice, Legitimacy, and Self-Determination: Moral Foundations for International Law* (Oxford University Press, 2004).

⁵ A number of American neo-conservatives have argued that using force to spread democracy can be justified partly on humanitarian grounds. See, e.g., *An End to Evil: How to Win the War on Terror*, by David Frum and Richard Perle (Random House, 2003), and *America Alone: The Neo-Conservatives and the Global Order*, by Stefan Halper and Jonathan Clarke (Cambridge University Press, 2004).

⁶ Harvard University Press, 1999 (henceforth I will use the abbreviation 'LP' to refer both to this book and to the view it presents).

⁷ Rawls does not state these theses; I have formulated them. I contend that LP makes sense and is defensible if interpreted as supporting these theses. Defenses of thesis (1) are developed in the following three works, which interpret and supplement Rawls's Law of Peoples: *Human Rights Reconceived: A Defense of Rawls's Law of Peoples* by Alyssa R. Bernstein (Harvard University, Ph.D. dissertation, 2000); "A Human Right to Democracy?" by Joshua Cohen, forthcoming in a festschrift for G.A. Cohen; and "Political Authority and Human Rights" by David Reidy, in this volume. I acknowledge that the brief formulation of thesis (1) in the present paper is problematic, in that it appears to hold that states may legitimately act to enforce rights merely because the rights are justifiable via sound moral and philosophical arguments, even though they are not recognized in positive law. If so understood, thesis (1) takes a controversial position and raises difficult philosophical questions which go beyond the narrow scope of this paper. However, I do not intend thesis (1) to be so understood; instead, it should be understood as: (a) rejecting a positivistic legal understanding of human rights; and (b) asserting that the duty-imposing normativity of human rights does not derive from acts of commitment, consent, or legislation but instead from (political) morality; and (c) that a distinctive feature of these morality-based rights is that the international community should enforce them worldwide, via appropriate procedures and measures. What kinds of procedures and measures would be appropriate? Although this question is highly important, I do not attempt to address it in this paper. (I thank Alessandro Ferrara and Faviola Rivera Castro for helpful discussion about these points at the 2005 conference of IVR, the International Society for Philosophy of Law and Social Philosophy.)

⁸ Harvard University Press, 1971/1999; henceforth 'TJ.'

⁹ Columbia University Press, 1993/1996, p.37; henceforth 'PL.'

¹⁰ LP, p. 37.

¹¹ TJ, p. 442.

¹² TJ, p. 10.

¹³ Among the critics of Rawls's Law of Peoples who designate themselves "cosmopolitan" liberals are Thomas Pogge, Charles Beitz, Brian Barry, and Kok-Chor Tan.

¹⁴ PL, p.37.

¹⁵ See the essay by Burton Dreben in *The Cambridge Companion to Rawls* (Cambridge University Press, 2003), henceforth 'CCR.'

¹⁶ By doing so, the citizens fulfill their duty of civility toward each other. LP, pp. 165-166.

¹⁷ *John Rawls: Collected Papers*, ed. Samuel Freeman (Harvard University Press, 1999), p. 607; henceforth 'CP.'

¹⁸ LP, p. 24.

¹⁹ See LP, p. 75, note 16.

²⁰ See, for example, Teson and Buchanan, op. cit.

²¹ This conception of governmental legitimacy is formulated so as to resemble that used by Charles Beitz in his *Political Theory and International Relations* (1979, Princeton University Press) -- see p. 78, note 26; as

well as that used by T. M. Scanlon in his "Human Rights as a Neutral Concern" in P. Brown and D. MacLean, eds., *Human Rights and United States Foreign Policy* (1979, Lexington Books) -- see p. 83.

²² Some definitions of 'democracy' combine substantive features with procedural ones, or blur the distinction between liberalism and democracy. Regarding the practical as well as theoretical importance of these distinctions, see Jack Donnelly, *Universal Human Rights in Theory and Practice*, 2d ed. (Cornell University Press: Ithaca, 2003), chapter 11; Amy Gutmann, "Rawls on the Relationship between Liberalism and Democracy," in CCR, op. cit., and Shadia Drury, *Leo Strauss and the American Right* (St. Martin's Press, 1997/1999), especially pp. 154-158.

²³ See section 2.3.

²⁴ CP, op. cit., p.59.

²⁵ LP, pp. 52-53.

²⁶ LP, pp. 44-54. Support for Rawls's view is provided by John M. Owen, IV in his article, "International law and the liberal peace," in *Democratic Governance and International Law* (Cambridge University Press, 2000). Owen argues that liberal states, which "limit governmental power via civil rights and competitive elections," do not fight wars against one another, and that it is not democracy alone but liberalism that causes the peace, via ideology and institutions working in tandem. See also the large-scale study conducted by the Political Instability Task Force convened by the U.S. Central Intelligence Agency, described in "How to Construct Stable Democracies," by Jack A. Goldstone and Jay Ulfelder (*The Washington Quarterly*, Winter, 2004-2005), who state: "...the key to maintaining stability appears to lie in the development of democratic institutions that promote fair and open competition, avoid political polarization and factionalism, and impose substantial constraints on executive authority" (p. 10).

²⁷ LP, p. 61.

²⁸ LP, p. 62.

²⁹ For example, many of the Amish people of Pennsylvania and Ohio choose not to take part in the American political system and do not vote in elections, believing that they should instead trust in God; so I have been informed by several with whom I spoke in 2004 in southeast Ohio.

³⁰ LP, p. 61.

³¹ LP, pp. 61, 67.

³² "The first disturbing lesson of the post-Cold War period...is that while in the long run democracy may be a very good thing -- democracies do not go to war with democratic neighbors, they prove more efficient economically, and they allow the peaceful expression of internal conflict -- in the short term the coming of democracy to a closed society with suppressed ethnic tensions can have explosive consequences. The 1990s were a decade of unprecedented democratization -- there are more functioning democracies in the world than at any time in history -- but they also brought with them ethnic war and ethnic cleansing." Michael Ignatieff, "State Failure and Nation-Building," in *Humanitarian Intervention: Ethical, Legal, and Political Dilemmas*, eds. J.L. Holzgrefe and R.O. Keohane (Cambridge, 2003), pp. 300-301.

³³ See "'You, the People': pro-democratic intervention in international law," by Michael Byers and Simon Chesterman, in *Democratic Governance and International Law*, op. cit.

³⁴ On these topics, see, e.g., the papers in this volume by Nickel and Hinsch/Stepanians.