THE LAW OF PEOPLES

with "The Idea of Public Reason Revisited"

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lives of its civilians. Political liberalism allows the supreme emergency exemption; the Catholic doctrine rejects it, saying that we must have faith and adhere to God's command.[31] This is intelligible doctrine but is contrary to the duties of the statesman in political liberalism.

The statesman, discussed in §14.2, is a central figure in considering the conduct of war, and must be prepared to wage a just war in defense of liberal democratic regimes. Indeed, citizens expect those who seek the office of president or prime minister to do so, and it would violate a fundamental political understanding, at least in the absence of a clear public declaration prior to election, to refuse to do so for religious, philosophical, or moral reasons. Quakers, who oppose all war, can join an overlapping consensus on a constitutional regime, but they cannot always endorse a democracy's particular decisions—here, to engage in a war of self-defense—even when those decisions are reasonable in the light of its political values. This indicates that they could not in good faith, in the absence of special circumstances, seek the highest offices in a liberal democratic regime. The statesman must look to the political world, and must, in extreme cases, be able to distinguish between the interests of the well-ordered regime he or she serves and the dictates of the religious, philosophical, or moral doctrine that he or she personally lives by.

§15. Burdened Societies

15.1. Unfavorable Conditions. In noncompliance theory we have seen that the long-term goal of (relatively) well-ordered societies is somehow to bring the outlaw states into the Society of well-ordered Peoples. The outlaw states[32] of modern Europe in the early modern

31. See the powerful essay by G. E. M. Anscombe, "War and Murder," in *Nuclear Weapons and Christian Conscience,* ed. Walter Stein (London: Merlin Press, 1961), pp. 45-62. This was written to object to Oxfords decision to award an honorary degree to President Truman in 1952. The view in §14 agrees with Anscombe in the particular case of Hiroshima.

32. Some may object to this term, yet these states were indeed outlaw societies. Their wars were essentially dynastic wars to which the lives and fundamental interests of most members of the societies were sacrificed.

period—Spain, France, and the Hapsburgs—or, more recently, Germany, all tried at one time to subject much of Europe to their will. They hoped to spread their religion and culture and sought dominion and glory, not to mention wealth and territory. These states were among the more effectively organized and economically advanced societies of their day. Their fault lay in their political traditions and institutions of law, property, and class structure, with their sustaining religious and moral beliefs and underlying culture. It is these things that shape a society's political will; and they are the elements that must change before a society can support a reasonable Law of Peoples.

In what follows I take up the second kind of nonideal theory, namely, societies burdened by unfavorable conditions (henceforth, *burdened societies).* Burdened societies, while they are not expansive or aggressive, lack the political and cultural traditions, the human capital and know-how, and, often, the material and technological resources needed to be well-ordered. The long-term goal of (relatively) well-ordered societies should be to bring burdened societies, like outlaw states, into the Society of well-ordered Peoples. Well-ordered peoples have a *duty* to assist burdened societies. It does not follow, however, that the only way, or the best way, to carry out this duty of assistance is by following a principle of distributive justice to regulate economic and social inequalities among societies. Most such principles do not have a defined goal, aim, or cut-off point, beyond which aid may cease.

The levels of wealth and welfare among societies may vary, and presumably do so; but adjusting those levels is not the object of the duty of assistance. Only burdened societies need help. Furthermore, not all such societies are poor, any more than all well-ordered societies are wealthy. A society with few natural resources and little wealth can be well-ordered if its political traditions, law, and property and class structure with their underlying religious and moral beliefs and culture are such as to sustain a liberal or decent society.

15.2. First Guideline for Duty of Assistance. The first guideline to consider is that a well-ordered society need not be a wealthy society. I recall here three basic points about the principle of "just savings" (within a domestic society) as I elaborated it in *A Theory of Justice,* §44.

(a) The purpose of a just (real) savings principle is to establish (reasonably) just basic institutions for a free constitutional democratic society (or any well-ordered society) and to secure a social world that makes possible a worthwhile life for all its citizens.

(b) Accordingly, savings may stop once just (or decent) basic institutions have been established. At this point real saving (that is, net additions to real capital of all kinds) may fall to zero; and existing stock only needs to be maintained, or replaced, and nonrenewable resources carefully husbanded for future use as appropriate. Thus, the savings rate as a constraint on current consumption is to be expressed in terms of aggregate capital accumulated, resource use forgone, and technology developed to conserve and regenerate the capacity of the natural world to sustain its human population. With these and other essential elements tallied in, a society may, of course, continue to save after this point, but it is no longer a duty of justice to do so.

(c) Great wealth is not necessary to establish just (or decent) institutions. How much is needed will depend on a society's particular history as well as on its conception of justice. Thus the levels of wealth among well-ordered peoples will not, in general, be the same.

These three features of the savings process discussed in *A Theory of Justice* bring out the similarity between the duty of assistance in the Law of Peoples and the duty of just savings in the domestic case. In each instance, the aim is to realize and preserve just (or decent) institutions, and not simply to increase, much less to maximize indefinitely, the average level of wealth, or the wealth of any society or any particular class in society. In these respects the duty of assistance and the duty of just savings express the same underlying idea.[33]

33. The main idea I express here draws on]. S. Mill's *The Principles of Political Economy,* 1st ed. (London, 1848), book IV, chap. 6, "The Stationary State." I follow Mill's view that the purpose of saving is to make possible a just basic structure of society; once that is safely secured, real saving (net increase in real capital) may no longer be necessary. "The art of living" is more important than "the art of getting on," to use his words. The thought that real saving and economic growth are to go on indefinitely, upwards and onwards, with no specified goal in sight, is the idea of the business class of a capitalist society. But what counts for Mill are just basic institutions and the well-being of what Mill would call "the labouring class." Mill says: ". . . the decision [between a just system of private property and socialism] will depend mainly on one consideration,

15.3. Second Guideline. A second guideline for thinking about how to carry out the duty of assistance is to realize that the political culture of a burdened society is all-important; and that, at the same time, there is no recipe, certainly no easy recipe, for well-ordered peoples to help a burdened society to change its political and social culture. I believe that the causes of the wealth of a people and the forms it takes lie in their political culture and in the religious, philosophical, and moral traditions that support the basic structure of their political and social institutions, as well as in the industriousness and cooperative talents of its members, all supported by their political virtues. I would further conjecture that there is no society anywhere in the world—except for marginal cases[34]—with resources so scarce that it could not, were it reasonably and rationally organized and governed, become well-ordered. Historical examples seem to indicate that resource-poor countries may do very well (e.g., Japan), while resource-rich countries may have serious difficulties (e.g., Argentina). The crucial elements that make the difference are the political culture, the political virtues and civic society of the country, its members' probity and industriousness, their capacity for innovation, and much else. Crucial also is the country's population policy: it must take care that it does not overburden its lands and economy with a larger population than it can sustain. But one way or the other, the duty of assistance is in no way diminished. What must be realized is that merely dispensing funds will not suffice to rectify basic political and social injustices (though money is often

viz., which of the two systems is consistent with the greatest amount of human liberty and spontaneity. After the means of subsistence are assured, the next in strength of personal wants of human beings is liberty, and (unlike physical wants which as civilization advances become more moderate and more amenable to control) it increases instead of diminishing in intensity as intelligence and the moral faculties are more developed." From the 7th and last edition of the *Principles* published in Mill's lifetime, paragraph 9 of §3 of chap. 1 of book II. What Mill says here is perfectly consistent with the Law of Peoples and its structure of political values, though I could not accept it as it stands. References to Mill's *Principles* are from the paperback edition, edited by Jonathan Riley, in Oxford World Classics (Oxford: Oxford University Press, 1994). The complete text of the *Principles* is now in *The Complete Works of John Stuart Mill,* vols. 2 and 3, Introduction by V. W. Bladen, ed. J. M. Robson (London: University of Toronto Press, Routledge and Kegan Paul, 1965).

34. Arctic Eskimos, for example, are rare enough, and need not affect our general approach. I assume their problems could be handled in an *ad hoc* way.

essential). But an emphasis on human rights may work to change ineffective regimes and the conduct of the rulers who have been callous about the well-being of their own people.

This insistence on human rights is supported by Amartya Sen's work on famines.[35] In his empirical study of four well-known historical cases (Bengal, 1943; Ethiopia, 1972-1974; Sahel, 1972-1973; and Bangladesh, 1974), he found that food decline need not be the main cause of famine, or even a minor cause. In the cases he studied, the drop in food production was not great enough to lead to famine given a decent government that cared for the well-being of all its people and had in place a reasonable scheme of backup entitlements provided through public institutions. The main problem was the failure of the respective governments to distribute (and supplement) what food there was. Sen concluded: "famines are economic disasters, not just food crises."[36] In other words, they are attributable to faults within the political and social structure, and its failure to institute policies to remedy the effects of shortfalls in food production. A government's allowing people to starve when it is preventable reflects a lack of concern for human rights, and well-ordered regimes as I have described them will not allow this to happen. Insisting on human rights will, it is to be hoped, help to prevent famines from developing, and will exert pressure in the direction of effective governments in a well-ordered Society of Peoples. (I note, by the way, that there would be massive starvation in every Western democracy were there no schemes in place to help the unemployed.)

Respecting human rights could also relieve population pressure within a burdened society, relative to what the economy of the society can decently sustain.[37] A decisive factor here appears to be the status

35. See Amartya Sen, *Poverty and Famines* (Oxford: Clarendon Press, 1981). Sen's book with Jean Dreze, *Hunger and Public Action* (Oxford: Clarendon Press, 1989), confirms these points and stresses the success of democratic regimes in coping with poverty and hunger. See their summary statement in chap. 13, p. 25. See also the important work of Partha Dasgupta, *An Inquiry into Well-Being and Destitution* (Oxford: Clarendon Press, 1993), chaps. 1, 2, and 5.

36. Sen, *Poverty and Famines,* p. 162.

37. I do not use the term "overpopulation" here since it seems to imply the idea of optimal population; but what is that? When seen as relative to what the economy can sustain, whether there is population pressure is a clear enough question. I am indebted to Amartya Sen on this point.

of women. Some societies—China is a familiar example—have imposed harsh restrictions on the size of families and have adopted other draconian measures. But there is no need to be so harsh. The simplest, most effective, most acceptable policy is to establish the elements of equal justice for women. Instructive here is the Indian state of Kerala, which in the late 1970s empowered women to vote and to participate in politics, to receive and use education, and to own and manage wealth and property. As a result, within several years Kerala's birth rate fell below China's, without invoking the coercive powers of the state.[38] Like policies have been instituted elsewhere—for example, in Bangladesh, Colombia, and Brazil—with similar results. The elements of basic justice have proven themselves essential for sound social policy. Injustice is supported by deep-seated interests and will not easily disappear; but it cannot excuse itself by pleading lack of natural resources.

To repeat, there is no easy recipe for helping a burdened society to change its political culture. Throwing funds at it is usually undesirable, and the use of force is ruled out by the Law of Peoples. But certain kinds of advice may be helpful, and burdened societies would do well to pay particular attention to the fundamental interests of women. The fact that women's status is often founded on religion, or bears a close relation to religious views,[39] is not in itself the cause of their subjection, since other causes are usually present. One may explain that all kinds of well-ordered societies affirm human rights and have at least the features of a decent consultation hierarchy or its analogue. These features require that any group representing women's fundamental interests must include a majority of women (§8.3). The idea is that any conditions of the consultation procedure that are necessary to prevent violations of the human rights of women are to be adopted. This is not a peculiarly liberal idea but one that is also common to all decent peoples.

38. See Amartya Sen, "Population: Delusion and Reality," *The New York Review of Books,* September 22, 1994, pp. 62-71. On Kerala, see pp. 70ff. China's birth rate in 1979 was 2.8; Kerala's 3.0. In 1991 these rates were 2.0 and 1.8 respectively.

39. I say this because many Muslim writers deny that Islam sanctions the inequality of women in many Muslim societies, and attribute it to various historical causes. See Leila Ahmed, *Women and Gender in Islam* (New Haven: Yale University Press, 1992).

We can, then, bring this idea to bear as a condition on offered assistance without being subject to the charge of improperly undermining a society's religion and culture. The principle here is similar to one that is always followed in regard to the claims of religion. Thus, a religion cannot claim as a justification that its intolerance of other religions is necessary for it to maintain itself. In the same way a religion cannot claim as a justification for its subjection of women that it is necessary for its survival. Basic human rights are involved, and these belong to the common institutions and practices of all liberal and decent societies.[40]

15.4. Third Guideline. The third guideline for carrying out the duty of assistance is that its aim is to help burdened societies to be able to manage their own affairs reasonably and rationally and eventually to become members of the Society of well-ordered Peoples. This defines the "target" of assistance. After it is achieved, further assistance is not required, even though the now well-ordered society may still be relatively poor. Thus the well-ordered societies giving assistance must not act paternalistically, but in measured ways that do not conflict with the final aim of assistance: freedom and equality for the formerly burdened societies.

Leaving aside the deep question of whether some forms of culture and ways of life are good in themselves, as I believe they are, it is surely a good for individuals and associations to be attached to their particular culture and to take part in its common public and civic life. In this way belonging to a particular political society, and being at home in its civic and social world, gains expression and fulfillment.[41] This is no small thing. It argues for preserving significant room for the idea of a people's self-determination and for some kind of loose or confederative form of a Society of Peoples, provided the divisive hostilities of different cultures can be tamed, as it seems they can be, by a society of well-ordered regimes. We seek a world in which ethnic hatreds leading to nationalistic wars will have ceased. A proper patriotism (§5.2) is an

40. See *Political Liberalism,* V: §6.
41. Ibid., V: §7.

attachment to one's people and country, and a willingness to defend its legitimate claims while fully respecting the legitimate claims of other peoples.[42] Well-ordered peoples should try to encourage such regimes.

15.5. Duty of Assistance and Affinity. A legitimate concern about the duty of assistance is whether the motivational support for following it presupposes a degree of affinity among peoples, that is, a sense of social cohesion and closeness, that cannot be expected even in a society of liberal peoples—not to mention in a society of all well-ordered peoples—with their separate languages, religions, and cultures. The members of a single domestic society share a common central government and political culture, and the moral learning of political concepts and principles works most effectively in the context of society-wide political and social institutions that are part of their shared daily life.[43] Taking part in shared institutions every day, members of the same society should be able to resolve political conflicts and problems within the society on a common basis in terms of public reason.

It is the task of the statesman to struggle against the potential lack of affinity among different peoples and try to heal its causes insofar as they derive from past domestic institutional injustices, and from the hostility among social classes inherited through their common history and antagonisms. Since the affinity among peoples is naturally weaker (as a matter of human psychology) as society-wide institutions include a larger area and cultural distances increase, the statesman must continually combat these shortsighted tendencies.[44]

What encourages the statesman's work is that relations of affinity are not a fixed thing, but may continually grow stronger over time as peoples come to work together in cooperative institutions they have de-

42. These are specified by the Law of Peoples.

43. Joshua Cohen, "A More Democratic Liberalism," *Michigan Law Review,* vol. 92, no. 6 (May 1994), pp. 1532-33.

44. Here I draw on a psychological principle that social learning of moral attitudes supporting political institutions works most effectively through society-wide shared institutions and practices. The learning weakens under the conditions mentioned in the text. In a realistic Utopia this psychological principle sets limits to what can sensibly be proposed as the content of the Law of Peoples.

veloped. It is characteristic of liberal and decent peoples that they seek a world in which all peoples have a well-ordered regime. At first we may suppose this aim is moved by each people's *self-interest*, for such regimes are not dangerous but peaceful and cooperative. Yet as cooperation between peoples proceeds apace they may come to care about each other, and affinity between them becomes stronger. Hence, they are no longer moved simply by self-interest but by mutual concern for each other's way of life and culture, and they become willing to make sacrifices for each other. This mutual caring is the outcome of their fruitful cooperative efforts and common experiences over a considerable period of time.

The relatively narrow circle of mutually caring peoples in the world today may expand over time and must never be viewed as fixed. Gradually, peoples are no longer moved by self-interest alone or by their mutual caring alone, but come to affirm their liberal and decent civilization and culture, until eventually they become ready to act on the *ideals and principles* their civilization specifies. Religious toleration has historically first appeared as a *modus vivendi* between hostile faiths, later becoming a moral principle shared by civilized peoples and recognized by their leading religions. The same is true of the abolition of slavery and serfdom, the rule of law, the right to war only in self-defense, and the guarantee of human rights. These become ideals and principles of liberal and decent civilizations, and principles of the Law of all civilized Peoples.

§16. On Distributive Justice among Peoples

16.1. Equality among Peoples. There are two views about this. One holds that equality is just, or a good in itself. The Law of Peoples, on the other hand, holds that inequalities are not always unjust, and that when they are, it is because of their unjust effects on the basic structure of the Society of Peoples, and on relations among peoples and among their members.[45] We saw the great importance of this basic

45. My discussion of inequality is greatly indebted, as so often, to T. M. Scanlon.