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**Liberalism and Democracy: A Response to**  
*Rawls' The Law of Peoples*

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This paper has two goals. First, to show, contrary to the narrative in John Rawls' *The Law of Peoples*, that it is only logical to derive fundamental rights at the level of individuals rather than at the level of groups. Second, to determine whether democracy or liberal rights should be fundamental rights for all people in a just global normative order given that rights are derived at the individual level. Along the lines of Rawls' calls for mutual respect between just and decent peoples, even if a powerful argument exists in favor of democracy or liberalism, the conclusion will aim to answer whether other societal forms should be tolerated.

### **Rawls' *The Law of Peoples*: A First Encounter**

John Rawls describes the reasoning behind his Society of Peoples thusly, "This account of the Law of Peoples conceives of liberal democratic peoples (and decent peoples) as the actors in the Society of Peoples, just as citizens are the actors in domestic society"<sup>1</sup>. Here Rawls assumes that rights in the international system are derived differently than they are in domestic society. Specifically, rights are derived on the level of peoples internationally and on the individual level domestically. This is Rawls' attempt at conceiving of a just international order. As Rachel Brown asserts, "To focus on peoples rather than on states enables Rawls to begin a response to certain theories of international relations, namely those that emphasize the 'non-moral' characteristics of states as presenting a barrier to relations of justice between them"<sup>2</sup>. So, for instance, Rawls does not endow peoples with the "traditional sovereignty" of states thus freeing

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<sup>1</sup> Rawls, John. *The Law of Peoples* (Cambridge, MA: Harvard University Press 1999) pg. 23

<sup>2</sup> Brown, Rachel. *The Extension of Liberalism Beyond Domestic Boundaries: Three Problem Cases* (MIT Humanities Library: Massachusetts Institute of Technology Ph.D. Thesis 1999), pg. 23

them from the yoke of the realist perception of international relations. As Rawls professes, “if a state’s concern with power is predominant; and if its interests include such things as converting other societies to the state’s religion, enlarging its empire and winning territory, gaining dynastic or national prestige and glory, and increasing its relative economic strength—then the difference between states and peoples is enormous”<sup>3</sup>. Rawls’ statement, given his inclusion of the quests for relative economic strength and national prestige in the forum of states rather than peoples, differentiates the Society of Peoples drastically from the state system we know today. Also, peoples as we know them today, Brown uses the example of Jews, also seek relative economic strength and national prestige to varying degrees. So here Rawls is using peoples as a foil to combat the arguments of international relations realists such as John Mearshimer. Entering this argument is not the goal of this paper, but it is important to note Rawls’ motivations and the almost selfless aims he requires of peoples.

#### **Four Problems with Deriving Fundamental Rights at the Group Level**

Fundamentally deriving rights at the level of groups such as peoples is problematic for a number of reasons; here I enumerate four of them. Although Charles Beitz believes that justice needs to be promoted in states, he defines justice as the promotion of individual autonomy. As Beitz avers, “a government is legitimate if it *would* be consented to by rational persons subject to its rule”<sup>4</sup>. Further, he argues that a state’s moral entitlement not to be interfered with is entirely derivative from its ability to

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<sup>3</sup> Rawls, *The Law of Peoples*, pg. 28

promote justice<sup>5</sup>. Thus, promotion of state rights, in Beitz's view, is a means to an end. That is, state rights are only necessary as a means to achieving individual rights. Beitz quotes Michael Walzer's assertion that, "the rights of states rest on the consent of their members"<sup>6</sup>. If the role of states is to promote the well-being of individuals, then there exists a powerful logic for deriving rights on the state level since the individual gains his resources and rights as part of the state. But giving a state or a group rights does not necessarily ensure that those rights will trickle down to all individuals, indeed they may be captured and controlled by political elites.

This gets us to the first problem with deriving rights at the group level, which is that basing the derivation of rights at the level of the group can very easily lead to cooptation by elites. In Benedict Anderson's *Imagined Communities*, nationalism is first created through the establishment of Creole nations, but then becomes a model called "official nationalism" that political elites use to concretize their zones of control and justify their rule. In Anderson's words, "official nationalism [is] an anticipatory strategy adopted by dominant groups which are threatened with marginalization or exclusion from an emerging nationally-imagined community"<sup>7</sup>. Deriving rights at the group level in the age of nationalism has thus been a tool for controlling the masses. The easiest way to forge a group has frequently been to point to the existence of an "other" group and to label them an "enemy." This comes to the second problem with deriving rights at the group level: the over-politicization of identity.

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<sup>4</sup> Beitz, Charles, *Political Theory and International Relations* (Princeton, NJ: Princeton University Press 1979) pg. 80

<sup>5</sup> Beitz, *Political Theory and International Relations*, pgs. 76-7

<sup>6</sup> Beitz, *Political Theory and International Relations*, pg. 77

<sup>7</sup> Anderson, Benedict, *Imagined Communities: Reflections on the Origin and Spread of Nationalism*. Revised Edition. (New York, NY: Verso 1991) pg. 101

The second problem with defining fundamental rights at the group level is that it leads to the over-politicization of identity. That is, when deriving rights at the group level, a group is more likely to use its communal identity for the purposes that Rawls warns against in his definition of peoples, such as the attainment of empire, relative economic gain or national pride. The use of group identity as a tool for achieving economic, territorial or political gain I call the politicization of identity. A certain level of identity politicization may be necessary simply in order to define a group. However, in my estimation, deriving fundamental rights at the group level leads to over-politicization of group identity as under such a system groups must compete with one another for goods and resources, and thus must explicate claims of desert regarding these substances. The following deleterious effects can be caused by over-politicization of identity: the potential creation of an “other” group, spurious group formation, and, most importantly, particularistic nationalism and group competition over resources. These factors all have the potential to yield racism, violence and resource inequality.

First, the over-politicization of identity can easily lead to the creation of an “other” group and thus to an increase in human suffering. Most germanely, politically charged group identity could lead to ethnic conflict. As the former Bosnian President Alija Izetbegovic stated, “will we accept peace at any price in Bosnia, bend our heads once and for all, because of peace accept an inferior position for the next fifteen years, or shall we say, we want sovereignty, risking a conflict”<sup>8</sup>. Since in the example, the right to self-determination is derived at the group level, groups must define themselves and reify their differences, thus creating an “other” group, in order to stake claims to this right.

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<sup>8</sup> Burg, Steven L. and Paul S. Shoup, *The War in Bosnia-Herzegovina: Ethnic Conflict and International Intervention* (Armonk, NY: ME Sharpe 1999) pg. 77

Deriving rights at the group level, then, calls for groups to form platforms and characterize themselves in order to prove that they are groups. In a non-ideal world wherein resources and territories are limited, the formation and characterization of groups that must prove their “groupness” in order to derive rights is problematic. Here I am thinking of the rights to secession and self-determination. Not only is it difficult to determine what groups “deserve” states, but it is also difficult to determine who belongs in what group or where new states should begin and end. In today’s world, the right to self-determination in practice is predicated on a group *proving* that it indeed consists of a coherent “people.” The most salient way of doing this has been the use of violence against the state from which the new group would like to secede. This violence is the product of the need to over-politicize a group’s identity in order to gain the rights to, in this instance, a state. However, the problem of defining who belongs in a group and thus who deserves certain rights remains even in a world with no states but limited resources.

This ties into the second problem with the over-politicization of groups: by deriving rights at the level of the group, groups are apt to pop up simply in order to request the rights that come with being a group. The process of group formation simply for the gain of goods or rights is similar to what Gayatri Spivak calls “strategic essentialism”<sup>9</sup>. Jean Jackson contends that some Indian groups like Colombia’s Tukanoans deliberately self-essentialize because “they increasingly need to demonstrate Indianness to obtain benefits from both government and NGOs”<sup>10</sup>. Thus, the Tukanoans choose to simplify and folklorize the culture they preserve “to make it easier for outsiders

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<sup>9</sup> Spivak, Gayatri and Ranajit Guha eds, *Selected Subaltern Studies* (New York: Oxford University Press 1998)

<sup>10</sup> Jackson, Jean E., “Culture, Genuine and Spurious: The Politics of Indianness in the Vaupés, Colombia”. *American Ethnologist* 22:1 (1995), pg. 12.

to understand” it<sup>11</sup>. Jackson says that groups like the Tukanians end up learning to use culture as a “commodity”<sup>12</sup>. It is true that groups that are in need do exist and that, in many instances, it is most efficient for these groups to request aid at the group level. However, by deriving rights at the group level, spurious groups may form simply to obtain the rights that come with being a group. In and of itself this is not a bad outcome, however, these groups may strategically essentialize in order to prove their status as a “people,” which in some instances may require them to define themselves against others. This could easily lead to conflict.

Finally, Thomas Pogge points to the fact that overly particularistic nationalism not only leads to chauvinism and racism, but also to unjustifiable “human misery and premature deaths”<sup>13</sup>. Pogge’s most powerful argument in supporting the latter point is that particularistic nationalist groups have incentives to only (or almost only) care about themselves in terms of resource extraction and economic gain. When rights are derived at the group level, the rights of certain people are undermined simply because of their group affiliation—deserved or not. Deriving rights at the group level leads to group competition which in the least leads to minor economic or political inequality and at most to violence. Strategic essentialism and an emphasis on group affiliation as the basis for achieving fundamental rights can thus lead to unequal resource distribution and, consequently, human misery.

By contrast, if rights were derived at the individual level, groups would not have to compete or prove their “groupness” in order to obtain rights. This circumvents the problem of group creation simply for obtaining fundamental rights and minimizes the

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<sup>11</sup> Jackson, Jean, “Culture, Genuine and Spurious”, pg. 15

<sup>12</sup> Jackson, Jean, “Culture, Genuine and Spurious”, pg. 16

amount of politically charged groups that will be created, thus limiting the incidence of violent conflict. The problem described here is one that is prevalent today in international politics since in order for a “people” to gain certain rights it must form a state. The most prominent example is the creation of the Jewish State on the grounds that without it the Jewish people may cease to exist. Michael Ignatieff’s assertion that, “nationalism solves the human rights problems of the victorious national groups while producing new victim groups, whose human rights situation is made worse” holds here<sup>14</sup>. Still, an end to deriving rights at the group level will most probably not lead to an end to violent conflict. There will surely still be reasons for people to form groups and for people to disagree. It is not the act of group formation that is troublesome here, rather it is the type of groups, in my jargon: over-politicized ones, which form under a system wherein groups are the fundamental derivers of rights. By establishing fundamental rights at the individual level, then, the incidence of over- politicized group formation will be minimized since individuals will have less incentive to form such groups because their rights as individuals are assured. The incidences of war and resource inequality will thus be limited. This leads to the third problem with basing rights at the group level, which is that of minority rights.

As Onora O’Neill writes, “if identities matter, minority identities matter”<sup>15</sup>. This points to the arbitrary nature of deriving rights at the group level. It is unclear how minority identities are dealt with in Rawls’ decent societies. Rawls writes that, “all persons in a decent hierarchical society are not regarded as free and equal citizens, nor as

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<sup>13</sup> Pogge, Thomas, *World Poverty and Human Rights* (Malden, MA: Blackwell Publishers 2002), pg. 119

<sup>14</sup> Ignatieff, Michael, *Human Rights: As Politics and Idolatry* (Princeton, NJ: Princeton University Press 2001), pg. 15

<sup>15</sup> O’Neill, Onora, *Bounds of Justice* (Cambridge: Cambridge University Press 2000), pg. 173

separate individuals deserving equal representation . . . they are seen as decent and rational and as capable of moral learning as recognized in their society”<sup>16</sup>. Decent societies further “must admit a sufficient measure of liberty of conscience and freedom of religion and thought, even if these freedoms are not as extensive nor as equal for all members of the decent society as they are in liberal societies”<sup>17</sup>. In this paper, decent and liberal societies are used as proxies for societies in which fundamental rights are derived at group and individual levels respectively. In the decent/ group rights based society, minorities would be allowed to be part of society but would be systematically established to be second-class citizens<sup>18</sup>—an arrangement reminiscent of the Muslim *dhimma* system. Under the Muslim system, *dhimma* status applied to followers of non-Islamic monotheistic faiths deemed worthy of toleration<sup>19</sup>. Bernard Lewis defines the *dhimma* system thusly:

“In Muslim law and practice, the relationship between the Muslim state and the subject non-Muslim communities to which it extended its tolerance and protection was regulated by a pact called *dhimma* . . . By the terms of the *dhimma*, these communities were accorded a certain status, provided that they unequivocally recognized the primacy of Islam and the supremacy of Muslims. This recognition

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<sup>16</sup> Rawls, John, *The Law of Peoples*, pg. 71

<sup>17</sup> Rawls, John, *The Law of Peoples*, pg. 74

<sup>18</sup> Second-class citizenship could portend varying degrees of rights. But the fact that decent societies do not necessarily provide for individual equality and rather derive rights at the group level would yield a system wherein one group rules another. Indeed, decent societies are characterized by decent consultation *hierarchies*.

<sup>19</sup> Lewis, Bernard, *The Jews of Islam* (Princeton, NJ: Princeton University Press 1984) pg. 20

was expressed in the payment of the poll tax and obedience to a series of restrictions defined in detail by the holy law”<sup>20</sup>.

Though the *dhimma* system was meant on one level to protect non-Islamic minorities, it is clear that the *dhimma* were treated as inferiors. According to Mordechai Ha-Cohen, a prominent Libyan Jew who lived in the late nineteenth and early twentieth centuries, “The Muhammadans of the villages [did] not have religious hatred toward the Jews, but, nevertheless [were] very proud. They [would] not allow a Jew to pass in front of them, mounted on an animal, nor [would] they permit him to carry a weapon”<sup>21</sup>. Though these slights are minor, they establish a hierarchical order within a society that, as Brown posits, could easily prove humiliating to the minority or disenfranchised group<sup>22</sup>. For example, Bernard Lewis notes that under the *dhimma* order, “Christians and Jews were to wear special emblems on their clothes. This, incidentally, is the origin of the yellow badge, which was first introduced by a caliph in Baghdad in the ninth century and spread into Western lands in later medieval times”<sup>23</sup>. The fact that this yellow badge was used as a way of singling out Jews for humiliation and oppression in Hitler’s Germany illustrates how the establishment of a group’s status as second-class citizens can quickly regress into scapegoating and mass violence.

Therefore, the very fashioning of the group as the fundamental deriver of rights could lead to pushing people outside the sphere of rights that group-members acquire.

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<sup>20</sup> Lewis, Bernard, *The Jews of Islam*, pg. 21

<sup>21</sup> Goldberg, Harvey E., *Jewish Life in Muslim Libya: Rivals & Relatives*. Chicago: University of Chicago Press 1990), pgs. 10, 12

<sup>22</sup> Brown, Rachel, *The Extension of Liberalism Beyond Domestic Boundaries*, pg. 47. Brown’s conception of humiliation will be fleshed out further below.

<sup>23</sup> Lewis, Bernard, *The Jews of Islam*, pg. 25

Thus, deriving rights at the group level potentially limits the amount of people that can justifiably stake a claim to these rights. This can lead to societal structures that justify discrimination on grounds of membership, tradition, or other like reasons. Thus, the rights of a woman, resident alien, etc. might be explicated to be justifiably less than those of the requisite citizen since those persons do not fulfill the notions of the group regarding who deserves rights. In such a system, Rawls' Society of Peoples for instance, the greatest slight to a person may be banishment.

Further, even if these hierarchical structures are agreed to, they could also lead to conflict and resource inequality. For one, say there is a drought in a decent society wherein Muslims are the superior group and Jews the inferior. If Jews may not hold political office, then resources may go predominantly to Muslims in times of crisis in order to please the people that "really matter." Thus, Jews in such a situation are forced to starve or rebel. Indeed, no less a source than the caliph 'Umar I declares in justifying a poll tax against the *dhimma* class that, "the Muslims of our day will eat [from the work of] these people as long as they live, and when we and they die, our sons will eat [from] their sons forever"<sup>24</sup>. Further, proof is the fact that Muslims' attitudes and behavior toward their "subject communities" worsened whenever the status of Muslims worsened economically or politically<sup>25</sup>. Thus, in practice, a system wherein one group is privileged over another can easily lead to inequality in a variety of public spheres. It can further lead to violence, discrimination and even genocide practiced against the subject group since the society is based on a philosophy that one group is superior to the other.

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<sup>24</sup> Lewis, Bernard, *The Jews of Islam*, pg. 31

<sup>25</sup> Lewis, Bernard, *The Jews of Islam*, pg. 169

The fourth and final problem with deriving fundamental rights at the group level, the indivisible nature of the individual and the comparatively arbitrary definition of the group, brings the previous three problems together. Those problems were: elite cooptation, over-politicization of identity and minority representation. As seen above, national groups and peoples are not as primordial in nature as they purport to be<sup>26</sup>. Further, group identity can easily be coopted by elites and can lead to a subversion of minority rights. Basing rights at the level of the indivisible individual has a more powerful logic than doing so at the level of the group. After all, what is the group? As O'Neill writes, "how can those who argue for principles of justice of universal scope, or for human rights, endorse structures that entail that the rights people actually have depend on where they are, or more precisely on which place recognizes them as citizen rather than alien?"<sup>27</sup> This question cuts to the issues of who decides who belongs to a group and how one earns rights if he does not view himself, or if his group does not view him, as part of the group with whom he resides. The definition of "group" or "people" or "national community" is a muddled one. Where does a group start and end? Who counts in the group? Is it not arbitrary to count groups or peoples only territorially? How about defining groups ethnically or religiously? Who decides who belongs to a particular ethnicity or religion? The individual, by contrast, is not an arbitrary unit. It can plainly be seen where an individual starts and ends, and who she is. Beitz asserts that, "the individual is in a better position than anyone else, and certainly than any government, to determine his own interests"<sup>28</sup>.

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<sup>26</sup> As Anderson asserts that "the *new* imagined communities . . . conjured up by lexicography and print capitalism always regarded themselves as somehow *ancient*" (Anderson 109, italics added).

<sup>27</sup> O'Neill, Onora, *Bounds of Justice*, pg. 170

<sup>28</sup> Beitz, Charles, *Political Theory and International Relations*, pg. 84

One may argue that individuals are “nothing” without societies since they cannot live in a vacuum. As O’Neill mentions, “such arguments are typically strengthened by pointing out that a feeling of affiliation to nations or communities is not a mere matter of preference, but the basis of the very sense of self and identity of the persons so linked”<sup>29</sup>. However, in my estimation, the meaning and identity that one can derive from a group is inversely related to the level to which that person is forced to be in said group. For example, religion can provide powerful meaning in a person’s life. However, if one is forced to sit in church every Sunday simply because one “has to,” the meaning that can be derived from such a situation is markedly reduced. One may counter that simply by going church, forced or not, one will eventually learn the truth and that a person does not always enjoy or find meaning in activities the first time he partakes of them. However, one can only begin to find meaning in a life situation when he chooses to accept it<sup>30</sup>. Lest this dialogue go too far, let it be underlined that what is being proposed here is not akin to the end of societies but rather the end of fundamental human rights being derived at the group level. Nevertheless, I do not think that a strong empirical case can be made that countries in today’s world that derive rights at the group level have, on the whole, more robust civil societies or that the people in those societies live more meaningful lives.

Now that the arguments against deriving rights at the group level have been established, the discussion turns to what rights individuals should have. Specifically, in a just global normative order, should individuals have a right to democracy? I will begin this discussion by defining democracy before turning to the heart of the argument. The

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<sup>29</sup> O’Neill, Onora, *Bounds of Justice*, pg. 173

<sup>30</sup> This may be a narrow definition of meaning, but I contend that the element of choice cannot be divorced from the notion of meaning completely. Can a being that lives solely on instinct, such as a goldfish, feel

first step in the argument will be to ascertain whether there is a sufficient enough logic or reasoning for establishing an individual's right to democracy based on the problems with deriving rights on the group level enumerated above. The second step will be to face Rawls' argument about the need for a mutual respect between liberal and decent peoples to see if it holds in this case.

### **Should there be an individual right to democracy?**

To begin a discussion on whether individuals should have a fundamental right to democracy in a just global normative order, the definition of democracy must be established. Though there exists wide disagreement on what electoral systems best provide for democracy<sup>31</sup>, the actual rules of democratic systems are secondary to the argument here. It is important, instead, to focus on what *rights* democracy provides for individuals and whether it is moral to forward these rights to all people.

One point that most experts on democratic electoral systems do not disagree on is that democracy needs to include universal suffrage. It is true that this is a relatively new idea, even in the United States, but without universal suffrage then some individuals are left out of the electorate and thus we return to the problem of minority rights. Further, suffrage must include some level of free speech in order for elections to run effectively.

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meaning? In my estimation, the goldfish cannot feel meaning because it has no free will. Then again, many would argue that humans too do not have free will, I will leave that argument for another day.

<sup>31</sup> Disagreements over democratic systems are focused on whether the electorate is best served in presidential or parliamentary systems and whether it is best to conduct voting on a plurality (or first-past-the-post) or a proportional representation system. See Lijphart, Arend ed. *Parliamentary versus Presidential Government* (Oxford: Oxford University Press 1992) and Shepsle, Kenneth A. and Mark S. Bonchek, *Analyzing Politics: Rationality, Behavior, and Institutions* (WW Norton & Company: New York 1997).

A democracy is a system whereby, in the words of Article 21(1) of the Universal Declaration of Human Rights, “Everyone has a right to take part in the government of his country, directly or through freely chosen representatives.” Article 21(1) of the UDHR points to the reasoning behind seeing democracy simply as a system of universal suffrage. But what about the rights that liberalism portends? As Rachel Brown asserts, “Liberalism is centrally defined by a commitment to respect and protect individual liberty. To secure this, liberalism claims that each individual holds certain basic rights and liberties, and gives a high priority to their protection”<sup>32</sup>. In a system as delineated above wherein individuals are the key derivers of fundamental rights, certain liberal rights need to be guaranteed so that the rights of individuals are protected. Most basically, these are the rights to life, liberty, equality, and security. Simple democracy would allow for a system whereby the majority could vote to disenfranchise a specific group. This goes against the arguments for why fundamental rights should be derived individually, thus such a democracy could not be part of the normative order that I am proposing. Perhaps, then, democracy is a necessary but not sufficient condition for establishing a just global normative order.

But is democracy—that is, universal suffrage—necessary for the establishment of a normative order that is based on individual rights? Simply providing individuals with the right to choose their rulers by majority or otherwise does not guard against the oppression of minorities, elite cooptation of individual rights or the over-politicization of group identity<sup>33</sup>. These three factors plus the indivisibility of the individual as a requestor of rights have been established to necessitate the need to base fundamental rights at the

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<sup>32</sup> Brown, Rachel, *The Extension of Liberalism Beyond Domestic Boundaries*, pg. 67

individual level. Universal suffrage provides individuals with the right to choose their rulers, but there is no guarantee implied in it that: a) their choice will be a substantive one, b) that their rulers will not opt to undermine their rights, and c) that the ruler they vote for will be the one that ultimately wins. Thus, it should be added that a democracy is a system whereby individuals are ordained with universal suffrage and wherein elections contain multiple parties. Further, free speech, and by proxy a free press, should be ensured so that elections are substantive and transparent. Even this broader definition of democracy, however, does not necessarily provide for minority rights. Thus, we must turn to the tenets of liberalism to safeguard the rights of the individual. A second encounter with Rawls will parse out whether in order to be just in the global normative order I am describing societies must be both liberal and democratic, or simply democratic.

### **Rawls' *The Law of Peoples*: Decent versus Liberal Peoples**

John Rawls defines two societal forms that he sees as just namely, decent and liberal societies. In the second part of his ideal theory in *The Law of Peoples*, Rawls states that though “liberal constitutional democracy is, in fact, superior to other forms of society,” it is important that the relationship between decent and liberal peoples be characterized by mutual respect. In rebuttal to arguments that emphasize the fundamental importance of liberal rights, Rawls asserts that, “a liberal people should have confidence in their convictions and suppose that a decent society, when offered due respect by liberal

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<sup>33</sup> Even in proportional representation systems, coalitions form that forward the rights of certain groups over others.

peoples, may be more likely, over time, to recognize the advantages of liberal institutions and take steps toward becoming more liberal on its own”<sup>34</sup>. In essence Rawls is stating that even if we find decent societies to be unjust by liberal standards, their societies look enough like liberal societies to necessitate mutual respect between the two groups. Even if we reject this argument, Rawls would counter that in the least, decent societies should be respected because respecting them is the quickest route to getting decent societies to see the virtues of liberalism. Closer scrutiny of these assertions requires a definition of decent societies.

Rawls characterizes decent peoples as those whose societal structures include decent consultation hierarchies that allow for a right to dissent. The decent consultation hierarchy is to be informed by a “common good idea of justice.” Further, though people in decent hierarchical societies “are not regarded as free and equal citizens, nor as separate individuals deserving of equal representation, . . . they are seen as decent and rational and as capable of moral learning as recognized in their society”<sup>35</sup>. Rawls is careful to note that though people in decent societies have a right to voice dissent, they do not have complete freedom of speech. In decent societies, dissent “is permissible provided it stays within the basic framework of the common good idea of justice”<sup>36</sup>. He further requires that decent societies “admit a sufficient measure of liberty of conscience and freedom of religion and thought.” But, Rawls allows the established religion to be privileged above others in decent societies as long as other religions are tolerated<sup>37</sup>. Thus, decent hierarchical societies look a lot like the Muslim *dhimma* system described above

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<sup>34</sup> Rawls, John, *The Law of Peoples*, pg. 62

<sup>35</sup> Rawls, John, *The Law of Peoples*, pg. 71

<sup>36</sup> Rawls, John, *The Law of Peoples*, pg. 72

<sup>37</sup> Rawls, John, *The Law of Peoples*, pg. 74

since they establish the superiority of a single group through the establishment of a hierarchy but aim to act benevolently toward minorities.

The *dhimma* system could be justified on the basis that it protects some minorities. However, it can easily lead to the humiliation and disenfranchisement of the unprivileged groups through, for example, inequalities in resource distribution. Brown proffers the following principle of humiliation: “A justification of institutional practices is properly regarded as humiliating to some class of persons X when it strongly negates the political conception of the person that all decent societies may reasonably be expected to endorse in the light of their guiding principles and ideals, and justifies treating members of X as less than this conception recommends”<sup>38</sup>. The example of Jewish life in Muslim Libya above illustrates the humiliating form that institutionalized second-class citizenship can take. Further, Brown rejects Rawls’ statement that decent hierarchical societies should be tolerated because of their consensual nature and allowance of dissent. A disenfranchised group’s virtual exclusion from political life, Brown asserts, is doubly unjust in decent consultation hierarchies because the ruling group in such societies recognizes the unjustness of the secondary group’s treatment but still allows itself to view the disenfranchised group as unequal. Further, the exclusion of certain groups from the political process by proxy excludes them from political life. As Brown states, “recognition followed by rejection is just as humiliating as no recognition at all”<sup>39</sup>. The fact that decent societies allow for consent and dissent is akin to paying lip service to minority or unrepresented groups while concretizing their lower social status through the establishment of a hierarchy. Decent societies, thus, understand the logic of treating all

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<sup>38</sup> Brown, Rachel, *The Extension of Liberalism Beyond Domestic Boundaries*, pg. 45

<sup>39</sup> Brown, Rachel, *The Extension of Liberalism Beyond Domestic Boundaries*, pg. 47

people equally but do not actually believe in the equality of individuals. In my mind, then, decent societies are ones that have been coopted by relatively benevolent elites<sup>40</sup>.

This follows the argument for providing all people in a democratic society, the right to vote. One can point to “virtual representation,” as the British did regarding the American colonies, all she wants but a system such as a decent hierarchical society where one is considered but not truly represented is endemically faulty. The structure of the household with a husband at the top who takes the wife’s views into consideration but ultimately makes decisions on his own could only be reasonably believed to be justly arranged if we attribute certain qualities to each gender. The assumptions underlying such a system would have to be either structural or qualitative. Examples of qualitative arguments using the household analogy are: a) that men are better at making decisions (because they are smarter, less emotional, etc.), or b) that men are fit for certain roles and women for others. Qualitative arguments point to biological or *a priori* differences between people to rationalize a hierarchical system. Structural arguments, on the other hand, include: that having a hierarchical structure in place maximizes efficiency. Structural arguments focus on the efficiency or tradition or economical sense, etc. of the structure that is in place, rather than focusing on the differences between individuals. Qualitative arguments are especially pernicious, even if they are meant to be benign, since they can quickly regress into discrimination and oppression. Since all people are equally capable given right opportunity, they should be allowed access to societal institutions on an equal basis. The qualitative rationale for rigid hierarchical structures

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<sup>40</sup> These elites are benevolent compared to those of less just societal forms described in Rawls’ *The Law of Peoples*: outlaw states, societies burdened by unfavorable conditions and benevolent absolutisms (Rawls 63).

unduly limits the opportunities for an individual's personal advancement, be it psychologically, professionally or otherwise. Structural arguments are more malleable since at their most benign they just assume that certain structures are more efficient. Within all societies there exist varying degrees of hierarchy, but the efficiency or traditional nature of hierarchical arrangements does not justify the establishment of an inferior group.

Regardless of the rationale, it is clear that the establishment of a hierarchical societal structure can lead to myriad problems. The nature of such hierarchies in practice normally leads to some degree of oppression of the minority or disenfranchised group. Further, by deriving rights at the group level, among other potential problems, individuals are not judged by who they are but by what they are, group identities may be over-politicized in order to show that they deserve certain rights, elites may coopt the rights of individuals, and minorities may be disenfranchised.

Still, John Rawls believes that decent societies should be tolerated because they are non-aggressive, bestow their people with the powers of consent and dissent and because they protect human rights. Above I make clear the weaknesses in a system that allows for consent and dissent without universal suffrage. Namely, such a system may purport to give individual's rights, but ultimately it does not. Following Brown's arguments and the example of virtual representation, even though these second-class citizens have some rights in decent consultation hierarchies, ultimately they only have the right to be heard, but not to be listened to. Decent societies, then, provide only weak rights for individuals and it is unclear whether these rights would provide for sufficient human rights protections.

## Decent Societies and Human Rights

Indeed, there exists a contradiction within Rawls' definition of decent peoples. On the one hand, in decent societies "the established religion may have various privileges" as long as adherents of other faiths are neither persecuted nor "denied civic and social conditions permitting [their religious] practice in peace and without fear"<sup>41</sup>. On the other hand, Rawls states that, "one condition of a decent hierarchical society is that its legal system and social order do not violate human rights"<sup>42</sup>. If certain groups may be privileged in decent societies, how could these societies be said to be forwarding human rights? The first sentence of the first article of the Universal Declaration of Human Rights states that, "All human beings are born free and equal in dignity and in rights." This statement is unequivocal regarding both the equality and the dignity that a society must insure its individuals in order for it to be deemed a protector of human rights. The placement of this statement as the first sentence of the first article of the UDHR demonstrates its central importance in the assurance of human rights. However, Rawls' system does not claim to adhere to the UDHR.

Rather, Rawls draws up human rights of his own: the rights to life, liberty, property, and "formal equality as expressed by rules of natural justice (that is, that similar cases be treated similarly)"<sup>43</sup>. Here it is important to note that Rawls states that "similar cases be treated similarly," which allows him much wiggle-room regarding equality. One interpretation of this phrase is that one group may be privileged in its treatment; it just

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<sup>41</sup> Rawls, John, *The Law of Peoples*, pg. 74

<sup>42</sup> Rawls, John, *The Law of Peoples*, pg. 75

cannot be egregiously privileged. If a person from the ruling group and one from the disenfranchised group are hungry, perhaps then Rawls' argument requires decent societies to provide that both people eat but does not require them to provide both with the same food. Another interpretation of Rawls' right to formal equality is that decent societies are required to explicate the differences between peoples such that they can justify different treatments for different groups. Such a system smacks of discrimination, a societal structure that is far from tolerable. Formal equality may also mean equality in the political or public sphere, in which case "equality" may not be ubiquitous. Regardless of the interpreted meaning of what "similar cases be treated similarly," the fact that Rawls allows certain groups in decent societies to be systematically "privileged" through the establishment of a hierarchy proves that such societies are unequal and thus violate human rights as framed in both the UDHR as well as any other rational definition of equality. Rawls himself "does not argue" with the contention that "full democratic and liberal rights are necessary to prevent violations of human rights" as established by "empirical fact supported by historical experience"<sup>44</sup>. Such empirical arguments could be based on the *dhimma* example and, thus, exhibit that in practice human rights are not secured by a decent consultation hierarchy.

Rawls foresees these arguments and offers a final caveat: "in view of the possible inequality of religious freedom [in decent societies], if for no other reason, it is essential that a hierarchical society allow and provide assistance for the right to emigration"<sup>45</sup>. Simply providing for the right to emigrate, however, does not make a society tolerable, though it certainly makes it more tolerable. If we are to accept societies that do not

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<sup>43</sup> Rawls, John, *The Law of Peoples*, pg. 65

<sup>44</sup> Rawls, John, *The Law of Peoples*, pg. 75fn.16

provide for liberal rights, then it is fair to say that these societies must at least prove that the people who live in them do so by choice. Thus, the right to emigration is essential to Rawls' argument that decent peoples must be tolerated for, as Joseph Carens demonstrates, freedom of movement is "essential for equality of opportunity"<sup>46</sup>. However, as Carens indicates the right to emigrate "does not imply a right to enter any particular place"<sup>47</sup>. The potential inability of citizens of a decent society to enter more equal societies poses a problem for Rawls' realistic utopia since if persons from a decent society cannot enter societies in which they will have greater equality, then decent societies are charged with the burden of providing commensurate equality for their citizens. This is because if the right to emigration does not provide for a range of reasonably just societies for a citizen to choose from, then an individual in the decent society may stay in that society not by choice but because it is the best option available. Since in order for decent societies to be most just they should be based on the choice of their citizens to live by their rules, decent societies in a world where emigration is not a tenable option are less just.

Further, a large part of Rawls' reasoning behind tolerating decent societies is their existence in a world alongside liberal societies. Liberal societies, thus, provide a potential demonstration effect for decent societies and are charged with the duty to tolerate decent societies—not vice versa. However, in a world bereft of liberal peoples, the justness of decent societies erodes since, first, the possibility of becoming liberal due to the example of other societies is gone. And second, decent consultation hierarchies are not just in

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<sup>45</sup> Rawls, John, *The Law of Peoples*, pg. 74

<sup>46</sup> Carens, Joseph H. "The Rights of Immigrants" in *Group Rights* edited by Judith Baker (Toronto: University of Toronto Press 1994) pg. 145

<sup>47</sup> Carens, Joseph, "The Rights of Immigrants", pg. 146

themselves; Rawls makes clear that liberal societies are more just<sup>48</sup>. Therefore, in a world without liberal societies, the burden shifts from liberal societies needing to tolerate decent ones to decent societies needing to adhere to liberal rights. The burden is shifted because liberal societies are the most just societies and thus in a world where they do not exist, the duty to tolerate decent societies is nonexistent since the toleration of their existence is premised on the existence of liberal societies in a Society of Peoples. Without a Society of Peoples, we are left with only the duties to “honor the laws of peace” and adhere to human rights<sup>49</sup>. In such a scenario, the argument that decent societies should be allowed to change in their own way no longer applies since there are only people who live in decent and less just societies. Since decent societies are less just than liberal societies, the inequality of opportunity in such a world would necessitate the enfranchisement of subject groups. Though it may be important to tolerate decent peoples in the Societies of Peoples, given that these societies limit the rights of certain individuals, why should their citizens, second-class or otherwise, tolerate them? So we see the right to emigrate does not justify the toleration of decent societies internally by their citizens.

However, Rawls states in his introduction that immigration in the Society of Peoples for reasons of “persecution of religious and ethnic minorities” and “the denial of human rights” would no longer be of urgent necessity<sup>50</sup>. As previously argued, the right to consultation and dissent in decent societies does not necessarily provide for the right for groups to take part in government. The example of the *dhimma* system was used in this case. Yet if we are to take Rawls at his word that the Society of Peoples that he envisions would be free of human rights violations and persecution of minorities, then

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<sup>48</sup> Rawls, John, *The Law of Peoples*, pg. 62

<sup>49</sup> Rawls, John, *The Law of Peoples*, pg. 67

how does this society look? For one, it is clear that though decent societies might not blatantly persecute minorities or deny human rights, their conception of the group as the fundamental requestor of rights limits the rights of individuals. Rawls spills much ink calibrating the level to which individual rights are limited in decent societies since he attempts to “conceive a reasonably just Law of Peoples that liberal and nonliberal peoples could together endorse” and yet admits that he is partial to liberalism. Thus in his example of a decent society called Kazanistan, he states that such a society is not “perfectly just,” but rather “perfectly decent.” He further equivocates with regard to religious minority rights in Kazanistan, a place that sounds like it is run by something akin to the *dhimma* system, declaring that Kazanistan “is an enlightened society in its treatment of religious minorities.” A decent society such as this, says Rawls “is the best we can realistically . . . hope for”<sup>51</sup>.

Rather than turning down the path of asking whether a place like Kazanistan could actually exist, I think it is important to ask whether such a place should be tolerated. Does a decent society that allows for a limited degree of equality but aims to treat its members well deserve the respect of liberal constitutional democracies? The answer appears to be yes, given the limited range of alternatives. An answer in the negative would have to be combined with a course of action to take against decent societies such as economic sanction or military intervention. Further, Rawls does not ask that liberal peoples accept decent societies, only that they tolerate and respect them. Charles Beitz states that a “true believer would not accept as neutral a principle protecting religious liberty” for all people, since his “most deeply held beliefs [entail] that

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<sup>50</sup> Rawls, John, *The Law of Peoples*, pg. 9

<sup>51</sup> Rawls, John, *The Law of Peoples*, pg. 78

certain actions protected by the liberty principle should not be permitted to take place.” He concludes that, “Despite its nonneutrality from the point of view of, for example, a true believer, the equal-liberty principle might be defended by showing that it is required to protect the pursuit of self-determined ends by autonomous agents, which is itself a central feature of an ideal of social life that is based on the criterion of respect for persons”<sup>52</sup>. Though Beitz does not believe that the rationale behind an equal- liberty principle could hold in international relations, he concludes that, “The most that can be said is that considerations analogous to those that support the equal-liberty principle [in domestic society] protect against those states whose institutions conform to appropriate principles of justice and those whose institutions are more likely to become just in the absence of outside interference than with outside assistance”<sup>53</sup>. Decent societies, as Rawls conceives them, fit into this second group.

Since life in decent societies appears to run smoothly and since these societies are ruled by relatively benevolent, if not completely consented to, elites, there appears to be little logical argument that can be made in defense of aggressively condemning, attacking or attempting to uproot such societies. Rawls' argument is simply that if laws that are not completely, but rather sufficiently, just rule a society, then that society should not be actively interfered with. In the least, the logic of Rawls' argument that tolerating and respecting (but not necessarily accepting) such a society would be more likely to yield liberalism in it holds here.

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<sup>52</sup> Beitz, Charles, *Political Theory and International Relations*, pg. 89

<sup>53</sup> Beitz, Charles, *Political Theory and International Relations*, pg. 90

## Toleration, Liberalism and Democracy

One way to get at whether individuals should have a right to democracy and what the term democracy portends is to enumerate the benefits of democracy and then see whether these benefits are provided for simply by the mechanism of universal suffrage. The first benefit of democracy is that through the mechanism of elections, democracy provides governments with the verifiable consent of the people. In Thomas Franck's view the contemporary international community has asserted, through the Soviet and Haitian cases of the early 1990s, "that *only* democracy validates governance"<sup>54</sup>. The consent of the governed, thus, provides rulers with legitimacy both internally and internationally. The systematic institutionalization of a superior group based on factors other than the consent of the people differentiates decent societies from democracies. However, the "tyranny of the majority" that Alexis de Tocqueville points to which is present in democracies could also fashion a system whereby a minority group becomes relatively disenfranchised. There are two arguments that can be employed to distinguish democracies from decent consultation hierarchies in this case. The first is that democracies allow for shifting majorities so that, in theory at least, no one group is established as supreme for all time as is the case in hierarchical societies. The second argument states that in order for democratic governments to be deemed to hold the consent of the people, they must secure the rights of individuals so that minority group

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<sup>54</sup> Franck, Thomas, "The Emerging Right to Democratic Governance," *The American Journal of International Law* 86, 1 (1992), pg. 47

rights are not eroded. In this case, however, democracy must be coupled with liberal rights.

A second purported benefit of democracy is that the mechanism of free speech creates a dialogue between the rulers and the ruled that creates transparency within societies. Transparency allows the people and their government to share information, motivations and goals in a way that best furthers the goals of a society and ensures that the government is acting in the people's interests. Thus, the primary instructor sees a free press as an integral component of democracy. He writes that, "rulers have the incentive to listen to what people want if they have to face their criticism and seek their support in elections." He further points out that, "no substantial famine has ever occurred in any independent country with a democratic form of government and a relatively free press"<sup>55</sup>. His example illustrates how the mechanisms of free speech and the free press translate into a better standard of living for people. It is important to note, however, that though consent and legitimacy are attained simply through universal suffrage, transparency is gained through the liberal rights to free speech and a free press. Thus, this second benefit attributed to democracy is actually achieved through liberalism.

## **Conclusion**

The crux of the argument in this paper has been to prove that rights should be derived at the individual level. From this vantage point, it is difficult to come up with a legitimation of democracy without liberalism. Though democracy provides for government legitimacy, in order for a democracy to secure individual rights, it must provide for a certain degree of liberal rights such as, most fundamentally, the right to free

speech and the rights to life, liberty, equality, and security. If a society allows for these liberal rights without providing elections, then under my rubric it would be found to be just. The legitimacy that a government gains from democracy both internally and internationally is an advantage, but I believe that this legitimacy could be achieved simply by providing liberal rights. One may counter that a monarchy that provides the polity with liberal rights is not just because the government is not consented to by the people. However, as previously stated, providing for democracy alone does not insure any rights for individuals at all. Thus, a hierarchy of justness should be established with liberal democracy at the top, liberal non-democracy (if such a system could actually exist) in the middle and non-liberal democracy on the bottom. In my judgement, of these three, only non-liberal democracy should not be tolerated since it has the potential for elite cooptation, disenfranchisement of certain social groups and over-politicization of identity in addition to all other unjust things that a government could do including infringing on a person's right to property, judging people without a fair trial, etc.

Democracy alone does not yield the human rights that are necessary for the creation of a just society. Deriving rights at the group level also does not provide for these necessary rights. A system run according to the dictates of liberalism does provide these rights for individuals and, democracy or not, is therefore just. Some societies that are non-liberal, however, should be tolerated. In the real world, these should be judged on a case-by-case basis to determine whether members of these societies are afforded the choice to remain in them, whether they are non-aggressive, whether their rulers are benevolent, and whether tolerating them is the best way to get them to see the virtues of liberalism. The definition of Rawls' decent society has its problems, but the concept that

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<sup>55</sup> Sen, Amartya, *Development as Freedom* (New York: Anchor Books 1999) pg. 152

there could exist societies that are not liberal constitutional democracies but still should be tolerated holds.

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