

THE UNIVERSITY OF CHICAGO

The Two Faces of Decent Peoples:

Right to Dissent, Self-Determination
and Liberal Toleration

By

Zheng Shang

December 2021

A paper submitted in partial fulfillment of the requirements for the
Master of Arts degree in the
Master of Arts Program in the Social Sciences

Faculty Advisor: Chad Cyrenne

Preceptor: August Kampf-Lassin

The Two Faces of Decent Peoples

Right to Dissent, Self-Determination and Liberal Toleration

1 Introduction: The Problem of Decent Peoples

The Law of Peoples puts forward the controversial claim that liberal toleration extends to certain nonliberal societies that Rawls calls “decent peoples.” Tied to this claim, and no less contentious, is Rawls’s minimalist doctrine of human rights, which leaves out a considerable number of rights enumerated in the widely acknowledged international documents. Among these rights are the rights to freedom of expression and association, the right to democratic political participation, and the right to equality without distinction of religion or sex, for example, in eligibility to run for office. According to Rawls, even though decent peoples do not honor these rights, liberal peoples ought to tolerate them—this means, not only to refrain from “imposing sanctions on, or forcefully intervening with,” them, but also to respect them “as equal participating members of good standing” within the international order as a moral order.¹ Rawls arrives at these conclusions by using the original position at the international level twice, first between liberal peoples and then between liberal and

¹ John Rawls, *The Law of Peoples [LoP]* (Cambridge, MA: Harvard University Press, 1999), 83, 59.

decent peoples. This line of argument is not flawless and indeed has received much critique. It is unclear, for instance, why agents representing only liberal democratic peoples would not agree to a conception of basic human rights binding on all regardless of consent that is at least modestly or generically liberal and democratic. More fundamentally, commentators challenge the primacy of peoples over individuals; they ask, in particular, why representatives in the international original position are peoples but not individuals.² *The Law of Peoples* does not provide a direct answer to these challenges, but Rawls's remarks on an array of related matters in various sections of the book may suggest his considerations on some related matters: first, considering the undesirableness of a world government, the Law of Peoples argues for "some kind of loose or confederative form of a Society of Peoples" and for "preserving significant room for self-determination" by each people.³ Second, Rawls appreciates the moral importance of a people's collective autonomy. He emphasizes that "self-determination, duly constrained by appropriate conditions, is an important good for a people, and that the foreign policy of liberal peoples should recognize that good and not take on the appearance of being coercive."⁴ Third, decent societies deserve respect because they meet certain specified criteria of political right and justice. Rawls conjectures that most reasonable citizens of a liberal society will find peoples who meet these criteria acceptable as

² Rawls had considered the possibility of such objections in *LoP*, 82, except that his reasons for objections are rather vague. See a more substantial defense at Kok-Chor Tan, "The Problem of Decent Peoples," in Rex Martin and David A. Reidy, eds., *Rawls's Law of Peoples: A Realistic Utopia?* (Malden, MA: Blackwell, 2006), 87.

³ *LoP*, 36, 61, 41 fn. 50.

⁴ *LoP*, 85.

peoples in good standing and tolerate them.⁵ Fourth, parallel to the fact of reasonable pluralism, which Rawls acknowledges as one of the historical conditions of a reasonably just domestic society, the Law of Peoples assumes there is an even greater diversity among reasonable peoples with their different “cultures and traditions of thought”, including certain “not unreasonable” comprehensive religious and nonreligious views which have shaped, and continue to shape, the character of their political order.⁶ “If all societies were required to be liberal”, writes Rawls, “then the idea of political liberalism would fail to express due toleration for other acceptable ways (if such there are, as I assume) of ordering society.”⁷ Finally, the Law of Peoples considers the relations between liberal and decent societies primarily as “an essential part of the basic structure and political climate of the Society of Peoples”, in which maintaining mutual respect and equal status should prevail. “Lapsing into contempt on the one side, and bitterness and resentment on the other, can only cause damage.” The Law of Peoples satisfies the criterion of reciprocity, because it asks of other societies “only what they can reasonably grant without submitting to a position of inferiority.”⁸

For some, these remarks do not constitute a set of systematic and convincing arguments.

Nevertheless, from them, it is at least clear that Rawls appreciates the importance of the

⁵ *LoP*, 65-67.

⁶ *LoP*, 11, 40, 127.

⁷ *LoP*, 59.

⁸ *LoP*, 122, 62, 121.

autonomy, equality, and mutual respect of peoples in a diverse international community, to the extent that he is willing to reconcile the liberal conceptions of domestic justice with these values. His cosmopolitan critics, however, refuse to make such reconciliations. For them, a Law of Peoples that claims to be “an extension of a *liberal* conception of justice for a domestic regime to a Society of Peoples”⁹ has to remain steadfast in its fundamental commitment of liberalism, that is, to protect the rights of every *individual* so that each of them can pursue their own lives with as much freedom and equality as possible. They argue, while nonliberal societies may find this individualistic commitment an imposition, this is “not an *unreasonable* imposition” from the point of view of political liberalism.¹⁰ Their reason to not tolerate nonliberal societies is straightforward—the political institutions in these societies are unreasonable. In contrast to his cosmopolitan critics, Rawls could argue, as Kok-Chor Tan puts it, that “to insist on an international theory of justice premised on the [...] cosmopolitan ideal that individuals are ultimate is to propose a conception of justice that nonliberal societies could *reasonably* object.”¹¹ Such debate concerning the scope of reasonable disagreement in the international level will ultimately point to the question whether *the Law of Peoples* has rendered political liberalism “more contingent and

⁹ *LoP*, 9, italics mine.

¹⁰ Tan, “The Problem of Decent Peoples,” 88. Notice, however, Rawls never uses the concepts, “unreasonable” or “reasonable,” in these exact ways as Tan uses here and in the subsequent sentence.

¹¹ Tan found that Rawls in his 1993 Oxford Amnesty Lecture made the remark that a law of peoples founded on the cosmopolitan ideal of individuals as free and equal would make the basis of that law “too narrow.” Tan, “The Problem of Decent Peoples,” 87. See Rawls’s 1993 Oxford Amnesty Lecture, “The Law of Peoples,” in Stephen Shute and Susan Hurley eds., *On Human Rights* (New York: Basic Books, 1993), 65.

contextual than perhaps Rawls himself intends or would want.”¹² I do not want to pursue this direction in this thesis.

Instead, I want to address the other side of the problem of decent peoples in this thesis. I propose to ask this question: For those liberals who recognize the importance of Rawls’s above considerations (including the value of the autonomy, equality and mutual respect of peoples; the existing greater diversity of the international community; and the desirability of a loose confederative form of a Society of Peoples) and for these reasons are willing to make reconciliations with some nonliberal peoples, what would be the appropriate criteria that a nonliberal people must meet so as to warrant liberal peoples’ toleration and acceptance as full members in good standing of the Society of Peoples? To answer this question, I am to begin with Rawls’s following statements about decent societies:

A decent [...] society meets moral and legal requirements sufficient to override the political reasons we [liberal peoples] might have for sanctions on, or forcibly intervening with, its people and their institutions and culture. [...] [D]ecent [...] societies do have certain institutional features that deserve respect, even if their institutions as a whole are not sufficiently reasonable from the point of view of political liberalism or liberalism generally.¹³

My first step is to review what justification Rawls could provide for his argument that societies with his specified “institutional features” “deserve respect.” I then argue that to

¹² Tan, “The Problem of Decent Peoples,” 90-1.

¹³ *LoP*, 83-4.

take the reason for this justification seriously, Rawls's human rights list and his specified "institutional features" have serious loopholes. They make room for, and legitimize, reprehensible state actions that are exactly opposite to the justification he could give for respecting a decent regime. There are thus, as it were, two faces of decent peoples—one respectful and the other reprehensible—conflated in Rawls's original description of decent peoples. Because we are morally compelled to respect and tolerate one as much as morally compelled to condemn and transform the other, I propose conceptualizing the two in distinct categories as different types of societies and specifying the boundaries between them as clearly as possible. This will not only help fully realize our opposite moral commitments, with greater clarity, in practical action, but also buttress the case of toleration for (the genuine) decent societies in theory. My analysis of these two types of societies further explains why (the genuine) decent societies are rare and somewhat counterintuitive. It also suggests necessary revisions to Rawls's human rights list and to the limits he specified for forceful intervention. These revised criteria become more defensible on moral grounds and meanwhile still maintain the merit of not being politically parochial. All in all, my analysis sees the value of Rawls's liberal/decent taxonomy but warns the hazard of losing sight of the *reality* of authoritarian regimes, and confounding these regimes with decent societies. In this sense, this thesis can be seen as a step towards redeeming the

right balance between realism and utopianism in this Rawlsian project in search for a “*realistic* utopia.”¹⁴

2 Decent Society: Morally Significant System, Respect to Dissent, and Self-Determination

Rawls specifies a three-part criterion that the domestic institutions of a decent society must meet. The first part is that the society’s legal system must secure all of the human rights in Rawls’s list. The second part of the criterion revolves around the core idea that the legal obligations that this society imposes on all its members must carry *bona fide* moral force. A number of requirements can be entailed from this core idea: The society must regard all its members as moral and political agents competent to reason.¹⁵ “Its system of law must follow a common good idea of justice that takes into account what it sees as the fundamental interests of everyone in society.” Members of the society are able to “recognize [their] duties and obligations as fitting with their common good idea of justice and [...] not [...] as mere commands imposed by force.” The third part of the criterion further consolidates these requirements. “There must be sincere and not unreasonable belief on the part of judges and

¹⁴ *LoP*, §1, “The Law of Peoples as Realistic Utopia.”

¹⁵ Rawls writes, “the members of the people are viewed as decent and rational, as well as responsible and able to play a part in social life [...]. They have the capacity for moral learning and know the difference between right and wrong as understood in their society.” *LoP*, 66.

other officials that the law is indeed guided by a common good idea of justice.”¹⁶ As such, a decent society is organized as a fairly genuine system of cooperation sustained by shared reason. Most importantly, the relationship between the authority and its people is marked by a significant measure of reciprocity. Members play an important role in making political decisions through an established consultation procedure or other equivalent institutions that fairly represent their interests.¹⁷ They have a right to evaluate, dissent from, and receive a public justification for official state actions. Rawls writes,

[...] the government has an obligation to take [...] dissent seriously and give a conscientious reply. [...] Judges and other officials must be willing to address objections. They cannot refuse to listen, charging that the dissenters are incompetent and unable to understand, for then ... we would have a paternalistic regime [...]. Moreover, [...] the dissenters are not required to accept the answer given to them; they may renew their protest, provided they explain why they are still dissatisfied, and their explanation in turn ought to receive a further and fuller reply.¹⁸

On the premise that dissent is given such a due weight in the political decision making process, Rawls concludes that decent societies are able “to reform themselves in their own way.” For “dissent, when allowed and listened to, can instigate change”, leading to “important reforms.” Rawls imagines that in Kanzanistan, his hypothetical example of a decent regime, “dissent has led to important reforms in the rights and role of women, with

¹⁶ *LoP*, 65-7.

¹⁷ *LoP*, 70-5; 77.

¹⁸ *LoP*, 72.

the judiciary agreeing that existing norms could not be squared with society's common good." When Rawls notes that "[t]he common good conception of justice held by decent peoples may gradually change over time, prodded by the dissents of members of these peoples,"¹⁹ he includes the possibility of decent peoples gradually extending their individual member's rights from a minimally acceptable list of basic human rights towards a more liberal and democratic fashion. Decent peoples so construed indeed have *in themselves* no worse conditions than the historically less than liberal democratic countries (e.g., England and the United States in the end of nineteenth century) to transform themselves towards a genuine liberal democracy or a just society in their own point of view. Moreover, if different voices are more or less adequately reflected and duly considered in the political decision making process, over time the basic political arrangement could be regarded as a collective choice made by the people.²⁰ In this sense, decent people should be left not only "free to liberalize and democratize in their own way on their own time"²¹ but also free to preserve their nonliberal institutions as their collective political decision.

A decent society thus constitutes a morally significant normative system and is fairly competent in collective self-determination. As one scholar, David A. Reidy, puts it,

¹⁹ *LoP*, 61; 78; 61.

²⁰ *LoP*, § 9.2, 72-5.

²¹ David A. Reidy, "Political Authority and Human Rights," in Rex Martin and David A. Reidy, eds., *Rawls's Law of Peoples: A Realistic Utopia?*, 180.

The members of such a polity are bound to one another and to their body politic, with its normative system of political and legal authority, in a morally significant way. It is theirs in the sense that it belongs to the exercise of their moral and political agency to determine its structure and content in light of their own best judgments and other moral commitments. Nonparticipants or nonmembers ought to respect the moral and political agency of those implicated within this morally significant normative system of political authority. They ought to refuse forceful intervention.²²

Reidy further argues that this is what agents representing liberal peoples in the original position would justify their own claimed right of self-determination. Such a normative system of political and legal authority need not meet even a modestly or generic liberal and democratic list of rights, according to Reidy. Otherwise, states not yet fulfilling the liberal democratic rights specified in such a list, say, those without universal suffrage or with gender or religious restrictions on political participation, would be denied equal standing within the international order as a moral order. They would not have a right to self-determination and nonintervention, or in any case, not the same right as those states with universal suffrage, nondiscrimination and so on. Consequently,

At the end of the nineteenth century, then, England and the United States would have had no right against coercive or forceful intervention, diplomatic, economic, perhaps even military, by other states keen to see that women got the right to vote. At the end of the century before that, they would have had no right against coercive or forceful intervention aimed at abolishing certain Church privileges. (Depending on what one

²² Ibid.

thinks ingredient in a conception of basic human rights that is modestly and generically liberal and democratic, the United States today might have no right against forceful intervention, say diplomatic and economic, to secure domestic campaign finance reform and other essentials to anything like fair value for basic political liberties.)²³

Whether one agrees with Reidy's further argument about how liberal peoples justify their own claimed right of self-determination, the main argument in this section should provide at least a plausible moral justification to respect and not interfere with a decent society. There may still be other considerations involved in arriving to such a moral justification. The Law of Peoples may have taken account of the fact that modernization, liberalization, and democratization take time and that different societies with their different social, economic, and cultural conditions may be in the different historical stages of these processes, and therefore it sees no reason to deny a society that comes late in these processes, as long as the above mentioned various conditions of decency are truly met.

3 Repression of Dissent: The Other Face of “Decent Societies”?

In the last section, I have sketched a sympathetic explication of Rawls's criterion of decency and why a society whose institutions meet this criterion deserves respect and warrants nonintervention. As we can see, the line of arguments relies heavily on political dissent

²³ Ibid., 179-80.

being admitted and followed by respectful and genuine responses from the political and legal authorities. However, Rawls does not include the rights relevant to the expression of political dissent into his list of basic human rights. Among the rights that are deliberately truncated from Rawls's list are the right to freedom of expression, the right to freedom of peaceful assembly, and the rights to freedom of association and to form independent political parties. This might sound surprising, but Rawls only endorses Articles 3-18 of Universal Declaration of Human Rights (UDHR) as human rights proper.²⁴ By this, he deliberately leaves out Articles 19 and 20. Article 19 writes, "Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media [...]." If one compares this article with Article 18, one will see that even though Article 18 discusses the "freedom of thought, conscience, and religion", it focuses on the spiritual life, whereas Article 19 addresses the political life. Moreover, Article 20 of UDHR ensures the right to peaceful assembly and association. If Rawls excludes Articles 19 and 20, then he means to retreat on the issue of political dissent in dealing with nonliberal peoples. As such, when he lists the human rights secured in a decent hierarchical people's system of law, he only mentions "a sufficient measure of liberty of conscience to ensure freedom of religion and thought)", but not the "right of freedom of opinion and expression" consequential to political dissent. The retreat seems to be motivated by his intention to avoid being

²⁴ *LoP*, 80, fn. 23.

“politically parochial,” as he notes that “Human rights, as thus understood, cannot be rejected as peculiarly liberal or special to the Western tradition.”²⁵ Most scholars agree with my interpretation of Rawls’s deliberate omission here. For instance, Reidy writes, “To be sure, [...] Rawls recognizes no basic human rights to democratic government or universal suffrage, the robust freedom of assembly or expression typically secured in liberal democracies, [...] and so on.”²⁶ As another example, James N. Nickel acknowledges that “Rawls denies the status of human rights to freedom of expression and to peaceful assembly and association. [...] Rawls does not endorse the view of political right found in Article 20-21 of the Universal Declaration. Those articles declare rights to protest peacefully [...].”²⁷ In the very least, Rawls is ambiguous with regard to the expression of political dissent in decent societies, and as we will see, this ambiguity has grave consequences. What Rawls is unequivocal about is the manifold restrictions on dissent that a decent consultation hierarchy is entitled to impose. According to him, dissent has to be expressed “appropriately in view of the religious and philosophical values of the society as expressed in its idea of the common good.” “Dissent ... is permissible provided it stays within the basic framework of the common good idea of justice.” For example, in Kazanistan, the right to express political dissent seems to be only enacted “at some point in the procedure of consultation (often at

²⁵ *LoP*, 65.

²⁶ Reidy, “Political Authority and Human Rights,” 172.

²⁷ James W. Nickel, “Are Human Rights Mainly Implemented by Intervention?,” in Rex Martin and David A. Reidy, eds., *Rawls’s Law of Peoples: A Realistic Utopia?*, 265.

the stage of selecting a group's representative)."²⁸ But how about dissent that questions, challenges, or passes beyond, these boundaries?

This question brings up the other face of "decent peoples." For more often the political authorities in illiberal societies selectively suppress the public expression of certain dissent. They could do so in the name of law and the common good idea of justice (e.g., threats to national security, disobedience to procedures for public protest, or even the so-called "tax evasion") with no ostensible violation of Rawls's basic human rights. But when such suppression is constantly and firmly implemented with a penetrating system of political censorship²⁹ and secret police, accompanied by trials to punish the dissenters, they generate enough psychological effects of impotence and intimidation upon members of the society to refrain from expressing dissent. Thus even though the scale of dissent appears to be minor and most of its content mild, one can hardly take it as the evidence that members of the society in concern are satisfied with the status quo concerning the basic political arrangement and conclude that external intervention is neither necessary nor morally justifiable. Quite the opposite is true. The mass apparatus of suppression and filtration itself reveals that those in power cannot justify their practices in line with the common good idea of justice in the society, but have to resort to force, coercion and concealment. Since these measures are not even acceptable from the point of the view of the culture of the society in

²⁸ *LoP*, 72.

²⁹ Political censorship is significantly different from censorship based on religious or moral grounds. Whereas censorship based on these other grounds may represent the general opinion of the society, political censorship is both unnecessary and often ill-intended.

concern, it is, for liberal peoples, not an issue of tolerance of cultural differences but rather of moral responsibility to fight against clear injustice and stark violation of reciprocity. It can hardly be maintained that the conditions are still met for members in the society to determine their future *on their own*, because the political authority has already blocked the channel of, and stifled the room for, agitation and peaceful change. As such, unjustified coercion constitutes an essential part of this illiberal regime—indeed often the indispensable part that it employs to preserve itself. Given that the presence of such coercion seriously blocks the channels for its people to freely choose their political future, the political authority in this regime should not be regarded as the representative of its people to determine its domestic affairs at its own will. International interference is not only permissible but also necessary.

4 The Grey Area: Intermediate Societies and Delinquent States

In the last section, I have considered a type of nonliberal societies which selectively repress their dissent in the name of the law or the common good idea of justice. Yet within the framework of the Law of Peoples, it is unclear whether such a society is an “imperfect” decent society or outlaw state, because there is neither adequate measure of reciprocity between its authority and people that qualifies its decency, nor major violations of Rawls’s basic human rights that indisputably pins it to the wall of outlawry. It falls into the grey area

between decency and outlawry. How would Rawls respond to such cases? There is no direct answer. But to recall, Rawls has at least drawn the distinction between decency and his human rights standard. That is, protection of human rights is merely the first part of a three-part criterion that a decent society needs to meet in terms of its domestic institutions. “Human rights set a necessary, *though not sufficient*, standard for the decency of domestic political and social institutions.”³⁰ Decency is “a normative idea of the same kind as reasonableness, though weaker (that is, it covers less than reasonableness does). We give it meaning by how we use it.”³¹ Decency, rather than the fulfillment of human rights *alone*, thus defines the liberal peoples’ criteria of admitting a society as a member in good standing in the international moral order. The “fulfillment” of basic human rights, in contrast, is only “sufficient to exclude justified and forceful intervention by other peoples, for example, by diplomatic and economic sanctions, or in grave cases by military force.”³² (Call this “No Forceful Intervention” argument, hereinafter NFI.) Thus it may be interpreted that the Law of Peoples excludes only intervention that takes the form of serious coercion and force against those societies that comply with basic human rights, but leaves low levels of interference not accompanied by significant threats for those societies that fail to meet the standard of decency, which include criticism, condemnation, and social pressure.³³ Against outlaw states that violate basic human rights, however, a broader range of options is

³⁰ *LoP*, 80. Italics mine.

³¹ *LoP*, 67.

³² *LoP*, 79-80.

³³ Nickel has enumerated a list of the concrete forms that government can take to express disapproval of others. See Nickel, “Are Human Rights Mainly Implemented by Intervention?,” 272.

suggested, including not only condemnation and pressure, but also refusal to admit as members in good standing in mutually beneficial cooperative practices, sanction, and, in the grave case, military intervention.³⁴ Rawls's remark on benevolent absolutism is consistent with my above interpretation: "While a benevolent absolutism does respect and honor human rights, it is not a well-ordered society, since it does not give its members a meaningful role in making political decisions. But *any* society that is nonaggressive and that honors human rights has the right [...] to defend itself against invasion of its territory."³⁵ Whether it is permissible to impose diplomatic and economic sanctions on benevolent absolutism Rawls however has not made any comment.

Since they fall into the grey area between decency and outlawry and call for a middle-path treatment, I propose to conceptualize the societies that observe Rawls's basic human rights but fail to meet the standard of genuine decency as "intermediate societies." Benevolent absolutism is one type of intermediate societies. But for reasons that I will turn to shortly, more often, the authorities in intermediate societies engage in some form of deliberate, malicious and systematic suppression of dissent. To be more precise, I propose to call this type of intermediate societies as "delinquent states."³⁶

³⁴ *LoP*, 93, fn. 6.

³⁵ *LoP*, 92.

³⁶ My concept of delinquency is different from Nickel's. Nickel also talks about a group of "delinquent countries", by which he refer to countries have serious violation of (Rawls's) human rights but overall are not repressive or tyrannical. See Nickel, "Are Human Rights Mainly Implemented by Intervention?," 267-72. I appreciate many of Nickel's insights in this chapter, but a more generous reading of *The Law of Peoples* may consider that Rawls has considered in his concept of outlaw states cases like the delinquent countries in Nickel's sense. For, although Rawls characterizes outlaw regimes mostly with severe violation

In the case of a delinquent state, international criticism and condemnation expose political persecution to public view and exert pressure on its authority to change its repressive policies, as the people in concern can hardly do so on their own domestically. Not only international non-governmental organizations (NGOs), but inter-governmental bodies and governments of other peoples should also have the right to carry out this form of criticism and condemnation, because the power of NGOs' voices is largely limited to cause effects upon the authorities in delinquent states. However, some might worry that governmental criticisms and condemnations would wound the self-respect of the people in concern. To this type of worry, I have two responses. First, I think Rawls's distinction between outlaw state's leaders and officials and its civilian population³⁷ is also helpful to refine our position of criticism and condemnation towards an intermediate society, for the political authority in an intermediate society has already put itself against its people in a morally significant and structurally consequential measure. We criticize the authority, for abusing its power, but not the people (or the individual members of the society as a whole) proper. We in fact honor and care about the people's right to self-determination (the realization of which is blocked by coercive rulers); it is out of this concern that we urge its authority to stop abusing its power. Second, it may be advisable that criticisms and

of human rights, such as slavery, his suggestions on the foreign policy toward outlaw states are not insensitive to the complexity of "intermediate" regimes. Rawls suggests a series of graduated policy options to pressure the outlaw regimes to change their ways. Rawls writes that the choice of policies "is [...] essentially a matter of political judgment and depends upon a political assessment of the likely consequences of various policies." See *LoP*, 93.

³⁷ *LoP*, 94-95.

condemnations focus on the subject of utterly unjust treatment of dissenters and petitioners, and proceed with prudence in making extensive judgments on the design of the regime or on the protection of non-basic human rights. For unfavorable judgments on the design of the regime may at times amount to contempt for the identity of the people and demand for the protection of non-basic human rights may lay oneself open to charges of cultural imperialism and paternalism.

5 The Legitimacy Pattern of Intermediate Societies

Thus far I have discussed why it is permissible and necessary to criticize and condemn the suppression of political dissent in “delinquent states”, but have not yet considered substantially why it is impermissible to subject such delinquent states and other “intermediate societies” to forceful intervention, including diplomatic and economic sanctions. After all, NFI is still left undefended: why does the fulfillment of Rawls’s basic human rights justify a state’s right to no forceful intervention? A couple of answers I could think of but none are strong or conclusive. Rawls might argue that there is no urgency for forceful intervention since there is no grave violation of basic human rights. But if the policy to suppress dissent is deliberate, malicious, and repetitive and the authority does not take any substantial reform except continuous window dressing, on what grounds are well-ordered peoples obliged to refrain from diplomatic and economic sanctions, which will give

teeth to plain criticisms? While discussing approaches to outlaw states, Rawls appears to justify these forceful interventions with pragmatic considerations,

Gradually over time, then, well-ordered peoples may pressure the outlaw regimes to change their ways; but by itself this pressure is unlikely to be effective. It may need to be backed up by the firm denial of economic and other assistance, or the refusal to admit outlaw regimes as members in good standing in mutually beneficial cooperative practices.³⁸

Then can well-ordered peoples justify some measure of forceful intervention into intermediate societies on the same grounds? I see no principled reason to refute this, except that, to the extent that the regime of an intermediate society enjoys partial legitimacy, forceful intervention might result in “bitterness and resentment,” as Rawls puts it. To be sure, such considerations based on how forceful intervention will be received do not offer a principled justification for NFI, and they have to be weighed in each case in terms of the actual degrees of legitimacy that members of the society confer on their political authority as well as on the proposed international interventions. However, the plausibility of NFI may be explained in the following mechanism: if the authority continuously refuses to address people’s interest and hence loses its legitimacy considerably, it cannot keep a tight rein on the ever-growing dissent without massive and severe violation of even Rawls’s basic human rights, which will make it an outlaw state anyway and undisputably subject to forceful

³⁸ *LoP*, 93.

intervention. In fact, authorities in delinquent states usually answer to peoples' demands in some important aspects at the same time of suppressing political dissent. It is with such achievements in important aspects that authorities could further manipulate the relevant information and their members' perception against foreign intervention. Nonetheless, it is important to see that such mechanism varies across societies. In some societies, even though the discontent is huge, the powerful authority still succeeds in suppressing the dissent through guileful intimidation and censorship. As discussed earlier, only a handful of individual cases can generate enough intimidation on the vast population and it is hard to pin down these individual cases as violations of basic human rights, when rights associated with the expression of dissent are absent from Rawls's basic human rights list.

In short, these practical considerations do not cancel the right to forceful intervention. Every intervention will anyway have to proceed with a prudent calculation of costs and benefits. Forceful intervention might be worthwhile even though it may cause some amount of "bitterness and resentment" among some population groups. Therefore, Rawls's NFI does not hold, at least not with his truncated list of human rights.

6 The Puzzle of Decent Peoples Reconsidered

Earlier I have suggested that there are two faces of “decent peoples”—one respectful and the other repressive—conflated in Rawls’s original description of it. Having analyzed both of them, in this section I further explore in more depth the underlying structural tension of the concept of “decent peoples”, especially its puzzling bipolarity. Let me begin by asking whether “delinquent states” are imperfect instances of decent peoples. Rawls has been criticized for missing a large part of reality in his division of ideal and non-ideal theories. The critics argue that since, in the real world, both the ostensibly liberal societies and so-called decent societies in practice have not complied, fully and effectively, with the principles of justice, Rawls has to deal with such imperfection under the heading of non-ideal theory as well.³⁹ However, my concept of intermediate societies is not meant to include these types of imperfect, but still internationally acceptable, liberal and decent societies. Rather I intend it to fill the conceptual gap between decency and outlawry. For the liberal and decent societies have established within their political system a set of *de facto* rights to protect dissenters, which are of paramount importance in their political culture. In contrast, delinquent states, the prime type of intermediate societies, repress dissent systematically and maliciously. To be sure, liberal and decent societies are not perfect systems – in their domestic politics, there *are* individual cases of violation of basic human rights and even suppression of dissent. But once exposed, these cases are usually corrected through domestic struggles within a reasonably limited duration of time. Thus, it is

³⁹ Alistair M. Macleod, “Rawls’s Narrow Doctrine of Human Rights,” in Rex Martin and David A. Reidy, eds., *Rawls’s Law of Peoples: A Realistic Utopia?* (Malden, MA: Blackwell, 2006), § 6, 144-5.

reasonable to treat these cases as part of the self-correcting mechanism and continue to grant liberal and decent societies the rights to self-determination and non-intervention. In contrast, it is necessary and justifiable to intervene in a delinquent state, pushing its authority to change its systematic practice of repression and concealment. Therefore, delinquent states are distinct from imperfect decent peoples.

There remains one crucial, yet unscrutinized, issue. If there are at least some existing liberal societies, (the prospect of) which are (remotely close enough to) “imperfect liberal societies”, are there any comparable cases that could be realistically thought of as an “imperfect decent society”? Is there any set of nonliberal political institutions that maintain a self-correction mechanism that is remotely comparable to liberal democracy concerning the protection of Rawls’s basic human rights and, in addition to that, the right to dissent? In short, does it make sense to talk about a nonliberal but sufficiently decent regime?

Rawls has realized this problem, but he refrains from further comments and opts for a conceptual defense:

... some writers maintain that full democratic and liberal rights are necessary to prevent violations of human rights. This is stated as an empirical fact supported by historical experience. I do not argue against this contention, and indeed it may be true. But my remarks about a decent hierarchical society are conceptual. I ask, that is, whether we

can imagine such a society; and, should it exist, whether we would judge that it should be tolerated politically.⁴⁰

In any case, this conceptual entity of decent regime forms an interesting asymmetry vis-à-vis its counterpart of constitutional democracy: the latter begins with higher achievement on the scale of justice and a relatively more effective self-correction mechanism, thereby more likely staying not too far away from the range of ideal theory; whereas the former begins from a much lower point on the justice scale and has more propensity to deteriorate, thereby, in practice, more likely falling out of the acceptable range. We are thus more likely to think of the real-world instantiation for these two cases as imperfect liberal democratic societies and delinquent states. But this is only half of the story. Rawls has yet another ideal vision for his conceptual entity of a decent regime: it not only does not deteriorate, but reforms itself progressively in face of dissent and “leaps forward” on the justice scale. Then the concept of decent societies and its most intuitively associated real-world instantiation, delinquent states, travel in opposite directions, entering into two realms—one respectable, the other reprehensible—to the extent that distinctions between them are so clear and so crucial that one category cannot capture their polarity.

However, by the above analysis, I certainly do not mean to suggest that liberalization and democratization do not take place in nonliberal societies. But they perhaps rarely take place without the battles between bitter struggle and stern suppression, if not between

⁴⁰ *LoP*, 75, fn. 16. A similar remark is repeated on *LoP*, 79.

desperate strife and bloody crackdown. In fact, most nonliberal societies maintain their nonliberal and undemocratic regimes by the very suppression of activists for liberalization and democratization. Even among the “enlightened” authorities of these regimes, many enact reforms reluctantly, and with cynical motivations; only because they know they had to keep up with the times to retain their grip on power and to forestall more radical change imposed on them. Therefore typically while they buy off the public with gradual reforms, they continue to stifle liberty, arrest activists, and sanitize media. If this pattern is indeed common in most cases, then this captures another reason why genuine decent societies are a rarity—because their existence relies heavily on the integrity of the rulers, especially in the absence of strong external pressure.⁴¹

Some people may contend that the decent society is an over-romanticized myth. I however believe it is prudent to leave space for exceptions, especially on the empirical matter. Robust self-correction mechanisms in decent peoples may still be possible, particularly if *political* dissent is institutionally protected. It need not rely solely on the self-discipline of rulers. In any case, non-violent revolutions did take place in history.

To avoid over-romanticizing reprehensible regimes, we should rather sharpen our conceptual work. The distinction between decency and intermediacy (with delinquency as its main type) is my answer to this task. It enables us to realize our commitments in

⁴¹ Thus Rawls places much hope for the integrity of the rulers to defend the possibility of decent societies: “A decent government is viable provided that its rulers do not allow themselves to be corrupted, either by favoring the rich or by enjoying the exercise of power for itself.” *LoP*, 75.

opposite ends fully—to respect and tolerate decency and, in the meantime, to condemn and transform delinquency. It draws a clear boundary between the two types of regimes in terms of their treatment of dissent. This is better than conceptualizing the intermediate state as “imperfect decent society”, for then we fail to distinguish delinquent intermediate societies from true decent societies—they are both imperfect but call for opposite treatments, for moral reasons.

7 Right to Dissent, Reciprocity, and Legitimacy

Respect for political dissent marks the fundamental difference of genuine decent societies from repressive delinquent states. The Law of Peoples ought to proclaim that in order for a state to be regarded as well-ordered (or decent), and thereby be accepted and respected as an equal participating member of good standing by other well-ordered peoples, it must protect the right to dissent. This means that in addition to Rawls’s basic human rights list, which draws the boundary between outlaw states and intermediate societies, there needs to be a more robust list of basic human rights, which draws the boundary between well-ordered (decent) peoples and intermediate societies. According to this list, all well-ordered peoples are obliged to enshrine the right to freedom of (at least, political) expression, the right to peaceful assembly, and the rights to freedom of association and to form independent political parties. To be sure, the establishment of these rights alone does not

guarantee due reciprocity between the political authority and its people. A decent regime, as we have discussed, has to not only allow dissent but also respond to it conscientiously, so much so that members of the society could reasonably see the possibility of reform instigated by dissent. Failing to meet this criterion in responding to dissent makes a society “intermediate”—not fully competent in collective self-determination—and thus, at times, needs assistance from external interference. Here, however, liberal peoples will be reminded that some of their own political systems at times fare badly in certain regards in terms of reciprocity or fair representation, with dim prospect of major improvements in the foreseeable future.⁴² Therefore, the due reciprocity condition set for decency cannot be too demanding, either. In practice, violation of due reciprocity is perhaps best ascertained when the right to freedom of expression, assembly and association is curtailed, or when the government does not respond to large-scale and repeated mass demonstrations. In fact, with the right to dissent fully secured, societies are much more empowered to determine their own futures. For as long as dissenters can freely organize themselves and rally for support, the members of the society in concern can respond through assembly and poll, even when a free and fair election is not institutionalized. If the authority of a society continuously fails to address the demands of widespread and ever-growing dissent, it will lose its grip on the power and would have to either accept the reforms imposed on it, or rule by terror, which in turn violates human rights and subjects itself to forceful intervention. In

⁴² Even in the paradigmatic case of liberal societies, such as the United States, it is highly debatable whether American people determine their future in the real sense, or whether their democracy is indeed paralyzed.

short, protecting dissent is not only less politically parochial and more respectful of a people's collective self-determination, but also effective in bridling the coercive power of political authority. Therefore I propose that the protection of the right to dissent be the benchmark of legitimacy as well as the benchmark for qualifying self-determination and liberal international toleration.

(6465 words)

Bibliography

- Macleod, Alistair M. "Rawls's Narrow Doctrine of Human Rights." In *Rawls's Law of Peoples: A Realistic Utopia?*, edited by Rex Martin and David A. Reidy, 134-49. Malden, MA: Blackwell, 2006.
- Nickel, James W. "Are Human Rights Mainly Implemented by Intervention?" In *Rawls's Law of Peoples: A Realistic Utopia?*, edited by Rex Martin and David A. Reidy, 263-77. Malden, MA: Blackwell, 2006.
- Rawls, John. *The Law of Peoples*. [LoP]. Cambridge, MA: Harvard University Press, 1999.
- . "The Law of Peoples." In *On Human Rights: The Oxford Amnesty Lectures 1993*, edited by Stephen Shute and Susan Hurley, 41-82. New York: Basic Books, 1993.
- Reidy, David A. "Political Authority and Human Rights." In *Rawls's Law of Peoples: A Realistic Utopia?*, edited by Rex Martin and David A. Reidy, 169-188. Malden, MA: Blackwell, 2006.
- Tan, Kok-Chor. "The Problem of Decent Peoples." In *Rawls's Law of Peoples: A Realistic Utopia?*, edited by Rex Martin and David A. Reidy, 76-94. Malden, MA: Blackwell, 2006.
- UN General Assembly. "Universal Declaration of Human Rights." Resolution 217 (III) A. Paris, 1948. <http://www.un.org/en/universal-declaration-human-rights/>.