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Decent Peoples, Political Legitimacy, and Informed Consent

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DECENT PEOPLES, POLITICAL LEGITIMACY, AND INFORMED CONSENT

by

Jonathan Grandits

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ABSTRACT
DECENT PEOPLES, POLITICAL LEGITMACY, AND INFORMED CONSENT

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The University of Wisconsin-Milwaukee, 2013

Under the Supervision of Professor Blain Neufeld

In *The Law of Peoples*, John Rawls attempts to work out principles of justice for the foreign policy of a reasonably just liberal people. One of his primary goals is to establish the minimum requirements necessary for a people to be an equal member (or a 'members in good standing') within a Society of Peoples (SoP). While Rawls believes that all well-ordered liberal peoples meet these requirements, he also believes that there are non-liberal peoples that are capable of doing so as well. He thus imagines the possibility of a non-liberal, well-ordered people. He calls such peoples Decent Hierarchical Societies (DHS). For Rawls, then, a fully just SoP need not be constituted exclusively by liberal peoples.

In this paper I argue against the inclusion of DHSs within the SoP on social epistemic grounds. More specifically, I argue that because DHSs do not secure for their members certain liberal rights—namely, the freedom of speech (and, consequently, freedom of the press)—such members will not have available to them the necessary means to give their legitimate (or free) support. This will result in DHSs violating a necessary condition of

'well-orderedness,' namely, that members freely support the basic institutions of their society, or what I call the political legitimacy condition. As such, DHSs should not be regarded as members in good standing within the SoP.

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In *The Law of Peoples (LP)*, John Rawls attempts to work out principles of justice for the foreign policy of a reasonably just liberal people.¹ One of his primary goals is to establish the minimum requirements necessary for a people to be an equal member (or a 'members in good standing') within a Society of Peoples (SoP). While Rawls believes that all well-ordered liberal peoples meet these requirements, he also believes that there are non-liberal peoples that are capable of doing so as well. He thus imagines the possibility of a non-liberal, well-ordered people. He calls such peoples Decent Hierarchical Societies (DHS). For Rawls, then, a fully just SoP need not be constituted exclusively by liberal peoples.

According to Rawls's account of domestic justice, all well-ordered liberal societies not only respect basic human rights but also liberal democratic rights. These latter rights include the freedom of speech, freedom of thought and conscience, freedom of association, and the right to equal participation in the political processes of one's society (e.g. equal voting rights; equal opportunity to run for the highest offices of one's society). However, in his international account of justice, Rawls narrows the set of rights that must be respected by all societies within the SoP to basic human rights. Because liberal democratic rights are not basic human rights according to Rawls, DHSs need not grant their members liberal democratic rights in order to be well-ordered. As a consequence, DHSs need not grant their members liberal democratic rights to be members in good standing within the SoP.

In this paper I argue against the inclusion of DHSs within the SoP on social epistemic grounds. More specifically, I argue that because DHSs do not secure for their

¹ John Rawls, *The Law of Peoples*, (Cambridge: Harvard University Press, 1999), 10.

members certain liberal rights—namely, freedom of speech (and, consequently, freedom of the press)—such members will not have available to them the necessary means to give their legitimate support. This will result in DHSs violating a necessary condition of 'well-orderedness,' what I call the political legitimacy condition. As such, DHSs should not be regarded as members in good standing within the SoP.

This paper will proceed as follows. In section I, I explicate what I take to be three necessary conditions of a well-ordered society according to Rawls. In section II, I focus on one of these conditions—the political legitimacy condition—and explain why Rawls thinks DHSs satisfy this condition. This will require arguing that Rawls has a conception of political legitimacy in *LP*, despite his apparent silence over such matters. In section III, I clarify this notion of legitimacy and argue that the members of society must be capable of becoming adequately informed if we are to regard their support as legitimate. In section IV, I introduce the subject of social epistemology and the notion of social epistemic dependency. In section V, I argue that because DHSs do not respect liberal rights, their social epistemic environment will not provide their members with the means necessary for becoming adequately informed. It follows from this that DHSs are not legitimate and, as a result, should not be included within a fully just SoP. However, this raises questions about how liberal societies should treat DHSs. To what degree should liberal societies tolerate DHSs? If DHSs are not included within the SoP, does this entitle liberal societies to coerce them into accepting liberal principles of justice? I address these questions in section VI. Finally, in section VII I argue that, given the highly non-ideal conditions of our world, there may often be good practical reasons for including DHSs in

the SoP. However, this is consistent with the view that an ideal, fully just SoP would consist of liberal societies and liberal societies only.

I: On Well-Ordered Societies

According to Rawls, a society must meet the following conditions for it to be a well-ordered society:

- 1) The human rights condition
- 2) The non-aggressive condition
- 3) The political legitimacy condition²

As this paper only concerns the third condition, the first two conditions only need brief mention here. The human rights condition states that for a society to be well-ordered it must protect certain basic human rights. Rawls includes as basic rights the right to subsistence and security; freedom from genocide, slavery, and forced occupation; and the right to own personal property. Rawls also includes minimal formal equality as a basic right, namely, that 'like cases be treated similarly.' Without each of these rights secured, Rawls thinks that social cooperation will be impossible.³

² Conditions (1) and (2) parallel Rawls's two criteria of decent peoples listed in §8.2 of *LP*. However, close readers of Rawls will notice two things. First, (3) is not explicitly mentioned in 8.2 (or elsewhere). I will address this later. Second, this list does not correspond to Rawls's definition of a well-ordered society in *Justice As Fairness: A Restatement (JaF)*. According to his account there, decent peoples would not be well-ordered as they do not have, *inter alia*, a basic structure that is effectively regulated by a political conception of justice (cf. pgs. 8-9). However, in *LP*, Rawls considers all members within the SoP, including decent peoples, well-ordered (cf. pgs. 4, 63). Rawls has clearly relaxed his conditions for well-orderedness in *LP*. This is perhaps best explained by the different domains that justice is being applied to in each book: *JaF* is a domestic account of justice and *LP* is an international account of justice. Rawls is clear throughout his writings that the same principles of justice do not apply to all domains (e.g. a well-ordered family need not be regulated by the difference principle). In any event, the reader should note that I am working with the conditions as he sets them out in *LP*. For more on this, cf. Blain Neufeld, "Liberal Foreign Policy and the Ideal of Fair Social Cooperation," forthcoming in *Journal of Social Philosophy* (2013).

³ Rawls, *LP*, 65.

The non-aggressive condition states that well-ordered societies respect the social and political orders of other peoples, viewing them as free and independent, and must only promote their rational ends through diplomacy, trade, and other peaceful means of cooperation.⁴ This condition does not preclude the possibility of military intervention. Rawls thinks that well-ordered societies have a duty to prevent human rights violations, and assuming that less aggressive means of intervention are not available (e.g. economic sanctions), military intervention is justified. But such intervention is not aggressive: its purpose is to protect the rights of others and not to further the rational ends of the intervening society.⁵

The third condition of a well-ordered society—and the one most relevant for this paper—states that a society can only be well-ordered if its basic institutions are freely supported by its rational and decent members.⁶ The concern here is one of legitimacy. If, as Rawls believes, governments have a monopoly on political power and such power is always coercive, then justification is needed to legitimize the use of this power.⁷ This justification is satisfied, Rawls thinks, if the rational and decent members of a society freely support—or give their consent to—the basic institutions of their society and the conception of justice that regulates them. In so doing, the members of society thereby consent to the coercive political power of the state.

⁴ *Ibid*, 64.

⁵ See Rawls, *LP*, 37-38, 80, 94.

⁶ 'Decent' members that comprise a DHS can be contrasted with the 'reasonable' members that comprise well-ordered liberal societies. According to Rawls, decency is a weaker normative idea than the idea of reasonableness. See *Ibid*, 67. Reasonable persons are characterized by, among other things, "their willingness to offer fair terms of social cooperation among equals." *Ibid*, 87. While decent persons do not offer fair terms of social cooperation to others, they do offer terms that are decent, i.e. terms that respect everyone's basic human rights and the right of everyone to take part in the political processes of society. For more on the difference between decency and reasonableness, cf. *Ibid*, 87-88.

⁷ Rawls, *JaF*, 90.

According to Rawls, most non-liberal societies will fail to meet one or more of the three conditions. For instance, those societies he calls 'outlaw states' fail to meet, among others, the second condition. Societies burdened by unfavorable conditions ('burdened societies') fail to meet, among others, the first condition. Moreover, those societies he calls 'benevolent absolutisms' meet the first two conditions, but because they do not involve their members in the political process—the ruler or ruling group decides all of the political and legal decisions without consulting the members of society—they fail the third condition.⁸ On the other hand, according to Rawls, DHSs satisfy all three conditions: they respect basic human rights, they are non-aggressive in their foreign policy, and they can be regarded as politically legitimate.

One final note. Rawls does not think that satisfying the political legitimacy condition (or, for that matter, the first two conditions) is sufficient for being fully just: the conditions for legitimacy are not identical to (and are, in fact, more easily satisfied than) the conditions for justice. A fully just society, according to Rawls, is a well-ordered liberal society that is, among other things, effectively regulated by the difference principle.⁹ Thus, Rawls thinks that while all liberal and decent societies satisfy the political legitimacy condition (as I specify this condition), all decent societies and many liberal societies will nonetheless fail to satisfy the conditions for justice.¹⁰

II: Decent Peoples and Political Legitimacy

⁸ Rawls, *LP*, 63.

⁹ Or "something like the difference principle." See Rawls, *JaF*, 49.

¹⁰ For more on the difference between justice and legitimacy, see John Rawls, *Political Liberalism: Expanded Edition*, (New York: Columbia University Press, 2005), 427-28.

Rawls is surprisingly silent on political legitimacy in *LP*. Unlike the first two conditions, he never makes it explicit that the third condition is necessary for a society to be well-ordered. It would be a mistake, however, to think this means he is not concerned with it. The purpose of this section is, therefore, twofold: to show that Rawls does, in fact, think political legitimacy is a necessary condition for a society to be well-ordered and to explain why Rawls thinks DHSs satisfy this condition. To show this, I will introduce two essential features of a DHS: what Rawls calls a 'decent consultation hierarchy' and a 'common good conception of justice.'

DHSs involve their members in the political process through what Rawls calls a 'decent consultation hierarchy.'¹¹ In a decent consultation hierarchy, each individual person is represented at the political level by the associations, corporations, and other groups of which they are members. This means that members of DHSs are not given voting rights characteristic of liberal democratic societies—namely, one vote per person. Nonetheless, Rawls thinks that a decent consultation hierarchy allows an opportunity for different voices to be heard.¹²

Moreover, a decent consultation hierarchy is responsive to its members' right of dissent. Rawls states, "Judges and other officials must be willing to address [the] objections [of political dissenters]. They cannot refuse to listen, charging that the dissenters are incompetent and unable to understand, for then we would have not a decent consultation hierarchy, but a paternalistic regime."¹³ Rawls thus believes that a decent

¹¹ Rawls, *LP*, 71.

¹² *Ibid.*, 72.

¹³ *Ibid.*

consultation hierarchy—given its associationist structure and given that it respects political dissenters—provides the members of a DHS with adequate involvement in the political processes of their society.

By requiring that DHSs involve their members in the political process, Rawls provides us with the most convincing reason for thinking he is concerned with the satisfaction of the political legitimacy condition. Consider, again, benevolent absolutisms. Rawls explicitly states that such societies are not well-ordered precisely because they "deny their members a meaningful role in making political decisions."¹⁴ A decent consultation hierarchy, on the other hand, requires that each person in society belong to a group, that each group be consulted about political and legal matters, and that each group be represented by a legal body that is constituted, in part, by members who know and share the interests of the group. This, Rawls says, "ensures that the fundamental interests of all groups are consulted and taken into account."¹⁵ Clearly Rawls is concerned with legitimacy here.

Furthermore, Rawls's concern with the right of political dissent is revealing. Not only does he insist that the judges and other officials of a DHS must listen to and address political dissenters, he also tells us that if such dissenters are not satisfied with the judges' response, they can renew their protest given that they explain why they are dissatisfied. Judges are then obligated to give them a further and fuller reply. This suggests, once

¹⁴ *Ibid*, 63.

¹⁵ *Ibid*, 77.

again, that Rawls is concerned with a society that will, over time, be freely supported by its rational and decent members.¹⁶

The second distinctive feature of a DHS is that their basic structure is regulated by a 'common good conception of justice.'¹⁷ Such a conception of justice is grounded in a particular comprehensive doctrine—some religious or philosophical doctrine such as Islam or utilitarianism—that determines what the common good is. For example, consider Rawls's imaginary Islamic DHS, Kazanistan. Kazanistan's basic structure and system of law does not uphold the separation of church and state.¹⁸ While minority religions are tolerated in Kazanistan, Islam is the favored religion. Not only are the highest political offices exclusively open to Muslims but all fundamental political and legal decisions are justified by Islamic principles. As Rawls states, political and legal decisions "should be made according to a conception of the special priorities of Kazanistan. Among these special priorities is to *establish a decent and rational Muslim people* respecting the religious minorities within it."¹⁹ Thus, political and legal matters in Kazanistan will be decided by how the Muslim rulers interpret the common good as understood by the principles and teachings of Islam.

Rawls's insistence that the conception of justice of a DHS be a common good conception that "takes into account what it sees as the fundamental interests of everyone

¹⁶ *Ibid*, 72

¹⁷ A common good conception of justice can be contrasted with a political conception of justice that regulates the basic structure of well-ordered liberal societies. Political conceptions are freestanding with respect to the various reasonable comprehensive doctrines within society: they neither endorse nor reject the reasonable religious or philosophical views of the members of society. Political and legal decisions are thus made, not by appeal to the common good as understood by a particular comprehensive doctrine, but by an appeal to public reason.

¹⁸ *Ibid*, 75.

¹⁹ *Ibid*, 77, emphasis mine.

in society" and that secures for everyone basic human rights, further suggests that he is concerned with the satisfaction of the third condition.²⁰ After all, it is difficult to see how the basic structure could be freely supported by its members if their fundamental interests and basic rights are not secured.

We may reasonably suppose, then, that Rawls thinks that a common good conception of justice, along with a decent consultation hierarchy, is sufficient for regarding DHSs as legitimately supported by its members. We may summarize this in the following way. A society can be regarded as politically legitimate if and only if its basic structure:

- (a) involves the members of society in the political process to a sufficient degree,
- and
- (b) is effectively regulated by a conception of justice that is at least decent.^{21 22}

III: Clarifying Legitimacy

I do not think that (a) and (b) are sufficient for regarding DHSs as being freely supported by their members. To see why, it will be useful to clarify exactly what legitimacy is and, therefore, requires. In order to do this, I will distinguish between two different types of support (or consent): the fact of support and legitimate support. The

²⁰ *Ibid*, 67.

²¹ Notice here that these two conditions do not satisfy the 'liberal principle of legitimacy' set out by Rawls in his domestic account of justice. That principle requires, *inter alia*, that the basic structure is regulated by a political conception of justice. So, assuming that I am correct in supposing that Rawls does have a conception of political legitimacy in *LP*, the conditions here are weaker than they are for well-ordered liberal societies.

²² There is a reason for saying 'at least' here. Rawls thinks that the conception of justice that regulates the basic structure of liberal societies is not decent but reasonable. As noted in footnote 5, decency is a weaker normative idea than reasonableness. Thus, while a common good conception of justice satisfies (b), any reasonable political conception of justice will do so as well.

distinction between these two types of support can be illustrated by cases of epistemic oppression.

First, consider the section from *The Republic* wherein Plato suggests that, for the sake of justice and stability, rulers ought to tell a 'noble lie' by convincing the other members of society that one's social position is not a matter of contingent circumstance but is a result of one's nature as determined by God.²³ In cases like these, one might find that the members of society voice their support in favor of the basic institutions of their society—satisfying the fact of support—and yet that support seems illegitimate. It seems illegitimate because it is based on a lie and, as such, is not adequately informed. Notice, however, that what seems morally problematic about this case is not merely the fact that the members' support is not adequately informed, but that they have been *prevented from becoming* adequately informed. After all, the noble lie would not be very effective if it was easily found out, and thus we find Plato advocating the widespread use of censorship throughout the kallipolis.

Second, consider a non-political example of epistemic oppression. Suppose that a father teaches his child that persons of a particular skin color are morally and intellectually inferior to those of other skin colors. Further suppose that, as the child develops, the father not only continues to reinforce this belief but that he also censors, as best he can, information that would put this belief into question. Suppose that the father is successful in these efforts. Finally, suppose that we now ask the child (who is now a young adult) whether or not he supports, say, a policy that would base voting rights on skin color. Even if we suppose that the child says 'yes' in non-coercive circumstances—

²³ Plato, *The Republic*, Book III, 414b-415c.

i.e. no one has threatened him to answer in a certain way, his father is now deceased, and so on—his answer seems illegitimate. Again, whatever else we might say about this case, the child's answer seems illegitimate because he has been prevented from becoming adequately informed.

I take it, then, that the fact of support is a necessary but not sufficient condition for legitimate support. A further condition is needed. This further condition must address the worry about the possibility of epistemic oppression because it is difficult to see how one's support could be legitimate if one is so oppressed. As Margaret Jenkins states, there is always a question about "how much weight should be given to individuals' perception of themselves in public life (certainly people can be oppressed even when they do not believe they are)."²⁴ In other words, it is a mistake to think that a society is legitimately supported by its members just in case those members voluntarily voice their support in non-coercive circumstances.

It is my contention, then, that a person's factual support of the basic institutions of society is legitimate if and only if they have not been prevented from becoming adequately informed. Or, as I will put it, their support is legitimate if and only if they are capable of becoming adequately informed, i.e. capable of giving their informed support (consent). Thus, in addition to (a) and (b), I add that for a society to be politically legitimate, the basic structure must:

- (c) provide its members with the means necessary to become adequately informed.

²⁴ Margaret Jenkins, "Political Liberalism and Toleration in Foreign Policy," *Journal of Social Philosophy* 41 (2010): 129.

There are three things to note here. First, (c) is a weaker condition than one that requires that members' support be *actually* adequately informed. In other words, (c) is satisfied just in case the members of society are capable of becoming adequately informed, not if they are, in fact, adequately informed. There are three reasons for favoring the weaker condition over the stronger one. First, the weaker condition seems sufficient to capture the intuitions we have about the above cases. As noted earlier, the problem with the above cases of epistemic oppression is not merely that the oppressed persons are not adequately informed, but that they have been prevented from becoming—or have not been provided with the means necessary to become—adequately informed. Second, one need not make a condition stronger than it has to be. While it may turn out that the stronger condition should be adopted, my argument will not depend it. Adopting the stronger condition will also lead to the conclusion that I seek. And third, there is the worry that the stronger condition could undermine the legitimacy of even liberal societies. A society in which every citizen (or, at least, every rational and reasonable citizen) is actually adequately informed about all of the relevant subjects may not be feasible. This is speculative, of course, but in order to avoid this possible objection, I will adopt the weaker condition. But again, my argument will not hinge on which condition (strong or weak) that one adopts.

Second, many kinds of information may be necessary to satisfy (c). I will list two of them. First, having the capacity to become adequately informed requires that one has access to the relevant facts. One of the problems with the above cases of epistemic oppression is that the oppressed persons are prevented from accessing certain facts about humans. Of course, these are not the only relevant facts that one must have access to. I

need not specify all of the relevant facts here, but certainly general scientific and historical facts will be relevant; so will the facts about one's political and legal institutions, the conception of justice that regulates them, and the comprehensive doctrine that grounds that conception (assuming that society has such a comprehensive doctrine).

Having the capacity to become adequately informed also requires that one has access to a sufficient diversity of alternative theories (viewpoints, accounts, ideas, comprehensive doctrines, etc). Facts are not always (if ever) self-reporting: they need to be interpreted and evaluated, placed within larger theories, and are sometimes themselves theory-dependent. Thus, facts by themselves do not always help us decide between alternative theories. For instance, the members of Kazanistan may have access to all of the facts about their comprehensive doctrine—e.g. what the Koran teaches, historical facts about the development of Islam, and so on—but these facts by themselves will not inform them about whether or not that doctrine is plausible or if the common good conception of justice that regulates their basic structure is preferable to a political conception. If people are severely limited in what theories they have access to, allowing them access to the relevant facts will not be enough for them to become adequately informed.

Lastly, assuming that I am right that (c) is a necessary condition of political legitimacy, we have achieved a significant result. It is now left open to anyone to propose ways in which DHSs satisfy or violate (c). I will argue that DHSs will violate (c) on social epistemic grounds. More specifically, I will argue that because DHSs do not respect liberal rights, their social epistemic environment will be unable to satisfy (c).

Before I argue that, however, it will be helpful to briefly discuss social epistemology more generally.

IV: On Our Social Epistemic Dependency

Instead of providing a definition of social epistemology, it will be more useful to explain (what I take to be) three rather uncontroversial facts of social epistemology. The first fact of social epistemology is that we are epistemically dependent upon our social environment for all of our beliefs. Our moral and prudential beliefs, scientific and historical beliefs, our beliefs about the basic institutions of our society and the conception of justice that governs them, are all dependent upon the sorts of information that are made available to us throughout the course of our lives. Sometimes such information is taught to us by our parents and peers, other times it is by engaging with the general media (understood in the broadest sense so as to include public news organizations—the press—and information centers like the internet, public libraries, and public schools). After Allen Buchanan, I will call this our 'social epistemic dependency.'²⁵

The second fact of social epistemology is that our social epistemic dependency is not something we can voluntarily opt out of. There are three reasons for this. First, many of our beliefs are formed in our early childhood before we have the cognitive capacity to voluntarily opt out. Second, even when we do acquire such capacities, it seems implausible to suppose that we can avoid engaging with our social epistemic environment. Much of the information we are subject to on a day-to-day basis is involuntary and unavoidable. Third, we are epistemically dependent upon what Buchanan

²⁵ Allen Buchanan, "Political Liberalism and Social Epistemology," *Philosophy & Public Affairs* 32 (2004): 95-130.

calls an 'epistemic division of labor'.²⁶ Such a division of labor involves epistemic deference to those far outside our immediate social circle, namely, the various experts within society. So, to the extent that we can avoid engaging with our social epistemic environment, it still remains the case that one person cannot form many reliable beliefs—or know very much—on his or her own.²⁷

The third fact of social epistemology is that our social epistemic environment is largely dependent upon the basic structure of society. Rawls has famously argued that the basic structure, more so than anything else, determines our life-prospects.²⁸ It does this, in part, by securing and protecting the rights that members of society have. Furthermore, it seems reasonable to suppose that the rights that we have are intimately related to our epistemic-prospects. For instance, those who do not have their basic rights respected will not be provided with the means necessary to become adequately informed. Certainly those who are starving or extremely impoverished will not have very good epistemic-prospects. This is just to say that the basic structure—which secures rights—is integral to our social epistemic environment, which determines the facts and theories that we have access to.

Given the first two facts of social epistemology, we can now say that having access to the relevant facts and a sufficient diversity of alternative theories requires that one live within a society with a social epistemic environment of the right sort. As the

²⁶ *Ibid*, 103.

²⁷ *Ibid*, 98.

²⁸ Rawls states that the basic structure affects "citizens' aims, aspirations, and character, as well as...their opportunities and their ability to take advantage of them" and that such affects are "pervasive and present from the beginning of life." John Rawls, *Justice as Fairness: A Restatement*, (Cambridge: Harvard University Press, 2001), 10. It seems reasonable to suppose here that "opportunities" can be understood to refer to, among other things, our epistemic opportunities.

third fact of social epistemology suggests, however, having a social epistemic environment of the right sort requires having a basic structure of the right sort. The question of importance now is this: will a society with a basic structure that does not accord its members liberal rights have a social epistemic environment that satisfies (c)? I don't think it will. To show this, I will argue that there are three features that a society must have for its social epistemic environment to satisfy (c): it must (1) allow its members to freely exercise their rational capacities, (2) properly motivate its members to express their beliefs, and (3) not prevent its members from expressing those beliefs. In short, a society must be reason-enabling, properly motivating, and sufficiently open. Societies that respect liberal rights will have all three features. On the other hand, DHS will only, at most, have the first two but not the third.

V: The Argument From Social Epistemology

Societies that are reason-enabling are ones that allow their members to freely exercise their rational capacities. That is, they allow the members of society to 'think for themselves' – to freely analyze the beliefs and claims of the other members of society while forming beliefs of their own. If members of society are not allowed to do this—if they are, for instance, starving or severely mentally manipulated—then the beliefs and claims that they do have access to will have no real value. Moreover, persons who are not allowed to freely exercise their rational capacities will themselves be poor epistemic contributors to the social epistemic environment. It is with the free exercise of our rational capacities, then, that we find the bases for the sort of diversity that is required for members of society to become adequately informed.

I take it that the sort of measures that are required to prevent persons from exercising their rational capacities are likely not consistent with protecting their basic human rights. Therefore, because DHSs do protect such rights, I will assume that DHSs will allow their members to freely exercise their rational capacities and move on to the second feature.

Societies that are properly motivating are ones that provide the members of society with the motivation to express their beliefs and, in particular, their epistemic dissent. We can define 'epistemic dissent' here as those beliefs that conflict with the status quo, where the status quo can be understood to refer to any beliefs that are either widely accepted throughout society or widely accepted by an epistemically authoritative sub-set of society (i.e. experts).²⁹ Given our social epistemic dependency, if the members of society do not have the proper motivation to express their epistemic dissent, then there is little reason to think they will have access to the relevant facts and a sufficient diversity of alternative theories. Furthermore, it is worth noting here that the openness of the social epistemic environment will not have real value if the members of society are not properly motivated to express their beliefs. Censorship from an external source (like the government) would not be required if people are already unwilling to express their beliefs (if they are already, we might say, internally or self-censored).

Part of Rawls's conception of a well-ordered liberal society is that persons who are raised in them come to acquire a sense of justice.³⁰ In a liberal society, part of this

²⁹ We must not forget that our social epistemic dependency includes deference to epistemic authorities. If such authorities are not properly motivated to express epistemic dissent, then there is good reason to think that the other members of society will not have access to the relevant facts and a sufficient diversity of alternative theories.

³⁰ Rawls, *JaF*, 29.

sense of justice will include coming to value the liberal rights that are accorded to oneself and to others.³¹ Thus, we would expect that members raised in liberal societies will come to value the expression of their own beliefs (and the beliefs of others) and eventually come to consider this expression as one of their fundamental rights. Members of liberal societies, we might say, feel entitled to express their beliefs and will not listen to those who tell them otherwise. Liberal societies thus foster a social epistemic environment that, among other things, encourages the members of society to not only express their beliefs but to not fear expressing their epistemic dissent. Well-ordered liberal societies thus produce social epistemic environments that are properly motivating.

Given that persons raised in well-ordered liberal societies are properly motivated to express their beliefs, including their epistemic dissent, we may wonder if this will also hold for persons raised in DHSs. Persons raised in DHSs will, we may suppose, acquire a sense of justice of their own, but this sense of justice, so it seems to me, will be limited to the conception of justice that they are familiar with, namely, a common good conception of justice. Their sense of justice will thus include acquiring the belief that basic human rights are fundamental, but this belief will not extend to liberal rights. Furthermore, recall that the common good conceptions of justice of DHSs presuppose the truth of one particular comprehensive doctrine, and that the rulers of a DHS (at least in Rawls's Kazanistan), along with the majority of the members of society, all endorse that doctrine. Given this strong bias in favor of one particular comprehensive doctrine throughout society, and given that members are not raised to accept the expression of their beliefs as a fundamental right, there is a serious worry that the members of DHSs will not be

³¹ Rawls tells us that citizens have a sense of justice that gradually develops and "after the age of reason [is] exercised in many kinds of judgments of justice ranging over all kinds of subjects, from the basic structure of society to the particular actions and character of people in everyday life." *Ibid.*

properly motivated to express their epistemic dissent. Perhaps this will be due to the fear of being chastised by their rulers and fellow compatriots, or because they value social cohesion over individualism, or because they simply don't place much value on distinguishing themselves by expressing their unorthodox beliefs.

Despite these worries, however, there are good reasons for thinking that DHSs will be properly motivating. Recall that one of the rights accorded to the members of a DHS is the right to political dissent. Further recall that this right requires that judges and other officials respect those who choose to dissent by giving them a full and conscientious reply. It seems to me that this right alone (assuming basic human rights are secured) may be enough to properly motivate the members of a DHS to express their epistemic dissent. After all, part of expressing one's political dissent will include expressing one's various dissenting beliefs. And if the members of a DHS are raised with this right and can thus be expected to come to view this right as fundamental, it seems unlikely that they will come to believe that expressing their epistemic dissent is not valuable or that it is something to fear.

I don't claim to have settled this issue. Certainly more could be said. But because I take the following argument to be much more decisive, I will assume, for the sake of the argument, that persons raised in DHSs will have the proper motivation to express their epistemic dissent. There is still one more way that DHSs can fail to have a social epistemic environment conducive to satisfying (c): they can fail to be sufficiently open.

Societies that are sufficiently open allow their members to freely express their beliefs and to freely access the diversity of beliefs of the other members of society. Given our social epistemic dependency, societies that are not sufficiently open will prevent their

members from having access to the relevant facts and a sufficient diversity of beliefs held by the other members of society. Thus, societies that are sufficiently open do not permit the obvious forms of epistemic oppression, like censorship. In liberal societies, openness is guaranteed by the fact that they accord their members the freedom of speech (and, consequently, freedom of the press).

The members of a DHS, however, do not have the freedom of speech. It follows straightforwardly from this fact that censorship is permissible within a DHS. Nevertheless, claiming that censorship is permissible within a DHS does not entail that the rulers will, in fact, censor. After all, it seems possible that there could be a DHS that, for whatever reason, never resorts to censorship, even though it could in principle. Hence, one might argue that there is no *a priori* reason to think that DHSs will fail to be sufficiently open. I don't think this is a plausible suggestion, however, due to an inherent tension within DHSs that will require that they resort to censorship if they are to remain stable over time.

Rawls has famously argued that any society that is sufficiently free will be characterized by 'reasonable pluralism' or a plurality of comprehensive doctrines. Rawls thinks that reasonable pluralism will inevitably result in such societies due to 'the burdens of judgment.'³² Moreover, Rawls argues that the only way to prevent reasonable pluralism from arising within a society is through epistemic oppression (or other forms of oppression that result in epistemic oppression). He calls this 'the fact of oppression.'³³

³² The burdens of judgment are, roughly, the difficulties involved in assessing various kinds of evidence i.e., deciding what evidence is relevant, deciding how much weight should be given to that evidence, and other such normative epistemic problems. See *JaF*, 35-36, for a fuller discussion of the connection between reasonable pluralism and the burdens of judgment.

³³ *Ibid*, 34.

Thus, we must ask: will DHSs be characterized by reasonable pluralism? As we have seen, there are good reasons for thinking that they will be. After all, if DHSs are reason-enabling, properly motivating, and sufficiently open (which, I have suggested, seems possible in principle), it seems to follow that they would have to be. Also, Rawls explicitly mentions that Kazanistan contains religious minorities (and is thus a pluralist society).³⁴ In any event, for our purposes we have to assume that DHSs will be characterized by reasonable pluralism because if they are not, then—given the fact of oppression—this can only be because they are epistemically oppressed. But if they are epistemically oppressed, then (c) is violated. So let us suppose that DHSs are characterized by reasonable pluralism.

This raises the problem of stability: how can a society that is characterized by reasonable pluralism and whose basic structure endorses one particular comprehensive doctrine maintain itself over time? In other words, if the members of DHSs hold various incompatible comprehensive doctrines—and the basic structure of a DHS is grounded in one particular comprehensive doctrine—then it seems implausible to suppose that such members will factually support the basic structure. Many of the various public policies that are justified by the common good conception of justice and the reigning comprehensive doctrine will not be accepted by them. Moreover, even if judges and other officials respectfully address the objections of political dissenters, this process will be severely limited due to the fact that the fundamental grounds that such officials appeal to will be rejected by the dissenters.

The worry here is that one of two scenarios will result: either a DHS will, over time, become unstable as a result of their members not factually supporting the basic

³⁴ Rawls, *LP*, 75-76.

structure or it will remain stable at the expense of reasonable pluralism. To maintain their society, then, the rulers of a DHS will need to undermine one of the three features.

Although undermining any of the three features will require epistemic oppression and thus be a violation of (c) (i.e. that members be provided with the means necessary to become adequately informed), we should note that only undermining (3) (the sufficiently open requirement) is consistent with the basic structure of a DHS. To undermine (1) (the reason-enabling requirement) would require that DHSs violate the basic human rights of their members (or so I have assumed). And to undermine (2) (the properly motivating requirement) would seem to require that they at least violate their members' right to political dissent. However, because DHSs do not accord their members liberal rights, it is open to the rulers of a DHS to resort to censorship in order to prevent reasonable pluralism from arising. Doing so, however, will mean that DHSs will not be sufficiently open and thus will not have a social epistemic environment that satisfies (c). The violation of (c), however, entails the violation of the political legitimacy condition of a well-ordered society. Thus, if DHSs resort to censorship—which it seems like they must if they are to remain stable over time—they fail to satisfy the political legitimacy condition, and as a result, are not well-ordered. As such, they should not be recognized as members in good standing within a fully just Society of Peoples.

VI: Toleration and Coercion

If DHSs are not recognized as members in good standing within a fully just SoP, what should the foreign policy of a liberal society be toward them? To answer this question, it will be helpful to introduce Rawls's conception of toleration. According to

Rawls, any society in the SoP is to be tolerated by the other members of the SoP, where toleration here is understood in two ways. First, to tolerate a society is to recognize it as immune from coercion—e.g., military, economic, and diplomatic sanctions. Second, to tolerate a society is to recognize it as an equal participating member in the SoP with "certain rights and obligations" where these rights and obligations are specified by the Law of Peoples.³⁵ For lack of a better term, let us call toleration with these two components 'Rawlsian toleration.' We can say, then, that any society within the SoP is to be Rawlsian tolerated by the other members of the SoP whereas any other society is not.

If DHSs are not to be included within the SoP—as I have argued—then it follows that they are not to be Rawlsian tolerated by liberal societies. However, if they are not Rawlsian tolerated by liberal societies, then it seems to follow that they will always be "properly subject to some form of sanction."³⁶ Rawls finds this objectionable, however. For one, the use of sanctions on DHSs violates the liberal commitment to tolerate other "acceptable ways...of ordering society."³⁷ Moreover, the use of sanctions will deny DHSs their due respect. Rawls states, "If liberal peoples require that all societies be liberal and subject those that are not to politically enforced sanctions, then decent nonliberal peoples will be denied a due measure of respect by liberal peoples...Denying respect to other peoples and their members requires strong reasons to be justified."³⁸ How are we to understand Rawls's objections here? Here is one way we might understand them.

³⁵ Rawls, *LP*, 59.

³⁶ *Ibid*, 60.

³⁷ *Ibid*, 59.

³⁸ *Ibid*, 61.

Alyssa Bernstein distinguishes between two different perspectives from which one can judge the legitimacy of a society: as a citizen from the inside or as a foreigner from the outside. Bernstein calls this 'internal' and 'external' judgments of legitimacy, respectively.³⁹ Thus, for example, it would be possible for a liberal society (or the members of a liberal society) to reject the legitimacy of a DHS even though the members of that DHS might believe that their own government is legitimate. Indeed, this is what I assumed when I claimed that it is possible for the members of a DHS to give their voluntary support even if, from the perspective of a liberal society, that support is unwarranted (e.g. for social epistemic reasons). Thus, we might take Rawls's objections above as saying that if all of the rational and decent members of a DHS believe that their government is legitimate, then there should be a presumption in favor of toleration and respect toward that society. To coerce a society that is voluntarily supported by its rational and decent members requires strong reasons to be justified.

Furthermore, even if the rational and decent members of a DHS came to doubt or reject the legitimacy of their society, this does not, by itself, seem to justify the enforcement of sanctions by liberal societies. To see why, consider a case in which the legitimacy of a liberal society was doubted or rejected by its own rational and reasonable members. We would not think that such a rejection, by itself, justified foreigners from enforcing sanctions on the liberal (or once-liberal) society. As Bernstein says, "Even if a citizen of the USA were to...call into question the legitimacy of its government, she would not therefore be committed to the view that its sovereignty need not be respected

³⁹ Alyssa R. Bernstein, "A Human Right to Democracy? Legitimacy and Intervention," in Rex Martin and David Reidy (eds.), *Rawls's Law of Peoples: A Realistic Utopia* (Blackwell Publishing, 2006): 288.

by foreign governments or that it had lost its right of non-intervention."⁴⁰ If a liberal society loses its claim to legitimacy, there are often built-in mechanisms within the structure of that society for returning it to a state of legitimacy (e.g. democratic elections, term limits for statesmen, courts of appeal). And we may reasonably suspect, I think, that the citizens of that society will prefer this method over foreign interference. After all, one of the purposes of such built-in mechanisms is, presumably, so that foreign interference is not required. Thus, assuming that such mechanisms are in place, foreign interference would not respect the will of the members of that society to regulate themselves. To interfere with such a society would, again, not give them their due respect as a sovereign nation.

Like liberal societies, decent societies also have built-in mechanisms within their basic structure for returning it to a state of internal legitimacy. For instance, although not procedurally democratic, DHSs hold elections for the highest offices of society. They also allow for political protests and judicial appeals. Thus, as in the case of liberal societies, even if the members of a DHS came to doubt or reject the legitimacy of their own basic structure, it does not follow that foreign interference is justified. Such interference would not respect the will of the members of that society to regulate themselves. As Rawls states,

All societies undergo gradual changes, and this is no less true of decent societies than of others. Liberal peoples should not suppose that decent societies are unable to reform themselves in their own way...Leaving aside the deep question of whether some forms of culture and ways of life are good in themselves (as I believe they are), it is surely, *ceteris paribus*, a good for individuals and associations to be attached to their particular culture and to take part in its common public and civic life.⁴¹

⁴⁰ *Ibid.*

⁴¹ Rawls, *LP*, 61.

Of course, if it should become apparent that the once-liberal society or the DHS is not capable of returning itself to a state of internal legitimacy, then, perhaps, some form of coercion from foreigners is justified (especially if the situation becomes so dire that basic human rights of its members are threatened). However, the point here is, as it was before, that there should be a presumption in favor of toleration and respect toward those societies that are legitimate (or nearly-so) from the perspective of its own members and that coercion of those societies requires strong reasons to be justified.

And what, we ask, can these strong reasons be? In some cases—say, in the case of some outlaw states or burden societies—those strong reasons will be available: if anything is a sufficient reason to enforce coercive sanctions, the violation of basic human rights is. But such reasons will not be present in the case of a DHS. As we have already seen, even if DHSs are neither fully just (according to Rawls)⁴² nor fully legitimate (according to my argument in the previous section), they do respect basic human rights, allow their members some involvement in the political processes of society, and allow political dissent. In other words, they are decent. However, if we conclude that they are not legitimate from a liberal point-of-view and are, therefore, not members in good standing—and if we commit ourselves to the view that societies outside the SoP are not to be Rawlsian tolerated—we seem to be led to the conclusion that DHSs will always be subject to some form of sanction by liberal societies. But, again, this conclusion runs up against Rawls's objections above.

⁴² Ibid, 83.

The response to this problem is to note that Rawls has set up a false dilemma. In his arguments above, Rawls seems to imply that either a society is within the SoP or it is the proper subject of coercive sanctions. We can state this another way using Rawls's conception of toleration: either a society is in the SoP and therefore Rawlsian tolerated—i.e. not subject to coercive sanctions and an equal participating member with certain rights and obligations—or it is not in the SoP and therefore not Rawlsian tolerated—i.e. the proper subject of coercive sanctions and not an equal participating member with certain rights and obligations. However, Rawlsian toleration and the lack thereof does not seem to exhaust the logical possibilities for how a society might treat another society. I want to suggest a second form of toleration.

Often, when we speak of one group tolerating another group (or one person tolerating another person), we don't have Rawlsian toleration in mind. That is, we don't think that the group doing the tolerating has to accept the other group as their equal (as having an equal claim to, say, rationality or to having the same rights). Rather, what it means for one group to tolerate another is that the first group "puts up with" the second group or, to use another idiom, the first group "lets them [the second group] be." Let us call this hands-off toleration. More clearly, hands-off toleration suggests a lack of interaction between the two groups: one group hands-off tolerates another group just in case the first group neither cooperates with nor coerces the second group.

For example, suppose that a group of distinct Christian denominations share a single place of worship. Even though each denomination adheres to different Christian doctrines, they decide to form a Society of Christians and thereby Rawlsian tolerate each other. Not only do they not attempt to coerce each other (by, say, putting pressure on

each other to convert to their own respective Christian denomination) but they also view each other as equal members with the same rights and obligations to the place of worship and to each other. Further suppose that there is a new Muslim organization in town that wants to share this place of worship with the Christian denominations. Suppose, also, that the state owns this place of worship and has declared that the Muslim organization has the right to use it. The Society of Christians could respond in various ways. They could decide to Rawlsian tolerate the Muslim organization and thereby welcome it into their society with all of the rights and obligations that come along with it. Or they could refuse to Rawlsian tolerate them by both not inviting them into their society and by attempting to convert them. Or they could hands-off tolerate them by not inviting them into their society but also by not attempting to convert them. If they chose this option, they would neither cooperate with nor coerce the Muslim organization.

Hands-off toleration thus suggests a possible middle ground between Rawlsian toleration and the lack thereof. Thus, it is at least *prima facie* possible for a liberal society to neither accept a DHS as an equal participating member with certain rights and obligations within a SoP nor subject it to coercive sanctions. Liberal societies can hands-off tolerate DHSs without Rawlsian tolerating them.

On this view, the foreign policy of a liberal society toward a DHS may not differ very much from the foreign policy of a liberal society toward another Rawlsian type of society: benevolent absolutisms. Rawls states that benevolent absolutisms are not well-ordered because they do not involve their members in the political processes of society. As argued earlier, this suggests that Rawls does not think benevolent absolutisms are legitimate and that it is for this reason that they are excluded from the SoP. But Rawls

never suggests that benevolent absolutisms should be subject to coercive sanctions by the societies that comprise the SoP. In fact, he seems to imply the opposite when he claims that not only do liberal and decent societies have a right to self-defense, but so do benevolent absolutisms. "Any society that is nonaggressive and that honors human rights has the right of self-defense" even if "its level of spiritual life and culture may not be high in our eyes."⁴³ Presumably, then, even benevolent absolutisms have a right to sovereignty and should only be coerced should they fail to satisfy either of these conditions.⁴⁴ Yet, as Alyssa Bernstein notes, benevolent absolutisms "are not entitled to full membership in good standing in the Society of Peoples. What exactly did Rawls mean by this? What should he have meant? I suggest we should take it to mean that such states are not entitled to full respectful toleration and cooperation from other states."⁴⁵ Thus, my suggestion is that liberal societies can treat DHSs in roughly the same way Rawls and Bernstein suggest that liberal societies treat benevolent absolutisms. They can tolerate and respect them (i.e. hands-off tolerate them) without fully tolerating and fully respecting them (i.e. Rawlsian tolerate them).⁴⁶ Doing the former avoids Rawls's objections above and doing the latter (i.e. refusing to Rawlsian tolerate them) allows the liberal to maintain his or her belief that only liberal societies are legitimate and thus entitled to full membership in good standing in the SoP.

⁴³ Rawls, *LP*, 92.

⁴⁴ Unfortunately, Rawls is otherwise silent on how the societies of the SoP should treat benevolent absolutisms. Rawls's chapter on nonideal theory in *LP* primarily focuses on outlaw states and burdened societies. However, we can make sense of this if we realize that Rawls's primary concern in that chapter seems to be the securing of peace between nations and the securing of basic human rights for all persons. And perhaps the fact that benevolent absolutisms are non-aggressive and respect basic human rights explains why he doesn't feel the urgency to address them in more detail.

⁴⁵ *Ibid*, 294.

On my view, then, because neither benevolent absolutisms nor DHSs are legitimate, neither should be accepted into an idealized SoP. An idealized SoP would consist of liberal societies and liberal societies only. But this need not entail that liberal societies should coerce or otherwise attempt to impose liberal principles of justice on those societies. Such coercion can be reserved for those societies that violate or threaten to violate the basic human rights of their own members or the members of other societies.

VII: Some Non-Ideal Theory

Jon Mandle holds that many interpreters of Rawls have erroneously understood Rawls's inclusion of DHSs in the SoP as being grounded in purely practical reasons. Mandle states, "The most common reading of *The Law of Peoples*...treats the toleration of decent hierarchical societies as a form of *modus vivendi*. Practical necessity may require that liberal societies refrain from imposing liberal principles of justice on other societies, but there is no deeper reason for toleration."⁴⁷ Mandle thinks this interpretation is wrong. Instead, Mandle argues that Rawls thinks that liberal societies have deeper reasons (i.e. theoretical or principled reasons) for refraining from coercing DHSs, namely, the principle of toleration and respect. I do not wish to enter into this interpretive debate. However, one thing I hope to have shown in the previous section is that even if liberals have principled reasons for refraining from coercing DHSs, the liberal commitment to such principled reasons can be satisfied even if DHSs are not included in the SoP. A liberal can show toleration and respect toward DHSs (or other non-liberal societies)

⁴⁷ Jon Mandle, "Tolerating injustice," in Gillian Brock and Harry Brighouse (eds.), *The Political Philosophy of Cosmopolitanism* (Cambridge: Cambridge University Press, 2005): 222.

without also committing him or herself to the view that those societies are entitled to the same level of toleration and respect as their own or other liberal societies.

It may turn out, however, that there are good practical reasons for including DHSs in the SoP when we come face-to-face with "the highly nonideal conditions of our world."⁴⁸ Whatever the proper interpretation of Rawls is, some of his arguments for including DHSs in the SoP do sound purely practical in nature. Consider the following argument,

If liberal constitutional democracy is, in fact, superior to other forms of society, as I believe it to be, a liberal people should have confidence in their convictions and suppose that a decent society, when offered due respect by liberal peoples, may be more likely, over time, to recognize the advantages of liberal institutions and take steps toward becoming more liberal on its own.⁴⁹

The argument here doesn't suggest that liberal societies should respect DHSs because there is something inherently respectable about their form of governance. Rather, the argument is that liberal societies should respect DHSs because doing so may lead to preferable consequences, namely, the liberalization of DHSs over time. Indeed, there may be cases where the inclusion of a DHS in the SoP would create better relations between the DHS and liberal societies and that these relations will be sufficient for reforming DHSs in the direction of liberalism. We might even suppose that including DHSs in the SoP is the only non-coercive method for liberalizing them in the long run. Thus, one might argue that—ideal theory notwithstanding—there are good practical reasons for including DHSs in the SoP.

⁴⁸ Rawls, *LP*, 89.

⁴⁹ *Ibid.*, 62.

This argument is entirely consistent with the view I have proposed. This becomes more clear once we realize what nonideal theory is. According to Rawls, nonideal theory is about taking the necessary practical steps toward eventually realizing one's ideal. In this case, that ideal is bringing all societies into the SoP. With the ideal in place, one "looks for policies and courses of action that are morally permissible and politically possible as well as likely to be effective."⁵⁰ As such, until ideal theory is settled, "nonideal theory lacks an objective, an aim, by reference to which its queries can be answered."⁵¹ Thus, we can say that the aim or ideal is a SoP comprised of liberal societies and liberal societies only. To achieve this ideal, however, it may be necessary to adopt certain policies or courses of action that violate this ideal. This may look like a compromising of one's principles, but this will not be a compromise if one's practical reasons are subservient to one's principled reasons. In the argument above, DHSs are included in the SoP, but only for the sake of realizing the ideal. One can thus consistently believe both that there are good practical reasons for including DHSs in the SoP and that an ideal SoP would not include them.

VIII: Conclusion

In this paper I argued that Rawls has a conception of political legitimacy in *LP* and that societies that fail to satisfy the political legitimacy condition are not well-ordered and are not, therefore, members in good standing within the SoP. I then argued that there are two conditions for satisfying the political legitimacy condition that can be extracted from *LP*: societies must have a basic structure that (a) involves the members of society in

⁵⁰ *Ibid*, 89.

⁵¹ *Ibid*, 90.

the political process to a sufficient degree and (b) is effectively regulated by a conception of justice that is at least decent. Next, I argued that these two conditions were not sufficient because they did not take into account the possibility of epistemic oppression and the importance of providing the members of society with the means necessary to become adequately informed (c). I then argued that because DHSs do not accord their members liberal rights—in particular, the freedom of speech—they will not have a social epistemic environment that satisfies (c). If DHSs are to remain stable over time, they will need to resort to epistemic oppression, namely, censorship.

The upshot of this paper is that liberal societies and liberal societies only should be recognized as members in good standing within a fully just Society of Peoples. It does not follow from this, however, that liberal societies must coerce DHSs into accepting liberal principles of justice. Liberal societies can tolerate and respect DHSs in the same way they tolerate and respect benevolent absolutisms: they can hands-off tolerate them by neither cooperating with nor coercing them. Ultimately, the hope is that non-coercive measures can be employed that will, over time, encourage DHSs and other non-liberal societies to reform their basic institutions in the direction of liberalism and thus allow them to become members in good standing within a fully just Society of Well-Ordered Peoples.

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