

The Law of Peoples

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This essay will serve as a contribution to the greater understanding of issues pertaining to international relations by offering explanations for the foreign policy of autonomous states. Drawing from John Rawls conception of the Law of Peoples and its objective for the state in relation to the international community, as well as, the two level model presented by Charles Beitz, the essay will take the form of two dominant observations that will contribute to a better comprehension of global political relations. First, an overview of Rawls ideal theory of toleration will serve as a demonstration of what can properly be considered a stable and secure state of international affairs. An understanding of toleration will prove to be important to recognize what Rawls claims to be tolerable behavior of external states, conducive to the interests of the Law of Peoples. The second observation will concern progressive foreign policy which will be an account of international assistance. The focus of the essay will entail the opposing views between those who want to extend the reach of liberal democratic influence and the skeptics who wish to address the issues involved in a progressive foreign policy. The problems involved in a progressive foreign policy are multifaceted and although philosophically pleasing, often fail to provide sufficient reason for political action.

The initial foreign policy introduced in John Rawls “The Law of Peoples” is found in the ideal theory of toleration. The original member of the Law of Peoples, the liberal society, sought to protect the freedom and liberty its constitution had established from both domestic and foreign threats. Through a series of legislative institutions the rights to liberty for each individual were secured on the domestic front on account of each individual mutually agreeing to honor the Law of People. Therefore, to achieve foreign security the same agreement was required of outside agents who would be considered a potential threat until a compact was reached. To this end, toleration of outside agents would be granted by the liberal society for those who agreed to honor the Law of Peoples. States who honored the conditions of the agreement entered into the Society of People which automatically protected their right to self-determination and deemed them tolerable for the sole reason that they honor the Law of People. This meant that they would respect states right to sovereignty and self-determination. Thus, the ideal theory of toleration served the purpose of creating a condition of positive reciprocity where all contractual states gained an international security of their unique way of life.

The point to stress is that toleration of foreign states was granted purely on account of a states agreement to honor the Law of People; the concern was the relations between peoples not the relation between the state and its citizens. Therefore, in this contractual agreement there were no domestic regulations concerning the style of government or the treatment of its citizens but only the regulation of foreign policy. The ultimate goal of the liberal society was for all states to consent to the Law of Peoples so to establish a universally secure right to self-determination. However, this right to self-determination is not synonymous with global equality or global

justice. To the contrary, Rawls stresses the point that “the world of decent and liberal people is not just” (Rawls, LP, 62) and the reason for allowing injustice is explained by the right to self-determination and the priority of the Law of Peoples to maintain mutual respect for each other’s way of life. If any state were to decide to encroach on another’s cultural way of life it would mean that the agreement to the Law of Peoples would be null and no states liberties could be secure.

The idea of toleration is stressed as a necessary measure to uphold international stability and therefore the scope of acceptable international political action is rather limited so not to encroach on another’s cultural traditions. Though the scope is limited, Rawls does mention the idea of assistance as an acceptable political action in special cases where a state is, because of circumstances out of its control, unable to provide the essential needs for its citizens such as food, water, clothing, shelter, and elementary education. However, assistance is only permitted when the circumstance causing the burden to the citizens was out of the states control. If the suffering of the citizens was due to political incompetence or political corruption or any such situation that would be considered the fault of the social or political culture, then in these cases assistance would actually violate the states right to self-determination even though the state has clearly violated the liberties of its citizens. The reasons to refrain from assistance are not only that doing so would be a violation of the Law of Peoples but also because assistance would unlikely achieve any greater standard of living for the beneficiaries. There could only be two extremes that would result from assistance: one, assistance would not be invasive enough and it would fail to resolve the cause of the problem or two, it would be too invasive and threaten the right to state sovereignty.

The duty of assistance is an honorable extension of the principles of justice which aims at assisting those who are truly in need who require the help of outside agents to recover basic elements of society needed to enjoy the right to liberty and a functional life. But assistance is greatly limited to a narrow scope of circumstances that would allow efforts to be successful.

These limited circumstances can be frustrating for outside agents who feel that they have the solutions for the problems found within the state. If the leaders were to hand over their authority to these able outside agents, solutions to the causes of the burdens could be found and the citizens of the state could be given the liberty and equality that outside agents believe they deserve. Unfortunately this is not a likely scenario and violations of human rights will continue despite the international concern. Though the issue is domestic and doesn’t threaten the international community it nevertheless is seen to violate basic human rights and it is this recognition of offence that encourages outside agents to argue over the limitation of the Law of Peoples. The question is then, if outside agents want to act politically in these cases of human rights violations in what ways could outside agents act, would it be practical, and for what reasons other than the urgent interest of the burdened society is there to act?

Human rights advocates may desire to have a stronger foreign policy that protects fundamental capabilities universally and to this end they may press for anti poverty rights to be a subject of international concern. Under a constitutional framework a proposition of this kind would be calling for an extension of the states responsibilities to provide basic needs and just institutions which are fulfilled in the liberal society. Advocates of this proposal would claim that there is in fact an anti-poverty right and wherever these rights are not fulfilled it is, or ought to be, the duty of the well ordered society to secure these rights both domestically and internationally.

The provision of rights can be understood from Beitz conception of the two level model and his idea of the schema applied to rights. The first level of the two level model is the state which has the responsibility to provide the needs of the citizens and on account of the failure of the state to provide these needs the responsibility then falls in the hands of the second level, the international agent(s). Therefore, in the global political order there are two levels of protection for human rights but to become a right they must adhere to the schema that Beitz helps to illustrate. First, the schema requires that the right derive from a reasonable need of the citizens. Secondly, to become an amenable right the state must recognize it as being both beneficial for the citizens *en bloc* and feasible for the state to provide. Lastly, for a right to be protected internationally it must fulfill the parallel requirements for a right to be protected by the state. In order to become an internationally protected right it must be proven to be beneficial for both the citizen and the international agent and it must be feasible to provide. Thus to be a protected right it is required to have a reason to be provided and a practical means to provide it.

A right also can be recognized as that which requires specified others to be obligated to refrain or act in specific ways that would secure the right. Domestically, a right fits this profile because the citizens of the state are obligated to refrain from action that would prevent others from enjoying their rights and the state itself is obligated to act in ways that sustain and secure the given right which the state is responsible to provide. The obligation, however, is not so clear and defined beyond the first level of the two level model.

Anti poverty rights advocates therefore have two distinct difficulties to overcome if they want agents outside of the failed state to be responsible for the needs of foreign citizenry. First, the rights are clearly the obligation of the state to fulfill but beyond the state there is not a distinct body or institution that can be held responsible for the provision of the rights. Secondly, in the benign case that an outside agent can be found, the right must still fulfill the third degree of the schema. That is; does the international agent have a reason to provide the rights of the foreign citizenry and can a practical measure be found? The first difficulty calls to the challenge of a global political order that is structured around autonomous sovereign states. State autonomy is conducive to the protection of one's peculiar way of life and it is this liberty and freedom from coercion of outside agents that is paramount to the Law of Peoples. However, on account of rights defined as that which others are obligated to provide, in the international order there are in fact no others that are obligated to provide even the most urgent interests of foreign citizenry. Until there is a global mechanism that has the authority to assign responsibility to international agent in the case of failed states there is no way that any agent other than the state itself can be said to be obligated to protect the anti poverty rights of citizens. The only protections said to be an obligation for all to honor are the rights of man which are those rights to freedom, property, and security. The rights of man can be referred to as passive rights for the reason that they require an obligation to refrain from action whereas, anti poverty rights require an agent to actively provide them for the citizenry.

The second difficulty calls on the cost of assistance that the international agent will endure if the anti poverty rights are to be fulfilled. The reasons for a state to endure the cost of its own citizens are weightier because the provisions of citizenry needs are necessary for the stability and progress of the state. However, the reasons for the international agent are less clear. Assistance appears to serve heavily in the interest of the beneficiaries while the outside agent seems to endure the cost without the same benefit. Rawls refers to this dichotomy of interest and

foresees the likely policy where he roughly states that no state will endure the cost of others where the advantage weighs heavier on those assisted. The urgent interest of the beneficiaries, therefore, is an insufficient reason for outside agents to act on account of the burden of the cost and unequal benefit resulting from the efforts.

Advocates of international anti poverty rights may then argue that there are special cases referred to as “strong beneficence” that could supply a sufficient reason for outside agents to assist failed states. These special cases have three elements (1) the interest is maximally urgent, (2) there is a set of eligible agents with the resources and capacity to act and (3), the cost of action would not be unreasonable for the outside agent(s). The burden of assistance could be even less if the nations of the most dominant economies shared the cost. The argument entails that the great wealth of a nation or an amalgamation of wealthy nations reduces the burden to such an extent that the interest of the foreign citizenry ought to be a sufficient reason to assist even though the benefit is still heavily on the side of the beneficiaries.

To return to the first difficulty concerning the obligation of outside agents, due to the absence of a global mechanism no obligation can be assigned to any specific agent. Thus, assistance will always be up to the independent state to decide and left up to their and the who and how much to assist is left up to their discretion. The decision to assist will depend on a sufficient reason to endure the cost but ultimately assistance must be feasible and practical; it must result in achieving a greater protection and security of the anti poverty rights. Outside agents are only eligible to the extent that their efforts will achieve a greater standard of living for the foreign citizenry. Therefore, assistance is limited to the cases in which efforts will successfully resolve the causes of poverty; if the causes cannot be resolved there are in fact no eligible agents. For example, if the causes of poverty are due to the political and social culture and not due to circumstances out of their control such as natural disaster, or unjust international trade law, or being victims of war, then in these cases, there would be no feasible way to resolve the causes of poverty.

The reasons to refrain from assistance may include the respect for the states sovereignty and their right to self-determination but the reason goes further. In order to successfully assist a burdened state it has to already be at least minimally decent because it would need to sustain the social order and anti-poverty rights provided by the assistance of the outside agent. If the rights restored are only ephemeral and dependent on the presence of the outside agents any efforts would be considered unproductive and for that reason not worth the cost of assistance no matter how minor. Because there are many burdened states which fall outside of the limited circumstances where assistance would prove helpful, many foreign citizenries will unfortunately suffer without any chance of asylum. Advocates of anti-poverty rights may provide persuasive philosophical and moral arguments but they fall short of providing practical measures of implementation for the values and principles they desire to see in the world. The global political structure and adherence to the principles under the Law of Peoples limits assistance and the pursuit of human rights as they may be conceived in a liberal perspective. Though displeased with the treatment of citizens under foreign authority the difficulties that precede international efforts are too great and in the end injustice ought to be expected.

The limit then on the advancement of anti-poverty rights consists in the incompatible political and social culture of the burdened or failed states. A liberal society cannot resolve the cause of poverty if resolving the cause would mean dissolution of the political and social culture

that is found to be dominant; doing so would undermine their right to sovereignty and moreover would likely be an unsustainable effort. The observation is that the states which cannot be helped from international assistance are ineligible because of the cultural schism between the outside agent and the burdened state. Therefore an assumption forms that if the two were compatible then the assistance could take place and the much needed anti-poverty rights could be restored. The inference that is derived from the observation is that the liberal democratic state, considering the fulfillment of its responsibilities to its citizenry, must be better suited to provide civil rights and state stability than other types of governments. On account of this inference some suggest that there ought to be a right for democracy and that failed or failing states ought to transition to a democratic style of government if they desire to have a stable state. The advocates of this transition conflate the idea of stability and security with democracy but this is only a conjecture supported by presumptions and prejudices of foreign forms of government.

Generalizations of this kind do not hold weight when held up to empirical statistics concerning the success or failure of different forms of government. The proponents argue that the economic and political performance of democracies show that in democratic states the rate of employment and standard of living exceeds that of other forms of government. Another argument is that because of the principles underlying a democracy the citizens of the state receive far superior and more secure rights and liberties than provided by other states. Therefore, the justification to transition failing states to democracy is on account of the instrumental structure that protects the interests of the citizens.

These claims can be invalidated through assessment of other forms of government and governments that have already experienced a democratic transition. By comparing democracies with non-democracies the claim that democratic states have a greater economic and political performance doesn't turn out to be true. The comparison shows that the economic performance of democracies is often equal to but no better than non-democratic governments and the political performance concerning the equal protection of rights is also found to be no greater than other governments. The only truth of democratic states having a better performance all around are in wealthy democratic states but considering that most transitions would take place in poor societies this statistic would hardly apply. The conclusion is that the performance of democratic states and non-democratic states in poor societies generally are found to perform the same. Moreover, attempts to transition states to democracies have only achieved 1/3rd of a success rate. The majority of the transitions ended in a type of hybrid government that holds the attributes of both democratic leadership and elite rule. Therefore democracy is not always the best form of government and often time's transitions fail to become fully democratic due to cultural obstacles.

Democratic governments are also not the only means to secure human rights, to the contrary, non-democratic governments can secure human rights just as well. A unique attribute of democracy is the right to equal representation which allows for interests and preferences of the citizen to be heard by those who make the political decisions. What is special about democracy is this link between each individual and the political decision maker and within a democratic state this right to equal representation is thought to be the only just representation. However, other states may not have the same structure of representation but still believe that justice and fairness is being upheld. For example, in non-democratic states each individual might not have the same link to the decision maker that is found in a democracy but each individual may be collectively represented by a representative that is linked to the political decisions. This

is the idea of collective self determination which the citizenry believe to be perfectly suitable for the just and stable state. The conclusion is that there is not a democratic right which is needed to protect the rights and liberties of individuals and with the evidence that other governments are equally suitable to protect the rights of individuals, advocates of human rights should not believe that a transition to democracy is the only means to secure human rights in the world.

The problem of poverty or any other such violation of basic rights may clearly be a product of cultural traditions but this observation is not conducive to resolving the causes of international concern but only distinguishes them as most difficult. Advocates of anti-poverty rights press for international political action when these rights are not being fulfilled but run into the obstacle of incompatible cultures. They may observe that the impediment to resolve the suffering of the citizens lies in the political culture and thus feel that the solution may be a transition to democracy but scarce is this viable or successful. Some may appeal to an aggressive foreign policy to resolve human rights violations though there are great risks in doing so. It's important not to make foreign policy decisions based off of principles that fail to be upheld by other cultures. This would lead to a similar form of political indignation that justified imperialism in the latter half of the 2nd millennia.

Ultimately by honoring the Law of Peoples and the right to self determination, mutual respect will likely develop and in time soft diplomacy ought to achieve the preferable buoyancy between cultures that human rights advocate's desire. This similar notion can be found in Rawls idea of the affinity of culture which he says will develop progressively the more that opposing cultures communicate and cooperate with one another. To this end, it is not that cultures ought to agree with one another but rather the key is granting a respect for each other's traditions. Those who wish to advance greater rights for all peoples will face many obstacles but their project is important and in order to achieve change they must be persistent in their cause.