LIBERAL ASSOCIATIONISM AND THE RIGHTS OF STATES*

By David Estlund

I. Introduction

Meet my neighbors, the Kazans. Stan and his wife Jan live together with their three grown children (one daughter and two sons) who are there until they can afford places of their own. They are a decent family, and they are friendly and cooperative with the rest of the neighborhood, although some of their practices trouble me and my other neighbors. Many of us do not approve of their sexist division of household labor, for one thing. The women do all the cooking (except grilling, of course) and cleaning while the men care for the yard and handle the finances. (The women seem to work harder.) Another thing that bothers me is that the parents are very hard on their kids, yelling at them and making unreasonable demands on their time. The parents also insist on the kids coming along to church every week, which obviously rankles the two kids who are nonbelievers. There is no abuse, and no one is kept against his or her will, nothing remotely like that. In fact, they seem to get along fine and to cooperate as willingly as any other family. Some of them are very close, others have some tension, pretty typical. For various economic and emotional reasons, it would be hard for any of them to leave and try to make it on their own at this time, but no one is stopping them.

As I say, I am not the only neighbor who disapproves. In fact the town is considering a law, partly inspired by Stan Kazan and his clan. The law would make it punishable by law to raise your voice with your family members (so as to be audible outside the house) more than twice a week. It would also become illegal to divide household labor in a rigidly gendered way, or to make household decisions without giving every adult member an equal say and vote. We suspect that even some of the Kazans welcome some parts of this law. Not all of the neighbors approve of the law even so. One group of neighbors thinks coercive interference like this

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is wrong, so they have chosen to take out a full page ad in the town newspaper every Sunday introducing the Kazans to the whole town, explaining their practices and roundly criticizing them and calling for them to change their ways. Those neighbors also skip the Kazan house when they distribute invitations to the annual block party, refuse to watch the house when the Kazans are away, and so on. Nothing coercive mind you. As for me, I am quite troubled by the behavior of both my town and my neighbors. I know the Kazans. They know how I feel about their sexism and rudeness with each other, which I do wish they would change, and I hope someday they will. Still, I think they are a decent family and good neighbors, and I am offended by the harassment and threatened coercion they have to endure.

The Kazans are a family, and our topic is relations between states, but the issues I will concentrate on are similar in important ways. Rawls imagines a state, Kazanistan, which respects the human rights of its members and is no threat to its neighbors but is unjust in various ways.[1] Rawls argues that Kazanistan should be left to make its own decisions without coercive outside interference even though this means some individual members of Kazanistan will continue to be treated unjustly. In political philosophy's recent turn toward moral questions about the global order, one central controversy is about whether, and to what extent, states (or nations, or peoples) have the right to make their own decisions free from outside interference. Such a right would, according to almost anyone, be defeasible, but there are some reasons for wondering whether there is any such right at all. If, for example, the globe were a social unit to which principles of justice applied then there would be strong theoretical pressure to think that global institutions and norms were ultimately supreme over the prerogatives of any state or nation. There might yet be practical reasons for staying out of states' business in many cases, but not, on this latter view, because states have any right of noninterference. Furthermore, to think that states, as such, might hold such a right might seem to suggest a kind of collectivism, or communitarianism, or associationism that comes at the expense of the rights of the individuals within each community—individuals who may be unjustly treated by their communities with no recourse to aid from the larger world. The more state-centered view will often add an exception when human rights are being violated. That is where the right of nonintervention finds its limit. Of course, much depends on how human rights are understood on this view. Still, the right to nonintervention is only substantial if there remain significant injustices other than human rights violations that do not defeat the state's right to nonintervention. Thus, there would be victims of injustice whose plight will not be within the legitimate purview of outside agents.

[1] I do not imagine that the Kazans are from Kazanistan. The verbal similarity is meant rather to suggest a parallel.

One form this debate has often taken revolves around the tradition of liberal political philosophy. It is often argued that if you hold a liberal political philosophy about individual rights against the state and the community then you cannot consistently say that a state that violates those principles is owed the right of noninterference. If people have certain rights against states, and a state is denying those rights, how can that state still have the moral standing to assert a right to noninterference? How could the rights of the collective trump the rights of individuals in a liberal view? The logic of this objection suggests that liberal political principles tend against any robust right of states to nonintervention unless they are more or less perfectly just.

On Rawls's view of the "law of peoples," states have a surprising kind of standing of their own. Not only do they have rights of their own that are not reducible to the rights of their members (I will concentrate on a right to noninterference), but Rawls justifies these rights by reference to a statist original position. It is like his famous original position in *A Theory of Justice,*[2] (call this the *original original position* (hereafter, following convention, I will stick with OP), with the dizzying difference that the parties to this new original position do not represent individuals but states. Call this an *original position of peoples* (OPP). Rawls speaks mainly of peoples, distinguishing them from states. For present purposes, however, we may use those terms as interchangeable, along with "nations," "countries," and "societies."

This has struck many commentators as a betrayal of the individualistic heart of liberal moral thinking. Thomas Pogge writes, for example, in criticism of Rawls,

> We should then work toward a global order that—though tolerant of certain nonliberal regimes, just as a liberal society is tolerant of certain nonliberal sects and movements—is itself decidedly liberal in character, for example by conceiving of individual persons and of them alone as ultimate units of equal moral concern.[3]

Some, including Pogge, have argued that the liberal approach would be to consider a *cosmopolitan original position* (COP), in which the parties to the decision are representatives of individuals across the globe.[4] Many have gone on to suspect that Rawls's choice of the OPP also generates more conservative *normative* results than a properly individualistic approach would

[2] John Rawls, *A Theory of Justice* (Cambridge, MA: Belknap Press of Harvard University Press, 1971).

[3] Thomas Pogge, "An Egalitarian Law of Peoples," *Philosophy and Public Affairs* 23, no. 3 (1994): 218.

[4] See, especially, Charles Beitz, *Political Theory and International Relations* (Princeton: Princeton University Press, 1979), and Thomas Pogge, *Realizing Rawls* (Ithaca, NY: Cornell University Press, 1989).

generate. Some have even doubted whether Rawls's method can generate the kind of importance for international human rights that Rawls defends. I will argue for the following claims:

> *Individualist justification for group rights*
> There is a suitable kind of individualism that is perfectly compatible with rights being held, irreducibly, by certain groups or associations as such.
>
> *From OP to OPP*
> The OPP arises naturally out of reflection on the OP once it is acknowledged that there will be multiple states.
>
> *From OPP to human rights*
> Individual international human rights can indeed, *in principle,* be generated out of the combination of the OP and the OPP.

I am not taking up the question of which normative results would actually be generated by such a methodology. Rather, I am rebutting the suggestions that:

(1) the right of even some unjust states to noninterference betrays liberalism's moral individualism, and,
(2) individual international human rights cannot, even in principle, be generated by an OPP but require a COP.

I believe that this debate calls for more reflection on the relation between liberalism and individualism. I will sketch a conception of liberalism (only in the broadest terms) in which there is nothing awkward about saying that associations, as such, have some moral (not just, say, legal) rights to noninterference. I will give this view the name "liberal associationism."

II. Liberal Associationism

The ideas of liberalism and individualism are tightly linked in political theory. When any collective entity is given any kind of moral status of its own it is natural to ask whether this is an illiberal tenet (whatever the importance of that might be). It is a fair question, but it does not answer itself. The term "individualism" is too vague to have definite implications for whether collectives can have certain kinds of moral status. I will take for granted that liberalism (whatever exactly that is) must be (in some sense or other) individualistic. But that leaves a lot of possibilities, and it hardly rules out from the start the possibility that any collective entities have any moral rights. I am struck by this little-discussed claim by Rawls:

> It is incorrect to say that liberalism focuses solely on the rights of individuals; rather, the rights it recognizes are to protect associations, smaller groups, and individuals, all from one another in an appropriate balance specified by its guiding principles of justice.[5]

In only slightly different terms and only slightly later, he writes,

> It is a mistake to say that political liberalism is an individualist political conception, since its aim is the protection of the various interests in liberty, both associational and individual.[6]

I believe this is the key to understanding the moral basis for the structure of Rawls's theory of relations between peoples. I will argue that the deference given to peoples or states in Rawls's view is a natural implication of his larger conception of liberalism as protecting associations and individuals alike from external coercive interference so long as they rise to a certain level of decency, and that this larger conception has a more general importance for liberal thinking. Rawls will figure prominently here as the provocation, but my main aim is not to explicate his theory, and except for a few noted asides, I do not mean to rest anything on any particular interpretation of his views. Rather, my aim is to spell out the structure of liberal associationism and explain how it might answer the challenges I described above.

It is helpful to make a preliminary distinction between two ways in which a political philosophy might be individualistic rather than, in one way or another, collectivistic. A political theory is individualistic in one way if it holds that political coercion (or authority, or power, and so on) is only morally proper if it can be justified in terms of reasons that are possessed by each of the individuals that would be subject to that coercion (and so on). It is not enough to cite reasons drawn from the good of the whole, or the will of God, or the interests of a chosen few who stand in for the whole. This first question is about *to whom* the political order is justified, and the answer is "individuals."

A second kind of individualism is present when a political theory holds that only individuals have any nonderivative moral standing in the theory. I will concentrate on the examples of rights and duties for simplicity. If a

[5] John Rawls, *Political Liberalism* (New York: Columbia University Press, 1993), 221, note 8.

[6] John Rawls, "The Idea of Public Reason Revisited," in *Political Liberalism,* expanded edition (New York: Columbia University Press, 2005), 476 or in *The Law of Peoples* (Cambridge, MA: Harvard University Press, 2001), 166. There are subtleties here of some exegetical interest, such as the fact that the later passage describes "political liberalism," Rawls's own innovation, whereas the earlier one speaks more generally (and, so, strikingly) about "liberalism" as such. It is implausible to think there's some change of view here. In *Political Liberalism* (1993), Rawls is unremitting on this point by nearly always referring to "persons and associations" rather than merely to "persons." See at least *Political Liberalism,* 16, 19, 41, 129, 136, 225, 266, 268–69, 276, 284, 302, 517.

theory holds that the only sense in which any group or association has rights or duties is when this is only shorthand for certain closely associated rights and duties of the members, then this gives the groups no nonderivative moral rights or duties. Call this alternative (to the view I will defend), *associational individualism.* Thomas Nagel defends a view of this kind, and we will look more closely at it below. Associational individualism would remain an individualistic theory in the second sense described: it holds that rights and duties are ultimately only possessed by individuals. Whereas the first kind of individualism concerns *to whom* the system is justified, this second kind of individualism is a question of *what sorts* of rights and duties are justified. I will call the first kind of individualism, which I will be defending, *justificatory individualism,* and the second kind, which I will be rejecting, *substantive individualism.*

It is not hard to see that, in principle, a theory could embrace justificatory individualism without accepting substantive individualism. This would require only that there be a justification, addressed to each individual's own reasons, for an order of moral rights and duties that are possessed, in some cases, nonderivatively by groups or associations. To have a handy name, call the view that some groups have moral rights and duties of their own *associationism.* Associationism is the denial of substantive individualism, but, as I have said, it is conceptually possible for a view that embraces justificatory individualism to be associationist. We are not yet asking about the attractiveness of such an approach.

A view cannot count as liberal unless it includes certain substantive rights and liberties. Therefore, justificatory individualism is not enough to qualify a view as liberal. Still, we might say that any such theory would be liberal in one respect. Rawls names his version of justificatory individualism the "liberal principle of legitimacy," even though it does not directly settle any substantive questions about political rights or liberties. Some have pointed to Hobbes as a proto-liberal, or as liberal in an important respect, insofar as he demands justifications that address the reason of each individual.[7] Nothing much hangs on this choice of terminology, but the important point is that certain characteristic rights and liberties are necessary elements in a liberal view, and so justificatory individualism is not enough. Imagine (if you can) a theory that offered an individualistic justification for a regime in which a state religion was promoted and protected by laws regulating expression and association, and by limiting political rights to public supporters of that religion. This would not be recognizable as a liberal view.

[7] See John Gray's review of Rawls's *Political Liberalism* "Can We Agree to Disagree?" in *New York Times Book Review* (May 16, 1993), 35 and Thomas Nagel's critical letter (June 6, 1993). Nagel writes, ". . . Mr. Gray's mind is a remarkably blunt instrument: anyone who can describe Hobbes, that great opponent of all limitations on government power, as a liberal has a very poor grasp of the fundamentals of political theory." For the above reasons, this strikes me as unfair.

Without trying to define liberalism here, one central substantive liberal right is that of an agent to make decisions free from social interference, even when (at least in some cases) those decisions are morally incorrect. So, for example, I am free to stay home from church without any coercive consequences from my society. A principle that guaranteed this freedom even if my atheism is a moral mistake would be a characteristically liberal protection. Notice that, just prior to the example, I said "agent," not "individual," since the characteristically liberal structure of that freedom—to make decisions free from social interference even if they are incorrect—did not depend on specifying whether the protected agent is an individual or association. The example of religious freedom describes an individual protection, but a view that gave to some associations a similar right would still have the characteristic liberal structure even though such a view would be, in our terms, associationist. This would be a *liberal associationism.*

So the characteristically structured liberal freedom that I have described has nothing in particular to do with individualism. Certainly, a theory should not count as liberal if certain characteristic liberties were not extended to individuals as well as to associations, so let that be included in the idea of a liberal associationism. I leave the exact content of that list aside, but it would include freedoms of expression, conscience, religion, association, political participation, and so on. Some things on the list might only make sense for individuals, but once the possibility of liberal associationism is clearly contemplated this opens up some new and interesting questions about the rights and liberties of associations as such. The term "associationism" might be misleading if it seems to *leave out* individuals, but the inclusion of associations is the salient thing about it for our purposes, and that is all that is meant by the choice of name. A theory is not liberal unless it includes characteristically liberal rights and liberties for individuals, and we are contemplating following Rawls in saying that a truly liberal theory includes similar liberties for certain associations and groups.

Now, whether or not justificatory individualism should be included as a necessary element of a liberal view, it is important to see that a liberal associationist view certainly could, in principle, embrace justificatory individualism. So, for those who insist that a liberal view must be individualistic, this could be satisfied at the justificatory level by a liberal associationism. Rawls evidently understands (at least) his own version of liberal theory as a form of liberal associationism. If it is individualistic, then, this is only at the level of justification. There are two prominent tenets of his view that appear to embody justificatory individualism. One is the OP, and the other is the liberal principle of legitimacy. I believe they are tightly connected insofar as the argument from the original position is part of Rawls's preferred way of demonstrating that his theory meets the strictures of the liberal principle of legitimacy, including its individualism. In

any case, we should look at the OP argument to see how justificatory individualism can be compatible with liberal associationism.

The original position, as is well known, is an imaginary situation in which each individual in the actual society whose justice is in question is represented by an agent who will rationally pursue for her client the best bundle of primary social goods (over a complete life) that she can within the constraints she faces. The constraints are considerable, of course. Primarily, the agent, while knowledgeable about all the general facts about the society as well as about science, psychology, social theory, and so on, is not allowed to know anything that would allow her to identify her own client from among the many inhabitants of the society. So the client's race, gender, intelligence, strength, health, tastes, preferences, religion, and so on are all unknown to the agent. Still, the agent can know that her client will want as large a bundle as possible of what Rawls calls primary social goods, including such things as certain rights, liberties, income and wealth, and so on. So the agent does have a well-defined task: to get her client as much of those as possible.

All of this is familiar. The important thing for our purposes is that the interests that are represented are those of individuals. They are not the interests of ethnic groups, religious communities, families, or genders, but of individuals. Rawls hopes to show that the chosen principles of justice are those that would have been agreed upon by rational individuals pursuing their own interests (through their agents) within the constraints of a reasonable and fair choice situation. In this way, the OP offers a justification in terms of individuals' own reasons: their reasons of prudence and of reciprocity.[8]

III. The Contrast with Deep Associationism

It will be useful to think about a more thorough kind of associationism, one that makes no effort to include any individualistic elements. Call this

[8] There is a complication, as an interpretive matter, since Rawls says at one point that we can see the parties to the OP as "heads of families." A careful reading of the passage shows that it has nothing to do with justice within the family, the justice of the family in the basic structure, the rights of the family to noninterference, or any of the related issues. Rawls says, "It is not necessary to think of the parties as heads of families, although I shall generally follow this interpretation. What is essential is that each person in the original position should care about the well-being of some of those in the next generation. . . .Thus the interests of all are looked after and, given the veil of ignorance, the whole strand is tied together." (Rawls, *Theory of Justice,* 129. It is slightly different in the revised edition but not relevantly for our purposes.) There are diachronic and synchronic concepts of family. The synchronic concept of family refers to people in certain relations to each other at the same time. The diachronic concept of family refers to the relationships of ancestors and descendants living at different times. Rawls clearly has the diachronic concept in mind, whereas the thought that this "heads of families" move would make the theory nonindividualistic at the justificatory level employs the synchronic concept of family: members living together or at least at the same time. Families in the diachronic sense are not associations or social units of any kind. I conclude that Rawls's view is indeed individualistic at the level of justification.

"deep associationism." Such a view might be motivated by the observation that just as there can be associations of individuals, there can also be associations of things that are not individuals, namely associations of groups or associations; call these elements of such associations sub-associations. The appropriate terms of an association of sub-associations might be interpreted as whichever terms would be acceptable in an original position in which the interests of each sub-association is represented fairly and, say, given a veto power. This is a comprehensible interpretation of fair terms for an association of sub-associations, at least so long as sub-associations can be conceived of as having interests of their own. Even if it were to be assumed that any such group interests are reducible to the interests of the individual members (which I do not take for granted), that does not establish that the interpretation of fair terms is really justified in an individualistic way—at the bar of each member's interests. Whatever the interests of a group might be exactly, they are likely to diverge in many cases from the interests of some individual member or other. While that individual might have vetoed a certain proposal, the group, in light of its interests, would not.

The point of sketching deep associationism is to show that there is such a nonindividualistic manner in which someone might argue for an "original position of peoples," as the favored interpretation of just terms for relations between peoples. The distinctive thing in such a view is not that it conceives of some associations as having interests, and so potentially rights, of their own. As we have seen, rights for associations are available to individualistic approaches to justification such as an original position representing individual members of society. The parties to such an OP might (as Rawls thinks they would) choose to protect certain groups, as such, and their interests with rights. The distinctive thing about deep associationism is that it eschews any requirement to ground such group rights in any individualistic form of justification.

Deep associationism, then, flies in the face of a central tenet of the modern liberal tradition, namely that the only interests and choices that have nonderivative moral importance are those of individual persons. Whether groups should be seen as having rights depends, according to this liberal axiom, on whether that could be shown to arise from proper respect for the interests and choices of, and only of, individual persons. This is what I have called "justificatory individualism." This liberal axiom is certainly disputable.[9] My aim in this paper, however, is not to investigate it, but to take it for granted. The question is whether there is a basis for an OPP that, unlike deep associationism, can meet this liberal individualistic requirement. The mere fact that Rawls's approach involves an OPP, then, does not rule out that the justification is, at root, compatible

[9] See a survey and critique of some who dispute it in Amy Gutmann, "Communitarian Critics of Liberalism," *Philosophy and Public Affairs* 14, no. 3, (1985): 308–22.

with individualism. The point is not that the OPP approach is essentially individualistic in the manner of justificatory individualism. Rawls argues that this would illegitimately contradict the nonindividualistic views of some decent peoples.[10] Whether or not Rawls is right about this, my goal is not to show that the OPP approach depends on justificatory individualism, but only that the two are compatible. This is required if it is to be acceptable to those with certain reasonable *liberal* views.

IV. Peoples as Associations

We began by meeting the Kazan family, whose affairs, while troubling in some ways, are their own business. Even though some members are treated wrongly in certain ways, this does not rise to the level that would be required in order to justify coercive (and even some only quasi-coercive) external intervention aimed at fixing things. I want to draw out the point of the analogy with Rawls's imagined country of Kazanistan before considering some arguments against the liberal associationist view.

Kazanistan is an association of individuals. The individual members have various rights and entitlements, and their country respects some and violates others. In particular, suppose, people have a right either to attend church or not as their conscience and preferences dictate, but Kazanistan compels church attendance by law (suppose). The counterpart in the Kazan family is that the parents have disproportionate power over family decisions despite everyone being consulted. In addition, Kazanistan is characterized by a highly sexist division of labor of a traditional kind. Women are overwhelmingly responsible for managing the daily affairs of the home and the family, while men are usually employed outside the home and dominate the political institutions. Unjust though this may all be, Kazanistan does not punish people without fair trials, its political decisions incorporate consultation with all important social groups, and its members continue to cooperate more or less willingly. Of course there is disagreement, and of course it would be very costly for many members to exit and take up membership in a different state, but still, apart from that, people are free to leave and society and the state would not try to stop anyone who wished to leave. The counterpart in the Kazan family is the fact that all are free to leave, and yet none is in a position to

[10] Rawls registers this worry in the original published lecture, "The Law of Peoples," *Critical Inquiry* 20 (1993): 55. I find no similarly clear statement of the point in his book, *Law of Peoples,* although it seems to be indicated at p. 70, ". . . an original position argument for domestic justice is a liberal idea, and it does not apply to the domestic justice of a decent hierarchical regime." It would follow from this that OP reasoning, since it represents individuals as free and equal, is not available to a public reason shared by nonliberal peoples who (not unreasonably in this larger context) do not share that view of individuals. That would rule out the availability of a COP. The quotation should not be taken to indicate that justice is relative to a society's views. Rawls also says, "[I believe] a liberal constitutional democracy is, in fact, superior to other forms of society." (*Law of Peoples,* 62)

do so easily given certain emotional and financial realities. For some it might be essentially impossible. And yet no one is stopping them, and they continue to cooperate as household members willingly even though they might wish they could afford to leave and even though they might object to many of the family's decisions.

Whatever basis there is for thinking that the Kazan family has a right not to be interfered with, that reason should be considered and tested as a possible basis for thinking Kazanistan ought not to be interfered with. In a very general way, it is undeniable that both the Kazan clan and Kazanistan are associations or social unions. They are not merely sets of individuals, such as the set of people with red hair. They are, for example, in highly structured relations of proximity, interaction, cooperation, and shared fate, whatever the moral relevance of these things might or might not be. Merely to point this out is not yet to cite any particular moral value that might explain why either of these kinds of social unions might have rights to conduct their affairs (within certain limits) without interference from others.

If we ask which sorts of social unions should be seen as having such rights, two points are important. First, for the moment we are not trying to decide between the associationist account and the associational individualist account of such rights favored by Nagel. Both agree that it would often be wrong to interfere in the affairs of certain social unions even if the aim is to prevent or remedy injustice, and the question at the moment is which social unions this applies to. I will return to the dispute between them later. Second, I want to limit the inquiry to the consideration of views that are individualistic at the justificatory level. This is compatible with both associationism and associational individualism. For purposes of illustration I will suppose that justification takes a form that can be explicated by appeal to something like Rawls's original position, or Scanlon's moral contractualism. I will use the term "contractualism" to cover both, or any view on which the justification for the assignments of rights, liberties, duties, and so on can be explicated as a unanimous agreement between suitably situated hypothetical decision-makers representing individual interests and points of view of actual individuals (putting things somewhat roughly for present purposes). So, to the question "which groups have rights not to be interfered with?" the formal answer I will take for granted is, "whichever ones the parties in the contractual situation would agree to give them to."

V. Arguing from the Original Position

As we have seen, it is a feature of Rawls's own view that, while the device of the OP is appropriate for choosing the basic structure of a society, it is less clear, at best, whether that morally individualistic device is appropriate for a law of peoples that is meant to be acceptable even to

some ("decent") peoples whose philosophical traditions are not liberal. However, this would still leave an important set of questions about global arrangements that could be addressed in the standard OP, namely questions about what principles should guide a given liberal society's behavior toward other societies. That is, along with questions about the basic internal structure of a society, parties to the OP could be made aware of the plurality of states and should be asked to choose principles to govern that society's own foreign policy.

The problem is how a given society's principles for a just foreign policy can be chosen in an OP if it does not include representatives of many of the people and/or associations for whom certain rights and duties will be determined—namely those outside the society whose members *are* represented. I will assume that the standard OP, while setting principles for foreign policy, cannot set the rights and duties of people or associations outside the society.

Rawls strikingly introduces a second original position, this time with parties representing peoples as such—the OPP.[11] This raises the questions about individualism with which we began. One first puzzle is how a people can have the sort of moral status to have a place, as an association, in an original position. In the standard OP only individuals are represented, and so why should this be different in the original position used to derive the law of peoples? Call this the puzzle of *collective standing*.

The idea of liberal associationism seems to provide the form of an answer. The parties to the standard OP would, we may suppose, agree to recognize certain subnational associations as morally relevant units in their own right, with rights and duties of their own that are not reducible to rights and duties of their individual members. (I will offer more substantive argument for this below.)[12] It would be only natural for the parties, then, to see the society as a whole as an association that might be a candidate for rights and duties of its own if there is to be a society of peoples. Once the assumption that individualistic justification can only generate individual rights and duties is seen to be a mistake, this makes available the possibility of a moral standing for a society itself in relations among societies. This does not settle our central question, of course, whether certain societies *should* be seen as having rights to conduct their affairs without outside intervention, but it clears away one obstacle to that suggestion: the thought that societies as such cannot coherently be thought to have their own moral standing. Furthermore, if members of a society can see their own society as potentially having such standing, then of course they can see other societies as potentially having it. So the question of

[11] The original position idea is used by Rawls three times, the third being the extension of the law of peoples to the case of nonliberal peoples. That phase will not matter for my purposes, and it can be seen as a second use of what I am treating as the second original position.

[12] See Section VI below.

what rights, if any, should be accorded, in an OPP, to societies as protections against other societies is now a well-formed question.

Call this an appeal to the *individual interest in states as associations.* We can get from this individual interest *in* states, to interests *of* states in the following way: Acknowledging that there will be multiple states in potential interaction, the interest in states as associations is an interest in states being free, within limits, to pursue their interests (as states, or peoples, as such) without outside interference. The interests of states, as such, get their significance from their appearance in the interests of individuals (though I do not assume they are reducible, about which I will say more later).

This is only the first step, however, and it brings us to a second puzzle. What justifies the introduction of an OPP, one in which individual interests are not represented? So far, we can suppose that the parties to the OP have an interest in the possibility of their state being an association that is free (within limits) to pursue its own interests. This, in turn, introduces the interests possessed by states, as such. It might be tempting to suggest that the parties to the OP now go on to authorize a second original position, the OP, in which the interests of states will be properly balanced against each other in a set of norms for a society of peoples. However, this will not work. Recall that the parties to a standard OP, each of whom is only maximizing her own bundle of primary social goods, do not care even about the other individuals (as is well understood in Rawls's version), much less the interests of other societies, and so they have no motive to accept an OPP with its veil, and so on. Each individual party would like to have her state be free to pursue its interests within certain limits, but there is no interest of the parties, at this stage, in other states being free to pursue theirs. Call this the *problem of narrow interests* of the parties to the OP.

The key to solving this puzzle lies in the observation that the narrow interests of the parties to the OP would also block their authorizing the OP itself. If that is not a problem, then their failure to authorize the OPP should be no problem. Just as in the case of the introduction of the original OP, once we have the individualistically generated interest of a people as such, it falls to us, the theorists, to ask what the moral limits are on the pursuit and protection of such an interest in the context of a society of equals. This is the point at which an OPP—an original position of peoples—may be introduced. The motive for introducing the OPP is our interest as philosophers, not theirs as prospective members of the chosen social order. This precisely mirrors the justification for the introduction of the OP itself.

Granted, the most transparently individualistic form of original position reasoning is when the parties are individuals and they accept or reject the arrangement whose justification is in question. If there were a prospective global society of individuals, there could have been a cosmopolitan original position (COP) in which all individuals were repre-

sented.[13] It might be suspected that if Rawls had been forced to run an OP representing all individuals in the world, then he would not have been able to generate the rights of illiberal and unjust, though "decent," peoples to nonintervention. But that would be no better (or worse) an argument than saying that since families and churches are not, as associations, represented in the standard OP, the OP could never generate rights of nonintervention for such small associations when they are morally flawed. The idea of liberal associationism allows us to make progress against this influential line of objection to Rawls, by, in a way, sidestepping it. The reason is that we now know that even if there were a COP, one of the questions before the parties (representing individuals) would be what rights to accord to the kind of association that is a nation or a people. As we have seen in the case of the standard OP, the fact that it is an individualistic mode of justification does not mean that all it can justify are individualistic rights and duties. We have seen how such associationist rights might indeed get an individualistic justification in the OP. In saying "might," my point remains formal for now, and the formal point is my primary objective. There are further important questions (to be briefly aired below) about whether the parties to a COP would choose the limited rights of states to nonintervention that are in question. The formal point is that this is up to the parties, just as rights of subnational associations are up to the parties of the OP.

As we know, some authors, including Rawls,[14] have rejected the appropriateness of a COP. I put aside the question of whether there are good reasons to do so, since I want to focus on a third puzzle: whether the Rawlsian alternative, the OPP, is capable, in principle of generating individual international human rights of the kind that Rawls defends. The challenge is this: How can an original position representing peoples, as such, be allowed to generate human rights for individuals? Call this the *puzzle of jurisdiction*.[15]

The key to the answer is this: The concept of human rights does not involve adding any rights to the list of individual rights, nor intensifying what individuals are owed. Rather, some subset of the already settled individual rights is identified in a specification of a certain right of the society itself. Next, the operative point is this:

> *Human rights are domestic rights that bear on states' rights*
> To categorize a certain right as a human right is to hold that violations of that (already stipulated) right tend to cancel the society's right to noninterference from other societies.

[13] This approach is pursued by a number of authors, including, as noted earlier (in note 5) Beitz and Pogge.

[14] See Leif Wenar, "Why Rawls is Not a Cosmopolitan Egalitarian," in *Rawls's Law of Peoples: A Realistic Utopia,* ed. Rex Martin and David Reidy (Malden, MA: Blackwell Publishing, 2006), 95–114, for an interpretation of why Rawls rejects a COP.

[15] Beitz raises this objection in, "Rawls's Law of Peoples," *Ethics* 110, no. 4 (2000): 686.

In order to explain this, I will suppose for simplicity that the principles of justice are the same for every society. (Certain weaker assumptions, such as mere overlap, would serve as well for present purposes.) I use this only to generate a uniform list of rights that individuals have against their own states. Given the list of rights that individuals have against their own states, there is an associated question about which of these rights are such that their violation would permit certain kinds of intervention from outside. Looked at in one way this would be the question of the limits of the first state's right to noninterference. Looked at from the other side, it is the question of when other states have a right to interfere. Without going into where the parties to the OPP would set these limits, this general point nevertheless dissolves the formal or structural puzzle of how an OPP could have any say over individual human rights if these are held by individuals. The OPP only determines rights of states, not of individuals.

This same point would, incidentally, be available if a COP were employed rather than an OPP. It would be easy to be misled by the presence, in that case, of parties representing all the world's individuals. This could easily obscure the fact that once individual rights against states are settled in the OP, the remaining question for the OPP is about the rights *of states* with respect to interference from other states. To repeat: The categorization of an individual right as a human right does not give the individual a stronger or more extensive claim to anything.[16] Rather, the categorization is part of specifying the society's rights, not the individual's rights, which are already settled before the question of human rights arises.

Again, this is only a step, and not the whole story. A right to nonintervention threatens to trample on individuals' rights against their states—not to violate them, but to devalue them. It might yet be incredible to think that the parties in the OPP representing states as such would have any incentive to accept limitations on their right to noninterference. If individuals are not present in the OPP, then what interest does the *state or people as such* have in agreeing to limits to nonintervention so as to protect certain *rights of individuals?* They would have to do so in the interest of individuals, or so it might seem, but individuals are not represented in an OPP, and so are not present to look out for the interests that would be protected by such a limitation on the state's right to noninterference. At this point some will think that only an individualistic OP such as a COP could generate this or other protections for individuals. Call this fourth and final puzzle the *wrong agent objection.*

The objection is based on what I take to be an error, which is best exposed by reconstructing the state of the dispute as follows: First, the objection grants for the sake of argument that individuals in the OP have

[16] This is not a claim about how the term "human rights" is best defined, but only a point about the structure of the points I have been making. I take no position in this essay about what should or should not be called "human rights."

an interest in peoples as associations, and that an OPP would then apply. Second, the objection then assumes that we should specify what the motives of the parties to that OPP are by reflecting on the idea of the interests of a state or of a people. Call this the *national interest assumption.* Third, it is then noticed that there is no reason to think that a people as a collective entity pressing its own interests would have any interest in limiting its own right to nonintervention from outside—as human rights would do.

There is no basis for the national interest assumption, however. To undermine it in a general way, recall that we do not simply assume that in order to specify the motives of parties to the familiar OP we reflect on the idea of individuals and their interests. There can be good theoretical reasons for specifying the parties' motives in a more complex way. For example, Rawls assumes that the parties to the OP are mutually disinterested while recognizing that this is not remotely true of actual individuals. Other considerations may legitimately come in to explain the disparity. Similarly, the motives that the state parties to an OPP should be assumed to have are up for theoretical consideration and are not given by the idea of a state's or a people's interests.

In particular, we should build into the state parties' motives the limits that are inherent in the interests of the individual parties to the OP that gave rise to the need for an OPP in the first place. It was a modulated interest, not a simple one: an interest in being a part of a state which has a right not to be interfered with even in *some* cases where the state is unjust, *though not in all such cases.* This gives rise to a distinctive conception of the state's interests for certain purposes. The interests of the parties representing states in the OPP ought to include an interest in nonintervention *limited to cases in which they are not violating the special subset of individual rights.*

VI. The State/Household Analogy

Even though my aim is mainly the formal one of showing that rights of collectives, and even an OPP, are not (formally, or structurally) ruled out by the assumption of justificatory individualism, it is worth briefly reflecting on the more substantial question that would remain: *Would* parties to the OP choose rights for families and households? And, if so, are there analogous interests that might support a limited right of states to pursue their interests without outside interference? One *voluntarist* concern might be that households are (in the case of adults) voluntary associations, whereas states or peoples (even when human rights are respected) are not, or at least not as much. A second concern might be that families and households tend to be associations of supreme importance to individuals, far more than states or peoples. This is an *objection from disanalogous importance.*

Consider the voluntarist objection first. Rights held by associations are sometimes thought to make sense only for voluntary associations. This is

a version of the view that associations' rights really all derive from individual rights, with the variation that individuals can voluntarily waive their rights in a way that creates rights of associations as such. Call this the *voluntarist account* of rights of associations. One individualist explanation of how my family might have a right of nonintervention, even if I would myself invite intervention for my own benefit, is to suppose that intervention is only legitimate when I have consented to this arrangement of rights by joining the association voluntarily.

The voluntarist view will expect some associations to have rights, but not societies, peoples, or nations. The individuals can be seen, then, as having rights to join associations in which no member has a right to remedial outside interference when he or she disagrees with the associations' decisions. A church, for example, is a voluntary association, and members can be understood as accepting the association's terms. States or peoples, on the other hand, are not voluntary associations. Very few people have joined voluntarily, and it is quite clear that residence does not imply consent.[17] It is true that many people stay voluntarily, although for most people it would be costly to leave, and for many it is effectively impossible. So the voluntarist view implies that while there might be some associations that have rights of their own to noninterference, peoples are not among them.

One challenge for the voluntarist view is to explain how the Kazan household, as such, has the right not to be interfered with by society when the female members are dissatisfied with the sexist division of labor. The children, at least, did not join the family voluntarily, having been born into it (as many are born into their society). It is true that they are not being kept by anyone from leaving. They can even be said to be staying voluntarily, even though leaving would be burdensome, and maybe even impossible for some of them.[18] In any case, staying does not imply consent to the authority of the group, since the members might be staying while not intending to so consent, and you cannot consent accidentally. Nevertheless, I assume that the state may not fine or jail the family members for the sexism of their division of labor. So, even if some other associations have the full measure of individual voluntariness that would come from genuine consent, some groups, such as households, seem to have such a right even though it cannot be explained by any actual consent.

[17] See for example, A. John Simmons, *Moral Principles and Political Obligation* (Princeton: Princeton University Press, 1981), chaps. 3 and 4.

[18] The case is similar to the cases Harry Frankfurt uses to suggest that a person can be responsible for an action even if she could not have done otherwise, so long as she did not (in the relevant way) want to do otherwise anyway. Family members are not being forced to stay simply because they could not leave. It may be that they do not (in the relevant way) want to leave anyway, and so stay voluntarily. See Frankfurt, "Freedom of the Will and the Concept of a Person," *Journal of Philosophy* 68, no. 1 (1971): 5–20.

Even if we take for granted that households have the limited right to noninterference, it is important to have at least a rough view of how this gets generated in the OP's individualistic framework for justification. Only then can we hope to see how an analogous justification might be available for a similar right of states. What moral basis could there be, then, for a right of a family or a people to noninterference even in some cases where some of its members are being treated unjustly from within the group? The question, as I have argued, is whether there is an adequate individualistic justification for the right even though the right is not held by individuals. A contractualist account of justification tries to make vivid its individualism even as it lets the parties decide (each possessing a veto) on whether, and which, associations have rights of their own. So the question, in effect, is whether the parties to an appropriate original position would unanimously approve of such an arrangement. Why would they?

With an important caveat, several points are helpful in seeing why they might. The caveat is that this is not the place to try to settle this matter. I am merely hoping to forestall the thought that it is obvious that individuals would never agree to rights of collectives even for cases where they might, when the time comes, be among the individual dissenters in such a group. I think this is not at all obvious, and the central reason is that there might be a sufficiently important individual interest in living willingly in partially self-governing subgroups.

By "willingly," I mean to indicate that I am focusing on what we might call *moderately voluntary associations,*[19] those in which, as we saw just above, while entry might have been by birth or other necessity (though not coerced), and exit, while not intentionally prevented might be costly or infeasible, cooperation in the association is nevertheless largely agreeable and cooperative rather than minimal and grudging. This does not mean there is no dissent, although it does assume that people do not fundamentally reject or take fundamental offense at the terms of association. I assume that the Kazans and Kazanistan fit this description, and the reader should adjust the examples as needed so that this is so. The importance of this point is that it helps to see how there is a kind of liberty for such groups that individuals might value—though it is not a species of individual liberty.

The idea might be clearest in the case of households (a broader category than family-households). Most people in the world do not live alone, and so many are in some household association or other, be it a nuclear family, extended family, or nonfamily.[20] While some are surely there against their

[19] As for the idea of cooperation being willing even if not voluntary, in *Political Liberalism,* Rawls writes, ". . . while social cooperation can be willing and harmonious, and in this sense voluntary, it is not voluntary in the sense that our joining or belonging to associations and groups within society is voluntary. There is no alternative to social cooperation except unwilling and resentful compliance, or resistance and civil war" (p. 301).

[20] According to Eric Klinenberg, just under forty million adults in the United States live alone, which is under twenty percent. Living alone is less common in the developing world.

will, at least many, and probably most, are not, but are willing members even if they are not there voluntarily. In an original position, then, parties would know that they may very well live in some such willing association. They could easily surmise that in some cases they might disagree with the household's decision (however it might be made), and might even in some cases wish outsiders would interfere on their behalf. I am assuming they would not accept unlimited group rights of noninterference, since there would be some forms of treatment (call these "basic rights") for which parties would find that unacceptable. Still, there remain many decisions about which members of households will disagree, and many which, while not in the category of basic rights, can reasonably be thought to violate justice or morality. Consider, for examples, the Kazans' sexist (but not brutal or even grossly unequal) sexist division of labor, overuse of raised voices, and other similar cases.

The alternative to the limited right to noninterference covering even some cases of injustice, though not covering violations of basic rights, would be the absence of any such right—no right to noninterference in the case of any injustice at all. Call this the *hair trigger view.* The parties would choose between group rights of those two forms: the hair trigger, or the limited group rights to noninterference. The question is whether the parties might have a strong interest in willing associations, in which they might well find themselves, having the right to make their own decisions as a group (by whatever group decision procedures are compatible with basic rights, probably not requiring majority-rule within each household), within these limits, without outside interference. Knowing that they might well live in such a willing if not voluntary association, would they prefer the hair trigger condition in which all group decisions are subject to enforceable review by society, the state, or others, or would they prefer that within the limits of respect for basic rights (somehow specified) these decisions be up to the group itself even though often some members will dissent, or even, when the time comes, prefer intervention? This gives an indication of the kind of reason parties might have for valuing associational integrity of this kind for households, and some other subnational associations.

It remains, then, briefly to address the parallel substantial question in the case of a people. The second objection to the state/household analogy claims, as we have seen, that states and households have a disanalogous kind of importance for individuals. Some will argue that even if there is the kind of individual interest in what I am calling associational integrity, it is not as weighty in the case of one's membership in a nation or a people as it is in the case of a household.

As a first point in reply, keep in mind that we do not need to limit our consideration to family-households, but can be understood as addressing

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See, *Going Solo: The Extraordinary Rise and Surprising Appeal* (New York: Penguin Books, 2012).

households more broadly. Ties of blood, or those between parents, offspring, and siblings, cannot be appealed to in the general case of households. Even so, it might be objected, co-members in a household are in especially important relations and this might explain an especially strong interest in associational integrity at the household level, one that does not (it might be objected) apply at the level of national membership.

Why assume that associational integrity is more valuable at the household level? Parties should be presumed to be aware of the wide range of degrees of commitment, allegiance, affection, and identification that will be exhibited by members of households as well as by members of states. Just as some members of households take their membership in that unit as one of their defining commitments, while others (even in households comprising families) do not, there are many people who identify powerfully with their national or state identity, just as many others do not. (Some would, but some would not, put God and country before family and self.) Both families and states can have powerful influence on a person's views and motives. I am not aware of any strong reason to think that people are more strongly committed to, or more profoundly shaped by, their memberships in their households or families than they are by their memberships in their states or nations, especially given how profoundly the latter can shape the former. Without that sort of asymmetry there is little reason to think that the individual interest in the limited associational integrity of households would lapse in the case of limited associational integrity of states.

Summarizing this section: as for the rights of a nation or people to noninterference, in this essay, I have mainly limited myself to two structural points. The first is that justificatory individualism is (as we see in the family case) compatible with rights of some associations as such. The second is that there is a warrant for an OPP arising from the interests that individuals could, in principle, have in national associations with limited rights to noninterference. Some prefer to reason from a COP, but if there is no proper basis for a COP (a matter of controversy) then there is the alternative of an OPP. As I have argued, peoples would be represented there as having interests of their own, though not as having any interests in being free to violate human rights.

As I say, these are structural points. Even if they are granted, it might yet be argued that a proper specification of individual parties' interests and choices would not support as robust a right to noninterference as Rawls supposes. I have limited myself to two responses to that possibility. First, it is important to see how different this is from the formal or structural objections that I am mainly defending against. Second, there is a plausible case (I claim no more here) that an individual interest in associational integrity for households would, based on similar considerations, find a counterpart in the individual interest in associational integrity of states.

VII. Associational Individualism as an Alternative

I return to a natural line of objection. The opponent I have in mind here is uncomfortable with letting associations bear rights. The basis for this worry might evaporate once there is a clear individualism present at the level of justification, but, in case it does not evaporate, it is still worth asking how such an opponent proposes to proceed. His or her strategy would be to take any proposed right of an association and either show (in an analytical objection) that it can be understood as a set of rights of individuals, or (in a moral objection) deny that it is a genuine right at all. For example, Thomas Nagel objects to the associationism in Rawls's *The Law of Peoples* as an analytical matter, even though he does not disagree with the moral upshot, namely a right of decent but nonliberal peoples to conduct their affairs without outside interference (all duly limited, and so on). Nagel believes this liberal associational right can be perfectly well captured without attributing the right to associations as such. What might look like a right of states to noninterference can, he argues, be analyzed without loss into rights of individuals to associate in that way. This view combines substantive individualism (*contra* associationism) with duties not to interfere coercively in the business of even illiberal states so long as they are (in Rawls's term) decent. Above I called this *associational individualism.* It is opposed to the line I have taken here by being individualistic at the substantive level (as it might also be at the justificatory level, but that is different), and hopes to explain the moral status of associations as wholly derivative from the rights, duties, and so on of individuals.

Even if Nagel's case can be made, we might have all the same normative consequences: peoples, like families, may wrong their members within certain limits without permissible outside interference. Why prefer the substantively individualist view if there is an underlying moral individualism, the characteristic liberal structure of protection, and even more or less the very same associational rights Nagel accepts (with only a different analytical structure)? Nagel does little to answer this except to express his discomfort with the associationist account. Nagel's objection to the liberal associationism I have defended would be philosophical, though not obviously of any normative significance. On the other hand, there are normative stakes here if, as I will now argue, Nagel's associational individualism cannot capture the full associational rights to noninterference that we intuitively accept without appealing to anything but rights held by individuals. If not, this would favor liberal associationism over that kind of individualism (thus going beyond showing merely that it is not incoherent).

Recall that the two female members of the Kazan family are displeased with the sexist division of labor that prevails in their home. They make their views known, and there are many discussions and arguments, but the men are not persuaded, they outnumber the women, and the parents

exercise disproportionate influence. All told, the decision in the family has, so far, been to keep things as they are. On the alternative view that we are considering, outside interference is blocked by the individual rights of the Kazans. The father, Stan, for example, asserts his right to be in a family that can make its own decisions without external interference. His wife, Jan, let us say, also believes she has such a right. She is not thrilled by the arrangement but she deeply values the right to make these decisions as a family without outside interference. By contrast, Nan, the only daughter, is not only offended by the sexist work rules, but would welcome a town ordinance that imposed stiff fines on families with such discriminatory arrangements. Nan may have the same rights as her parents to keep society out of family decisions, but *she is happy to waive it in this case.* Assuming each member has this same right, why is society forbidden to interfere even on behalf of members who waive that right? Certainly, Nan's right to noninterference is not the basis of the moral wrongness of society interfering, since she invites them in warmly, in order to protect herself from unjust treatment under her family's rules. So if individual rights are doing this work, the relevant individual rights are those of the others in her family to make and enforce rules without outside interference, even when these rules treat Nan unjustly and when she would waive her own right against the interference and welcome the help.

Why should we believe that some family members have rights to treat others unjustly without interference? We normally think that the right to be left alone does not protect us when we harm or violate the rights of others. On the other hand, those harms or violations must rise to a certain level of seriousness before interference is permitted. It is open to Nagel to say that the sexist rules about household work are not so severely wrong that the perpetrators forfeit their right to be left alone. And if the wrong gets much more serious I would be forced to agree that the right to noninterference runs out. However, it seems as though we can wrong our family members more gravely than others without interference. How would individual rights to noninterference explain that?

Here is an example. Stan tends to yell when he is angry. He is not abusive, but he gets worked up. Sometimes he gets mad at Nan for being out so late with her boyfriend, even though Nan is 22. Oddly, he also gets mad at Nan's friend next door, Nell, also 22, when he notices her coming home at all hours from a date. Nell, too, has often been chewed out by Stan at great volume across the fence in the families' adjoining back yards. Nell is tired of this and has recently called the police, who have warned Stan that unless he stops this he could go to jail. Nan naturally perked up at this, but the police have told her that she is on her own with Stan's boisterous criticism unless it escalates into something worse.

Whether the police are right is a contingent matter of law. Suppose they are. Our question is whether that legal arrangement correctly reflects

underlying moral rights, held by families, to noninterference. I conjecture that this differential treatment of Stan's yelling at his daughter as compared with his neighbor will strike most readers as correct, at least under the facts as I have sketched them. At least, we can calibrate the story to set Stan's obnoxiousness at a level that makes this so. If so, it is hard to see how his right can be understood simply as a right to be left alone unless the harm or wrong to others is too severe, without needing to bring in a right of the family as such. When Nel and Nan endure the very same harm and wrong, the police can warn or arrest Stan for his treatment of Nel but not for his treatment of Nan. I believe this suggests that Nan's family has a right to noninterference that cannot be accounted for by Stan's or anyone else's individual rights. There is more that could be said on both sides, but I leave the matter here. I take these considerations to cast doubt on whether associational individualism of the kind Nagel favors can adequately explain the structure and content of rights to associational integrity.[21]

The parallel to the Nan and Nel case would be some treatment by a people, of some of its own citizens, which would trigger permissible protective interference if perpetrated on people outside of the society, but which may not be interfered with if it remains internal. There are so many ways a state may treat only its own citizens that it is hard to find an especially illuminating case. It may be that Kazanistan may, without outside interference, unjustly require its citizens to attend a state-sponsored church on pain of punishment. This is unjust, but it may not trigger a permission for other states to interfere. Clearly, however, if Kazanistan threatened incarceration or violence against citizens of other countries who did not attend the preferred church, coercive interference would be permitted to protect people from such threats. There will be many examples that are at least as good.

VIII. Are Political Rights Special?

One final objection is worth mentioning even though I can barely consider it here. Many will grant that some kinds of injustice are within the bounds of what other societies should tolerate without interference, but insist that the denial of full political liberties of the liberal variety is too grave a wrong. If not everyone can vote, at least for representatives, so as to weigh in on the important matters under decision in the society, then

[21] If it is thought that it is Stan's ownership of the house that explains Nan's lack of a right to invite interference, change the example to a cooperatively owned house by a set of close friends. The state may not, I assume, fine them for sexist rules even if some members would welcome this. Granted, I am only claiming this applies so long as Nan and others stay voluntarily (whether or not they came voluntarily, or could leave if they chose). But I am also only claiming the parallel thing for states that, whether or not they are just, are willing associations in a similar sense.

other countries may (with due prudence and caution) exert their power to move societies in this direction. This would amount to asserting what we might call an international human right to democracy. I want only to make two brief points.

First, I cannot here consider the question whether there is a human right to democracy in the sense of a permission for outside countries to intervene coercively in order to promote, if they can, democratic arrangements. It is an important question, of course, but it is about where the line is drawn between unjust societies that may not be interfered with and unjust societies that may. My points about associationism here are not meant to resolve disputes of that line-drawing kind, but only to extend the liberal associationist view of domestic intervention to a view with a similar structure in the international realm.

Second, the question whether denial of democratic rights cancels a society's right to nonintervention seems tightly bound up with more general issues about legitimacy (permissible state coercion) and authority (obligation to obey the law). The reason is that it would be odd to say that a certain society has, on one hand, no authority over its citizens—citizens have no obligation to obey its commands—and, on the other hand, a right to make its decisions free from outside interference. If citizens do not have to respect the state's decisions, why do outsiders? Arguably, Rawls holds that societies that meet the conditions for "decency" do indeed also possess legitimacy and authority, and so the paradox would be avoided.[22] This raises the question whether he thinks such societies meet his "liberal principle of legitimacy," or whether he thinks that principle does not apply to nonliberal peoples.[23] But for theories according to which there is no authority without democracy there is some pressure to say that democracy is a human right. If the citizens need not obey the law then it is not clear why outsiders should have to respect that law. Crucially, the thing that seems to open the door to intervention is not that the law is unjust. It is, rather, the fact (when it is one) that the subjects of the law have no obligation to obey it. In any case, no argument is offered one way or the other here on the question whether a society has to be democratic in order to have genuine authority over its members.

IX. Conclusion

The idea of liberal associationism is that associations as such might have rights, including some of a characteristic liberal structure, such as the right to behave wrongly, within certain limits, without outside inter-

[22] See Jon Mandle, "Tolerating Injustice," in *The Political Philosophy of Cosmopolitanism*, ed. Gillian Brock and Harry Brighouse, (Cambridge University Press, 2005), 219–33.

[23] I briefly discuss this issue in, "The Survival of Egalitarian Justice in John Rawls' *Political Liberalism*," *Journal of Political Philosophy* 4, no. 1 (1996): 68–78.

ference. It has emerged that there is a difference between the analytical point and the normative point of such an idea. It seems to me that the analytical possibility of such a view suggests normative possibilities that we might be willing to stick with even if we ultimately insist on putting things, analytically, in wholly individualistic terms (à la Nagel). However, it is not clear to me what the advantage would be in that more individualistic mode. There is no logical problem in attributing rights to groups, something that the law does without difficulty. Individualists like Nagel are not objecting on moral normative grounds since he accepts the normative implications of Rawls's associationism. And it is not at all clear that those normative implications can be fully captured in a substantively individualistic way, as Nan's envy of Nel is meant to suggest.

Much of what I have argued in this paper centers around the observation that the idea of substantive rights for groups as such does not depend on a wholesale rejection of moral individualism. A liberal associationism of the kind I have found to be suggested in Rawls is individualistic at the justificatory level. Finding rights for states as such does not even depend on rejecting the cosmopolitan idea of a COP in favor of Rawls's OPP, since there are reasons that might support parties to a COP insisting on associational integrity at the level of states.

Why, one might ask, does it much matter which underlying methodology is used if there is no significant normative upshot of that choice? The answer is, at least in part, that there may well be an important normative upshot. First, I have not presumed to settle whether the cosmopolitan approach and the liberal associationist approach would, in the end, generate the same stance on rights of states; I have only rebutted certain reasons for thinking that it is obvious that they would not. Second, whether or not that is so, there might well be normative differences between the approaches in other areas, such as whether distributive principles apply across states, across all individuals of the world, and so on. These matters I have left for future investigation in which the liberal associationist approach pioneered by Rawls is not prematurely dismissed as objectionably collectivist or illiberal.

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