

Liberal Associationism and the Rights of States

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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 don't 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 non-believers. There's no abuse, and no one is kept against their 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's stopping them.

As I say, I'm 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 house-

hold 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 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'm 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'd change, and I hope someday they will. Still, I think they are a decent family and good neighbors, and I'm 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 pretty much the same. Rawls's 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 makes 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 suggests 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 injus-

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

tices 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.

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.

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." I will also show that Rawls took this view. My aim is not primarily Rawls exegesis, but his work will figure prominently below because his view of justice in the global order is among the most influential arguments for fairly strong prerogatives of states (or, as he prefers, "peoples"). I want to explore the possibility that this feature of his "law of peoples" is an extension of the liberal associationism that he holds also at the domestic level (this last point being less well-known). Again, the guiding question is not about what Rawls thought. Rather, if liberal associationism is compelling in general terms then, if states (or some of them) can be shown to be associations in the relevant respects, then liberalism itself will supply the moral basis for a right, held by a state or people as such, to nonintervention.²

² For an imagined Part II, that fell by the wayside for now: "A second theme of this paper concerns the common suspicion that a state-centered theory is illegitimately giving too much weight to unfortunate facts on the ground, in particular to the long history and powerful influence of states. On this view, Rawls's theory is a sort of concession to the improbability of reorganizing global thought and practice in a way that significantly diminishes the claims and prerogatives of states. I want to turn this on its head. I will argue that if we resist the tyranny of unfortunate probabilities then the case for global liberal associationism, with its rights of states to nonintervention, will be especially strong. The case for more cosmopolitan approaches is stronger only when we step back from certain idealizations and face certain unfortunate facts. Facts must, of course, be faced, and so cosmopolitan thought would still have its place, but only (in what may seem a surprising twist) in a concessive mode of political theory—conceding, that is, that full global justice, which would be more state-structured, is too improbable to be an appropriate goal in practice."

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, however, 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.³

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.⁴

I believe this is the key to understanding the moral basis for the structure of Rawls’s theory of relations between peoples. Rawls will figure prominently here, but my main aim is not to explicate his theory, but to spell out the structure of what I will call “liberal associationism.” I will argue that the deference given to peoples or states in Rawls’s view is a natural and predictable implication of his larger conception of liberalism as protecting associations and individuals alike from external coercive interference so long as they rise to a cer-

³ PL 221, note 8.

⁴ “The Idea of Public Reason Revisited,” PL 476 expanded edition, or p. 166 in *The Law of Peoples*. 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* Rawls is unremitting on this point by nearly always referring to “persons and associations” rather than merely to “persons.” See at least PL 16, 19, 41, 129, 136, 225, 266, 268, 269, 276, 284, 302, 517. [*** Are there roots of this in TJ? What about the idea of “social union of social unions?”]

tain level of decency, and that this has a more general importance for liberal thinking.

It is helpful to make a preliminary distinction between two ways in which a political philosophy might be individualistic (and there might be others) 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, etc.) 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 (etc.). 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 whom the political order is *justified to*, 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'll concentrate on the examples of rights and duties for simplicity. If a 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. That would remain an individualistic theory in this second sense. It holds that rights and duties are ultimately only possessed by individuals. Whereas the first kind of individualism concerned whom the system is *justified to*, this second kind of individualism is a question of what kinds of rights and duties there is a *justification of*. I will call the first kind *justificatory individualism*, and the second kind *substantive individualism*.

It isn't 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, non-derivatively 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've 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, but it is possible for a view that is associationist to yet be individualistic in the justificatory sense.

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 doesn't 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 justi-

fications that address the reason of each individual.⁵ 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.

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 calling it associationism. 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.

⁵ *** See Gray’s review of PL in NY Times Book Review 1993, and ensuing exchange with Nagel.

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 plainly 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 original position (hereafter, 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 are 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, etc. 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, 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 theory offers a justification in terms of individuals' own reasons: their reasons of prudence and of reciprocity.

The "heads of families" red-herring

There is a complication, since Rawls says, at one point, that we can see the parties to the OP as "heads of families." This is a striking suggestion, especially as we consider the relation between liberalism, individualism, and association-

ism. Are the parties to the original position in effect representatives of small collectivities? However, I believe that suggestion is a red-herring in this context, and gives us no reason at all to withdraw the claim that the OP represents the interests of individuals and not associations, not even families. A careful reading of that 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 non-interference, or any of the related issue. The best reading of the OP for all such matters is that it includes representatives for each individual. It is worth looking at the whole relevant passage in order to dispel doubts. The assumption is introduced in the section of *A Theory of Justice* on the “circumstances of justice,” (sec. 22) in order to theoretically account for the interests of all generations in the OP. Rawls says,

The parties are thought of as representing continuing lines of claims, as being, so to speak, deputies for a kind of everlasting moral agent or institution. They need not take into account its entire life span in perpetuity, but their goodwill stretches over at least two generations. Thus representatives from periods adjacent in time have overlapping interests. For example, we may think of the parties as heads of families, and therefore as having a desire to further the welfare of their nearest descendants. As representatives of families their interests are opposed as the circumstances of justice imply. 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, it being presumed that their concern is for different individuals in each case. Moreover for anyone in the next generation, there is someone who cares about him in the present generation. Thus the interests of all are looked after and, given the veil of ignorance, the whole strand is tied together. (TJ, first edition, p. 129. It is slightly different in the revised edition *** but not relevantly for our purposes.)

There is no basis for interpreting this theoretical move, which Rawls himself says could just as well be replaced with alternatives, as building into the theory some special status for the household or family. The OP is populated by representatives of individuals, each with their own interests. The trick is how to have the parties represent members of future as well as present generations, but that is an issue that has nothing to do with the status that the theory gives to the family unit. 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 this the “heads of families” move would make the theory individualistic 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.

The original position is such a vivid construct that it will help in illustrating how a theory that is individualistic about justification might be associationist in its content or substance. The simple answer is that the individualistic structure of the original position in no way rules out the possibility that the parties would agree on principles that attach rights, liberties, duties, etc., to certain associations as such. That is certainly a conceivable option that they could consider, and if they opted for it the result would be a form of justificatory individualism combined with substantive associationism. It is easy to slide from the fact that the original position aggregates individual decisions to thinking that the resulting rights and liberties must also be those of individuals, but this simply doesn’t follow. That is a question that is itself up for decision in the original position.

It is not a simple matter to give examples of rights held by associations. Rights are often thought to be held only by individuals and so much of our thinking is shaped by that assumption. It will be useful, then, to try to devise some rights which have the irreducibly associationist structure. We don’t need to make the normative claim that these are genuine rights, since the goal for now is only to understand how there could be rights with that structure. Which such rights there really are, if any, is a further question I leave aside.

Consider an association’s rights to keep its membership lists secret from the government. Is there a right here that couldn’t simply be formulated in terms of the rights of the members? If it is just members’ rights, then they must be able to waive them. Suppose each member, upon joining, consented, by checking a box on the membership form, to the publication of his or her own status as a member. So, even if there were an individual right to have one’s name kept secret, every instance of that right has been waived. Nevertheless, the group might decide at their annual meeting to deny a government request to see the membership list. Assume there is long discussion and that this decision is passed by majority rule (and for simplicity, not a close vote). There might be several reasons why some members would vote for secrecy even while not objecting to the government seeing their own name. However, the group’s decision might be simply on principle, on the belief that the government should not have that power, even though there is no actual objection to their having the names. Or the government might obtain some political advantage if they had all or most of the names, something that members might want to oppose even without any particular fear about their own name being

known. So the group might decide to keep the list private, and there could be a right possessed by the group as such to do so without government interference even if the individual rights to keep one's own name private have all been waived.

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 doesn't 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, 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 if they 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 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 willingly⁶ 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

⁶ 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)

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, Nagel's being an example of the latter view. 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'll use the term "contractualism" to cover both, or any view on which the justification for the assignments of rights, liberties, duties, etc. 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 we will take for granted is, "whichever ones the parties in the contractual situation would agree to give them to."

Arguing from the original position

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 the set of all humans on the globe, who will certainly live in conditions of some interaction and shared fate, etc., should count as a prospective society for these purposes. If not, there would be no any basis for thinking the appropriate arrangements at the global level could be arrived at by appeal to an OP representing all the world's individuals. 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 society's behavior toward other societies. That is, along with questions about the basic internal structure of a society, parties to the OP could 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 when there are no representatives in that OP of many of the people and/or associations for whom certain rights and duties will be determined. So the standard OP, while setting principles for foreign policy, cannot set the rights and duties of people or associations outside the society. Rawls proposes, as I understand him, that the parties to the standard OP would agree to enter their society into a society of peoples if suitably constituted. Having now introduced the concept of society at this level, he allows that a new OP could be used to determine the just relations between the members of the society of peoples.

With this move come a number of questions. One first puzzle is how a people can have the sort of moral status to have a place, as an association, in an OP. In the standard OP only individuals are represented, and so why should this be different in the OP of peoples? The idea of liberal associationism seems to provide an answer. The parties to the standard OP would agree to recognize certain sub-national 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. 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 doesn't 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 can't 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 what rights, if any, should be accorded, in an OP of peoples, to societies as protections against other societies is now a well-formed question.

A second puzzle is what objection there could have been to the idea of a global society of individuals which is somehow absent once we shift to the idea of a society of peoples instead. If there were a prospective global society of individuals there could have been an OP in which all individuals were represented (call this a cosmopolitan OP). I believe 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 cosmopolitan OP, 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. It is a very common suggestion (cite) 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 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. We have seen how such associationist rights might indeed get an individualistic justification in the standard OP, and so the form of argument is fallacious.

Before looking at further challenges for the idea of an OP of peoples, I want to emphasize that the main points I’m making are not, as I understand them, merely points about the idiosyncratic implications of Rawls’s own approach. The idea of liberal associationism, and how it might have individualistic moral foundations is the more general point that is doing the work in refuting the charge, which we can also frame in this more general way, that peoples as such could not have rights if justification must ultimately be individualistic. We don’t need specific commitments to the original position or to a Rawlsian law of peoples to see how that argument fails.

Returning, now, to the idea of an OP of peoples: the agents for whom principles are now to be devised include peoples themselves—that is, collectives of a certain kind and not only individuals. So, a third puzzle is how an OP representing peoples could generate human rights for individuals. Without the idea of human rights, a right of nonintervention would be unlimited and so morally unpalatable.

The representatives of peoples in an OP can recognize rights that individuals and smaller associations have against their own societies, since anyone can ask what the results of a standard OP would have dictated for them. And the results should evidently be similar across societies. Some have thought they might differ, but this has been partly in an effort to understand why they are immune from interference even if they don’t meet liberal standards of justice. We are in the process of explaining the right to noninterference in a different way, one that doesn’t depend on any such relativization of the standard of justice to particular cultures. In the OP of peoples, then, there will be common acknowledgement of certain rights and duties that are held by all individuals and certain (sub-national) associations within the framework of each domestic society. The concept of human rights does not require adding any rights to this list, or intensifying what individuals are owed by their societies in any way. Rather, some subset of the already settled rights are identified in a specification of a certain right of the society itself. To categorize a certain right as a human

right is to hold that violations of that right tend to cancel the societies right to noninterference from other societies. This set of individual rights that have this status is to be determined in the global OP, whether the parties to that OP are peoples or all the world's individuals. That is, the question about human rights is best seen as a question about the extent and limits of the rights of societies to conduct their affairs without interference. As I understand it, the categorization of an individual right as a human right does not give the individual a stronger or more extensive claim to anything. Rather, the categorization is part of specifying the society's rights, not the individuals, which are already settled before the question of human rights arises. This dissolves the puzzle of how an OP of peoples could have any say over human rights if these are held by individuals.

A fourth puzzle, or question, is whether the principles chosen for a law of peoples, whatever they turn out to be, can be said to be individualistic at the justificatory level. Since justification is addressed to real individuals by arguing that the arrangements would have been agreed to by them or an agent representing them in an original position, I believe the justification for the whole edifice is individualistic. We haven't answered the question why there shouldn't have been a cosmopolitan OP, but that doesn't affect the answer to the present question. Even without it, the structure employing an OP of peoples is part of an individualistic method of justification because it is argued that this is how parties to standard OP's would agree to proceed. I am not evaluating the argument, since that isn't the present question. Whether or not it succeeds, it is an individualistic form of justification.

Voluntarism

I want to step back now, and consider an objection to the extension of liberal associationism to a global order of relations between peoples. A preliminary point is to notice that granting certain rights to an association as such will often come at the expense of the interests of individuals. If my family has a right of noninterference even in the case of decisions with which I disagree, then my interest in having those decisions changes is thwarted. If I could call for intervention, this would give me a way of promoting my own interests against the decisions of my family. One individualist explanation of how my family might have this right of nonintervention, even where I would myself invite intervention for my own benefit, is to suppose that this only obtains when I have consented to this arrangement of rights by joining the association voluntarily. So rights held by associations are sometimes thought to only make sense when we are speaking of voluntary associations. This is a version of the view that it is really all a matter of individual rights, with the variation that individuals can voluntarily waive their rights in a way that can create rights of associations as such. Call this the voluntarist account of rights of associations.

The voluntarist view will expect some associations to have rights, but not societies, peoples, or nations. A church, for example, is a voluntary association, and members can be understood as accepting the association's terms. The individuals can be seen, then, as having rights to join associations in which no member has a right to remedial outside interference when they disagree with the church's decision. States or peoples, on the other hand, are not voluntary associations. Very few people have joined voluntarily, and it is well-known that residence does not imply consent. We might say that many people stay voluntarily, although for most people it would be quite 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 difficulty for the voluntarist view is to explain how my neighbors, the Kazans, have the right, as a family, not to be interfered with by society when their 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). They are not being kept from leaving and so can be said to be staying voluntarily, although leaving would be very burdensome, and maybe even impossible for some of them. In any case, staying does not imply consent to the authority of the group, since you can't consent accidentally, and the members might be staying while intending not to so consent. Nevertheless, I assume the state may not fine or jail the family members for the sexism of their division of labor. So even if some associations have the full measure of individual voluntariness required to sustain the voluntarist account of that group's right of noninterference, some groups, such as families, seem to have such a right even though it can't be explained in voluntarist terms.

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? 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. My aim is not to make the moral case for any particular set of individual or associational rights, but only to show that the justification for the rights of peoples or states to noninterference would be roughly parallel in its structure to the justification of the rights of certain sub-national associations to noninterference. The justification rests ultimately on a morally individualistic account, and takes a characteristically liberal shape insofar as the fact that a decision might be morally wrong doesn't not automatically permit outside coercive interference to try to correct it. So the question, in effect, is whether the parties to an appropriate original

position would unanimously approve of such an arrangement. As for a people's right to noninterference, the story I have sketched in outline would be that parties to standard OP's will recognize a range of associations whose freedom to make decisions free from outside interference they would unanimously accept, subject to certain limits in the form of a subset of individual rights which, if violated, would cancel the right to noninterference. I take this to remove any particular puzzle about how peoples or nations as such could hold rights to noninterference in a liberal political philosophy that rests on individualistic moral foundations.

Associational Individualism as an alternative

I return, finally, to a natural line of objection. The opponent I have in mind 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 it is still worth asking how such an opponent proposes to proceed. Their 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 LP as an analytical matter, even though he doesn't disagree much with the moral upshot, namely a right of decent but nonliberal peoples to conduct their affairs without outside interference (all duly limited, etc.).⁷ 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. For lack of a better name, I will call this *associational individualism*. It is individualistic at the substantive level (as it might also be at the justificatory level, but that's different), and hopes to explain the moral status of associations as wholly derivative from the rights, duties, etc. of individuals.

It is important to point out that even if Nagel's case can be made we would have all the same normative consequences: peoples, like families, may wrong their members within certain limits without outside interference. He accepts this but would rather try to account for it without what substantive associationism of Rawls's view. The question whether this can be accounted for by associational individualism as well as well as it can by liberal associationism is a question of philosophical interest, but not of any direct moral importance at least here. Recall, however, that I hope to have dissipated certain im-

⁷ [Consult Walzer's *Just and Unjust Wars* on this too. ***]

pulses to construe all liberal rights as held by individuals by pointing to the need for morally individualistic justifications for whatever rights there are. Contractualist accounts of justification suggest that whether rights are held only by individuals or by associations would depend on the arguments about what contractors would accept, and is not settled by the very ideas either of liberalism or individualism.

The main aim so far has been to remove the puzzling or paradoxical impression that many seem to get from the attempt to marry liberalism with rights held by associations as such. So, that is a partial response to associational individualists such as Nagel: 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. It is worth asking, though, whether a further response to the associational individualist position is possible. I want to ask whether it is really true that we could (if there were any reason to) 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 rather than merely showing that it is not paradoxical or inconsistent.

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 has, so far, been to keep things as they are. On the view 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's say, also believes she has such a right. She's not thrilled by the arrangement but she deeply values the right to make these decisions as a family without outside interference. Nan, the only daughter, on the other hand, 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. She 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, it is the individual

rights of the others to make and enforce rules that treat Nan unjustly without outside interference even when Nan would 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's open to Nagel to say that the sexist rules about household work are not so severely wrong that the perpetrators waive 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 without interference. How would individual rights to noninterference explain that?

Here's an example. Stan tends to yell when he's angry. He's 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 has often been chewed out at great volume across the fence in the families' adjoining back yards. Nell is tired of this and had recently called the police, who have warned Stan that if he doesn't stop 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.

I think the cops are right. At least, we can calibrate the story to set Stan's obnoxiousness at a level that makes them right. If so, it's hard to see how his right to be left alone unless the harm or wrong to others is too severe. 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. Recall, that this is a question of philosophical interest but without any normative significance. Nagel proposes to capture the normative claims of Rawls's law of peoples without resort to associationist rights, appealing only to rights of individuals. Either way, a people would have a right to noninterference even when it is internally unjust so long as it meet certain standards such as respect for basic human rights and respect for norms against any except self-defensive war.

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 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. It is just different words for the same thought to say that there is no basic human right that is violated. Clearly, however, if Kazanistan threatened incarceration or violence against citizens of other countries who didn't attend the preferred church, coercive interference would be permitted to protect people from such threats.

Are political rights special?

One final objection is worth mentioning even though I can barely consider it here. Someone could grant that some kinds of injustice are within bounds of what other societies should tolerate without interference, but 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 other countries may (with due prudence and caution) exert their power to move societies in this direction. This would amount to asserting a human right to democracy. I want only to make two quick points.

First, I cannot here consider the question whether there is a human right to democracy in this sense: 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 one 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 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—they have no obligation to obey its commands—and, on the other hand, a right not to make its decisions free from outside interference. If they don't 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.⁸ This raises the question whether he thinks such societies meet his "liberal principle of legitimacy," or whether he thinks that principle doesn't apply to nonliberal peoples.⁹ But for theories (such as my

⁸ See Jon Mandle, "Tolerating Injustice," *The Political Philosophy of Cosmopolitanism*, Brock and Brighouse, eds. (Cambridge, 2005).

⁹ I briefly discuss this issue in, "The Survival of Egalitarian Justice in John Rawls' *Political Liberalism*," *The Journal of Political Philosophy*, March 1996, pp. 68-78.

own) according to which there is no authority without democracy there is some pressure to say that democracy is a human right. If the citizens needn't 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.

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 interference. 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. However, it is not clear to me what the advantage is. 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, finally, it is not at all clear that those normative implications can be fully captured in an individualist way, as Nan's envy of Nel is meant to suggest.¹⁰

¹⁰ Thanks to Corey Brettschneider and Bob Goodin for useful discussions of the inchoate ideas that have led to this paper.