

IN OR OUT?
ON BENEVOLENT ABSOLUTISMS
IN *THE LAW OF PEOPLES*

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BENEVOLENT ABSOLUTISMS occupy a rather unclear position in Rawls's *The Law of Peoples*. On the one hand, these states, because they are not well ordered, do not belong to the Society of Peoples, which consists of those societies that are both law abiding and well ordered. On the other hand, unlike other societies that are either not well ordered or not law abiding (or both), benevolent absolutisms are not to be assisted or sanctioned into becoming well ordered. Given Rawls's aim of expanding the Society of Peoples for the benefit of lasting peace and stability, this situation seems wanting. In light of this, I argue that *The Law of Peoples* should be altered in order to clarify the theoretical status of benevolent absolutisms, and I discuss alternative ways of doing so. First, I consider including these states into the Society of Peoples. This solution is problematic in part because it would implausibly strain the notion of liberal tolerance. Second, I consider merging the two criteria for membership in the Society of Peoples—well-orderedness and adherence to the Law of Peoples—by making the latter a part of the former. As it turns out, this does not solve many problems, and I therefore suggest the further move of including a crucial aspect of the well-orderedness criterion into the very *conception of human rights* contained in the Law of Peoples. This, I argue, does clarify the position of benevolent absolutisms. These states no longer meet one of two criteria for inclusion into the Society of Peoples. They now fail the only criterion there is. Further, making this aspect of well-orderedness a part of the conception of human rights opens the possibility of subjecting benevolent absolutisms to sanctions. The reason is that, on Rawls's view, respecting human rights excludes the imposition of justified sanctions.

1. INTRODUCTION

A central theme in the later writings of John Rawls is how individuals and

groups with incompatible worldviews can live together in peace and stability. The question is crucial in both the domestic and international realms. In *Political Liberalism*, Rawls presents a notion of legitimacy that aims to facilitate stable and peaceful cooperation between adherents to a range of different and incompatible comprehensive doctrines. He claims that, in liberal constitutional democracies marked by reasonable pluralism, it would be unreasonable for citizens to insist that the basic structure of society should be organized in light of their own particular doctrine. Rather, all citizens should accept some ground rules for the organization of the political sphere that all reasonable persons, regardless of their comprehensive doctrines, can endorse.¹

In *The Law of Peoples*, Rawls extends some of his core ideas on reasonably just constitutional democracies to the international sphere.² More precisely, he formulates the principles that ought to guide liberal peoples' foreign policy.³ Just as members of comprehensive doctrines within a domestic society should accept political liberalism, so should peoples accept an ideal international law—the Law of Peoples—that is to regulate international cooperation and interaction. This is a contested claim from a liberal point of view, since adherence to the Law of Peoples does not require internally liberal institutions.

For theoretical purposes, Rawls proposes a (non-exhaustive) ideal-typical categorization of societies. The first type consists of reasonable liberal peoples, which are stable democracies organized in light of a liberal political conception of justice, of the kind outlined in *Political Liberalism*. The second type is decent peoples. These could take various forms, but Rawls mainly discusses a type that is hierarchically organized according to a religious doctrine. The third type is so-called burdened societies, “whose historical, social, and economic circumstances make their achieving a well-ordered regime, whether liberal or decent, difficult if not impossible.”⁴ These societies are unable, rather than unwilling, to accept the demands of the Law of Peoples. The fourth is outlaw states. These are aggressive, and they do not honor either human rights or the Law of Peoples more generally.⁵ Finally, there are benevolent absolutisms. These societies

1 Rawls, *Political Liberalism*, 12.

2 Rawls, *The Law of Peoples*, 9.

3 Rawls uses the term “peoples” as opposed to “states” for societies that are law abiding and well ordered.

4 Rawls, *The Law of Peoples*, 5.

5 Rawls, *The Law of Peoples*, 90.

respect human rights, but deny their members any meaningful role in political decision-making.⁶ They are therefore not well ordered.⁷

Only reasonable liberal peoples and decent hierarchical peoples fulfill the criteria for admission into what Rawls refers to as the Society of Peoples. First, these peoples are law abiding in that they accept the principles of the Law of Peoples, and second, they are *well ordered*. It appears that both criteria are necessary, and jointly sufficient, for inclusion into the Society of Peoples.⁸ The three latter types of states—burdened societies, outlaw states, and benevolent absolutisms—are treated in the nonideal part of the theory, covering cases of non-compliance and unfavorable conditions. It is noteworthy, however, that while outlaw states and burdened societies are discussed in detail, very little is said about benevolent absolutisms.

In this paper, I will be primarily concerned with these benevolent absolutisms and their apparently uneasy status within Rawls's theory. On the one hand, as noted, they fall outside the Society of Peoples; on the other hand, liberal and decent hierarchical societies are neither to assist nor sanction them because they are peaceful and respect human rights. Given the aims of the theory, which is to expand a peaceful Society of Peoples, this is unfortunate. I argue that *The Law of Peoples* should be altered in order to clarify the status of these states, and discuss different ways of doing so.

While *The Law of Peoples* has been met with substantial criticism (and defense), there is a need to see how far his theory can be amended and adjusted in light of the criticism before a final assessment is made. The present paper is a contribution to that effort. If I am right that benevolent absolutisms occupy an awkward position in the theory, one pertinent question to ask is whether the theory can be slightly amended so as to remove this awkwardness. This is important also from a practical point of view, since we need a coherent and principled view on how liberal peoples should respond to various kinds of non-liberal states. *The Law of Peoples* offers such guidance when it comes to decent hierarchical societies, burdened societies, and outlaw states, but more needs to be said about benevolent absolutisms, or so I argue.⁹

6 Rawls, *The Law of Peoples*, 4.

7 Rawls, *The Law of Peoples*, 4, 63, 92.

8 Rawls sometimes seems to suggest that respecting the Law of Peoples is sufficient. See for instance Rawls, *The Law of Peoples*, 3. It is clear from his remarks on benevolent absolutisms, however, that well-orderedness is required as well.

9 For related contributions, see Maffettone, *The Coherence and Defensibility of Rawls's Law of Peoples*, "Benevolent Absolutisms, Incentives, and Rawls's *The Law of Peoples*," and "Should We Tolerate Benevolent Absolutisms?"

On a methodological note, I should emphasize that my goal is not to argue in favor of an ideal system of international law as such. Rather, I start out from an apparent incongruence in the Rawlsian way of dealing with benevolent absolutisms, and propose a strategy for dealing with this from a perspective internal to that theory.¹⁰

2. THE LAW OF PEOPLES, THE SOCIETY OF PEOPLES, AND WELL-ORDEREDNESS

In Rawls's contractual theory, the Law of Peoples is first chosen by representatives of liberal peoples in a hypothetical contract situation under a (suitably tailored) veil of ignorance.¹¹ The result is, unsurprisingly, broadly liberal, because liberal peoples choose the law that they ideally think should guide international interaction. However, this ideal is informed by a—somewhat controversial—notion of tolerance. Due in part to this idea of tolerance, the Law of Peoples will be acceptable to some non-liberal peoples as well. Specifically, Rawls argues that representatives of decent hierarchical peoples will adopt the *same* law in their own (subsequent) hypothetical contract.¹² The Law of Peoples consists of eight principles:

1. Peoples are free and independent, and their freedom and independence are to be respected by other peoples.
2. Peoples are to observe treaties and undertakings.
3. Peoples are equal and are parties to the agreements that bind them.
4. Peoples are to observe a duty of non-intervention.
5. Peoples have the right of self-defense but no right to instigate war for reasons other than self-defense.
6. Peoples are to honor human rights.
7. Peoples are to observe certain specified restrictions in the conduct of war.
8. Peoples have a duty to assist other peoples living under unfavorable conditions that prevent their having a just or decent political and social regime.¹³

10 For more critical approaches, see the references in note 41.

11 The parties do not know their country's size, population, strength, possession of natural resources, or level of economic development. On the other hand, "they do know that reasonably favorable conditions obtain that make constitutional democracy possible—since they represent liberal societies" (Rawls, *The Law of Peoples*, 32–33). Liberal peoples have already chosen their *domestic* principles of justice in domestic original positions (Rawls, *A Theory of Justice*).

12 Rawls, *The Law of Peoples*, 64.

13 Rawls, *The Law of Peoples*, 37.

The Society of Peoples is Rawls's term for an idealized, peaceful, and stable association of peoples that are all internally well ordered, and share a desire to respect and uphold the Law of Peoples. The members of the Society of Peoples have a general aim of making other states respect the Law of Peoples as well. Burdened societies are to be *assisted* (because they are *unable* to become well ordered on their own), while outlaw states may be *sanctioned* (because they are *unwilling* to become law abiding) by way of diplomatic, economic, or military means.

The overarching goal is to secure lasting peace and stability among peoples. Rawls states that it is a "basic characteristic of well-ordered peoples that they wish to live in a world in which all peoples accept and follow (the ideal of the) Law of Peoples."¹⁴ He also writes that "it is characteristic of liberal and decent peoples that they seek to live in a world in which all peoples have a *well-ordered regime*."¹⁵ The natural way of achieving this goal is to work toward bringing more and more states into the Society of Peoples. Extending the Society of Peoples is likely to benefit all societies, since well-ordered and law-abiding societies are (by definition) not aggressive. Any extension will more particularly benefit those peoples that become members of the Society of Peoples, because membership presupposes just or decent, that is, well-ordered, domestic institutions.¹⁶

Decent hierarchical peoples are well ordered partly in virtue of allowing their members a *meaningful role in making political decisions*. Allowing members such a role is of fundamental importance for Rawls. This is a feature that benevolent absolutisms lack, and this is the *main reason* why they cannot be considered well ordered or candidates for membership in the Society of Peoples. Decent hierarchical peoples are defined by two criteria. These are of interest here as they concern the idea of well-orderedness.

1. First, the society does not have aggressive aims, and it recognizes that it must gain its legitimate ends through ... ways of peace.
- 2a. A decent hierarchical people's system of law ... secures ... human rights.
- 2b. A decent people's system of law must ... impose *bona fide* moral duties and obligations (distinct from human rights) on all persons within the people's territory.
- 2c. There must be a sincere and not unreasonable belief on the part of judges and other officials ... that the law is indeed guided by a common good idea of justice.¹⁷

14 Rawls, *The Law of Peoples*, 89.

15 Rawls, *The Law of Peoples*, 113, emphasis added.

16 For a discussion, see Huseby, "John Rawls and Climate Justice."

17 Rawls, *The Law of Peoples*, 64–67.

In order to meet criteria 2b and 2c, Rawls argues that decent hierarchical societies must have some form of “decent consultation hierarchy.”¹⁸

In political decisions a decent consultation hierarchy allows an opportunity for different voices to be heard. . . . Persons as members of associations, corporations, and estates have the right to at some point . . . (often at the stage of selecting a group’s representatives) to express political dissent, and the government has an obligation to take a group’s dissent seriously and to give a conscientious reply.¹⁹

As noted, Rawls holds that benevolent absolutisms, unlike decent hierarchical societies, do not give their members a meaningful role in political decision-making, and are *therefore* not well ordered.²⁰ In line with this, I take it that benevolent absolutisms could become well ordered by securing for their members such meaningful political participation. This would, as Rawls suggests, secure that the law imposes *bona fide* moral duties and obligations on all participants, and that judges and officials are sincere in their belief that the law is guided by a common good conception of justice.²¹ In other words, if a benevolent absolutism instituted a decent consultation hierarchy, it would both secure meaningful political participation for its members *and* go from non-well ordered to well ordered. The reason is that doing so would make sure it fulfills 2c and 2b.

18 Rawls, *The Law of Peoples*, 71.

19 Rawls, *The Law of Peoples*, 72.

20 Rawls, *The Law of Peoples*, 4, 63, 92, emphasis added. See Maffettone, *The Coherence and Defensibility of Rawls’s Law of Peoples*, 24–56, for discussion of why political participation is so crucial to Rawls’s understanding of well-orderedness. My understanding of the importance of political participation in relation to benevolent absolutisms seems to be more in line with Neufeld, “Liberal Foreign Policy and the Ideal of Fair Social Cooperation,” 296.

21 Rawls, *The Law of Peoples*, 92. Rawls draws in his discussion of these issues on Philip Soper’s theory of law (Soper, *A Theory of Law*). Arguably, however, there could be *some bona fide* moral duties imposed by law in benevolent absolutisms, even if we assume that Rawls’s Soper-inspired theory of political obligation is overall correct. As pointed out by Estlund, legitimate authority, and subsequent obligation to obey, can arise in different ways, from different sources (*Democratic Authority*). Thus, it is possible that the law, even in benevolent absolutisms, can impose *bona fide* moral duties on citizens for reasons such as (a) the law actually protects valuable moral rights (apart from human rights, which clearly also impose moral duties on citizens), and (b) law-abidingness, to some extent, is necessary to preserve societal stability over time. There could be further reasons as well. However, even if the law in benevolent absolutisms *can* impose *bona fide* moral duties (*contra* Rawls), it can still be true that the system cannot impose such duties with the generality and robustness necessary for achieving decency or meaningful political participation. Generally, I suppose systems of law can fall short of decency in many different ways and to many different degrees. I am very grateful to an anonymous reviewer for helpful comments on this issue.

Benevolent absolutisms already meet 1 and 2a, since they are not aggressive and they respect human rights.²²

3. BENEVOLENT ABSOLUTISMS

Quite a lot has been written about *The Law of Peoples*. Less, however, has been said specifically about the “curious case of benevolent absolutisms.”²³ These societies occupy an uneasy position in the theory. Unlike burdened societies, they are not unable to become well ordered and members of the Society of Peoples, and there is thus no need to assist them. And unlike outlaw states, they are not to be subject to sanctions, since they, like decent societies, are nonaggressive and respect human rights.²⁴ Nonetheless, these societies must be unwilling on some level (since they are not unable), to become well ordered. In any case, because they are not well ordered, they are not eligible as members of the Society of Peoples, and the international community, moreover, has no means with which to put pressure on them.

3.1. *Can Benevolent Absolutisms Respect the Law of Peoples?*

The role of benevolent absolutisms is somewhat peculiar, since there is nothing to say that these societies could not accept the Law of Peoples in its entirety.²⁵ They respect and honor human rights, which is the only principle of the Law of Peoples that explicitly addresses the internal organization of participating states.²⁶ Further, there is no reason to think that benevolent absolutisms would be opposed to the principles concerning self-determination and noninterven-

22 Well-orderedness is given a stricter interpretation in Rawls’s *domestic* theory of justice. Liberal constitutional democracies are well ordered when “everyone accepts, and knows that everyone else accepts, the very same political conception of justice” (Rawls, *Justice as Fairness*, 8). Further, the basic structure of such societies is believed by most citizens to meet the standards of justice they affirm (*Justice as Fairness*, 8). Lastly, “citizens have a normally effective sense of justice . . . that enables them to understand and apply . . . the principles of justice” (*Justice as Fairness*, 8). Decent hierarchical societies are not well ordered in light of these criteria.

23 This phrase is Maffettone’s, who is one of the few to offer substantive treatments of benevolent absolutisms. See Maffettone, *The Coherence and Defensibility of Rawls’s Law of Peoples*, 142–53, “Benevolent Absolutisms, Incentives and Rawls’s *The Law of Peoples*,” and “Should We Tolerate Benevolent Absolutisms?” See also Neufeld, “Liberal Foreign Policy and the Ideal of Fair Social Cooperation”; Reidy, “Human Rights and Liberal Toleration”; and Riker, “The Democratic Peace Is Not Democratic.”

24 Rawls, *The Law of Peoples*, 80, 92.

25 Maffettone, *The Coherence and Defensibility of Rawls’s Law of Peoples*, 143.

26 Rawls, *The Law of Peoples*, 92.

tion. It is also likely that such states would be sympathetic to the principles pertaining to treaties, international cooperation, and the conduct of war. Thus, it appears that benevolent absolutisms most likely accept the Law of Peoples.

One might ask whether benevolent absolutisms can *really* accept and honor the Law of Peoples, however, since these states are not peoples at all, precisely because members are denied a meaningful political role. As such, these states do not constitute corporate agents.²⁷ However, these states, by their *leaders*, can, in one sense at least, accept and honor the Law of Peoples. They can, for instance, abide by its statutes and forgo any violations of them. Suppose there are two states, one well ordered and one not. Even though only the well-ordered state properly acts on behalf of its people, both states, however constituted, act meaningfully in the world. Both states can intervene or not into other states, both can sign treaties, and both can uphold laws internally. Thus, even though the Law of Peoples is intended to regulate the interactions between one type of international actor—peoples—it seems perfectly possible for another kind of actor, benevolent absolutisms, to honor, comply with, and accept this law. Thus, whether or not benevolent absolutisms accept the Law of Peoples does not hinge on whether they constitute a suitable corporate agent, but on whether the regime commits to *actually* honoring and accepting it.

This, moreover, seems compatible with Rawls's view. Even though human rights do not constitute the whole of the Law of Peoples, they do constitute a part of it, and if benevolent absolutisms can "respect" human rights, they can respect (and honor) the other principles as well. According to Rawls, "while a benevolent absolutism does respect and honor human rights, it is not a well-ordered society, since it does not give its members a meaningful role in making political decisions."²⁸ This quote strongly suggests that benevolent absolutisms can indeed accept, in a relevant sense, international law. Further, if benevolent absolutisms were unable, due to their lack of well-orderedness, to respect international law, they would also, for that *same* reason, fail to respect human rights, which would make them vulnerable to justified sanctions.²⁹ Notice also that when Rawls discusses outlaw states, he says that they are *unwilling* to abide by the Law of Peoples, and not that it is in principle impossible for them to do so because they are not well ordered and do not constitute an appropriate kind of corporate agent.³⁰

27 Consequently, Pettit argues that societies that are not well ordered, have "no standing under the law of peoples" ("Rawls's Peoples," 43).

28 Rawls, *The Law of Peoples*, 92.

29 I say more about the connection between human rights and sanctions below.

30 Rawls, *The Law of Peoples*, 90. Burdened societies, on the other hand, are unable to comply

This interpretation is further strengthened by the fact that Rawls holds that (in addition to well-ordered societies), “any society that follows and honors a reasonably just Law of Peoples” has a right to self-defense, *and* that benevolent absolutisms, specifically, have a right to self-defense.³¹ This does not strictly imply that benevolent absolutisms honor the Law of Peoples, but, in my view, it strongly indicates as much, since the quote does imply that even non-well-ordered peoples can follow and honor the Law of Peoples, and benevolent absolutisms are seemingly as close to well ordered as can be. There is a distinction, then, between a leadership properly representing its people and a leadership honoring international law. Thus, benevolent absolutisms can honor the Law of Peoples even if they do not constitute a people.

One might perhaps question whether these states would accept the last principle, concerning the duty of assistance. Not because there is any particular reason to suppose that benevolent absolutisms would be averse to assistance among societies, but because the goal of the assistance is to enable burdened societies to become well ordered. However, the principle as it is stated seems compatible with different motivations, and it is clearly conceivable that benevolent absolutisms could accept even this principle, though perhaps with a different motivation than hierarchical and liberal societies.

3.2. *The Theoretical Purpose of Benevolent Absolutisms*

Rawls’s typology of states is not perfectly systematic, and one might wonder what theoretical purpose benevolent absolutisms serve. Why, for instance, are they defined as nonaggressive? This is not entirely clear, but it seems that if they had been defined as aggressive they would have been subject to sanctions, though not for the same reason as outlaw states. There is room in Rawls typology (which as noted is non-exhaustive) for two kinds of semi-benevolent (or semi-outlaw) absolutisms. The first would be like outlaw states in that they would be externally aggressive, but like benevolent absolutisms in that they would respect human rights internally. The other would be like outlaw states in that they would violate human rights internally, but like benevolent absolutisms in that they would be externally nonaggressive. Neither kind would, then, be well ordered nor give their citizens a meaningful political role. Both kinds of society would potentially be subject to sanctions, either because of their external

with the Law of Peoples, but this is due to social, historical, and economic factors, not a (possible) lack of political participation (Rawls, *The Law of Peoples*, 4).

31 Rawls, *The Law of Peoples*, 91, emphasis added, and 92.

aggression or because of their human rights violations. Outlaw states are potentially subject to sanctions on both counts.³²

Now, the reason why Rawls assumes that benevolent absolutisms are non-aggressive, presumably, is to carve out a conceptual space between decent societies and outlaw states. Outlaw states are primarily defined in virtue of violating human rights internally and being aggressive externally. Benevolent absolutisms lack both these features, but are not well ordered, because they do not give their citizens a meaningful role in political decision-making. And such a meaningful role is one of the most important features in light of which decent states are decent.

A similar contrast can be made between benevolent absolutisms and burdened societies. Burdened societies are not well ordered, and because they lack the capacity to be so, they are consequently not included in the Society of Peoples, and there is a duty to assist them. Benevolent absolutisms presumably have the capacity to become well ordered, since there is no duty to assist them.

Benevolent absolutisms, then, is a useful category because they fill out (some of) the conceptual space between the group of states that are part of the Society of Peoples and the group of states that are subject to sanctions or targets of a duty of assistance. In addition, benevolent absolutisms arguably have empirical counterparts (see below). One could, of course, imagine states that give their citizens a meaningful role in political decision-making but fail to be well ordered for other reasons. However, as indicated below, Rawls seems to employ a less demanding conception of well-orderedness in *The Law of Peoples* than in *Justice as Fairness*. Hence, benevolent absolutisms fit into the space between decent societies, outlaw states, and burdened societies in a theoretically suitable and illustrative way (though I will, as noted, question whether there should be such a space).

This theoretical position also helps explain why benevolent absolutisms have the right to military self-defense. According to Rawls, all societies that honor ideal international law have the right to defend themselves in the face of external aggression.³³ It makes sense that benevolent absolutisms have the right to self-defense despite not being well ordered. As noted, they are, on Rawls's view, immune to sanctions, in virtue of being peaceful and respecting human rights.³⁴ If they had not been immune to sanctions, decent and liberal states might have

32 Rawls claims that respecting human rights immunizes a state against sanctions (*The Law of Peoples*, 80). It is clear, however, that external aggression can trigger sanctions too, whether or not such aggression typically violates the human rights of the victims of the aggression.

33 Rawls, *The Law of Peoples*, 91.

34 Rawls, *The Law of Peoples*, 80.

had grounds for sanctions and, in extreme cases, even military intervention. If so, it would have made sense to claim that benevolent absolutisms should not have a right to self-defense. Otherwise there could be situations in which a benevolent absolutism could have a right to self-defense against a justified intervention. As it is, the *only* kinds of states that pose a military threat to benevolent absolutisms are outlaw states. It would be highly implausible to hold that benevolent absolutisms do not have the right to defend themselves against armed aggression from outlaw states.

3.3. *Do Benevolent Absolutisms Only Have Theoretical Interest?*

One might also ask whether benevolent absolutisms are of more than theoretical interest. I think the answer is yes. First, some historical societies can with some justification be labeled benevolent absolutisms (or benevolent despotisms or enlightened absolutisms).³⁵ Further, many current states share, or have shared, important characteristics with benevolent absolutisms.³⁶ These examples are only suggestive, for two main reasons. First, because they capture only parts of the features of benevolent absolutism and, second, because benevolent absolutisms are ideal types and we cannot necessarily expect to find many clear-cut examples in the real world. Nevertheless, the examples do suggest, quite clearly, that benevolent absolutisms are of more than theoretical interest. It is important, therefore, that liberal (and decent) societies have a principled basis on which to interact with such states. Further, regardless of how many states that today fit the description, there is no telling what the future might hold. Some democracies might regress and some outlaw states (or burdened societies) might progress in such a way that they for some period of time become peaceful and human rights respecting but without providing meaningful political participation for their inhabitants.

35 So-called enlightened despotism is associated with seventeenth-century monarchs in Prussia, Russia, and Austria.

36 These include: Swaziland (1976, 1978, 1980–82, 1986, 1988, 1992), Saudi Arabia (1976, 1978), Kuwait (1976–79, 1988), Qatar (1978–81, 1987–90, 1992–99, 2000–06), Oman (1976–77, 1988, 1990), Bhutan, (1982–86, 1988–89, 1996, 1998, 2000–03), Argentina (1972), Panama (1985–86), Liberia (1974), Thailand (1973), Honduras (1973–79), and Fiji (2000). The first six of these countries are the result of combining a high degree of power concentration (Polity = -10; Marshall, Gurr, and Jaggers, *Polity IV Project*) with rare instances of human rights violations (Political Terror Scale = 1; Wood and Gibney, “The Political Terror Scale (PTS)”). The next six are the result of combining the near absence of any political rights (PR = 7) with a moderate level of civil liberties (CL = 3) in the Freedom House index (Freedom House, *Freedom in the World 2016*). I am indebted to Håvard Strand for very generous help with this issue. Note also that Maffettone suggests Brunei as a possible example of a benevolent absolutism (Maffettone, *The Coherence and Defensibility of Rawls’s Law of Peoples*).

Further, even if benevolent absolutisms turn out to be nonexistent (and unlikely to materialize in the future), they would still be worth discussing. The reason is that, in order to evaluate Rawls's theory, we need to assess its overall coherence and plausibility. If the theory is unable to deal adequately with a possible category of states that are peaceful and respect human rights but deny their members a meaningful role in political decision-making, this would still count as a (theoretical) problem worth discussing.³⁷

4. IN OR OUT?

Consider, then, these observations that all seem to be parts of Rawls's theory:

1. Extending the Society of Peoples will help securing lasting peace and stability.
2. Members of the Society of Peoples must
 - a. respect the Law of Peoples, and
 - b. be well ordered.
3. Benevolent absolutisms are neither to be assisted nor sanctioned into either accepting the Law of Peoples (which they might do in any case), or to become well ordered (which they by definition are not).

These observations give rise to some questions. First, it is not clear why well-orderedness is a criterion for inclusion into the Society of Peoples in the first place. This is a general question highlighted by the case of benevolent absolutisms. Well-orderedness, unlike adherence to the Law of Peoples, does not clearly pertain to the overarching goal of peace and stability, since benevolent absolutisms, as noted, are peaceful and most likely law abiding quite generally. Second, it is not clear why benevolent absolutisms, though excluded from the Society of Peoples, are immune to all forms of sanctions, including diplomatic ones. There are no mechanisms, such as assistance or pressure, available to move them closer to inclusion in the Society of Peoples. These states are not to be treated as free and equal parties along with liberal and decent hierarchical societies. In short, benevolent absolutisms appear to occupy some sort of halfway house between the included and the excluded. This makes for a confusing position for these states within Rawls's theory.

This does not amount to any substantial criticism of *The Law of Peoples*. But

37 Something similar, I think, can be said about decent hierarchical societies. Even if no actual state fits the bill, it is important to carve out the limits of international toleration. For a brief discussion of empirical instances of decent societies, see Riker, "The Democratic Peace Is Not Democratic," 620.

it does, I think, give us some reason to search for ways of resolving the uneasy position of benevolent absolutisms. There are at least two natural options. First, one could drop the well-orderedness criterion, and accept as members in good standing of the Society of Peoples all those societies that accept the Law of Peoples, including benevolent absolutisms. Second, one could include the well-orderedness criterion into the Law of Peoples itself, with the foreseeable consequence that benevolent absolutisms cannot adhere to it. This will then provide a clear and sufficient reason not to let them become members of the Society of Peoples. Since it is not obvious (as I argue below) what, if any, gains can be derived from this, this latter option can be further refined by including the crux of the well-orderedness criterion into the set of human rights referred to in principle 6. Specifically, this would entail a *human right* to meaningful political participation. To be sure, meaningful political participation does not comprise the whole of well-orderedness, but this aspect, as shown above, is what benevolent absolutisms lack from becoming well ordered.³⁸ Given the special status Rawls accords to human rights, this would also give members of the Society of Peoples the possibility of subjecting benevolent absolutisms to sanctions, whenever doing so would be reasonable and useful.

In the following, I discuss both these ways of adjusting Rawls's theory, and argue that the latter version of the latter strategy is preferable. Following it would first make *The Law of Peoples* more coherent (both strategies would), and would secure a means of putting pressure on benevolent absolutisms to become well ordered and hence to give their members a meaningful role in political decisions, which would, if successful, in itself represent progress in light of Rawls's stated aim of lasting peace and stability.

5. DROPPING THE WELL-ORDEREDNESS CRITERION

The first strategy, then, would be to simply drop the well-orderedness criterion altogether, and allow benevolent absolutisms as members of the Society of Peoples. If they accept the Law of Peoples, which, as I have argued, it is likely that they would, they should be treated as free and equal parties to the Law of Peoples, and accordingly as members in good standing of the Society of Peoples. Accepting them as equal members, moreover, may serve to secure the goal of continued peace and stability, as both these features are arguably better nurtured within a Society of Peoples than outside it. This will reduce the potential for future resentment and conflict.

38 It is also the only aspect that is not already a part of the Law of Peoples, which requires respect for (the codified) human rights, as well as nonaggression.

There are two problems with this solution, however: one theoretical and one normative. To start with the former, it is unlikely that benevolent absolutisms would be tolerated by liberal societies. Theoretically, this matters, because in Rawls's contractual framework, the Law of Peoples is worked out by liberal and decent societies. If benevolent absolutisms are to be included, they must be accepted by liberal (and decent) peoples as members in good standing. For this to be possible, liberal peoples must be redefined in a way that ensures that they would tolerate states that deny their citizens any meaningful role in political decision-making. Rawls painstakingly argues that liberal societies ought to tolerate decent hierarchical societies. But it appears from his discussion that these societies clearly mark the outer borders of what liberals can reasonably tolerate.³⁹ The issue of toleration does not link directly to the Law of Peoples itself, as this law, as noted, does not contain any requirements concerning the internal structure of participating states apart from the human rights criterion. But it is indirectly connected exactly in the sense that liberals could not reasonably accept the inclusion into the Society of Peoples of any societies that they cannot tolerate. Liberal reluctance to tolerate benevolent absolutisms, then, makes for a tension that would effectively block this strategy.

From a normative point of view, I think there is reason to resist tolerance for benevolent absolutisms. Liberals, regardless of the details of Rawls's theory, should not accept as members in good standing societies that deny their citizens any meaningful role in political decision-making processes. To tolerate benevolent absolutisms would entail tolerating a form of oppression. It seems to me, at least, that denying members of society any political participation amounts to oppression. Further, given the fact that tolerance of decent hierarchical societies is, rightly, controversial, tolerance of benevolent absolutisms seems clearly out of bounds for a liberal theory of international justice.⁴⁰ It appears then, that dropping the well-orderedness criterion is not the way to go.⁴¹

39 Rawls, *The Law of Peoples*, 59–60.

40 See, however, Maffettone, "Should We Tolerate Benevolent Absolutisms?" for an argument to the contrary.

41 As indicated, Rawls has been heavily criticized for his tolerance of *decent* hierarchical peoples. See Tan, "Liberal Toleration in Rawls's Law of Peoples"; Beitz, "Rawls's Law of Peoples"; Pogge, "An Egalitarian Law of Peoples"; Tesson, "The Rawlsian Theory of International Law"; Caney, "Cosmopolitanism and the Law of Peoples"; and Kuper, "Rawlsian Global Justice." For more sympathetic readings, see Bernstein, "A Human Right to Democracy?" and Reidy, "Rawls on International Justice." Some of the criticisms were directed toward the first version of the theory (Rawls, "The Law of Peoples"). In the later version, Rawls elaborates on his arguments for tolerating decent societies. See Huseby, "Liberalism, Tolerance, and Human Rights," for a discussion.

One might reply that decent hierarchical states also engage in a form of oppression, since their members are also denied some crucial rights, including the full right to free speech and the right to democratic participation. This is true, but my argument is primarily negative. I claim that benevolent absolutisms are oppressive to the extent that they should not be tolerated by liberals, and that they should be excluded from the Society of Peoples. This is sufficient to reject the suggestion that they should be included. My argument, however, implicitly presupposes that there is a relevant difference between benevolent absolutisms and decent societies (that is, relevantly different degrees of oppression). In order to rule out the possibility that my claim that benevolent absolutisms should be excluded somehow implies that decent societies should be excluded as well. And it seems that the difference between having meaningful political participation and not having any political participation at all is relevant in the required way. To see this, consider the fact that citizens in systems with political participation have the opportunity to express dissent.⁴² This opportunity is crucial for the possibility of change and reform over the long term. Even though systems with consultation hierarchies fall far short of democratic political participation, they provide a potential for political empowerment that goes significantly beyond systems in which they are lacking.

Surely there could nevertheless be other reasons to exclude decent societies. One could hold that they are *sufficiently* oppressive (though less oppressive than benevolent absolutisms) to be excluded. As noted, many critics have suggested that this is the case. I do not consider this here, however, because my question is whether benevolent absolutisms should be included, not whether decent societies should be excluded.

6. STRENGTHENING THE WELL-ORDEREDNESS CRITERION

An alternative is to alter the Law of Peoples in such a way that benevolent absolutisms can no longer adhere to it. Doing so would render benevolent absolutisms clear non-compliers, and possibly legitimize the use of pressure or sanctions of some kind in order to make them comply. This would be conducive to the aim of improving the conditions of the members of these states.

6.1. Including Well-Orderedness into the Law of Peoples

This could perhaps be achieved by including a demand for well-orderedness into the Law of Peoples, as a principle 9, say. This would effectively block the possibil-

⁴² Rawls, *The Law of Peoples*, 72.

ity for these states to accept the Law of Peoples, and would involve no demand for the liberal toleration of absolutist political systems. However, this would not in and of itself answer the question of how to relate to benevolent absolutisms. As noted, it is not clear whether Rawls presupposes these societies' acceptance of the original Law of Peoples. I have suggested that they might very well accept it, but it is not apparent that this would make any difference with regard to how Rawls thinks they should be dealt with, partly for reasons that have to do with his understanding of human rights (see below).⁴³ If well-orderedness was made a part of the Law of Peoples, benevolent absolutisms would still be excluded from the Society of Peoples, but it is uncertain whether they for that reason could be subject to pressure of any kind, even if they were unable to abide by the (revised) Law of Peoples.

One reason this is uncertain is that violating the Law of Peoples does not automatically open the door to sanctions. A state that violates certain treaties and undertakings (principles 2 and 3, for instance), is not obviously a legitimate target of sanctions, depending of course on the nature and importance of these treaties and undertakings. Violation of other principles, concerning nonintervention and legitimate reasons for warfare, are more likely to trigger sanctions. It is worth repeating here that respecting human rights is sufficient to immunizing a state from sanctions.⁴⁴ Thus, it is not given that the violation of a principle demanding well-ordered institutions would provide grounds for pressuring benevolent absolutisms into compliance.

6.2. *Meaningful Political Participation as a Human Right*

We should consider the possibility of making the crux of the well-orderedness criterion a part of the human rights package referred to in principle 6. In other words, we could argue that there is a human right to meaningful participation in political decision-making.⁴⁵ Rawls's list of human rights is quite limited. It lacks, among other things, a full right to freedom of expression. This and other omissions have, with good reason, been criticized by several theorists.⁴⁶

43 For a related discussion, see Maffettone, *The Coherence and Defensibility of Rawls's Law of Peoples*, 143–44.

44 As noted, it seems clear that external aggression too might trigger sanctions.

45 For relevant discussion, see Peter, "The Human Right to Political Participation."

46 See note 41. Further, several authors argue in favor of a human right to *democracy*, a right which, reasonable though it seems, would represent a much larger alteration to the Rawlsian framework. Christiano, among others, holds that there is a human right to democracy ("An Instrumental Argument for a Human Right to Democracy"). Requiring democratic institutions would mean that decent hierarchical societies could no longer accept the Law of Peoples and would be excluded from the Society of Peoples.

However, some authors suggest that the Law of Peoples *already* entails a human right to political participation.⁴⁷ In my view, this is hard to square with what Rawls says about human rights and benevolent absolutisms. According to Rawls, even though “a benevolent absolutism does respect and honor human rights, it is not a well-ordered society, since it does not give its members a meaningful role in making political decisions.”⁴⁸ This does not seem easily compatible with the view that benevolent absolutisms in fact violate at least one human right—namely the human right to meaningful political participation. In my opinion, Rawls is here best understood on the assumption that there is not a human right to political participation. If there was, this would surely have been worth mentioning explicitly. Notice that while I disagree with Reidy’s interpretation, I obviously agree with the upshot of his view—namely that the Law of Peoples *should* indeed include a right to political participation. I only disagree that this feature is *already* present in Rawls’s theory. Note also that, in one of the three places in which he explicitly mentions benevolent absolutisms, Rawls says that they respect “most” human rights.⁴⁹ I do not think that this is sufficient to establish either that it is the right to political participation that they in particular fail to respect, or that the right to political participation is a human right (on Rawls’s view).

Reidy further suggests that Rawls acknowledges two distinct lists of rights: one minimal list, the respect for which secures the common human good and renders a state immune to sanctions, and a more extensive list, the respect for which suffices for social cooperation and for full toleration in the international society.⁵⁰ This is an interesting suggestion, but I do not share Reidy’s view of the textual basis for this claim. It is true that Rawls lists human rights in two places, and that the lists are not identical, but it seems to me that the second list is a *specification* of the shorter list.⁵¹ That said, Reidy is correct to point out that Rawls’s notion of human rights is more expansive than many critics have realized, but not, I maintain, so expansive as to include the human right to meaningful political participation.

Incorporating the well-orderedness criterion into the list of human rights

47 See, in particular, Reidy, “Human Rights and Liberal Toleration.” Also, Riker suggests that there is a human right to political participation, in “The Democratic Peace Is Not Democratic,” 625–26. However, he seems to later have abandoned this view, in “Human Rights without Political Participation?” 372.

48 Rawls, *The Law of Peoples*, 92.

49 Rawls, *The Law of Peoples*, 63.

50 Reidy, “Human Rights and Liberal Toleration,” 293.

51 Rawls, *The Law of Peoples*, 80n23 and 65.

would, in addition to simply being plausible, accommodate many of the concerns Rawls has in developing his theory. Importantly, it would not affect tolerance of decent hierarchical peoples, nor their adherence to and acceptance of the Law of Peoples. Despite the objections of many critics, Rawls (and some of his defenders) think that tolerating these societies is highly important with regard to the goal of achieving lasting peace. Since decent hierarchical peoples do give their members a meaningful role in political decisions (on Rawls's definition of meaningful), their status would remain unchanged.

Further, this move would be largely in line with the special roles Rawls assigns to human rights:

1. Their fulfillment is a necessary condition of the decency of a society's political institutions and of its legal order.
2. Their fulfillment is sufficient to exclude justified and forceful intervention by other peoples, for example by diplomatic and economic sanctions, or in grave cases by military force.⁵²
3. They set a limit to the pluralism among peoples.⁵³

The inclusion of well-orderedness (still in the limited sense of giving members a meaningful role in making political decisions) into the list of human rights would not touch the first point. The domain of necessary conditions of decency would just expand to some extent.

One problem with the suggestion might be that Rawls explicitly says that human rights is a label reserved for a "special class of urgent rights."⁵⁴ Thus the question is whether a right to political participation is a right with the required level of urgency, which is of course hard to answer conclusively. As I have argued above, however, denying members a right to political participation amounts to a form of oppression, and this seems very urgent indeed. Without such a right, fully competent citizens are coercively deprived of any serious political influence over the societies in which they lead their lives. It is also worth noting that Rawls writes that "laws supported merely by force are grounds for rebellion and resistance."⁵⁵ Such laws are contrasted with laws imposed in a system of political participation. In my view, this indicates that a right to political participation is urgent, even in Rawls's own estimation.

The inclusion would, however, affect the second point in the following crucial

52 Again, this seems true only so far as human rights are concerned. External aggression will also provide grounds for sanctions.

53 Rawls, *The Law of Peoples*, 80.

54 Rawls, *The Law of Peoples*, 79.

55 Rawls, *The Law of Peoples*, 66.

way: any expansion of the list of human rights would provide *additional* grounds for diplomatic, economic, or military intervention. Such expansions should be made with great care. In my view, as noted, holding that members of society should have a human right to a meaningful role in making political decisions in the society in which they lead their lives is a very reasonable claim. It seems hard to oppose it on moral grounds. Also from the perspective of *The Law of Peoples*, this makes sense. The reason is that benevolent absolutisms are not to be tolerated by liberal and decent peoples, precisely because they deny their members such a meaningful role.

More pragmatically, one could ask whether such an expansion of the list of human rights would risk *increasing* international conflict and strife. To the extent that human rights violations may permissibly be met with sanctions, any expansion of human rights provides additional possibilities for conflict. However, this risk must be weighed against the gains, which primarily lie in establishing mechanisms through which to influence benevolent absolutisms into becoming members of the Society of Peoples and adherents to (in my view a more reasonable) Law of Peoples. Further, the question should be whether a candidate human right is plausible or not, and not simply whether such a right may risk provoking conflict.

It is also worth keeping in mind that the use of sanctions is *permitted* on Rawls's account, not obligatory. Whether to impose sanctions should be considered on a case-by-case basis, with reference to whether or not sanctions would be likely to improve the chances of making a benevolent absolutism well ordered. In cases in which the use of sanctions is likely to make things worse, in terms of either the target state's compliance or the conditions for the citizens of the target state, sanctions should not be employed. (Exceptions to this are conceivable, for instance, due to the potential indirect effects of sanctions.⁵⁶) Notice, however, that my aim here is to argue that some mechanism ought to be available, rather than figuring out the conditions under which this mechanism ought to be employed.

Further, since benevolent absolutisms are far less problematic than outlaw regimes, which are externally aggressive, there would be no question of resorting to military intervention, and only rarely to economic sanctions.⁵⁷ A detailed discussion of the justifiability of sanctions lies beyond the scope of the present paper. Note, however, the possibility of smart sanctions that explicitly target regime leaders through such measures as travel bans or asset freezes. Sanctions of this kind may be permissible, at least when they are likely to be both humane

56 Drezner, "The Hidden Hand of Economic Coercion."

57 Thus, benevolent absolutisms' right to self-defense would not be undermined.

and efficient, which will not always be the case.⁵⁸ So the question is really whether the use of relatively mild sanctions would be plausible against states that deny their members any meaningful role in making political decisions. In my view this would indeed be plausible.

It could further be argued that the inclusion of well-orderedness would make the third role of human rights more coherent. I take it that Rawls by “pluralism” refers to “reasonable pluralism,” since human rights obviously do not limit pluralism in any descriptive sense. If this is true, the third role of human rights is better served by the expanded list than the original one. The expanded list is such that those societies that respect the human rights it contains meet the threshold for inclusion into the Society of Peoples, and it is these societies that constitute reasonable pluralism on the international level. The original list is most likely respected by at least one kind of state that falls outside—namely, benevolent absolutisms.

Lastly, and particularly relevant in the present context, the addition would clarify the standing of benevolent absolutisms. They would fall into the category of states that are unwilling to abide by the Law of Peoples, and as a result they are rightfully excluded from being members in good standing of the Society of Peoples. Adherence to the Law of Peoples, moreover, would be the *sole* criterion of membership. In this scenario, it is also the case that liberal and decent societies have the means to pressure benevolent absolutisms into compliance, something that they lack in Rawls’s original account.

6.3. *A Modification or an Abandonment of the Rawlsian Framework?*

One might ask whether the suggested alteration really amounts to an abandonment of *The Law of Peoples*, rather than merely a modification. Consider Rawls’s methodology, according to which, at the international level, peoples enter into a contract that is to protect their interests and regulate their interaction. This methodology is likely to have difficulties coming to grips with states, like benevolent absolutisms, that are externally peaceful but internally oppressive (in the sense of denying political participation rights to its citizens). Since these states pose no threat to the contracting parties, it is not really clear how internal matters, such as human rights, enter the picture in the first place.

The answer, I think, lies again in the special role that Rawls assigns to human rights. These rights have a universal moral force that extends to all societies. While the contracting parties have no *prudential* interest in the internal organization of other societies, they have, by definition, a *moral* interest in the universal

58 For a critical discussion of smart sanctions, see Drezner, “Sanctions Sometimes Smart.”

protection of human rights.⁵⁹ Arguably, my proposal does not fundamentally challenge this picture, but only modifies it, in the sense that minimal political participation rights are included in the basic human rights that set a limit to reasonable pluralism. This seems plausible and in line with the general thrust of Rawls's approach.

7. INTERNAL AND EXTERNAL SELF-DETERMINATION

Maffettone, as noted, has also discussed the theoretical and practical problems posed by benevolent absolutisms. He, too, wonders why these societies are excluded from the Society of Peoples despite the fact that they seemingly would be able and willing to abide by the statutes of the Law of Peoples. His answer starts with the observation that the Law of Peoples supposes externally self-determining (politically autonomous) parties. This is clear from how the statutes are formulated as they refer to free and independent parties, sovereignty, non-intervention, and so on. Next, he argues that Rawls implicitly accepts the idea (found in international law), that external self-determination is premised on *internal* self-determination. Internal self-determination, moreover, requires some measure of collective political participation.⁶⁰ As we have seen, this participation need not be democratic; it can also take the form of, for instance, the consultation hierarchies mentioned earlier.

The lack of internal self-determination, then, explains why benevolent absolutisms are not included in the Society of Peoples. Since they do not have internal self-determination, they cannot have external self-determination. In one sense, this explanation resembles the second alternative discussed above. Even though Maffettone does not propose internal self-determination (understood as limited collective political participation) as an explicit demand in the Law of Peoples, it is clear that this lack of participation is what warrants exclusion. This solution is interesting, but as with the similar solution discussed above, it has little bearing on how liberal states should respond to benevolent absolutisms.⁶¹

Maffettone suggests that liberal and decent societies are permitted to provide benevolent absolutisms with *incentives* in order to encourage them to become liberal or decent, and hence eventually members of the Society of Peoples.⁶²

59 Rawls, *The Law of Peoples*, 27.

60 Maffettone, *The Coherence and Defensibility of Rawls's Law of Peoples*, 146–49.

61 Let me also note that Maffettone does not explain in detail *why* external self-determination should be premised on internal self-determination.

62 Maffettone, *The Coherence and Defensibility of Rawls's Law of Peoples*, 151–52, and “Benevolent Absolutisms, Incentives and Rawls's *The Law of Peoples*.”

Moreover, if the members of the benevolent absolutisms are actively protesting and making demands for more participation, liberal and decent societies can employ “diplomatic pressure mixed with positive incentives.”⁶³ Providing incentives might be useful in many contexts, and there appears to be nothing in *The Law of Peoples* that precludes this. However, it is not immediately clear what “diplomatic pressure,” short of sanctions, might amount to.⁶⁴

All in all, I think that adding the right to political participation to the list of human rights, as I have suggested, is preferable to Maffettone’s proposal. The reason is that my strategy opens a wider range of available tools, including diplomatic and economic sanctions. While these tools will not always work and should not always be employed, it seems better to have a wider rather than a narrower set of options. This solution will make liberal and decent peoples better equipped to strive for the goal of an expanded Society of Peoples.

8. CONCLUDING REMARKS

In this paper, I argued that benevolent absolutisms occupy an uneasy position in Rawls’s *The Law of Peoples*. In an attempt to remedy this unease, I discussed two ways of adjusting the theory. First, I considered including these states into the Society of Peoples. This solution is problematic mainly because it would implausibly strain the notion of liberal tolerance. Second, I considered merging the two criteria for membership in the Society of Peoples—well-orderedness and adherence to the Law of Peoples—by making the latter a part of the former. This in itself does not appear to solve many problems, and I have therefore considered the further move of including a part of the well-orderedness criterion (the right to meaningful political participation) into the very conception of human rights contained in the Law of Peoples. This, I have argued, does clarify the position of benevolent absolutisms. These states are no longer in a situation in which they meet one of two criteria for inclusion in the Society of Peoples. They now fail the only criteria there is. Further, making (this aspect of) well-orderedness a part of the conception of human rights opens the possibility of subjecting benevolent absolutisms to sanctions, since Rawls argues that respecting human rights excludes justified sanctions. All this, of course, rests on whether it is plausible to see the claim to meaningful participation as a human right with universal political and moral force. In my view, this is clearly plausible.

One might wonder, more generally, how the suggested alteration would impact the principles of international law. First, it is clear that Rawls’s account lim-

63 Maffettone, *The Coherence and Defensibility of Rawls’s Law of Peoples*, 153.

64 Note that my account is compatible with the use of incentives, whenever that will be useful.

its external and internal sovereignty as traditionally conceived. This is, as he says, in line with recent trends in international law.⁶⁵ My suggested alteration would be a step further in the sense that states are under a legal obligation to allow their citizens a meaningful role in political decision-making.⁶⁶ Moreover, given that Rawls ties human rights violations and sanctions so tightly together, any expansion of human rights will automatically increase the grounds for diplomatic, economic, and military intervention. In international law, the principle of non-intervention is not set in stone, but it seems that allowing intervention in order to pressure states into giving their citizens a meaningful role in political decision processes would most likely imply a further limitation of state sovereignty.⁶⁷ As I already noted, such a limitation has to be considered and implemented very carefully.⁶⁸

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65 Rawls, *The Law of Peoples*, 27.

66 Note that some human rights documents make reference to the right of political participation (Reidy, "Human Rights and Liberal Toleration").

67 In this paper, I take much of Rawls's framework for granted. In a subsequent discussion it could be interesting to ask whether the connection between human rights and sanctions ought to be as closely connected as Rawls assumes.

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