
Rawls's Law of Peoples

A Realistic Utopia?

Edited by

Rex Martin and
David A. Reidy

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Rawls's Law of Peoples

I contend that this scenario is realistic – it could and may exist. I say it is also utopian and highly desirable because it joins reasonableness and justice with conditions enabling citizens to realize their fundamental interests.

John Rawls, *The Law of Peoples*, p. 7

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BLACKWELL PUBLISHING

350 Main Street, Malden, MA 02148-5020, USA
9600 Garsington Road, Oxford OX4 2DQ, UK
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First published 2006 by Blackwell Publishing Ltd

1 2006

Library of Congress Cataloging-in-Publication Data

Rawls's Law of peoples : a realistic utopia? / edited by Rex Martin and David A. Reidy.
p. cm.

Includes bibliographical references and index.

ISBN-13: 978-1-4051-3530-6 (hardback : alk. paper)

ISBN-10: 1-4051-3530-1 (hardback : alk. paper)

ISBN-13: 978-1-4051-3531-3 (pbk. : alk. paper)

ISBN-10: 1-4051-3531-X (pbk. : alk. paper) 1. Rawls, John, 1921– Law of peoples. 2.
International relations – Philosophy. 3. International law – Philosophy. 4. Justice. 5. Human
rights. 6. Liberalism. I. Martin, Rex, 1935– II. Reidy, David A., 1962–

JZ1242.R395 2006

320.51–dc22

2005020534

A catalogue record for this title is available from the British Library.

Set in 10/13 Galliard
by Graphicraft Limited, Hong Kong
Printed and bound in the UK
by TJ International, Padstow, Cornwall

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For my mother, Cecelia Reidy, and in memory of my father,
David Reidy, Sr.

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Preface

Citizens and officials within contemporary liberal democracies face innumerable practical political problems every day. These include familiar issues of domestic economic, educational, cultural, environmental, and social policy. Of course, within liberal democracies citizens and officials disagree, often reasonably, over these matters. But their disagreements are, at least when reasonable, typically framed by a generally shared, even if also abstract and indeterminate, liberal and democratic moral vision. This vision makes possible between them a politics of public reasons.

But what about matters of foreign policy? Citizens and officials within contemporary liberal democracies daily face the practical political problem of whether and how to interact as corporate agents, through their states or governments, with individual persons as well as other corporate agents, states and governments, economic corporations, and so on, beyond their borders. Of course, citizens and officials within liberal democracies, and between them, will again disagree over these matters. Within and between the United States, France, Denmark, Australia, Costa Rica, and so on, citizens and officials disagree over many current matters of foreign policy. These disagreements often lead to different and sometimes conflicting foreign policies between liberal democratic states. This much is obvious.

What is less obvious is whether and how these disagreements, like those over matters of domestic policy, might be aired and resolved by the citizens and officials of liberal democracies within a politics, domestic and international, of public reasons. In liberal democracies, public discussion of the general principles of a liberal democratic moral vision has been rather robust for the last several decades. But it has been largely an inward-looking discussion focused on matters of domestic policy.

Only recently has a vigorous public discussion erupted over the general principles of a liberal democratic moral vision for matters of foreign policy. The 1989 transformation of the geopolitical landscape carried in its wake a wide range of new foreign policy challenges and opportunities for liberal democracies. These

have perhaps come too fast. Citizens and officials in liberal democracies still find themselves without much of a shared moral vision, even at the level of abstract and indeterminate general principles, when it comes to matters of foreign policy. Accordingly, disagreements are generally resolved not through a politics of public reasons, but simply through politics. The suspicion and distrust that follows is a substantial cost to effective international action, whether unilateral or multilateral.

Meanwhile, the practical political problems of foreign policy faced by liberal democracies continue to mount both in number and severity. Desperate poverty around the world and international terrorism are just the two most obvious problems. Global environmental degradation, growing economic inequalities, the absence of transparency, stability and nondomination within many global markets, the nonproliferation of nuclear and other weapons of mass destruction, and systemic and regular human rights violations are problems perhaps less visible but equally pressing. All these are made more difficult by the fact that they arise within a larger context within which liberal democracies must determine how to interact with states either illiberal or undemocratic or both. And these states are a pretty diverse lot. They range from Afghanistan, Brunei and China through Cuba, Iran, Jordan and Nigeria to North Korea, Sudan, Venezuela and Zimbabwe. It's literally from A to Z.

What moral vision ought to guide the citizens and officials of liberal democracies as they take on the many practical political problems of foreign relations in a world that includes all these states? For what kind of world can liberal democratic peoples reasonably hope, and thus purposefully and rationally work?

These are demanding questions. Among the leading contemporary philosophers, John Rawls has attempted to outline an answer to them. In a series of important books he attempted to lay out a moral vision appropriate both to liberal democratic societies and to their place within the international community. Rawls's overall contribution is so ambitious and so important and his international theory is so contested, even by sympathetic readers, that David A. Reidy and Rex Martin organized two panel sessions: one for the World Congress of the International Association for Philosophy of Law and Social Philosophy (IVR) in Lund, Sweden, in 2003; the other for the Conference on Global Justice held in conjunction with the American Philosophical Association, Pacific Division, meeting in Pasadena, California, in 2004.

Because the public response to these sessions was so enthusiastic, a volume of papers focusing on Rawls's international theory, a volume that was both critical and balanced, seemed a good idea. Such a volume would carry the conversations begun in Lund and Pasadena to a much wider audience. Many of the papers from these sessions, all of them considerably revised after several drafts, are included in the present volume. In addition, the volume includes papers from a number of additional people – scholars and thinkers who would be numbered among the most distinguished political philosophers and theorists of international relations and international law working today. Taken together the papers here should serve

those, beginners and experts alike, working in philosophy, law, political science, international relations, government, and advocacy and with a serious interest in issues of global justice, human rights, and the nature and content of a proper liberal democratic foreign policy.

We appreciate the help provided to our editorial efforts by Dusan Galic, Donna Martin, Walter Riker, and Jeppe von Platz.

David A. Reidy and Rex Martin

List of Abbreviations used for Rawls's Books

<i>CP</i>	<i>John Rawls: Collected Papers</i>
<i>JasF</i>	<i>Justice as Fairness: A Restatement</i>
<i>LoP</i>	<i>The Law of Peoples</i>
<i>PL</i>	<i>Political Liberalism</i>
<i>TJ</i>	<i>A Theory of Justice</i>

Full bibliographical details of the books are provided in the notes in each chapter, along with any additional comments individual authors may wish to make regarding editions used.

Part I
Background and
Structure

1

Introduction: Reading Rawls's *The Law of Peoples*

Rex Martin and David A. Reidy

Background

The post-Second World War international order has not been a peaceable one. However, the great powers for the most part did avoid direct military confrontation, and for the last sixty years or so the world has been free of the scourge of world war that so troubled the first half of the past century.

After the Second World War a number of important changes occurred in the international state system, a system that had, by 1945, been in existence for about three hundred years. Among the most important of these changes were: (1) the gradual but increasing international recognition of human rights; (2) changing attitudes about war (with a growing recognition that wars are justifiable only in a limited number of cases – in self-defense, including collective defense, and, in extreme cases, in the protection of human rights); (3) the establishment and development of the United Nations and of other supranational organizations, such as the European Union (EU); and (4) concomitant with these developments, the demise of colonial rule.

One of the greatest challenges posed by this new international order has been that of providing appropriate standards of justice for this emerging system (including, of course, the attempt to characterize and to justify human rights). The theory of political justice developed by John Rawls, whose work has been enormously influential in the last thirty years or so, has been the source of one of the main lines of reflection on developing a solution, or at least the beginnings of one, to the problem of standards of international justice. However, as we shall see, there has been a good deal of controversy as to how, exactly, Rawls's theory is best to be applied and set out in an international or global context.

John Rawls

During the period since the original publication in 1971 of his book *A Theory of Justice*, John Rawls (1921–2002) has been the dominant theorist of justice in the English-speaking world and in much of Western Europe. *A Theory of Justice* has been translated into twenty-seven languages, and Rawls has come to have a worldwide audience.¹

The heart of *A Theory of Justice* is Rawls's idea that two principles of justice are central to a liberal and democratic society, arguably to any society: (i) the principle of equal basic rights and liberties; and (ii) a principle of economic justice, which stresses (a) equality of opportunity and (b) mutual benefit and egalitarianism. This latter principle – of mutual benefit constrained by egalitarianism – Rawls calls the difference principle; it indicates when differences (inequalities) are acceptable. The difference principle, assuming a continuing conscientious effort at achieving equality of opportunity as backdrop, is designed to reach an optimum goal point at which no further mutually improving moves are possible; at this point the difference in income and wealth between the topmost and bottom-most groups would be minimized, and those least well off would here have their greatest benefit (without making any group worse off in the process).

What is distinctive about the arguments Rawls develops for his two principles of justice is that he represents them as taking place ultimately in an ideal arena for decision making, which he calls the “original position.” The features of the original position (in particular, the so-called veil of ignorance and the requirements of publicity and unanimity) taken together provide a setting for structuring the competition between potential governing principles (for example, the Rawlsian two principles versus various forms of utilitarianism) in a fair and objective way and then for determining a preference, if possible, for one of the candidate principles of justice over the others. Rawls maintained in *A Theory of Justice* that his two principles of justice not only would be unanimously chosen over alternatives in such an original position, but in time would also be universally or near universally endorsed by real persons in a real society governed by those two principles.

In time, Rawls came to feel considerable dissatisfaction with this approach and he began to reconfigure his basic theory in new and interesting directions. Rawls loosened things up in two distinct ways. First, he moved the focus away from his own two principles and toward a “family” of liberal principles (which included his two principles as one possible option). And, second, he developed for this family of principles a background theory for justifying them that did not require people to come to any sort of unanimous foundational agreement. In short, people didn't have to hold one and the same basic moral theory or profess one and the same religion in order for the family of liberal principles to be conclusively justified; rather, the issue of background justification (by moral or religious principles) could be approached from a number of different angles, and this would

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