

1-2004

Review of “The Law of Peoples with ‘The Idea of Public Reason Revisited’”

John Rudisill
The George Washington University

Follow this and additional works at: <https://commons.pacificu.edu/eip>

 Part of the [Philosophy Commons](#)

Recommended Citation

Rudisill, John (2004) "Review of “The Law of Peoples with ‘The Idea of Public Reason Revisited’”," *Essays in Philosophy*: Vol. 5: Iss. 1, Article 34.

Essays in Philosophy

A Biannual Journal

Vol. 5 No. 1, January 2004

Book Review

The Law of Peoples with "The Idea of Public Reason Revisited", by John Rawls. Cambridge, MA and London, England: Harvard University Press, 1999. v-vi + 199 pages (including index). ISBN: 0-674-00542-2. \$15.95.

Within the pages of this, his last major work (excepting the later published, *Lectures on the History of Moral Philosophy*, Harvard Univ. Press, 2000) Rawls presents us with his "reflections on how reasonable citizens and peoples might live together peacefully in a just world" (preface vi.). In his first major work, *A Theory of Justice* (Belknap, Harvard Univ. Press, 1971) Rawls had considered, narrowly, how his conception of justice as fairness had implications for the questions of just war theory. Here, he is concerned to broaden his focus and develop and justify an account of the principles that govern the ways in which various peoples relate to one another so as to comprise a social world that is, in his words: a realistic utopia. It comes as no surprise to those who are familiar with Rawls's writings that the book is careful in its organization, clear in its argumentation, and noble in its purpose. What might come as a bit of a surprise is the degree to which the exposition in this book reveals the depth of compassion and humanity that all readers of Rawls have come to know were an essential part of his character. Serious students of Rawls's thought cannot have missed this, even though in his previous writings these details of the philosopher as a person merely lurk somewhere in the background. This is not to say that the book, as a whole, represents a marked departure in style. Rawls is here, as ever, a theorist focused on the details of his case and establishing its completeness, consistency, plausibility, and ultimately its truth.

Rawls's compassion and humanity are reflected early on in the hope and optimism that mark his conception of his project and which are, in turn, reflected in the centrality of the guiding conception of a realistic utopia. Rawls tells us that there are two main ideas motivating this work and that these are connected with his guiding conception. These ideas are,

...that the great evils of human history-unjust war and oppression, religious persecution and the denial of liberty of conscience, starvation and poverty, not to mention genocide and mass murder-follow from political injustice, with its own cruelties and callousness.

and

...that, once the gravest forms of political injustice are eliminated by following just (or at least decent) social policies and establishing just (or at least decent) basic institutions, these great evils will eventually disappear (p. 7)

Here Rawls takes inspiration from Kant, as he has throughout his career. He begins with the assumption

that, to the extent that various peoples can be organized, each internally, under some acceptable interpretation of principles of justice respecting the fundamental value and rights of their constituents, we can be hopeful of a world in which the causes of the greatest of human evils are non-existent or at least minimized.

The structure and course of development of his position are as follows. Parts I and II of the book concern what he calls ideal theory. The first part of ideal theory lays out the content of the law of peoples (its principles) and presents the case for the acceptance of these principles by all peoples, varied though they might be, who can be adequately characterized as liberal. This part proceeds largely through an argument from analogy with the position he defended in *A Theory of Justice* and later developed and fine-tuned in *Political Liberalism* (Columbia Univ. Press, 1993). There are deliberately drawn parallels between the case for principles governing the relationships between citizens comprising a people (the domestic case) and the case for principles governing the relationships between two or more peoples (the case for the "society of peoples"). The second part of ideal theory attempts an extension of the society of peoples to include (all actual or hypothetical) non-liberal (though decent) peoples and describes why such an extension is warranted and how such peoples can, from their own (non-liberal) perspectives, accept the principles being presented. Part III of the book turns to questions Rawls locates under the heading of "non ideal theory." Under this heading we are to consider how, in accordance with his account of the law of peoples, members of the society of peoples are to deal with their relationships to those peoples who are neither liberal nor decent and so not included in their society. Such peoples comprise the categories of outlaw states, societies burdened by unfavorable conditions, and benevolent absolutisms. Here the questions are those related to the justification and conduct of war and also those surrounding what, if any, obligations of assistance members of the society of peoples have to those peoples who are burdened by unfavorable conditions. The fourth and final part of *The Law of Peoples* addresses four distinct though related areas of concern. First is the concern that the position defended is ethnocentric and peculiarly western and so lacking in objectivity. Second is a revisiting of the issue of the grounds for liberal peoples' toleration of non-liberal though decent peoples (should there be any). Third is the question of the degree to which our social world reveals to us the possibility of a society of peoples governed by the law of peoples as well as the degree to which our social world presents clear limits to the extension of such a society of peoples. Finally, Rawls offers his concluding reflections on the way in which our *recognition* of the possibility of a society of peoples plays an important role in our continued striving for its realization in large part because such a recognition closes off to us fatalistic postures of resignation and cynicism.

Because the portion of the book devoted to ideal theory draws so heavily on an analogy with the structure of his argument for a domestic theory of justice (which is extensively and thoroughly made first in *A Theory of Justice* and then later in modified form in *Political Liberalism*) readers familiar with Rawls's earlier works will have little difficulty following the development of his view here. For this reason, readers who are not familiar with Rawls's earlier writings would be well advised to gain such a familiarity before focusing on *The Law of Peoples*. One of the central motivations of Rawls's earlier account and defense of liberal political theory has been his insistence on our acknowledging (and in our political theorizing, accommodating) what he calls the fact of reasonable pluralism. This pluralism, in the domestic case, is a pluralism of reasonable comprehensive conceptions of the good. This fact is an inevitable outcome of the free exercise of reason by individuals in the modern world. Different individuals will be persuaded of the truth of different conceptions of what is of the highest value and utmost importance in the conduct of one's life. Rawls has never been a relativist about such important

matters but he has maintained that the truth on such matters is notoriously difficult (sufficiently impossible) to establish with any degree of consensus. Consequently, we should expect that many such varied and even incompatible conceptions will be favored by diverse individuals, each of whom is yet perfectly reasonable in maintaining his or her preference. This is at least the case for those who, in maintaining their preferences, are respectful of the right of others to be in disagreement and to prefer conceptions that contradict their own. In light of this fact of reasonable pluralism, social ordering through an acknowledgment by would be citizens of acceptable governing principles and institutions (a variety of the social contract) cannot rest on any one of the competing comprehensive conceptions. This leads Rawls to develop his notion of the idea of public reason as a reason which is shared by diverse individuals *qua* citizens and which places a constraint on the conditions of acceptability of arguments for principles, institutions, and legislation. This constraint requires that an argument is acceptable only if it can be sufficiently formulated within the confines of this public reason which means without recourse to controversial commitments located within a comprehensive conception of the good. An acceptable political conception of justice, then, is one that is supported by what Rawls calls an overlapping consensus of comprehensive doctrines.

Rawls has made use of his famous concept of the original position, complete with its veil of ignorance, as a way of modeling what inheritors of the modern liberal-democratic tradition would regard as the appropriate conditions for selecting the principles that will govern the basic structure of their state. In formulating his account of the law of peoples, Rawls again makes use of the device of the original position. Unlike the first use of the original position, however, in this instance the parties who are to specify the laws of peoples are not the representatives of individuals who will each be citizens of an ensuing state. Rather, the parties in this instance are representatives of entire peoples. In the first part of ideal theory Rawls is concerned to characterize the outcome of an original position decision procedure where the peoples being represented are all liberal peoples. All liberal peoples will recognize a list of basic rights and liberties, will not allow such rights to be trumped by, say, considerations of overall utility, and will be committed to assuring the provision of the primary goods needed by all citizens in order to be free in more than just a negative sense. Even given such commitments, two or more liberal peoples can be expected to exhibit significant differences between themselves. For example, some will interpret the principles in such a way as to be rather strictly egalitarian (such is the interpretation Rawls favors). Others equally committed to these same principles, however, will interpret them as supporting a more *laissez-faire* socio-economic organization. Each of the representatives in the second original position, thus, are acting on behalf of one of several actual or possible variants of the category of liberal peoples. They are charged with the responsibility of selecting the principles that are to govern the relationships between the varieties of liberal peoples being represented. These are, then, the principles that specify the basic terms of cooperation between members of the ensuing society of peoples. In the second original position as well as the first the representatives are situated so that none of the parties enjoys a position of greater bargaining power or influence. In this they are said to be free and equal. They are also depicted as having the capacity for rational deliberation (instrumental reason). They are aware of the purpose of their deliberation: that they are choosing the principles that are to govern how the peoples they represent are to relate to one another. They are, in the second original position as much as in the first, under a veil of ignorance. In this case, the veil prevents them from knowing details such as the size of the territory and population as well as the quantity and quality of available natural resources of the peoples they represent. Finally, aware that they are representing liberal peoples, the parties in the second original position will necessarily understand the fundamental interests of the people they represent since these interests are given by the mere fact of their being liberal peoples. Included amongst the

fundamental interests of all liberal peoples (and some non-liberal peoples as well), for instance, is the protection of their political independence. This extends to all that is necessary for such protection. Additionally, such peoples have as a fundamental interest the maintenance of their proper self-respect or “proper patriotism,” understood as a benign pride in their traditions, history and the accomplishments therein. Representatives in the second original position, then, deliberate over the political norms which are to govern the relationships between the liberal peoples being represented and in light of the recognized fundamental interests that are at stake.

The principles that supply the content for the law of peoples, and which are selected in the second original position, are familiar principles. Here we find, among others, a principle enjoining the respect for the freedom and independence of all peoples, a principle stipulating peoples' obligations to observe treaties and undertakings with other peoples, as well as principles governing the justification of war and its proper conduct (i.e. only for self defense). These principles, like those arrived at in the first original position, govern the relationships (between those who are represented) to best provide for the freedom and equality of the represented. The difference is that in the first case, it is individuals (with their pluralistic comprehensive conceptions of the good determining their individual interests) who are represented and the principles selected are those which promote the freedom and equality of these individuals as citizens in a state. In the second case, not individuals but entire liberal peoples (which do not have—since they are liberal peoples—comprehensive conceptions of the good but which have the interests described in the preceding paragraph) are represented. In this latter case, the freedom and equality provided for is that of the peoples comprising a society of liberal peoples. The second original position, like the first, models the acceptable conditions for the deliberation regarding principles to be selected. Rawls tells us that under these conditions

...the representatives of well-ordered peoples simply reflect on the advantages of these principles of equality among peoples and see no reason to depart from them or to propose alternatives. These principles must, of course, satisfy the criterion of reciprocity, since this criterion holds at both levels—both between citizens as citizens and peoples as peoples (p. 41).

The law of peoples, so conceived, provides for the right kind of stability between members of the society of peoples. To say that it is the right kind of stability is to say that it is stability for the right reasons. Given the reasonable interests of liberal peoples as peoples we can expect adherence to these principles. Further,

...when the Law of Peoples is honored by peoples over a certain period of time, with the evident intention to comply, and these intentions are mutually recognized, these peoples tend to develop mutual trust and confidence in one another. Moreover, peoples see those norms as advantageous for themselves and for those they care for, and therefore as time goes on they tend to accept that law as an ideal of conduct (p. 44).

Stability for the right reasons is distinguished from mere *modus vivendi* stability. The latter sort of stability is a too contingent balance only for so long as the balance is the preferred alternative to violating the peace. Hobbes's political theory is perhaps the most well known illustration of *modus vivendi* stability and as a result it is criticized for its inability to satisfactorily deal with free-rider problems.

Just as in the domestic case (discussed at length in Rawls's earlier writings) a principle of toleration is in

force in the consideration of the appropriate understanding of the Law of Peoples. In the domestic case, each of the plurality of actual and possible reasonable (non-fundamentalist) comprehensive conceptions of the good is to be tolerated. In the first part of ideal theory (Part I of *The Law of Peoples*) the focus is on the correct principles for governing all liberal peoples and it is a requirement that the plurality of liberalisms be tolerated. But the principle of toleration is to extend beyond just the possible variants of liberalism, opening up the membership in the society of peoples to some non-liberal peoples. The book's Part II, "The Second Part of Ideal Theory," is concerned with this claim. Rawls maintains that there are possible (and, perhaps even actual) ways of ordering society that, while not liberal, are still decent and so to be tolerated. A possible decent, though non-liberal way of ordering society is referred to, by Rawls, as a "decent consultation hierarchy" (see esp. pp. 61-78). A people organized as a decent consultation hierarchy will, among other things, respect and protect human rights, be sufficiently democratic in allowing members a role in political decision making and a right of dissent. Furthermore, such a people is non-aggressive and so respects the freedom and independence of other peoples—even those who do not acknowledge what they identify as the singular comprehensive doctrine of the good (which can be expected to be a religious doctrine). It is precisely this identification with, commitment to, and institutionalizing of a singular comprehensive doctrine that renders such peoples non-liberal. It is their willingness to respect the dissension of citizens who do not share this commitment, and to allow them genuine voice in public deliberations that makes them decent. In view of the characteristics and interests of decent, though non-liberal societies, Rawls maintains that the representatives of such peoples situated equally in an original position (with the representatives of liberal peoples), would agree to the same familiar and traditional laws for the society of peoples. So long as decent peoples respect these laws they are to be recognized as full and equal members in the society of peoples. The important point is that the representatives of the various liberal and non-liberal but decent peoples will accept these principles from an original position in which appeals to neither the superiority of liberalism nor of any comprehensive doctrine are allowed or needed.

Besides liberal peoples and decent peoples, however, we must be aware that peoples who cannot be tolerated also actually (and always possibly) occupy our world. Primary amongst these are outlaw states. Such states refuse to comply with a reasonable law of peoples. Such states are aggressors who would justify war for expansion or the promotion of their interests. Typically such states will violate the human rights of their subjects. Burdened societies are also neither liberal nor decent. In the case of burdened societies, however, it is a matter of historical, social or economic circumstances (as opposed to indecent ideology) that contributes to the inability to be well ordered. Part III, "Non ideal Theory" focuses on questions surrounding how such peoples, who are not members in the society of peoples governed by the law of peoples, are to be dealt with. For instance, the law of peoples allows all peoples included in the society of peoples a right to war in order to protect themselves from the aggression of outlaw states. However, it will also indicate constraints on how such war may be conducted. For instance, civilians in outlaw societies may not (except in extreme circumstances) be targeted since they cannot reasonably be seen as the organizers of the aggression carried out in their name. This is because such peoples are not well ordered and do not have even minimally adequate democratic structures through which citizens could take such responsibility. Besides self-defense, the law of peoples can, in some instances, allow for the conduct of war with the goal of relieving the suffering of the subjects of outlaw states whose basic human rights are being violated. As for burdened societies, Rawls's account of the law of peoples establishes that there is a limited duty imposed on liberal and decent societies to provide assistance to such societies. This duty of assistance is to be distinguished from Rawls commitment, in the domestic case, to a rather strict egalitarianism. While justice in the domestic case, for Rawls, requires rather

extensive redistribution of wealth so as to maximize the position of the least well off this is not so in the case of the duty to burdened societies. The clearly articulated goal of such assistance is to get burdened societies in a position where the burdens are lifted enough so that they can be well ordered, themselves, and so enter into (with full membership) the society of peoples. Beyond this, there is no duty for even greater assistance through continued redistribution the world's wealth. In this, Rawls is much less the egalitarian.

"The Law of Peoples" is a thoughtful, clearly articulated and persuasively argued account of the basis for principles that are to govern the relationships between peoples. It is an extension, suitably modified, of his approach to justice in the domestic case which itself is widely recognized as the standard bearer for political theory in the late 20th and early 21st centuries. At the heart of both theoretical positions is his account of public reason. This is a reason that is purified of any taint of controversial comprehensive commitments and so a reason that, if it can be sufficiently established, promises to provide a way towards agreement on the most important issues concerning our capacity to share the world with an inevitably pluralistic population. This conception is a powerful tool for Rawls, both in its inspiring quality as well as in the subtlety with which he has developed and defended it. And yet, whether the idea of public reason is showing us the way to organize our own society or to coordinating our relationships with other peoples, there are important concerns that for me remain insufficiently addressed. While Rawls denies that comprehensive conceptions and their consideration is to be privatized, his insistence remains that no reason in support of principles, policies or institutions that relies on any such comprehensive conception is allowed to have persuasive force. Only reasons which come from within the overlapping consensus and which thus presuppose no comprehensive view can have their day in court. Sure, these other reasons can be presented, but where they support the same policy this is just a bit of fortuitous icing on the cake for some involved. In this, there seems to remain a problematic formulation of the public/private distinction that reinforces the status quo in which the few retain access to wealth and influence while many remain disenfranchised. The concern is with a failure on the part of practiced liberalism to counter errant ways of thinking that have become ingrained and traditional because of the way it can tend to illicitly constrain the arguments of those who would protest from the perspective of a comprehensive conception.

Notice, however, that this deeper challenge hits harder at the sort of political liberalism that Rawls has favored than it does at a more substantive liberalism of a Millian variety. On the Rawlsian approach, personal values, those constitutive of comprehensive conceptions of the good, are bracketed and prohibited from any genuine and potentially effective inclusion in public debate over constitutional and policy issues. The political liberal affords competing conceptions of the good a greater protection that insulates them from critique. The result of this, it seems, may be that there will be a predominance of what Mill calls (pejoratively) "customary ways of life." Such lives are lives lacking sufficient critical engagement and self-reflection. They are lives devoted to dead dogma wherein the subject requires no need for a reason behind any of her beliefs or choices. This scenario leads to a non-progressive tendency towards the status quo. Perhaps in a diverse modern society there will be a plurality of "customary" ways of life but this is hardly a progressive state of affairs if each of them is uncritically led. Moreover, the conflicts that are likely to occur in such a society will be much less likely ever to be settled completely and agreeably because exploration and critical examination (of a robust enough sort) of the deeper issues at the roots of such conflicts will never be permitted. In sharp contrast, the substantive liberalism favored by J.S. Mill depends upon robust and open debate about especially the sorts of disagreements involved in questions about the good life. This concern with Rawls's approach reaches beyond the insulation of

official opinions and the problems that result from this to a more general concern with a form of society that allows all private opinions to be insulated from critique by not encouraging robust debate. Rawls's apparent skepticism regarding the good life and the likelihood that individuals can reach any agreement on this matter leads him to defend a social structure that insulates individuals and their prejudices from one another. The prejudices do not go away and neither does the sort of institutional neutrality Rawls defends neutralize them. Moving beyond the domestic realm. Rawls is aware that there are fundamentalist states that will remain recalcitrant and so not be reconciled to our social world. They will see the idea of public reason as dangerous and heathen in part because it comes out of a presupposition that a wide variety of comprehensive conceptions are equally reasonable. Rawls is optimistic that, over time, a society of peoples governed by the law of peoples established as he recommends will have the effect of somehow swaying (bit by bit) recalcitrant groups into their fold. It is as if it is a sort of catching them off guard and seducing them with our sweetness that he envisions, where eventually they cannot but succumb to our charms. I worry, however, that in both the domestic case and on the world scene the recalcitrant fundamentalists will be less likely to reconsider the soundness of their respective comprehensive views when these views are not challenged more directly from an equally substantive though more enlightened liberal comprehensive perspective.

John Rudisill

The George Washington University

Copyright © 2004, Humboldt State University