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## Book notes: The Law of Peoples by John Rawls, Harvard 1999

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## BOOK NOTES

### The Law of Peoples

John Rawls  
Harvard 1999

John Rawls, the great political philosopher, has turned his reflections to questions of international justice, much as his philosophical ancestor Kant did toward the end of his career. Indeed, Kant's conception of a "pacific federation" of states in *Perpetual Peace* is Rawls's acknowledged model for the "realistic utopia" sketched in *The Law of Peoples*, which expands upon his 1993 essay by the same title (without, however, revising its basic argument). Despite differing philosophical constraints and geopolitical conditions, both Kant and Rawls aim to develop an ideal normative framework for international law that accommodates a measure of realism and rejects the idea of a world-state. Unfortunately, in its uncritical acceptance of so-called "decent hierarchical societies" even at the level of ideal theory, the normative claim of Rawls's *Law of Peoples* is undermined. This philosophical appeasement, meant to secure perpetual peace in our time through a moderately demanding *Law of Peoples* that liberal and "decent" hierarchical societies alike can endorse, departs fundamentally from Kant's cosmopolitanism. For Kant, the "First Definitive Article of a Perpetual Peace"—as opposed to a temporary interruption of hostilities—is that each member state of the *foedus pacificum* must have a republican form of government, which is partly founded upon "the principle of legal equality for everyone (as citizens)." By contrast, Rawls weakens his ideal of international justice to buy the assent of hierarchical societies, which by definition lack equality among citizens, at the price of sacrificing a theoretical basis for justifying reforms of the practices and institutions of these hierarchical societies above a minimal level of decency.

Rawls's complex argument begins by extending the original position, in which principles of justice for the basic structure of society are chosen under epistemic constraints that ensure fairness, from a single liberal society to what he calls the Society of Liberal Peoples. In a second step, though still within ideal theory, he argues that the substantive principles comprising the Law of Peoples are also acceptable to

decent hierarchical societies, which possess decent consultation hierarchies and common good conceptions of justice. Despite being inegalitarian, decent hierarchical societies do respect basic human rights, allow some dissent, and at least consult with representatives of groups whose members are denied full citizenship rights. Rawls distinguishes decent hierarchical societies from truly paternalistic regimes such as benevolent absolutisms, which respect basic human rights but allow no political participation at all (and so are not well-ordered)—thus decent hierarchical societies lie between liberal societies and benevolent absolutisms in terms of citizenship rights. Non-ideal theory, finally, deals with types of societies that violate basic human rights—outlaw societies against which humanitarian intervention may be justified, and burdened societies to which a limited duty of assistance is owed. In short, in order to broker the widest possible agreement for the Law of Peoples, Rawls draws the limits of international toleration very broadly, excluding only outlaw societies, while excusing burdened societies which cannot afford to conform to the Law of Peoples.

Rawls opposes cosmopolitanism not only by tolerating oppression within hierarchical societies, but also by rejecting a global application of his difference principle of distributive justice, which permits only those inequalities benefitting the worst off in a society. The duty to assist burdened societies does not, in his view, require redistribution of resources through international taxation, even though the natural lottery clearly operates world-wide. Rawls's anti-cosmopolitanism, in both manifestations, stems from his view that societies, not individuals, are the proper subjects of global justice. His focus on "peoples" thus masks a residual, attenuated statism, and it ignores the reality of multicultural and polyethnic societies. It also conveniently leaves intact his account of justice at the intrasocietal level. Rightly concerned to avoid charges of ethnocentrism, Rawls tolerates illiberal peoples and provides no basis for critique to oppressed individuals within these illiberal—in other words hierarchical—societies. His central objection to liberal cosmopolitanism is that it incorrectly assumes that only liberal societies can be acceptable. However, only in liberal societies can what individuals consent to be reliably ascertained. A Kantian theory of international justice must be more cosmopolitan and should not, in the name of realism, countenance the oppression of individuals within so-called "decent" hierarchical societies or the vast inequalities of resources among societies.

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