

ON *THE LAW OF PEOPLES* BY JOHN RAWLS

SUL DIRITTO DEI POPOLI, IL PENSIERO DI JOHN RAWLS

doi: 10.54103/2464-8914/30134

ANTONIO PADOA SCHIOPPA

Professore Emerito, Università degli Studi di Milano (ROR: 00wjc7c48)

Contacts: antonio.padoaschioppa@unimi.it

ABSTRACT ENG

© Antonio Padoa Schioppa

These pages aim to shed light on the lines developed by John Rawls in his last major work, *The Law of Peoples* (1999), which completes the political-institutional model begun almost thirty years earlier with its celebrated book *A Theory of Justice*. The thesis that the same principles of justice and cooperation can and should, under certain conditions, be extended from individuals to Peoples is sharply argued in the book. A few concluding reflections by the reviewer suggest considering the necessary and appropriate connections between Rawls's thesis on peoples and the only large existing organization that includes inside the United Nations the whole human community of 193 member States.

Keywords: John Rawls; law of peoples; United Nations

Published online:
30/12/2025

ABSTRACT ITA

Queste pagine hanno l'intento di mettere luce le linee che John Rawls ha sviluppato nell'ultima delle sue opere maggiori, *Il diritto dei popoli* (1999), che completa la costruzione del modello politico-istituzionale iniziato quasi trent'anni prima con il celebre volume su *Una teoria della giustizia*. La tesi per la quale si possono, a certe condizioni, estendere ai popoli i medesimi principi di giustizia e di cooperazione è argomentata lucidamente. Alcune brevi conclusive riflessioni propongono di considerare i nessi, necessari e opportuni, della tesi di Rawls con la sola grande organizzazione esistente che include ormai l'intera comunità umana suddivisa nei 193 Stati aderenti alle Nazioni Unite.

Parole chiave: John Rawls; diritto dei popoli; Nazioni Unite



Rawls 's last great work, *The Law of Peoples*¹, discusses whether and under what conditions it is possible to conceive of an international order of peace and harmony among the peoples of the Earth. The intent, certainly ambitious, is to outline what is called a "realistic utopia", as concretely achievable.

A first point lies in the distinction between peoples and States. Peter Rawls discusses relationships not between States but between peoples as they exist today, divided into States, each being the culmination of a complex history, both ancient and recent. This distinction is made on the assumption that under certain conditions it seems easier to conceive harmony between peoples than between States, as the latter have shown and still clearly show mutual aggressive impulses driven by their respective rulers' power, resulting in the wars with which the millennia-long history of the human race is full. This is also due to the fact that peoples as such, unlike States, doesn't impersonate sovereignty in the traditional sense (I. 2.2, p. 23).

Rawls distinguishes five categories of peoples. The first is that of peoples with liberal-democratic constitutional government. The second includes peoples who are not liberal-democratic but can be described as "decent" in the dual sense that they grant an effective role to all citizens in an acceptable hierarchy of consultation, albeit not as individuals but as groups, and also in the sense that they promote just laws. The third category includes peoples outside the law because they do not meet the two conditions just mentioned. The fourth designates peoples living in unfortunate conditions, being disadvantaged societies. The fifth includes societies governed by a "benevolent" absolutism.

A basic aim of Rawls's investigation consists in the attempt to argue that not only the first of these categories of liberal peoples but also the second category of peoples with non-liberal but "decent" regimes constitute essentially peaceful entities not only internally but also in their mutual relations and can therefore coexist in a mutually peaceful arrangement.

Democratic-constitutional forms of government, though differently structured, must provide for a "reasonably just" government

¹ Rawls, 1999a.

(we will return to this) that serves their fundamental interests, and beside that also a liberal conception of justice, and must be under the political control of all citizen sharing the ancient and recent history of their people (I. 3. 1-3, pp. 23-25; 32-35). This allows, despite their diversity, agreements between peoples such as those that are achieved inside the United Nations.

Rawls mentions eight principles of justice common to liberal-democratic peoples and recognized by them as such: freedom and independence; observance of treaties; equality between peoples; duty of non-intervention; right to self-defense, the only case in which it is lawful to fight a war; recognition of human rights; duties to be respected in war; duty of assistance towards peoples with unjust or undecent political regimes (I. 4.1, pp. 35 ff.).

These basic principles, valid within each people (and discussed in Rawls' seminal book *A Theory of Justice*, chapters II and III), are conceived as valid also in the context, which is of interest here, of relations among liberal-democratic peoples and not only within a single people. They are principles that ensure sufficient stability both within each people and in relations between peoples (I. 5.1, pp. 44 ff). The author repeatedly underlines that these principles have their ground in the history and in the international practices, not in rational and philosophical investigations: "political liberalism is altogether distinct from its transcendental idealism" (I. 12.2, p. 87). And he adds that each of the aforementioned principles is, however, susceptible to different interpretations, connected with the specific conditions of each people (II. 12.1, p. 86).

If so it is then possible, indeed probable, that agreements between peoples can be reached, which however will not give rise to a single order but will remain of a confederal nature, as Kant had already hoped for in order to avoid the risk of giving rise to a "global dispotism" (I. 4.1, p. 36).

In the second part of his investigation, Rawls addresses the question of the applicability of what he affirmed in the first part to non-liberal peoples ("decent" in the sense mentioned above, according to his terminology).

A first point lies in the assertion that these peoples must be recognized as *bona fide members* of the society of peoples, accepting ("tolerating") their anomalies without coercive maneuvers to correct them, but rather trusting in the incentive value of compar-

ison with liberal-democratic peoples (II. 7.1, p.59). This approach is, however, conditioned by the presence of two criteria that qualify the category of “decency”: the first lies in the representative character of each of the different social groups (groups, not individuals) that make up the people itself; the second lies in the guarantee of *bona fide respect* for human rights—to life, liberties, property, justice—for all groups of the people themselves, even without requiring acceptance of the liberal idea based on the person, but rather within the framework of an “associative society”. Religious tolerance, the right to emigrate, and the non-marginalization of women must be guaranteed (II. 9.2, pp. 73-75).

Beside that, the eight principles mentioned above must also apply to “decent” peoples, albeit with possible different interpretations as said (II. 8.2-8.4, pp. 64-68; p. 85 f.). Furthermore, a proper, “decent” form of consultation must also be present within such a structure. And these characteristics must be admitted not only within individual “decent” peoples but also in their inter-relationships and with peoples governed by liberal-democratic institutions (II. 8.4, pp. 69 f.).

In the “law of peoples” inclusive of the two categories mentioned above - liberal-democratic peoples and “decent” peoples, both components of an international organization of peoples - war has to be held as no longer admissible (II.10.2, p. 79). And the role of cosmopolitan justice must also be recognized (p. 82).

War in self-defense should be allowed in the protection of freedom, both for liberal peoples and “decent” peoples, and it also includes the legitimacy of compulsory conscription (II. 13.2, p. 91 f.).

Rawls devotes specific considerations to the principles that must be adopted in “just wars”, that is, wars of defense against outlawed peoples who attack them on grounds of national interest: respect for human rights both towards the military enemy and towards the enemy population, and a ban on bombing the latter except in times of emergency (which the Christian conception, however, does not allow, II. 14. 6, pp. 103 f.). Hiroshima and Nagasaki are to be considered heavy moral sins (p. 95). Finally, the promotion of a just peace.

Regarding the notions of rationality and reasonableness, Rawls refers to his previous works. As for the principles of “rationality,”

they had been theorized in *A Theory of Justice*². What is meant by “reasonableness” was explained by Rawls in his book *Political Liberalism* of 1993³, summarized here in a few propositions: it is the behaviour of citizens in the concrete context of a historical phase that identify what is “reasonable”, so that “it must be considered politically reasonable for them to offer fair terms of cooperation to other free and equal citizens and it is politically unreasonable to refuse to do so” (II. 12.2, p. 87). And the same criterion must be adopted with regard to the requirement of “decency” (with reference to what was expressed above, II. 7.1 -7.2).

So, in conclusion, “both reasonably just liberal peoples and “decent” hierarchical peoples would accept the same Law of Peoples” (II. 12.1, p. 85).

Well-ordered peoples of the first two categories can form alliances to promote their common views and policies against outlaw regimes (II. 13.3, p. 93). Note that Rawls does not argue that in such cases wars of attack against them are legitimate.

The States and peoples to be defined as “outlaws” are characterized by the fact that these regimes - unlike the first two categories - “consider it sufficient reason to declare war (or to threaten it, I should add) assuming that war promotes or can achieve the regime’s rational (even if not necessary reasonable...) interests” (II. 13.1, p. 90). Modern European history is clearly rich in historical experiences of this nature.

The fourth category includes disadvantaged societies, which are equipped with such a low material capital and such a level of knowledge and technology that are unable to meet the basic needs of orderly coexistence.

With respect to these peoples of the fourth category Rawls believes that well-ordered peoples in the first two categories have a duty of assistance that allows them to achieve a sufficient level of “just economy” (*A Theory of Justice*, par. 44) to enable them to achieve a just and stable internal order, without this implying wealth being equal to (or the average of) those of the first two categories. The crucial elements that determine conditions of disadvantage—for example, famine—are in Rawls’s opinion generally

² Rawls, 1999b, in particular chapters II and III.

³ Rawls, 1993.

not material factors such as food shortages, but rather internal deficiencies in their social and political structure, as the discriminated role of women, which cannot and should not be based on religious motivations. Therefore, assistance should not consist so much in material aid as in incentives to overcome such factors. Such societies should be assisted in managing their affairs in “rational and reasonable” ways, without inducing them to renounce their adherence to their historical traditions (III. 15.1 - 15.4, pp. 105-112).

Furthermore, they must adopt the criterion of religious tolerance, which the West itself has failed to admit and struggled to achieve only after immense suffering (III. 16.1, p. 113). Nor, as said, is it required that disadvantaged societies achieve the same level of wealth among themselves and with respect to the first two categories (p. 114). What is essential, instead, is that they achieve - supported and assisted in this by well-ordered peoples - a sufficient level of equity in their internal representation procedures and a fair right to education for all (p. 115).

This is a fundamental principle in Rawls 's thought (already developed in his *Theory of Justice*), which he calls the “difference principle,” by virtue of which he thinks that it is inherent and admissible in a liberal civilization that there be inequalities of wealth and function inside a society, provided that these are not achieved by repressing the fundamental rights of the less wealthy and also (this too is essential for Rawls) providing that the asset resulting from a liberal economic order that produces different levels of power and wealth results in positive effects, in terms of well-being, for the socially and economically inferior groups of citizens. Daniel Chambers's recent book, which I will discuss later shortly, effectively clarifies the meaning and implications of this principle (Id., *Liberi e uguali* , Rome-Bari 2025, pp. 41-50).

Rawls believes that the same “difference principle” must also apply to relationships between different peoples (*Law of Peoples*, III. 16.1 - 16.3, pp. 113-120). Consequently, he rejects the theses of those authors (as Charles Beitz, Thomas Pogge) who believe that the unequal distribution of resources among different peoples imposes the duty for the best equipped to redistribute benefits so as to promote equality of wealth among different peoples. He instead argues that the greater wealth and more advanced

level of development of some peoples should produce the direct and indirect effect of structurally improving the living conditions of less prosperous peoples - not so much in terms of aid, which Rawls deems of dubious effectiveness, but in terms of progress in development, education and training, beside the autonomous promotion of fundamental rights. In his opinion, "in the society of the Law of Peoples the duty of assistance holds until all societies have achieved just liberal or decent basic institutions" (p. 118), but not beyond what is necessary for this purpose.

In Rawls 's opinion, a cosmopolitan perspective that addresses the condition of individuals and their well-being inside one people is different from the one he outlines for the relationships among different peoples, which aims to outline the characteristics of a "Law of Peoples".

Fundamental and sufficient, in this perspective, is that the "society of peoples" pursue a fourfold objective: the recognition of a reasonable pluralism in religious and political doctrines; the co-existence of political doctrines inspired by different criteria of democracy; a reasonable plurality of political conceptions of justice addressed to citizens, which separates spiritual questions from the political sphere, leaving them to the choices of the individual citizen; finally, a common conception of peace, which permits only war in self-defense that respects the parameters of the *ius in bello* (IV. 18.1pp. 124-127).

In conclusion, Rawls believes that the reasonable utopia of a "Law of Peoples" such as the one he is suggesting is endowed with prospects of realization; prospects, not certainties, which, however, "are connected to the profound tendencies and inclinations of the social world." And he concludes (IV. 18.3, p. 128) with the unforgettable words of the great patron of perpetual peace, who wrote (Kant, *Metaphysics of Morals*, VI, note E, par. 49) that if a society of peoples whose members subordinate their powers to the achievement of reasonable ends and of justice were not possible, and human beings were conceived as mostly amoral, if not incurably cynical and selfish, we might be forced to ask ourselves what sense there it is for human beings to live on this Earth.

Rawls 's analysis, rich in ideas that represent a culmination of his thought, presents several aspects that make it not only highly valuable but particularly timely. I will mention a few.

There is the prospect of a series of international agreements between peoples organized in liberal-democratic regimes but extended to regimes (which he calls “decent”) which, although distant from these, are nonetheless governed according to some seminal criteria: representativeness, equal recognition of economic and social groups and associations, rejection of war other than defensive warfare, non-discriminatory acceptance of different religious ideologies existing within each people, beside the recognition of certain basic principles of justice, women’s rights, and freedoms.

The prospect of such an agreement between peoples is considered by Rawls a “realist utopia” because it is “rational” and “reasonable”. The characteristics highlighted in his two previous works concerning the individuals and their mutual relationships are therefore now extended, albeit with some distinctions, to peoples and their relationships.

Outside this context are, first of all, peoples defined as “outlaws” because they are potentially aggressive in terms of military force for real or supposed “reasons of State”; secondly, peoples objectively disadvantaged in terms of natural and human resources; and thirdly, peoples governed by “benevolent absolutism” regimes.

Daniel Chandler’s recent book, *Free and Equal: A Manifesto for a Just Society* (2023, Italian translation, Rome-Bari 2025), already quoted, constitutes a very important contribution to the understanding of Rawls’ thought as a whole. Chandler presents a clear and, in my opinion, convincing series of replays to the objections that Rawls’s highly influential work has raised over the years at various times and in different respects in America and Europe.

Furthermore Chandler explores in depth the strategies, deliberately omitted by Rawls, aimed at concretely realizing the principles set out in his two volumes on *Law and Justice* (1971) and on *Political Liberalism* (1993), albeit not in the volume which we have dealt with here. The sectors considered by Chambers are, in the second part of his book *Free and Equals*, the following: Freedom (pp. 107-142); Democracy (pp. 143-175); Equality of Opportunity (pp. 176-206); Shared Prosperity (pp. 207-253); Democracy at Work (pp. 254-280). For each of these chapters, corresponding to the themes that Rawls placed at the foundation of his thought, Chambers evokes a reasoned series of political strategies capable of concretely promoting, albeit progressively, their imple-

mentation. We cannot dwell here on these strategies that I think deserve full attention.

I conclude with some observations, also referring to some remarks argued by me in previous writings⁴.

The idea of “people” that Rawls places at the heart of his research is undoubtedly an interesting and fruitful approach for overcoming or at least limiting the sovereignist implications inherent in the concept of State. In my opinion, however - not in contradiction with, but in addition to Rawls design - it is important to consider that the very concept of “people” must be conceived broadly, at different territorial levels. Both below the national level (understood as corresponding to the State) and above it, it is not only legitimate but necessary to recognize the existence and the role of several collective territorial communities and identities inherent to each individual: the identities of the municipalities and of the regions, often very much alive, as well as, above national identity, the broader communities and identities of the Continents (for instance, in my opinion there exists a European demos with specific tendencies and choices). The humanity as a whole implies that each of us is also a “citizen of the world”. Political institutions adopting the idea of federalism should, in my opinion, include all these levels, compatible with each other from the perspective of the principle of subsidiarity.

And for what concerns the relationships among different peoples, this implies that such a plurality of identities should be admitted also in the immigration perspective.

It is also necessary to underline that Rawls ‘s approach should apply also when he extends to the relationship between peoples the principle according to which a liberal-democratic people must admit within its ranks ideologies, religions, ethnic groups, customs, visions of the world and of society, even if different from each other, without any pretense of making one prevail over the other, provided, however, that the fundamental principles mentioned above are respected.

Another aspect concerns the issue of extending the criteria indicated for formulating a system of peoples’ rights to the mem-

⁴ I will limit myself to mentioning Padoa Schioppa, 2024; further information therein.

ber States of the United Nations, which at present encompass the whole international community of national States. The peoples corresponding to the first two categories, the only ones indicated by the author as potential subjects of a system of peoples' rights, certainly do not include all UN states. Both in the great powers (Russia and to some extent also the United States, China, and India) and in many States of varying sizes, the dominant ideology unfortunately includes the possibility of resorting to war to uphold its claims.

However, it should be emphasized that each of the 193 States that have successively joined the UN has signed not only the 1945 Charter, which outlaws war and provides measures to combat it, including by force, but also the 1948 Bill of Rights, supplemented by the numerous resolutions and conventions subsequently approved on human rights, the status of women, climate control and other matters, which are now part of the legacy of international law. This is true even if, in the factual and legal circumstances of individual States, at present their behaviour is in contrast to these commitments.

It seems reasonable to believe, then, that from the perspective of multilateral agreements all States must be entitled to negotiate and conclude them, at least within the terms established by the 1945 Charter. This certainly includes the condemnation of wars and the promotion of peace and humanitarian support by a group of States even if is weakened and ineffective due to the veto powers currently held by each of the five permanent members of the Security Council.

Therefore agreements and conventions between groups of States should be equally admissible and practiced, even between States governed by regimes that do not all fall into the first two categories of liberal-democratic or so-called "decent" States described by Rawls. The necessary compromises should, however, not violate either the 1945 Charter or other subsequent treaties approved by the UN and duly ratified.

It must therefore be held that, in principle, agreements, even when they are binding and include enforcement measures in the event of non-compliance, must be permitted regardless of the legal-political nature of their respective regimes. All that is required is that a common interest exist and can be achieved, nothing else,

as indeed occurs in every association, as in every local, national, European, and global government. Today, fundamental common interests exist, concerning the environment, biodiversity, clean energy, peace.

And so we need common solutions. Possibly even starting with a reduced geometry: as Einstein had proposed in 1946-47 regarding nuclear weapons ⁵.

What if Russia doesn't agree? Or China? Or the US? Let others take the lead: on common defense; on international trade; on a common currency (or a basket of currencies); on environmental protection; on effectively combating wars of aggression; on protecting peoples under military attack. Scientific research and sport shared rules in a way already constitute, in their respective domains, models for a world republic, which should not be opposed for political reasons.

Rawls and many other utopians, like him, aim at formulating achievable goals closer to realization. Is it simply utopian? Not necessarily. Freedom, democracy, the abolition of slavery, human rights, universal suffrage, the welfare state, and the status of women were all considered impossible goals, due to the fierce opposition of the economic, religious, social, and political powers hostile to them. Yet each of these goals has been finally achieved, sometimes even in a short time.

Today we need to focus on a reform project for the UN General Assembly, to be carefully discussed and supported by all globalist, federalist, and environmental forces, to give it a greater chance of political implementation. Luigi Ferrajoli's *Earth Constitution* is a valuable example of such an effort and could be a starting point. The General Assembly, in its current configuration, can indeed discuss and adopt, as art. 109 of the Chart allows, ambitious resolutions, even gradually moving beyond the constraints of the Security Council's veto under the Charter. This veto paralyzing provision will in any case need to be reformed, as the Assembly itself needs to be reformed, currently lacking continental and proportional representation.

Progress can only occur in stages, following the same path of "constitutional gradualism" - that is, a progressive advancement

⁵ Einstein, 1981, pp. 335-540, in part. pp 395 and 409.

of partial reforms, each of which advances the whole process toward a fully-fledged federal structure - in line with an approach which has allowed (although still incomplete and unfortunately presently even at risk) the unprecedented construction of the European Union.

REFERENCES

Einstein A., 1981: *On Peace*, New York

Padoa Schioppa A., 2024: *Destini incrociati, Europa e crisi globali*, Bologna, Il Mulino

Rawls J., 1999a: *The Law of Peoples*, Cambridge Mass. - London

Rawls J., 1999b: *A Theory of Justice* (1971), Cambridge, second edition

Rawls J., 1993: *Political Liberalism*, New York