Many criticisms of John Rawls’s conception of international justice and human rights, the Law of Peoples, fail due to misinterpretations of Rawls’s use of the original position (see the entry on ★ Original Position in this encyclopedia). Rawls agrees with Immanuel Kant’s idea that a constitutional regime must establish an effective law of peoples in order to realize fully the freedom of its citizens, and he undertakes to follow Kant’s lead as sketched in his Toward Perpetual Peace (first published in 1795), including his idea of foedus pacificum (pacific league). Rawls says that he interprets Kant’s idea of a pacific league to mean that we are to begin with the criteria of decency. Kant’s criteria of decency may be summarized as follows: (1) A decent people must honor the laws of peace. (2) Its domestic system of law must follow what it sees as the fundamental interests of everyone in the society; also, the legal system must be such as to respect human rights and to impose duties and obligations on all persons in its territory; further, the judges and other officials must sincerely and not unreasonably believe that the law is indeed guided by a common good idea of justice.

When states are thought of as pursuing power, they are thought of as acting for reasons. This is a familiar idea in the social sciences and history. What is controversial, according to the school of thought called “political realism,” is the idea that states can and will act not only rationally (in the narrow sense) but also reasonably. Rawls argues that political societies that meet his proposed criteria for decent societies could act reasonably and would tend to do so under certain conditions which are realistically possible, and also that it is realistically possible for political societies, non-liberal as well as liberal, to meet the criteria of decency.

Participants in fair cooperation must, logically, be agents that are both capable of cooperating on fair terms and motivated to do so. In Rawls’s view, the participants in a reasonably just international order must be political societies that are reasonable as well as rational, that is, peoples. Using the device of the original position, Rawls considers what terms of cooperation among peoples would be chosen, behind a suitably characterized veil of ignorance, by rational parties representing peoples and responsible for their fundamental interests. Rawls argues that no decent society, liberal or non-liberal, would have good reason to reject the eight principles of his proposed Law of Peoples (listed in the entry on ★ Rawls, John in this encyclopedia), which modify certain long-standing principles of international law and practice so that basic human rights can be better secured globally.

In the first step of the argument for the principles, the parties in the original position are rational economic, etc.) in order to dominate other societies, to enlarge its empire and/or to convert other societies to the state’s religion, then there is an enormous difference between such a state and a people (Rawls 1999). A people is a political society that is reasonable; it deals with other societies according to principles that meet the criterion of reciprocity, and its understanding of its own basic interests is shaped by its conception of justice. Every people, whether liberal or non-liberal, is a political society that meets certain moral criteria, which Rawls calls “the criteria of decency.”
representatives of liberal-democratic peoples. Behind the veil of ignorance, they do not know any particulars about their society, such as the size of its territory, its level of economic development, its natural resources, its population, or how powerful it is as compared to other societies. What each party knows is that the represented society is liberal (i.e., liberal-democratic). Rawls provides the parties with this knowledge because their deliberation about the proposed principles is to be guided by the fundamental interests of a liberal people; Rawls stipulates this, because the question to which he is seeking an answer, at this point, is: Do liberal societies have reason to reject the proposed principles? In the second step of the argument, in which the parties are rational representatives of decent non-liberal societies, the question is: Do decent non-liberal societies have reason to reject the proposed principles?

The parties representing peoples in the second and third original positions choose between different interpretations of eight proposed principles. They are all, Rawls says, principles of equality among peoples: they establish equality among peoples by ascribing the same fundamental rights and duties to them all (Rawls 1999). Rawls holds that when seeking fair principles it is appropriate to start from a baseline of equality. He contends that the representatives of decent, well-ordered peoples would see no reason to prefer any set of principles that did not ascribe equal status and rights to all decent peoples.

Inequality of status is clearly unacceptable, in Rawls's view. He says that a classical, or average, utilitarian principle would not be accepted by peoples, since no people organized by its government is prepared to count, as a first principle, the benefits for another people as outweighing the hardships imposed on itself (Rawls 1999). A people's representatives will, he says, aim to preserve the equality and independence of their own society, since they each, like trustees, have the job of securing their own society's fundamental interests; and by insisting on equality among themselves as peoples, they rule out any form of the principle of utility (Rawls 1999). Evidently regarding this as obvious, Rawls focuses on the questions concerning the freedom of peoples: the moral basis, content, and limits of peoples' rights of sovereignty. According to Rawls, whatever rights peoples are to have, these rights must be the same for them all, and these equal rights must be secure, not contingent in the ways that rights grounded in utility can be contingent.

What the parties in the second and third original positions debate is how to interpret the principles. They can be variously interpreted, depending on how one conceives human rights and the other criteria of decency, as well as how one understands the relations between the principles. Rawls outlines a minimal list of basic human rights that must be included in a reasonable law of peoples. His argument focuses mainly on the two most controversial principles: (6) Peoples are to honor human rights, and (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.

The representatives of liberal peoples in the second original position consider, Rawls says, the following question(s): What kind of political norms do liberal peoples, given their fundamental interests, hope to establish to govern mutual relations both among themselves and with non-liberal peoples? What moral climate and political atmosphere do they wish to see in a reasonably just Society of well-ordered Peoples? (Rawls 1999). The answer is that the powers of sovereignty should be limited: the representatives of liberal peoples would choose an interpretation of the eight proposed principles according to which the freedom and independence of peoples, as declared in principle (1), and the duty of non-intervention, as declared in principle (4), are constrained by the requirement to honor human rights, as stated in principle (6); and while principle (5) (which states that peoples have the right of self-defense but no right to instigate war for reasons other than self-defense) is included, it is interpreted as permitting humanitarian military intervention in cases of grave violations of human rights.

In the second step of the argument, Rawls proposes criteria for a decent society and argues that if they are satisfied by any society, whether liberal or not, it is to be recognized as a bona fide member of a politically reasonable Society of Peoples and, in this sense, “tolerated” (Rawls 1999). Rawls argues that rational representatives of decent non-liberal peoples behind a veil of ignorance in an original position, deliberating about the proposed principles and guided in their deliberations by the fundamental interests of any decent non-liberal people, would endorse the same interpretation of these principles as would the rational representatives of the liberal peoples. If this argument succeeds, it shows that the principles of Rawls's Law of Peoples can reasonably be proposed and endorsed by all decent peoples. It also shows (if the criteria for a decent society are properly justified) that the Law of Peoples does not strike a compromise, neither among comprehensive doctrines nor among liberal and illiberal conceptions of justice, and that the justification of the principles of the Law of Peoples does not rely on any premise about toleration (see the entry on Original Position in this encyclopedia and Bernstein 2007).
Rawls’s argument for the principles of the Law of Peoples hinges on his views about the fundamental interests of decent peoples, non-liberal and liberal. To understand these views one must carefully attend not only to Rawls’s definition of a decent people but also to his distinction between liberal and non-liberal decent peoples.

Liberal peoples belong to the category of decent peoples, but satisfy additional criteria, as required by liberal conceptions of justice. The criteria for decent hierarchical societies (meaning societies in which the members are not equal citizens, as in liberal societies) include a specification of which rights must be included among the human rights. Rawls provides an open-ended list which does not include all of the basic rights of citizens of liberal societies, and states that the criteria of decency do not presuppose the liberal political conception of the person (according to which persons are regarded as free citizens with equal rights as individuals), but presupposes only the (not-exclusively-liberal) political conception of the person according to which persons are regarded as responsible and cooperating members of their respective groups, able to recognize, understand, and act in accordance with their moral duties and obligations as members of these groups (Rawls 1999). Thus Rawls makes clear that his formulation of the criteria for decent societies does not logically preclude their being satisfied by non-liberal societies.

A liberal people’s conception of justice differs from that of a decent hierarchical people in that the former requires a constitutional democratic government that is effectively under the citizens’ political and electoral control and that protects their fundamental interests, understood according to a liberal political conception of persons. A society with a regime that meets the requirements of a liberal conception of justice may not count as a people unless it also satisfies two additional conditions: its citizens must share a culture in the sense that they are, in Rawls’s words, united by common sympathies and a desire to be under the same democratic government, and the society must have a moral character such that it is willing to cooperate on fair terms with other peoples, offers such terms, and honors them when assured that other peoples will do so as well (Rawls 1999). These conditions are related; arguably satisfaction of both of the first two conditions – (1) a just liberal regime, and (2) a shared culture – is sufficient, although not necessary, for satisfaction of the third (a moral character).

The fundamental interests of a liberal people “as a people,” Rawls explains, are specified by its political conception of justice and the principles in the light of which liberal peoples agree to the Law of Peoples. Liberal peoples strive, he says, to protect their political independence and their free culture with its civil liberties, to guarantee their security, territory, and the well-being of their citizens. In addition, liberal peoples want other peoples to show a proper respect and recognition of their equality; this interest is, in his words, a people’s proper self-respect of themselves as a people, resting on their common awareness of their trials during their history and of their culture with its accomplishments (Rawls 1999). In order to realize fully the freedoms of their own citizens, liberal peoples seek a stable peace secured by a law of peoples that restricts the war powers of governments, and in order to secure basic human rights for everyone worldwide, they seek to set limits to states’ autonomy in dealing with their own populations. Therefore, liberal peoples support a law of peoples that both limits a state’s right to engage in war and limits a state’s right of internal sovereignty by recognizing a right to intervention against outlaw states that gravely violate human rights.

Rawls conceives the fundamental interests of decent non-liberal peoples similarly, although not identically. Their rational representatives in the original position strive to maintain their security and independence. And since decent non-liberal peoples are well-ordered in terms of their own ideas of justice, which satisfy Rawls’s criteria for decent societies, their rational representatives in the original position strive also to protect the human rights and the common good of the people they represent. Rawls ascribes only to liberal peoples the aim of securing basic human rights for everyone worldwide, but contends that decent non-liberal peoples will see no reason to reject the principles proposed by the liberal peoples.

In each original position of peoples, what the parties deliberate about is whether the proposed principles, understood in terms of Rawls’s interpretations of the ideas of the equality and the freedom of peoples, are acceptable for governing the relations among peoples through application to international law and practice. Rawls argues that neither liberal nor non-liberal decent peoples will see any reason to reject the principles proposed by the liberal peoples.

If a political society is capable of acting for reasons, it is free in a certain sense. If it is independent, it is free in another sense: it is not obligated to obey any other political society, although it is obligated to obey certain principles and laws. If it makes and follows its own laws and policies, then it is free in a further sense: it is self-determining or autonomous. Rawls conceives peoples as political societies that are both capable of acting for reasons and independent, and he holds that self-determination, duly constrained by appropriate conditions, is an important
good for a people. However, he opposes the position that international law should regard the rights to self-determination and independence as unlimited (Rawls 1999).

Rawls specifies an interpretation of the idea of the equality of peoples. He ascribes to liberal peoples an interest in receiving from other peoples a proper respect and recognition of their equality. Here, equality is understood as equal status based on equal rights. Rawls ascribes this same interest to decent non-liberal peoples, and argues that a reasonable basis for cooperation among societies is equality of status and rights: the fact that a decent society is not a liberal democracy is not by itself a sufficient reason for liberal societies to refuse to cooperate with it on fair terms or to refuse to grant it the equal status and rights of members in good standing in the Society of Peoples (Rawls 1999).

Who is to be represented by the parties in an original position depends on what practical question the theorist is addressing, that is, what kind of cooperation (for what purposes and among what kinds of agents) is to be evaluated as to its fairness. In *A Theory of Justice*, Rawls uses an original position in which the parties represent individual citizens, because he is addressing a question about fair cooperation among persons in their role as citizens of a self-governing society. Analogously, in the Law of Peoples Rawls uses an original position in which the parties represent individual citizens, because he is addressing a question about fair cooperation among peoples in their role as members of a Society of Peoples; that is, he is addressing a question about justice in international relations, and more specifically, a question about how to secure basic human rights globally.

Charles Beitz, criticizing *The Law of Peoples* (1993), claims that it takes societies as fundamental and aims to identify principles that are acceptable from a point of view in which the prospects of each society or people, instead of the prospects of each person, are equally represented (Beitz 1999). Darrel Moellendorf asserts that Rawls’s Law of Peoples is based on the assumption of respect for peoples rather than respect for persons, and subordinates the interests of persons to those of peoples (Moellendorf 2002). Similarly, Thomas Pogge contends that in the Law of Peoples the ultimate units of moral concern are peoples; according to Pogge, Rawls gives no weight to individuals and their interests, which do not count at all in the Law of Peoples (Pogge 2006). All of these criticisms imply that Rawls offers an entirely unsatisfactory conception of human rights, denying that they are of fundamental importance for international justice. However, Rawls does not deny this; quite the contrary (see the entry on *Law of Peoples in this encyclopedia*).

Criticalisms such as these apparently assume that to use the original position as a test of the fairness of proposed terms of cooperation is to make a claim about the moral status or moral importance of the participating agents represented by the parties: specifically, the claim that those represented are, or should be regarded as, the ultimate or fundamental units of moral concern. However, this is false. Using the original position as a test of fairness does not determine the moral status, moral importance, moral capacities, or moral characteristics of those represented by the parties: it does not make it the case, or make it true, that they have any particular moral status, importance, capacities or characteristics, nor is it a way of arguing for the truth of any such claim; nor is it a way of finding out what moral status, importance, capacities or characteristics they have. What the test determines (i.e., finds out) about those represented is what their relation to each other would be if they were engaged in cooperation according to the proposed principles. It determines whether their relation to each other would be a relation of equals, that is, whether, in cooperating according to the principles proposed as terms of cooperation, they would all have equal status (as specified by those terms). Of course, those represented by the parties (whether individual citizens or political societies) must be assumed to be agents capable of fair cooperation, for otherwise there would be no point in proposing fair terms of social cooperation among them. To dispute that political societies can be agents capable of fair cooperation would require either denying (implausibly) that any organized groups can take part in fair cooperation with any other organized groups, or denying that any political societies can do so.

According to Rawls, decent societies meet criteria that include securing and fulfilling the basic human rights of their members, and only societies that respect these basic rights of individuals are reasonable and entitled to the rights of members of the Society of Peoples, including the right of nonintervention. Thus the rights of peoples in relation to each other are contingent on their fulfillment of the rights of individual human beings. The ultimate units of moral concern in Rawls’s Law of Peoples are not peoples but individual persons. Rawls’s goal, to which he hopes his Law of Peoples will provide a means, is global justice, which he construes in terms of a world of politically autonomous, well-ordered societies that all honor and together secure universal human rights.

**Related Topics**

- Contractarianism
- Law of Peoples
- Moral Cosmopolitanism
Self-Determination

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Self-Determination

Self-determination is an indispensable instrument in the United Nations’ struggle “to save succeeding generations from the scourge of war” as it seeks “to develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples” (Charter of the United Nations). At its most basic, the principle of self-determination affirms that all peoples should be free to determine their economic, social, and political development. No contemporary norm of international law has been so vigorously promoted or widely accepted as the right to self-determination, even though “the meaning and content of that right remain as vague and imprecise as when they were enunciated by President Woodrow Wilson and others at Versailles” (Hannum 1990: 27).

There are two central issues for the meaning and content of the right to self-determination relating to the “self” and the “determination” components, respectively: (1) What type of collective entity is entitled to self-determination? (2) What type of determination, autonomy, or control may be exercised by this type of collective entity in the name of self-determination?

The Principle of National Self-Determination

In eighteenth- and nineteenth-century Europe, the principle of national self-determination emerged as a central tenet of nationalism, and was heralded by those opposing the increasingly assimilationist policies promulgated by the central authorities of the Ottoman, Austrian, German, and Russian empires. In this context, the principle of self-determination was thought to provide nations with the right to establish their own sovereign states. During this early period of its history, the success or failure of nationalist struggles for self-determination depended on the external support of the Great Powers, and this support was based more on realpolitik and prudential political calculation than on the content of the claims under international law.

The principle of self-determination continued to be applied intermittently and inconsistently leading up to the First World War. At the Paris Peace Conference in 1919, the principle of national self-determination was seen as an obvious vehicle for the re-division of Europe after the disintegration of the Austro-Hungarian and Ottoman empires, but here again, it was not applied consistently. In a League of Nations report on the Aaland Islands Question, it was clarified that there was no right to national self-determination for any minority groups under international law, that such a right would be incompatible with the territorial and political integrity of states, and that such a right would lead to the destruction of peace, order, and stability within states and the inauguration of anarchy at the international level. In short, at the time of the Paris Peace Conference, there was no right to self-determination under international law.

The Right to National Self-Determination

It was not until the post-Second World War decolonization effort that the vague “principle” of self-determination was transformed into a “right” under International Law. In 1960, with the General Assembly’s adoption of Resolution 1514 (XV) or the Declaration on the Granting of Independence to Colonial Countries and Persons, the UN proclaimed “the necessity of bringing to a speedy