

Rawls and the Chimera of Neutrality

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“Society is indeed a contract . . . It is a partnership in all science; a partnership in all art; a partnership in every virtue, and in all perfection. As the ends of such a partnership cannot be obtained in many generations, it becomes a partnership not only between those who are living, but between those who are living, those who are dead, and those who are to be born.”

- Edmund Burke, Reflections on the Revolution in France

“No country is a thing of mere physical locality. A hotel is a physical locality; hotels have residents. Countries do not have residents: they have citizens. Democratic government must be a tutor as well as servant to its citizens because citizenship is a state of mind.”

- George Will, Statecraft as Soulcraft

In this paper I engage with the thought of the eminent political theorist John Rawls. I briefly sketch his principles of justice and the arguments by which he arrives at them, whereupon I highlight some areas of agreement and defend his “difference principle,” with the proviso that its acceptance does not entail that one must embrace social democracy or democratic socialism. I then turn to the priority of the right over the

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good in Rawls's thought. I criticize this aspect of Rawls's work from two angles: (1) the imperative to cultivate certain dispositions and attitudes in the populace as a precondition for long-term political stability and (2) the inevitability of recourse to controversial conceptions of the good in politics. I conclude with some thoughts about how robust moral argument in the public square should be carried out in a pluralistic society.

When *A Theory of Justice* was written, the primary approaches to questions of political theory were utilitarianism and intuitionism. For Rawls, both are unsatisfactory in their own way. Utilitarianism generates counterintuitive results and fails to respect the individuality and inviolability of persons (Rawls 24). Intuitionism, on the other hand, offers only a grab-bag of disparate intuitions without a unifying thread. It raises doubts about utilitarianism but does not provide a coherent alternative theory to take its place (Rawls 39). In *A Theory of Justice*, Rawls develops just such a systematic alternative to utilitarianism in political theory.

Fundamental to Rawls's approach is the priority of the right over the good. "The right" refers to those principles that govern proper action toward others that is in keeping with their inviolability as ends-in-themselves. "The good" encompasses all of those attributes, attitudes, conditions, and components of life that one judges to be constitutive of human flourishing, and therefore valuable and worthy of pursuit. On Rawls's account, the moral equality of persons entails that individuals should be free to live out their own conception of the good. The state exists merely to secure the conditions of justice, (i.e., to enforce the right), not to promote a vision of the good. Therefore, the state must remain strictly neutral on questions of virtue and the good life.

Rawls identifies two principles of justice as fairness. The first principle pertains to liberty: each person has an equal right to the most extensive total system of equal basic liberties compatible with a similar system of liberty for all, and these rights are not to be overridden in the name of overall social utility. These rights secure the inviolability of persons as ends in themselves whose capacity to choose their own aims and ends must be respected rather than undermined in the pursuit of collective ends. The second pertains to equality: social and economic inequalities are to be arranged so that they are both to the greatest benefit of the least advantaged and attached to offices and positions open to all under conditions of fair equality of opportunity (Rawls 302–303). This criterion for the permission of material inequalities is known as the "Difference Principle."

Rawls mounts a two-pronged defense of his principles of justice, by which he hopes to obtain a "reflective equilibrium." Reflective equilibrium is the result of the interplay between one's considered judgments about particular situations and one's broader principles of justice. One's

considered judgments may lead one to adjust one's principles, but it is also possible that one's principles will lead one to revise one's judgments. The hope is that the conclusions reached via this deliberative process will rest upon "the mutual support of many considerations" (Rawls 19). The two components of Rawls's case are an argument that his principles accord with our intuitions and an argument that they are the principles that would be generated by persons in "the original position."

Rawls's intuitive argument unfolds in the course of a penetrating interrogation of the equality of opportunity. Implicit in the concept of equality of opportunity is the assumption that an unequal distribution of social goods is unobjectionable so long as it is attributable to individual choice rather than arbitrary factors such as lack of access to the training and social capital that would equip one to compete in the marketplace on a level playing field. Rawls believes that this widespread judgment carries implications more far reaching than commonly supposed. After all, even human beings born into more or less equal social circumstances are not born equal in health, intelligence, or good looks. Yet surely these contingencies of the genetic lottery have at least as great an impact on a person's earnings as her social background and upbringing. The intuition behind equality of opportunity—that one's fate should be determined by one's own choices, not the arbitrary circumstances of one's birth—applies with equal force to our natural endowments. In this vale of tears, both nature and nurture are fickle in their generosity.

Even if one struggles to spot a flaw in the chain of reasoning, the implications might seem too unsettling to accept. Must the state perpetually intervene in economic life in order to preserve a leveling equality? Fortunately, Rawls has something very different in mind. Equality in poverty is hardly to be preferred to inequality in prosperity. If a measure of inequality is needed to call forth, say, the creativity of entrepreneurs and the discipline and expertise of brain surgeons, then so much the worse for egalitarianism. But, strictly speaking, the wealthy do not deserve their wealth. They are entitled to it, not because they deserve to be rich in some absolute sense, but because a system that compensates them generously redounds to the benefit of all (Rawls 102).

The other principal line of argument for justice as fairness, the original position, is Rawls's distinctive adaptation of the state of nature device. The original position is a hypothetical scenario in which individuals come together to select the principles that will govern society. What distinguishes the original position from the boilerplate state of nature is that it takes place behind a veil of ignorance that precludes any knowledge of one's social status, natural endowments, or conception of the good life. Unlike the principles chosen in the boilerplate state of nature, which may

be distorted by the asymmetrical bargaining positions of the powerful, the principles of justice reached in the original position will be fair.

The parties to the original position are motivated by rational self-interest, not by altruism. But in conditions of ignorance about her place in society, natural endowments, and commitments, a rational agent will choose principles that will maximize the position of the least well off. Those principles will not be utilitarian—no rational and self-interested agent would want to risk ending up as an oppressed minority exploited by the majority. Instead, the principles arrived at from behind the veil of ignorance will intersect with those indicated by our own considered intuitions about justice. Both lines of argument converge on the principles of justice as fairness.

One might respond that not all differences in income can be traced back to differences of natural endowment and upbringing. The successful have worked hard to develop their abilities to the fullest extent. Their diligence and dedication merit a condign remuneration. Three points can be made in response to this argument.

First, the very disposition to work hard and put forth effort is likely influenced at least to some extent by contingencies such as birth order, upbringing, and genetics that are morally arbitrary. Second, even the most devout meritocrat doesn't really believe that hard work and monetary remuneration bear any intrinsic relation. As Michael Sandel points out, though Michael Jordan worked hard to develop his talents as a basketball player, there have undoubtedly been other players who worked, at a minimum, just as hard to develop theirs yet never matched Jordan's achievements on the basketball court (*Justice* 159) (see also, the film *Amadeus*). So, there is no necessary connection between one's blood, sweat, and tears and one's being entitled to any particular compensation. And ironically, to posit such a connection may require one to endorse more state intervention rather than less—should the state be in the business of determining the relative quantity of elbow grease expended by every laborer in the economy and allocating incomes on that basis?

Third, the goods and services a society happens to value at any given time are themselves arbitrary. The utility of my endowments and abilities in bringing in an income will depend to a significant extent on whether they match the preferences that happen to obtain in the society in which I find myself. The Kardashians, Nickelback, and Michael Bay are fortunate enough to live in a society that values what they provide. They might just as easily have been born into societies with more refined tastes. They are entitled to their earnings, of course, but do they really deserve, in some deep moral sense, to make exponentially more than the inner city school teacher or the soldier on the front lines in Afghanistan?

We can concede all of this without taking even one step down the road to serfdom. Though Rawls himself was partial to a greater role for the state in economic affairs, his principles of justice do not mandate any particular approach to political economy. They can help to orient us on the moral landscape, but their application will be a matter of prudential judgment.

For example, suppose Jacqueline reads *A Theory of Justice* and accepts the difference principle. Soon thereafter she comes across Hayek's critique of central planning and finds it penetrating and illuminating (Hayek). She observes that economic freedom and political freedom more broadly seem to be connected. She worries about the rent-seeking and cronyism that often seem to attach themselves like barnacles to big government. She becomes convinced on the basis of her research that the spread of free markets and free trade has something to do with the vertiginous reduction in global poverty in recent decades (Givens and Wright). In comparing the divergent fortunes of similarly situated countries she finds that those that embraced free markets have prospered while those that opted for state planning and confiscatory redistribution have not and concludes that the correlation is a significant one.

It seems to me that Jacqueline could oppose social democracy or democratic socialism, not on libertarian grounds, but on Rawlsian ones. She could argue, not without plausibility, that a dynamic market economy bolstered by a well-designed safety net to provide for the elderly and assist those who have fallen on hard times to get back on their feet better instantiates the difference principle than more socialist-inclined systems. On this view, private property and market forces would be means to an end, not ends-in-themselves. But there is no reason in principle that a Rawlsian cannot celebrate the creativity, innovation, and abundance that they unleash.

There is much that is insightful and appealing in Rawls's principles of justice. I am in agreement with his criticisms of utilitarianism. Moreover, I believe that in calling attention to the influence of morally arbitrary factors in the genesis of material inequality he provides a needed corrective to the tendency to assume that the wealthy categorically deserve their wealth while the condition of the poor is largely traceable to their inferior character. This is not to say that we are simply marionettes dangling on the strings of nature and nurture. But neither are we noumenal selves acting in a metaphysical vacuum of unconditioned freedom. Acknowledging that a whole range of factors, tangible and intangible, constrain the menu of options and opportunities available to any given person is not a capitulation to determinism but simply intellectual honesty in the face of

the unfathomably complex interactions of nature, nurture, experience, and agency that shape a life.

Again, none of this points toward any particular policy or constellation of policies. There should be a vigorous debate about how to achieve the difference principle in practice. But something like the difference principle should be our lodestar. Our discourse should balance accountability with compassion, personal responsibility with our responsibilities to each other, self-determination with a sense that we are all in this together. If Rawls's insights push the well-off to consider their good fortune not as indefeasible evidence of their superiority but as an occasion for stewardship, an opportunity both to do well and to do good, then he has accomplished something significant.

Even so, I have significant reservations with Rawls's project. My concerns center on the Rawlsian doctrine of state neutrality vis a vis the good. Rawls maintains that the state is to concern itself only with enforcing the principles of justice that constitute the right, leaving the individual free to select her own conception of the good. But as the civic republican critics of Rawlsian liberalism have pointed out, a healthy democracy requires a cultural climate that values, among other things, hard work, deferred gratification, strong families, honesty, public spiritedness, and a willingness to see one's country not merely as a guarantor of rights but as a source of duties and responsibilities. It requires that a critical mass of citizens see themselves, not as rational self-maximizers, but as participants in an ongoing association encompassing not only the living but the dead and the unborn. In short, it requires citizens. And citizens do not simply emerge from behind the veil of ignorance fully-formed.

Indeed, the currents of modernity, left to their own devices, have a tendency to erode ties of community, solidarity, and loyalty. Paradoxically, the taxes collected to fund the safety net are experienced as oppressive even as the reform needed to preserve these programs for future generations is perpetually deferred. Absent a conception of ourselves not merely as occupants of the same land mass but as neighbors and fellow countrymen, our disagreements take on a more embittered character. Public deliberation degenerates into civil war by other means. The very idea of the common good comes to seem like a contradiction in terms.

Moreover, the pathologies that accompany widespread family breakdown, drug abuse, and the hollowing out of civil society are well known. As George Will points out, the distinction between self-regarding and other regarding acts—

. . . Is not especially helpful . . . obviously it would be untenable to argue that there can be no such thing as

purely private moral choices. But it is equally mistaken to dismiss the possibility that changed patterns of moral choices can have large and intolerable social consequences . . . An individual getting regularly drunk on gin may be a private matter. Millions of workers and parents regularly getting drunk is a social disaster . . . (83–84)

Broken homes and balkanized neighborhoods will not produce the citizens the polity needs. A society running on the fumes of moral individualism unchecked by countervailing influences is hurtling toward a rendezvous with entropy.

So, we must promote some values and stigmatize others, if only for reasons of pragmatism. Civic virtue cannot be generated *ex nihilo* by the state, but neither will it materialize spontaneously absent a particular cultural context. The state has a role to play in fostering that context.

We rightly prohibit practices such as vote selling and hiring a substitute to take one's place on a jury in part because allowing them would promote the wrong attitudes towards citizenship and thereby erode civic virtue. We maintain the practice of reciting the pledge of allegiance in our public schools and institute national holidays in remembrance of important figures and events in our history in order to send the message that we are not isolated monads who happen to occupy the same physical territory, but members of a community extended across time.

The cultivation of civic virtue also provides a strong reason for continued state recognition of marriage. Society cannot do without the positive externalities of healthy marriages and families, even if it entails privileging some life choices over others. We could leave marriage to private associations; instead, we choose to dignify it with the imprimatur of the state. Law is a blunt instrument, to be sure, but if wielded with prudence and restraint it can help to cultivate some attitudes and dispositions and discourage others. At its best, it can be not only a temporary deterrent, but also a teacher.

The force of arguments of this kind has led some Rawlsians to incorporate republican elements into their liberalism. They are willing to allow for state action aimed at promoting the cultural preconditions for liberalism, particularly the shared sense of nationhood needed to sustain the difference principle (Kymlicka 312). However, they remain committed to the exclusion of substantive moral and spiritual questions from the public square, a wall of separation, as it were, between the state and the various conceptions of the good held by the members of society.

The impulse is understandable, but I think that even this qualified form of liberal neutrality will not withstand scrutiny. In his article "Political Liberalism," Michael Sandel argues that at least where grave moral questions

are at stake, it isn't possible to detach politics and law from substantive moral judgment. Sandel uses the abortion debate as an illustration. Supporters of abortion rights often rest their case on the grounds of state neutrality. They argue that since the moral status of the fetus is a matter of moral and metaphysical controversy, the state should not impose the view that the fetus is a person on those who do not share that view. But, as Sandel points out, if the arguments for fetal personhood are correct, then the current legal regime vis a vis abortion is gravely unjust ("Political Liberalism" 1778). To support abortion-on-demand is, implicitly, to take the position that the fetus is not a person.

It follows that one simply cannot be neutral on the underlying moral question. A sounder pro-choice stance would engage in substantive moral and philosophical argument with the opponents of abortion and try to show that they are mistaken about the moral status of the fetus. Hopefully over time the truth would rise to the top. But this debate would necessarily have recourse to the good *qua* good, not just *qua* instrumentally useful as a means to social cohesion. That takes us beyond civic republicanism.

Moral and even spiritual issues percolate beneath the surface of our debates over human cloning, euthanasia, and the treatment of non-human animals. They suffuse our deliberations over surrogate motherhood, prostitution, and whether to permit a market in human organs. They were integral to the abolitionist and civil rights movements that helped send the evils of slavery and segregation to the ash heap of history. It seems clear to me that robust moral and spiritual arguments belong in our public life. Citizens, whether secular or religious, should be able to bring their deepest metaphysical and moral commitments with them into the public square.

That said, I understand why one might feel a measure of trepidation at this prospect, particularly when it comes to religious and theological arguments. In her article "On Translating Religious Reasons: Rawls, Habermas, and the Quest for a Neutral Public Sphere," Sonia Sikka grapples with the question of how a pluralistic society should negotiate the clash of comprehensive doctrines in the public square. She points out that religious arguments often contain an underlying moral principle that can be isolated, to some extent, from its specific theological carapace (Sikka 104-105). An argument that draws upon the theological language and concepts of a particular religious tradition can spark moral reflection and reassessment in someone who does not belong to that tradition if it brings to her attention a moral intuition or metaphysical intimation whose luminosity cuts across religious and philosophical divides.

Consider, for instance, the Protestant who opposes the death penalty on the grounds that even the most depraved murderer bears the image of God. Many of the theological implications of her belief that every human

being is made in the image of God will not be accessible or acceptable to someone not of her faith. But the moral intuition that human life is in some sense inviolable clearly can be recognized and respected by people of many different faiths and no faith. Hence, the agnostic who invokes universal human rights and the Anabaptist who invokes the image of God may be able to make common cause. If their efforts were to help bring about the abolition of the death penalty in their country, it would be inappropriate for the legislation ending the death penalty to justify itself by reference to the *Five Precepts* or the *Groundwork for the Metaphysics of Morals*. But terms like “human dignity” and “the sanctity of life” that express the weighty moral and spiritual dimensions of the death penalty issue without privileging any particular tradition would not be out of place.

The upshot is that a pluralistic state cannot embody, say, the Roman Catholic view that there should be a “preferential option for the poor,” *qua* Roman Catholic, but it *can* embody something like that view *qua* true and recognized as such by a consensus that transcends sectarian divisions. Indeed, one could argue that Rawls’s difference principle and the preferential option for the poor express the same moral intuition. As Sikka explains:

“Neutrality,” if we continue to call it that, is best conceived as a historically evolving wide (not universal) agreement, and as a confluence of various types of agreement, justified in a commonly acceptable language whose form we cannot anticipate in advance . . . the commonality, whose mutually agreeable language we are in the process of forging, is sometimes a result of convergence for different reasons, sometimes of common intuitions expressed in different vocabularies amounting to a partial consensus for the same reasons, and sometimes a complex and unclear blend of these. (113–15)

It is possible that the process of deliberating about the common good with people of other philosophical and theological commitments will deepen and enrich one’s understanding of one’s own tradition. Perhaps encountering the moral and spiritual insights of other traditions will lead one to incorporate them in some fashion into one’s faith. The Christian might discover that the spirit really does blow where it wills, even outside the walls of the church, while the atheist may develop a certain respect for the moral and spiritual wisdom embedded in the religious traditions of her fellow citizens. In a sense, this ongoing process of dialogue and deliberation within and between the various worldviews and traditions of a pluralistic society would instantiate, writ large, Rawls’s method of reflective equilibrium.

In conclusion, Rawls's case for political liberalism is a fascinating and formidable one. He deftly challenges utilitarianism and uncritical assumptions about distributive justice. However, in repudiating utilitarianism's lack of respect for the individual, he may go too far in the other direction, unduly neglecting the communal prerequisites of individual liberty. Moreover, he does not successfully establish that the right can be detached from the good. Our deliberations about public policy cannot be hermetically sealed off from questions of morality and the good life. In light of this fact, the importance of communal and national attachments grows even more evident. Sensitivity, discretion, and a willingness to compromise are indispensable in the face of the diversity of moral and metaphysical views in our society. Without the glue of national identity to hold us together in the midst of our differences and debates, the challenging processes of public deliberation in a diverse society cannot long endure.

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