

accept the hierarchal system as legitimate and endorse its conception of justice. Under these conditions, incentives to become more liberal are likely to cause resentment within the society of peoples and also compromise the self-determination of nonliberal societies. See *Law of Peoples*, p. 85.

- 85 Some object to Rawls's duty of noninterference since it seems to imply a duty not to come to the assistance of democratic liberation movements. But the duty of noninterference only prohibits assisting democratic liberation movements in decent hierarchical regimes, not in tyrannical and other indecent regimes. A decent nonliberal society should be deemed capable of the eventual self-imposition of democracy; otherwise, Rawls implies, its members are not likely to sustain democratic rule that is imposed upon them.
- 86 See Brian Barry, *The Liberal Theory of Justice*, pp. 128–33; Charles Beitz, *Political Theory and International Relations* (Princeton, NJ: Princeton University Press, 1979), pp. 127–69, and Thomas Pogge, "An Egalitarian Law of Peoples," *Philosophy and Public Affairs* 23, n. 3 (Summer 1994).
- 87 This is the "target" of the duty of assistance; unlike a global distribution principle, it has a cut-off point and no longer applies once a society achieves political autonomy and economic self-sufficiency. In view of the independence and self-determination of a people who take responsibility for their political culture, and for their rate of savings and investment, Rawls sees little justification for a global distribution principle (like the difference principle) that applies continuously without end (*LP* 117). Citing Japan, Rawls says once unjust political causes are removed and a people achieves independence, its wealth is largely determined by its political culture and industriousness, not its level of natural resources.
- 88 In earlier drafts of *LP*, Rawls said that the contention that the justification of boundaries must rest in the difference principle begs the issue for its global application.
- 89 Because *The Law of Peoples* was not near completion when this volume was planned in 1996, an essay on the law of peoples was not commissioned.
- 90 On political liberalism, see also Sections II and III of Scanlon's chapter in this volume (Chapter 3) containing a discussion of overlapping consensus and public reason, Gutmann's chapter (Chapter 4) on liberalism and democracy (especially Section 6 on public reason), and Section V of Freeman's chapter on overlapping consensus (Chapter 7).

# 1 Rawls and Liberalism

## I

"Liberalism" means different things to different people. The term is currently used in Europe by the left to castigate the right for blind faith in the value of an unfettered market economy and insufficient attention to the importance of state action in realizing the values of equality and social justice. (Sometimes this usage is marked by the variants "neoliberalism" or "ultraliberalism.") In the United States, on the other hand, the term is used by the right to castigate the left for unrealistic attachment to the values of social and economic equality and the too ready use of government power to pursue those ends at the cost of individual freedom and initiative. Thus, American Republicans who condemn the Democrats as bleeding-heart liberals are precisely the sort of people who are condemned as heartless liberals by French Socialists.

Both of these radically opposed pejorative uses have some basis in the broad tradition of liberalism as a group of political movements and political ideas, sharing certain convictions and disagreeing about others. It is a significant fact about our age that most political argument in the Western world now goes on between different branches of that tradition. Its great historical figures are Locke, Rousseau, Constant, Kant, and Mill, and, in our century, its intellectual representatives have included Dewey, Orwell, Hayek, Aron, Hart, Berlin, and many others. With the recent spread of democracy, liberalism has become politically important in countries throughout the world.

Rawls occupies a special place in this tradition. He has explored and developed its philosophical foundations to an unprecedented depth – and thereby transformed the subject of political theory in

our time – and he has defended a distinctive, strongly egalitarian view that is at odds with many others in the liberal camp, although he sees it as following the basic ideas of liberalism to their logical conclusion.

One indication of the importance of a political theory is the vehemence with which it is attacked and the need its opponents feel to explain their disagreements and situate themselves in relation to it. Rawls has been attacked relentlessly, and from many directions, because his theory of justice has the kind of real substance that arouses strong disagreement. Though the style of presentation is always accommodating rather than challenging, the views themselves are highly controversial. They do not, for example, represent the main stream of liberal opinion in the United States today.

In brief, what Rawls has done is to combine the very strong principles of social and economic equality associated with European socialism with the equally strong principles of pluralistic toleration and personal freedom associated with American liberalism, and he has done so in a theory that traces them to a common foundation. The result is closer in spirit to European social democracy than to any mainstream American political movement.

Rawls's theory is the latest stage in a long evolution in the content of liberalism that starts from a narrower notion, exemplified by Locke, which focused on personal freedom and political equality. The evolution has been due above all to recognition of the importance of social and economic structures, equally with political and legal institutions, in shaping people's lives and a gradual acceptance of social responsibility for their effects. When the same moral attention was turned on these as had earlier been focused on strictly political institutions and uses of political power, the result was an expansion of the liberal social ideal and a broadened conception of justice. Indeed, the use of the terms "just" and "unjust" to characterize not only individual actions and laws but entire societies and social or economic systems is a relatively recent manifestation of this change of outlook. Rawls's liberalism is the fullest realization we have so far of this conception of the justice of a society taken as a whole whereby all institutions that form part of the basic structure of society have to be assessed by a common standard.

The original impulse of the liberal tradition, found in Locke and Kant, is the idea of the moral sovereignty of each individual. It

implies limitations on the ways in which the state can legitimately restrict the liberty of individuals even though it must be granted a monopoly of force in order to serve their collective interests and preserve the peace among them. Freedom of religion, of speech, of association, and of the conduct of private life and the use of private property form the core of the protected liberties. Mill gave a different, rule-utilitarian justification to these limits on the authority of the state over the individual. They have remained central to liberalism through continuing arguments both about their moral foundation and about their proper scope and interpretation.

The other great moral impulse of liberalism, a hostility to the imposition by the state of inequalities of status, overlaps at its point of origin with the protection of liberty since both of them mean that slavery, serfdom, and caste are ruled out. But opposition to inequality extends gradually to more positive requirements such as equal citizenship for all groups, universal suffrage, the right to hold office, the abolition of hereditary political authority – in short, political and legal equality as a general feature of public institutions.

What has led to the development of modern forms of egalitarian liberalism of the kind that Rawls defends is the recognition that a society may impose inequalities of status on its members in many ways other than by making them legally explicit. The entire system of social and economic institutions – partly made possible by laws, such as the laws of contract and property, but really shaped by conventions and patterns that are the sum of countless transactions and choices by individuals acting in this framework over time – offers very unequal life chances and opportunities to different persons, depending on where they are situated in it by fate.

Consciousness of the hereditary inequalities of class led, of course, to other political movements besides liberalism, but it expanded the concerns of liberalism, through a natural extension of the opposition to inequality, from inequality that was deliberately imposed to inequality that was foreseeable and preventable but tolerated. This has led to a great expansion of what liberalism can demand of the state because it is not just a prohibition but a positive requirement – the requirement that the state use its power to prevent certain severe social inequalities from arising or from having their worst effects.

But the egalitarian impulse in liberalism, as opposed to movements farther to the left, has always been strictly tied to the limits on

state power imposed by each individual's sovereignty over himself. However much is required of the state in a positive direction to curb the development of deep institutional and structural inequalities, it may not violate the basic rights to liberty of individual citizens when carrying out this charge. Putting these impulses together in a coherent theory is not always easy, and the task has resulted in familiar disagreements within the liberal camp.

Rawls's theory is remarkable for the distance to which he has followed both of these moral impulses and for the way he connects them. Rawls interprets both the protection of pluralism and individual rights and the promotion of socioeconomic equality as expressions of a single value – that of equality in the relations between people through their common political and social institutions. When the basic structure of society deviates from this ideal of equality, we have societally imposed unfairness, hence the name “justice as fairness.” A society fails to treat some of its members as equals whether it restricts their freedom of expression or permits them to grow up in poverty.

It is the very strong interpretation he gives to the requirements of justice for all of the basic institutions of society that makes Rawls's liberalism so controversial. It is very different from the liberalism of Mill with its dominant insistence on limits to government action. Mill was aware of the egalitarian appeal of socialism and responded to it in his posthumously published “*Chapters on Socialism*.”<sup>1</sup> His doubts about the economic and psychological viability of a system of that type were of the kind that have persisted and proven valid. But the egalitarian impulse also persisted and eventually had its effect on the development of the liberalism of the welfare state. How extensive that effect will be remains uncertain; the question is very much under current political debate in all broadly liberal regimes.

The other big difference from Mill is that Rawls's account of the individual rights central to liberalism is not instrumental. He does not think they are good because of the results they will bring about; he thinks they are good in themselves. Or rather, he holds that they are principles of right and that the right is prior to the good. The protection of certain mutual relations among free and equal persons, giving each of them a kind of inviolability, is a condition of a just society that cannot, in Rawls's view, be explained by its tendency to promote the general welfare. It is a basic, underived requirement.

This noninstrumental conception of individual rights is also supported by Rawls's rejection of the utilitarian method of aggregating advantages and disadvantages across persons and choosing the system that maximizes the total. The importance for morality of the distinctness of persons also accounts for the special form he gives to the social contract as a foundation for political theory. But the details would take us too far from the topic of this essay.

## II

The relation of Rawls's theory to other views will show up clearly if we examine his two principles of justice in detail. We will then see how his choices among alternatives express a specific moral position and what other positions would have been expressed by other choices. The two principles, in their latest formulation in *Political Liberalism*, are as follows:

- a. Each person has an equal claim to a fully adequate scheme of equal basic rights and liberties, which scheme is compatible with the same scheme for all; and in this scheme the equal political liberties, and only those liberties, are to be guaranteed their fair value.
- b. Social and economic inequalities are to satisfy two conditions: first, they are to be attached to positions and offices open to all under conditions of fair equality of opportunity; and second, they are to be to the greatest benefit of the least advantaged members of society.<sup>2</sup>

The first principle (equal rights and liberties) has priority over the second, and the first part of the second principle (fair equality of opportunity) has priority over the second part (the difference principle).

Note that the first principle is a principle of strict equality, and the second a principle of permissible inequality. The first applies roughly to the constitutional structures and guarantees of the political and legal systems, and the second to the operation of the social and economic systems, particularly insofar as they can be affected by tax policies and various approaches to social security, employment, disability compensation, child support, education, medical care, and so forth. The strict priority of individual rights and liberties over the reduction of social and economic inequalities is the

true core of liberalism, and it has attracted the scorn of the radical left over a long period. This ideological battle is not over, as we see from the denigration of “Western values” by the latest generation of non-Western despots.

However, the issue of what to include in the required scheme of rights and liberties marks an important division among liberals. There are those who believe that the core rights are connected with the protection of the democratic process and the prevention of political oppression – such rights as freedom of speech, freedom of association, due process of law, the right to vote and hold office, and freedom of religion. On this view, purely personal and cultural liberties, such as those involved in disputes over the legal enforcement of sexual morality or the legality of abortion, do not have the same status. On these issues Rawls’s interpretation of the scope of basic rights tends to be broader for reasons having to do with the foundations of those rights and with the ways in which a just society must accept pluralism, reasons that will be discussed below.

On the other hand, there is one significant kind of right that Rawls excludes from the full protection of the first principle, namely, property rights. Those who give significant moral weight to property rights – not just to the right to possess some personal property, which Rawls includes, but significant rights of accumulation and disposition of private property – belong to the libertarian branch of liberalism. Even if strict libertarians are rare, the high valuation of economic freedom is a significant element in the outlook of those who retain a Lockean sympathy for the natural right of individuals to enjoy the fruits of their labor and their gains from other uncoerced economic transactions.

Rawls will have none of this. Entitlement to what one has earned or otherwise legally acquired has a completely different status in his theory from free speech, freedom of worship, or freedom to choose one’s employment. Economically significant property rights are valued not as an essential part of individual liberty but as indispensable features of the economic system without which the reliable expectations and security that are essential for long-term planning, investment, production, and capital accumulation would not be possible. Reliance on contract, salary agreements, the payment of dividends, and so forth is economically essential, and it is only the justification of the whole system that provides the moral support for

an individual’s entitlement to what he earns or otherwise acquires through the actions he and others take in accordance with its rules. What he is entitled to is determined by the rules, and what the rules should be, including the rules of taxation and redistribution, is determined by which overall system would be most just in its results, taken as a whole. In Rawls’s theory individual property rights are the consequence, and not the foundation, of the justice of economic institutions. In theories of a libertarian tendency the reverse is the case.

This rejection of economic freedom as a value in itself is one feature of Rawls’s view that has attracted opposition along with the closely related rejection of individual desert as a fundamental political value. For the purposes of political theory, at least, Rawls holds that people deserve the product of their efforts only in the sense that if they are entitled to it under the rules of a just system, then they have a legitimate expectation that they will get it. This view is, I think, more uncompromising than would be accepted even by most of those who would describe themselves as liberals. There are certainly those who would maintain that, even preinstitutionally, people deserve what they gain by their own efforts and that this should be allowed to have some effect on the form of a just economic system. That might be expressed by some modification in the interpretation of Rawls’s first principle, to admit a measure of economic freedom as a protected right.

If we move now to the second principle, the first thing to observe is that the inclusion of any such principle at all, limiting the inequalities that can be permitted by a just state to arise through the free choices of individuals acting under a regime of adequate and fully protected individual rights and liberties, marks the difference between laissez-faire liberalism and welfare state liberalism. The second principle expresses the recognition that class stratification and the resulting inequality of chances in life are social evils bearing on the justice of a society.

To begin with the first part of the second principle: Equal opportunity has come to be a central tenet of most liberal positions, but it is open to two very different interpretations, negative and positive. Negative equality of opportunity means the absence of barriers to competition for places in the social and economic hierarchy, so that anyone can rise to a position for which he is qualified. This is what

Rawls calls the principle of “careers open to talents.” Positive equality of opportunity, or what Rawls calls “fair equality of opportunity,” requires more: It requires that everyone, whatever his starting place in life, have the same opportunity to develop his natural talents to the level of which he is capable so that he can compete for a position, when the time comes, without handicaps that are due to a deprived background. The second interpretation, enabling everyone to realize his potentialities, demands much more state action than the first, making sure the doors are open to anyone who qualifies.

Attachment to negative equality of opportunity – condemning the deliberate exclusion of anyone on grounds of race, class, sex, or religion from an equal chance to compete – is now nearly uncontroversial.<sup>3</sup> And to some degree the value of fair or positive equality of opportunity, or equality of chances, is more and more widely recognized. The obligation of an affluent society to ensure access to education through the university level to all who are willing and able to benefit from it and some obligation to see that children receive adequate nourishment and medical care, however poor their parents may be, are accepted by most segments of the political spectrum in broadly liberal societies. The disagreements are over the degree to which inequalities of opportunity ought to be evened out.

Such inequalities cannot be eliminated entirely because differences between families have a big effect on children that state action cannot completely override. But there is room for disagreement over how much has to be done. Some of that disagreement may be due to differences of opinion about how powerful the effect of class is on people’s options. Some parties claim that anyone can succeed by hard work, whereas others point out how much more difficult it is if you start at the bottom rather than at the top. But most of the disagreement, I suspect, is due to a difference of moral focus. Those who are inclined to regard the competitive advantages children get from the luck of having been born to prosperous parents as unobjectionable probably focus on the fact that they result from normal and irreproachable family affection. Others, who think those advantages and the corresponding disadvantages of those born poor are unfair, probably focus on the fact that their recipients have done nothing to deserve them.

Still, the debate over the proper form of equal opportunity is much less divisive than that over whether a just society should go beyond

this to strive for equality of results. That brings us finally to the second part of the second principle – the difference principle – which is Rawls’s most strikingly egalitarian requirement and one of his most contested claims. It says, to repeat, that social and economic inequalities “are to be to the greatest benefit of the least advantaged members of society.” One can conceive of an even more egalitarian principle, one which favored greater equality even if it would lower everyone’s level of welfare, including that of the worst off. But this does not hold much appeal outside the tradition of utopian socialism and is in any case probably the reflection of something else – the idea that strict equality of possessions would promote a universal level of self-esteem and mutual respect that is impossible in a socially and economically stratified society. That is the appeal of the perennial fantasy of the abolition of all hierarchy. But Rawls’s difference principle is still very egalitarian, and it can be contrasted with several alternatives that command support within the spectrum of liberal views.

First there is the view that the only equality required for justice is equality of opportunity and that since the inequalities that arise under a regime of equal opportunity are the result of what people make of their opportunities, they are not unjust. Somewhat more egalitarian is the view that certain forms of misfortune, including disability, serious illness, and particularly low earning capacity due to lack of skills or overwhelming parental responsibilities, should not be allowed to render their victims helpless and destitute. The provision of some kind of social safety net is widely favored to deal with such cases, although there is disagreement over how high the net should be – what level of social minimum it should guarantee. This view is perhaps best interpreted not as a fundamentally egalitarian one but rather as the consequence of something else: the judgment that certain absolute forms of deprivation are particularly bad and that no decent society should tolerate them if it has the resources to prevent them.

Another view that has egalitarian consequences, although it is not fundamentally egalitarian, is utilitarianism, the position that the maximization of total welfare should be a social goal. Destitution seriously brings down the total, and the diminishing marginal utility of resources means that transferring some of them from the rich to the poor, if it can be done without too much loss, will increase total welfare. It seems likely that most support for moderate policies

of assistance to the disadvantaged is due to moral positions like these rather than to the much more deeply rooted egalitarianism that Rawls defends.

Rawls's difference principle is based on the intuitively appealing moral judgment that all inequalities in life prospects dealt out to people by the basic structure of society and for which they are not responsible are *prima facie* unfair; these inequalities can only be justified if the institutions that make up that structure are the most effective available in achieving an egalitarian purpose – that of making the worst-off group in the society as well off as possible. This is an egalitarian aim because it blocks the pursuit of further equality only if that would make everyone worse off.

This may be a radical position, but it should be kept in mind that it applies only to deep structural inequalities that affect statistically large numbers of people in the different social categories. It does not apply to the countless inequalities among individuals that will inevitably arise as people make choices and interact, and succeed or fail in their efforts, in the context of any socioeconomic structure, however just. If the broad structure of society satisfies the principles of justice in its large-scale statistical effects on the life prospects of different groups, then, according to Rawls, any individual inequalities that emerge from its operation will be *ipso facto* just. That is what he means by calling it a system of pure procedural justice: The broad design of the system confers legitimacy on the specific outcomes, whatever they are.

Nevertheless, the difference principle means that the broad design of the system is supposed to be evaluated by its success in eliminating those inequalities that are not needed to provide maximum benefit to the worst off. And this imperative depends on the moral claim that it is unfair if people suffer or benefit differentially because of differences between them that are not their fault. A society that does not try to reduce such differentials is not just, and that applies whether the differences in question are racial, sexual, or religious or disparities in the fortunes of birth, such as being born rich or poor, or being born with or without unusual natural abilities.

It is this last point, the unfairness of society's systematically rewarding or penalizing people on the basis of their draw in the natural or genetic lottery, that underpins the difference principle. Even under ideal conditions of fair equality of opportunity, such inequalities will

arise from the normal operation of a competitive market economy in which there is bidding for scarce productive skills. According to Rawls those inequalities are unjust unless supplemental policies ensure that the system works to the maximum benefit of the worst off. People do not deserve their place in the natural lottery any more than they deserve their birthplace in the class structure, and they therefore do not automatically deserve what "naturally" flows from either of those differences.

One other point about the second principle deserves attention: the priority of the first of its conditions over the second. Rawls holds that fair equality of opportunity may not be sacrificed even if this would benefit the worst-off group in a society. It may be difficult to imagine how that might be so, but I mentioned earlier in this section the deviation from equality of opportunity represented by affirmative action, and it is perhaps possible that, even in the absence of the historical legacy of slavery or a caste system, someone might favor an ongoing program of preference in assignment of desirable positions to the less talented, or perhaps some randomization of assignment, in order to prevent the development of a hereditary meritocracy. That kind of reversal of priority between equality of opportunity and equality of results would represent a more radically egalitarian position than Rawls's, and also one that was in a sense more anti-individualistic.

This brief survey of the alternatives shows that in putting forward his two principles of justice, Rawls has not only expressed a distinctive position but provided a framework for identifying the morally crucial differences among a whole range of views on the main questions of social justice. I now want to go more deeply into the justifications for the most controversial features of his view – its pluralism and its egalitarianism.

### III

An important element in Rawls's conception of liberty is the requirement that a just state refrain, so far as possible, from trying to impose on its members a single conception of the ends and meaning of life. This is most straightforward in the requirement of freedom of religion, and Rawls assigns great importance to the historical descent of ideas of toleration from the seventeenth-century wars of religion and their aftermath. But he applies the principle much more widely

to cover all deep differences in fundamental conceptions of the good. Toward these, he believes a just society should adopt an attitude of toleration and the expectation of pluralism and should leave people free to pursue their ultimate aims provided they do not interfere with the other requirements of justice.

What this position opposes, in particular, is one or another form of perfectionism based on commitment to a particular contested idea of the ends of life and insistence that it is the proper role of a political community to guide its members in that direction by coercion, education, the exclusion of other options, and control of the cultural environment. Rawls opposes perfectionism not merely because the contest for religious or cultural hegemony has divisive results and is potentially dangerous for all parties. That would be to accept pluralism and toleration as a mere *modus vivendi*, necessary for practical reasons though falling short of the ideal. Rawls believes, on the contrary, that pluralism and toleration with regard to ultimate ends are conditions of mutual respect between citizens that our sense of justice should lead us to value intrinsically and not instrumentally. In the original position, this ideal receives formal expression through the fact that parties to the hypothetical contract are supposed not to know their own full conception of the good – so they have to choose principles of justice based on a thin, purely formal conception that they know would be consistent with any of the thicker conceptions that might be their actual one. This feature of the veil of ignorance, like not knowing one's race or class background, is required because Rawls holds that equal treatment by the social and political systems of those with different comprehensive values is an important form of fairness.

The distinction between comprehensive values and more narrowly political values is discussed extensively in *Political Liberalism*, and Rawls suggests that in *A Theory of Justice* he failed adequately to attend to this difference.<sup>4</sup> This is a rather subtle matter. I myself think that the aim of making the theory of justice independent of any particular comprehensive view was already implicitly present in the earlier book, though the later discussion is very important in working out how Rawls believes this can coherently be accomplished. In any case, the questions whether it is possible, and if so whether it is desirable, have generated a great deal of attention. Rawls himself points to others in the liberal tradition, such as Kant

and Mill, who take it for granted that political liberalism should be derived from a comprehensive moral conception. That outlook still has many adherents. And since Rawls has raised the issue, a number of skeptics have argued that it is impossible to ground a political theory of justice on a much narrower base, as he wishes to do – that the kind of neutrality or abstinence that he requires of us when thinking about justice is unavailable and incapable of sustaining the moral commitment to principles of tolerance and antiperfectionism.<sup>5</sup>

This corresponds to a heated dispute that arises again and again in public debate: Do the typical liberal demands for tolerance and individual liberty with respect to religion, sexual conduct, pornography, abortion, assisted suicide, and so forth really depend on the requirement of state impartiality toward deep and contested personal convictions, or are those demands in reality based on the quite specific contested convictions of those very liberals, convictions which they think it politically inadvisable to invoke directly – religious skepticism, sexual libertinism, and moral endorsement of abortion and assisted suicide? Alternatively, the charge may be that the true basis of all liberal positions is a comprehensive belief that the best thing for each person is to live his life in accordance with his own autonomous choices, whatever they are, and that that is what a just society should make possible so far as it can be managed for people with widely varying preferences and commitments. This is an important issue both theoretically and substantively; the appropriate form of liberal toleration turns on it.

It is true that with respect to any issue of individual rights, such as homosexuality, two very different arguments can be offered on the side of liberty. The first is that there is nothing wrong with homosexuality, so it should not be prohibited. The second is that, whether or not homosexuality is morally wrong, sex is one of those highly personal matters that should not be controlled by a society on the basis of the convictions of a majority of its members. It is also true that many of the people who would be willing to offer the second argument would also endorse the first, and perhaps not many who would reject the first would be persuaded by the second. Still, there is an important point to the appeal by some liberals, in the style of Rawls, to the second, higher-order argument, which belongs specifically to political rather than overall moral theory. Whether or not it actually commands wide acceptance, the second-order argument

tries to appeal to a value which all members of a pluralistic liberal society could reasonably accept even if they disagreed fundamentally in their beliefs about sexual morality. It is not the overriding value of individual personal autonomy, which may be rejected by many religious and other comprehensive views. It is the value of mutual respect, which limits the grounds on which we may call on the collective power of the state to force those who do not share our convictions to submit to the will of the majority.

All government, all society, requires that the state must have such power; the issue concerns only its extent and the admissible grounds of its exercise. The way it defines those limits is one of the most important features of any liberal position – what makes it a liberal theory of democracy rather than mere majoritarianism. As we know from the case of Mill, strict limits on both the extent and the admissible direct grounds for the exercise of state power can be defended directly by appeal to the comprehensive value of happiness and individual human flourishing without relying on any principle of second-order impartiality among comprehensive views. *On Liberty* is a powerful rule-utilitarian defense of liberal principles.

But Rawls wants something else – something that is in a way more difficult and perhaps less likely to persuade in real political argument. He wants a justification for liberty and pluralism that does not rely on the individualistic system of values so many liberals share. Political liberalism should be compatible with religious orthodoxy. Rawls wants this because, when it comes to constitutional essentials, it is insufficiently respectful toward those many members of a liberally governed society who do not share those comprehensively individualistic values to justify the institutions under which we all must live, and the rights which those institutions guarantee, by reference to grounds those individuals cannot reasonably be expected to accept. The reach of a justification for constitutional guarantees of individual freedom must be wider than that even if this means its grip will be more precarious.

Rawls identifies the type of argument he has in mind in his extensive discussions of what he calls “public reason” and its relation to the fact of reasonable pluralism. These concepts are very important in *Political Liberalism* and receive their most developed treatment in a still later essay of 1997.<sup>6</sup> The greatest difficulty in defining such a view is to distinguish between those conflicts of value that belong

within the domain of public reason and those that do not. Disagreements outside of the public domain, religious disagreements being the clearest example, should so far as possible be avoided when justifying the design of basic social and political institutions. But disagreements within the domain of public reason can be just as fundamental, yet Rawls believes that those who hold the balance of political power need not hesitate to exercise it on the basis of their views on such questions or to impose the result on those with opposite views. This happens all the time in political debate over issues of war and peace, economic policy, taxation, welfare, or environmental protection, for example. So what is the difference?

Rawls emphasizes that public reason is not to be thought of as an effective decision procedure, guaranteed to produce agreement, but rather as a special kind of disagreement, argument, and counterargument, which tries to use mutually recognized methods of evaluation and evidence, whether these produce consensus or not. Even if we are not convinced by an opponent’s arguments about distributive justice, for example, we can recognize them as offering grounds that he thinks would be reasonable for us to accept, simply in virtue of the reasoning capacity that we all share. The same cannot be said for appeals to faith or revelation.

Whether an argument constitutes an appeal to public reason is itself likely to be a contested issue (think of the question of the permissibility of abortion). But the concept of public reason is not put forward by Rawls as a mechanical test for the admissibility of arguments but rather as a characterization of what we should be looking for in an admissible ground for the design of basic institutions. In applying the concept there will be higher-order disagreements, just as there are conflicting arguments within the domain of public reason. But the sense of justice should lead us to try, in good faith, to offer to our fellow citizens grounds for the exercise of collective power that we believe they, from their point of view as fellow reasoners, have reason to accept – even if they do not actually do so. To invoke only our private convictions is, according to Rawls, a violation of the requirement of reciprocity that applies to members of a just society.

In addition to these problems of definition there is the big problem of justification. How can we put aside some of our deepest convictions – convictions about the ultimate ends of life – in deciding



how our society should be arranged? It can seem like a betrayal of our values to deliberately refuse, if we have the power, to put everyone on what we believe to be the true religious path to salvation, or on the contrary the true secular path of individual autonomy and self-realization, through the design of the political, social, and educational systems. To base political values on something less than our most comprehensive transcendent values can seem both morally wrong and psychologically incoherent. For how can these narrower political values have the leverage to hold in check transcendent religious values, for example – particularly when the latter are concerned not just with my own interests but with what I take to be the most important interests of everyone, and therefore of my fellow citizens, whatever their own convictions may be? The same question arises about individualistic secular values, which would seem to justify political opposition to orthodox religion.

This is a difficult question of moral theory, lying at the foundation of the idea of individual rights and therefore at the foundation of a liberalism based on rights. The central issue is whether a requirement of mutual respect, operating in the context of the exercise of collective power over the individual members of a society, is strong enough to hold in check not only the unlimited pursuit of the self-interest of the majority at the expense of the minority but also the unlimited pursuit of the ostensibly transcendent values of the majority against the will of the minority who do not share them. Skeptics answer that to base our principles of political right and wrong on something less than our full system of values is to accord those values only superficial importance by comparison with an abstract, almost contentless universality.

Rawls's attempt to answer the question by grounding liberal toleration and freedom on principles of right that are prior to conceptions of the good is one of his most significant contributions. The difficulty of the task is considerable, and the suspicion remains on the part of many critics that such views are a kind of liberal camouflage for much more partisan arguments – that the proposed ecumenical appeal of liberalism is hollow. Some of these critics are themselves liberals who believe it is better to defend liberal ideals by appealing to an explicitly liberal conception of the human good.

But I believe Rawls's alternative is a moral idea of the first importance and that it represents a political ideal worth striving for.

Even if it is much harder to explain and defend than a liberalism based straightforwardly on individualistic and utilitarian values, a Rawlsian political liberalism that could be justified even to those of orthodox religious belief who do not share those values would be preferable as a ground for determining the legitimacy of the exercise of power by a state over all its citizens. Rawls has tried to describe a form of liberalism that can claim the allegiance not only of secular individualists and not only as a *modus vivendi* or second best. I believe he has identified a source of moral conviction and motivation that does not depend on religious skepticism or an ethic of individual autonomy, and that has an important role to play in the justification of liberal democratic institutions.

#### IV

The other great source of controversy in Rawls's moral outlook is his strong egalitarianism, exemplified by the difference principle. Not only the principle itself but various of the claims offered in its support have aroused substantial opposition. He qualifies its status somewhat in *Political Liberalism*, saying that it is part of basic justice but not a constitutional essential and that it is much more difficult to ascertain whether it has been realized than is true of the basic liberties; but it remains a very important part of his overall view.

Rawls defends the difference principle most fully in Chapter 2 of *A Theory of Justice*, arguing that it follows intuitively by a kind of analogy from other principles of equality that are less controversial. His main point is that we cannot be content with equality of opportunity. Even the principle of negative equality of opportunity, which excludes deliberate discrimination, depends on the belief that the social system should not assign benefits or disadvantages solely on the basis of differences between people for which they are not responsible and which they have done nothing to deserve. To exclude qualified candidates from a profession because of their race or sex is to penalize them on grounds that are arbitrary in the worst sense, and a society that permits such a thing is unjust.

This is only a first step, however, because people are no more responsible for the socioeconomic status of the family into which they are born than they are for their race or sex. Yet a system which

guarantees only negative equality of opportunity permits class inequalities to develop and accumulate without doing anything to counteract the enormous differences they generate in the opportunities for individuals to acquire the training and background needed to develop their abilities and so to compete for formally open positions. Negative equality of opportunity is therefore not full equality of opportunity. It must be supplemented by positive provision of the resources that will permit each potential competitor to develop his natural abilities and therefore to be in a position to take advantage of his opportunities. That is what Rawls means by fair equality of opportunity.

The same reasoning leads him further. Even under a regime of fair equality of opportunity, undeserved inequalities would continue to arise. Fair equality of opportunity, to the extent that it can be realized, guarantees only that persons of equal natural ability will have roughly equal chances to prosper. But people are not equal in natural ability, and their natural or genetic differences will continue to affect the benefits they gain from interaction with the social and economic order. Yet this too is morally arbitrary, for people are no more responsible for their genetic endowment than for their race or the economic status of their parents. Consequently a just society will counter these undeserved differences in benefit to the extent that it can do so without hurting the very people whose arbitrary penalization it is most concerned to rectify, namely, those who come in last in the socioeconomic race. Hence, the difference principle.

Despite the persuasiveness of these analogies, not everyone is convinced that there is anything unfair about people's benefitting differentially from the employment of their own natural abilities even though they have done nothing to deserve those abilities. Even if they have done nothing to deserve it, their genetic makeup is part of their identity, and it can seem like an assault on the independence of persons to say that they have no right to the benefits which flow from that identity, except insofar as this also benefits others. Such reactions have seized on Rawls's striking remark that "the difference principle represents, in effect, an agreement to regard the distribution of natural talents as a common asset and to share in the benefits of this distribution whatever it turns out to be."<sup>7</sup>

The issue identifies a fundamental cleavage in the liberal tradition between those who identify justice with the fight against any kind of

undeserved inequalities that the design of the social system can ameliorate and those who believe the scope of justice is narrower – that society is exempt from responsibility for certain forms of "natural" difference, even if they are in a nonpolitical sense unfair. In this more limited conception, a just society should provide a framework, with fair equality of opportunity and a decent social minimum, in which people can rise by their own efforts to the level to which their natural abilities and efforts are able to take them.

The moral significance of the choice between this vision and Rawls's is quite difficult to characterize. Both are interpretations of the vague idea of relations of mutual respect and cooperation among the separate, autonomous individuals that make up a society. We do not own one another and we want to interact on equal or reciprocal terms in some sense. But in Rawls's conception, we should not want the collectively sustained system of which we are all equally members to allow us to reap benefits on the basis of lucky accidents of fate which we do not deserve, at the expense of others less fortunate who also do not deserve their fate. The fact that one's draw in the natural lottery is undeserved communicates itself morally to what flows from it through the operation of the economy. As Rawls says in another memorable formulation, "In justice as fairness, men agree to share one another's fate."<sup>8</sup>

The opposite view is that we retain more independence than this of the claims of others when we enter a society and do not even metaphorically hand ourselves over to it. Just as basic personal freedom remains protected by liberal equality, so does the right to benefit from one's efforts and one's talents. Our responsibility for one another, as fellow members of a society, is substantial but nevertheless definitely limited by our continued independence.

The moral key to Rawls's more expansive position is in the idea that, because of the essential role of the state, the law, and the conventions of property in making possible the extraordinary productivity and accumulations of a modern economy, we bear collective responsibility for the general shape of what results from the sum of individual choices within that framework. We are therefore responsible for large-scale inequalities that would not have arisen in an alternative framework, and if they are morally arbitrary, we have reason to want to alter the system to reduce them. There is simply something repellent about a joint enterprise in which rewards are

apportioned in accordance with genetic endowment – unless there is some further instrumental justification for this apportionment, as there is when an inequality satisfies the difference principle.

Among those who would agree with Rawls in accepting society's responsibility for all outcomes that it permits, and not only for those that it produces deliberately, there is still room for disagreement with the strong egalitarianism of the difference principle. The strict priority given to improvements in the situation of the worst off, in preference even to greater individual and aggregate improvements to the situation of those better off, seems unreasonable – particularly to those drawn to utilitarianism. Utilitarians might agree that social inequalities require justification but that they may be justified because they contribute to the general welfare, not just to the benefit of the worst off.

Even those who would admit some priority to the needs of the worse off over the better off – after all, the better off already *have* what the worse off need – may think the difference principle too absolute. It seems to devalue the interests of the middle class unreasonably to say that a socioeconomic order will always be more just if it sacrifices them to the interests of the lower class. Such doubts are also voiced at the level of the hypothetical contract: it is often questioned whether the parties in the original position would be rational to adopt the maximin strategy of choice, which leads to the choice of the difference principle, as a way of ensuring that the worst possible outcome will be as good as possible. Rawls's strong egalitarianism displays an exceptionally strong aversion to the generation by social institutions of what he regards as undeserved differences.

In addition to the familiar opposition from his right on the grounds that the difference principle is too egalitarian, there is an interesting criticism from the left to the effect that Rawls is too ready to countenance economic inequalities under the difference principle even if they are the result of acquisitive motives on the part of members of the society – motives diametrically opposed to the ideal of equality.<sup>9</sup> The point is that, in a market economy, it is assumed that inequalities in income and wealth will arise as a result of the wage and profit incentives that drive economic activity. The claim that these inequalities are necessary for the benefit of the worst off depends on the assumption that individuals will not be adequately motivated in their roles as participants in the economy without personal

incentives that appeal to the purely individualistic desire to accumulate resources for the discretionary use of oneself and one's family. But the question then arises, Can a society be truly just if there is such a gulf between the egalitarianism that determines the design of its institutions and the individualism that motivates its members when they act in the context of those institutions?

The fact that Rawls accepts this division is a mark of his unqualified attachment to the liberal tradition despite his strong institutional egalitarianism. Political theory is one thing; personal morality is another. Justice is conceived as a specifically political virtue, leaving individuals free to live their lives in pursuit of their own aims and commitments, be these hedonistic or puritanical, libertine or devoutly religious. The special demands of equal respect for the interests of all that justice imposes apply to the sphere of collectively sustained institutions, not to personal life. So liberalism involves a division of the moral territory and leaves individuals free to instantiate a great plurality of forms of life, some of them highly self-absorbed, so long as they are compatible with a just basic structure of cooperation.

## V

This division between the personal and the political, and the assignment of justice firmly to the political category, has come to prominence in Rawls's writings after *A Theory of Justice*, culminating in *Political Liberalism*. He has emphasized that justice as fairness is a freestanding political conception partly in response to criticisms of *Theory* alleging that it relied on a conception of the self as an autonomous, unconstrained subject of choice whose good consisted in forming its own preferences and pursuing their satisfaction, whatever they were. While most of those criticisms depended on misinterpretation, including the gross misinterpretation of attributing to Rawls the view that actual persons were like the stripped-down characters in the original position, the criticisms also threw into relief the difficult question of the coherence of a position that makes political values independent of comprehensive values and capable of dominating them in the political sphere, even if they are concerned with the most important things in life such as salvation and self-realization.

One of the important points Rawls has made is that the alternative, of deriving the political order from a particular comprehensive value system, is often supported by nostalgia for a communitarian past that never existed, in which all the members of a society were united in devotion to their common conception of the good: the Christian world of the middle ages – in fantasy. Rawls points out that the maintenance of orthodoxy of that kind has always required oppression because harmonious agreement over fundamental values does not maintain itself naturally. The Inquisition was no accident; the persecution of heretics and apostates is an inevitable part of the attempt to maintain comprehensive unity and to prevent the outbreak of conspicuous dissent. Pluralism, on the contrary, is the natural result of a regime of basic individual rights and freedoms.

It follows that support for the core of liberalism, the guarantee of basic rights, must be compatible with pluralism. Now admittedly, it would be possible to argue for such rights purely instrumentally on the ground that each party in the plurality of comprehensive views has more to lose from the danger of becoming an oppressed minority than it has to gain from the chance of being the controlling majority. Then liberalism would be adopted as a *modus vivendi* among parties each of which would prefer, if only it were possible, to impose its comprehensive conception on the others. But Rawls favors the more demanding standard that the equal respect for others expressed by recognition of their rights should be valued for itself and that this should be the highest value in the sphere of political institutions, although not in the conduct of personal life.

The importance of liberal rights depends precisely on the fact that there are things people care about more than the political order but with respect to which a plurality of beliefs and commitments is inevitable. The only way to live together on terms of equality with others with whom we disagree fundamentally about the ends of life, in a framework that imposes its basic shape on all our lives, is to adopt principles for the evaluation of the framework that can be accepted by as many of us as possible. Their basis must therefore be compatible with a wide range of reasonable but mutually incompatible comprehensive views.

That means that some comprehensive views are not reasonable because they do not permit their own subordination to the requirement of reciprocity, that is, to the aim of seeking a collectively

acceptable basis of cooperation. Fanatical movements which subordinate the individual to the community depend on comprehensive values that are unreasonable in this sense. But Rawls believes that a wide range of views, forming the plurality typical of a free society, are reasonable and can support the common institutional framework. That is what he means by an “overlapping consensus.” Overlapping consensus does not mean the derivability of common principles of justice from all the comprehensive views in the pluralistic bouquet but rather the *compatibility* of each of those comprehensive views with a free-standing political conception that will permit them all to coexist.

There are many forms of liberalism, and there will continue to be. And while the liberal tradition is now in the ascendant politically in economically advanced countries and making considerable inroads elsewhere, it continues to be the object of attack not only from apologists for tyranny and fanaticism but from many others who cannot accept its severe restraints on the legitimate use of government power – its insistence that the end, however worthy, does not justify the means. Rawls’s advocacy of a specific liberal position and his deep exploration of its foundations in ethical and political theory constitute an enduring contribution to this tradition.

#### ENDNOTES

- 1 In S. Collini, ed., *On Liberty and Other Writings* (Cambridge, UK: Cambridge University Press, 1989).
- 2 Rawls, *Political Liberalism* (New York: Columbia University Press, 1993), pp. 5–6 (cited as “PL” with page numbers).
- 3 It has been breached by the policy of affirmative action, which is of course highly controversial in liberal societies, but is probably best understood in Rawlsian terms as an attempt at corrective justice – an attempt to rectify the residual consequences of a particularly gross violation in the past of the first principle of equal rights and liberties. Affirmative action therefore does not form a part of what Rawls would call “strict compliance theory” or ideal theory, which is what the two principles of justice are supposed to describe. See *A Theory of Justice* (Cambridge, MA: Harvard University Press, 1971/revised ed. 1999), pp. 8–9/7–8 rev.
- 4 See the introduction to *PL*, pp. xvii–xx, and pp. xix–xxii in *PL*, 1996 paperback edition.

- 5 See, for example Joseph Raz, "Facing Diversity: The Case of Epistemic  
Abstinence," *Philosophy & Public Affairs* 19 (1990).
- 6 "The Idea of Public Reason Revisited," in John Rawls, *Collected Papers*,  
ed. Samuel Freeman (Cambridge, MA: Harvard University Press, 1999),  
573–615.
- 7 *TJ*, p. 101/87 rev., sentence rewritten.
- 8 *TJ*, p. 102/88 rev., sentence eliminated.
- 9 See G.A. Cohen, "Incentives, Inequality, and Community," in *The  
Tanner Lectures on Human Values*, vol. 13 (1992), Grethe B. Peterson,  
ed.; "Where the Action Is: On the Site of Distributive Justice," *Philoso-  
phy and Public Affairs* 26 (Winter, 1997): 3–30; *If You're an Egalitarian,  
How Come You're So Rich?* (Cambridge MA: Harvard University Press,  
2000), Lectures 8–9.