

subtopic

John Rawls

JOHN RAWLS, CONTEMPORARY LIBERALISM, and NATURAL LAW

Christopher Wolfe, University of Dallas;

Professor Emeritus, Marquette University

The best known version of liberalism today—indeed, the version that is often equated with liberalism simply—is John Rawls’s antiperfectionist liberalism, developed in *A Theory of Justice* (1971) and *Political Liberalism* (1992).^[1] His influence extends far beyond philosophy into law and politics.

A Theory of Justice

Rawls’ *A Theory of Justice* (1971) resurrected social contract theory and gave it a more egalitarian form, drawing on Kant to provide a stronger foundation for liberal rights than the previously dominant form of liberal thought—utilitarianism—seemed able to.

Rawls begins with conceptions he considers implicit in our political culture.^[2] The first is that of citizens as free and equal persons, who have a capacity to understand and act on principles regulating a scheme of social cooperation and a capacity to develop, revise, and pursue rationally a conception of the good. The second is that of society as a fair system of cooperation among free and equal citizens, an idea that is developed to arrive at a “political” conception of justice, which applies only to the broadest social framework of the nation and the way that persons relate to one another politically within that basic structure. This political conception seeks to avoid philosophical controversies, in order to advance its strictly practical task of securing fair terms of social cooperation. (Partisans of different comprehensive philosophical, moral, and religious views will find fuller justifications within their own theories, providing Rawls’s theory of justice with an “overlapping consensus.”)

The fair terms of social cooperation turn out to be two principles of justice: first, “each person has an equal right to a fully adequate scheme of equal liberties, which scheme is compatible with a similar scheme of liberties for all” (including freedom of thought and conscience, political liberties, freedom of association, liberty and integrity of the person, and the rule of law) and, second, “social and economic inequalities must satisfy two conditions, (i) they are to be attached to offices and positions open to all under conditions of fair equality of opportunity; and (ii) they are to be to the greatest benefit of the least

advantaged members of society.”

The justice of these principles is arrived at by a certain procedure: namely, a thought experiment of putting citizens in an “original position,” behind a “veil of ignorance” (not knowing their status in society or their conceptions of the good). These citizens are to choose principles of justice, in light of their recognition of certain primary goods (basic rights and liberties, freedom of movement and occupation, power and prerogatives of office, income and wealth, and the social bases of self-respect). Given a choice between justice as fairness and utilitarianism, Rawls says that people in the original position will choose the former, on the basis of the “maximin” rule: where there is uncertainty about a choice, but one knows that the worst outcome of one choice is satisfactory while the worst outcome for the other is unsatisfactory, it makes sense to select the alternative that has the best worst case. People in the original position, not knowing their status and their conceptions of the good, will choose justice as fairness over utilitarianism, where the worst case scenario is very great: loss of one’s liberties as part of a social calculus.

Political Liberalism

Rawls says in *Political Liberalism* that *A Theory of Justice* did not sufficiently distinguish between moral and political philosophy: “a moral doctrine of justice general in scope is not distinguished from a strictly political conception of justice.”^[3] In his revised work, the distinction between comprehensive philosophical and moral doctrines, on one hand, and political conceptions, on the other, becomes fundamental. Justice as fairness is held to embody certain (partial) conceptions of the good, but Rawls denies that it entails any comprehensive conception of the good. At the same time, he does not describe it as entirely “neutral,” recognizing that it tends to foster some ways of life (e.g., those that value tolerance, civility, a sense of fairness, the ability to compromise), while undermining others (e.g., those based on intolerance).

Political Liberalism^[4] and later articles^[5] develop at some length the concept of “public reason”:

when constitutional essentials and questions of basic justice are at stake, citizens are to be ready to justify to one another their political actions by reference to the public political conception of justice, and so by conceptions and principles, values and ideals that they sincerely believe other citizens may reasonably be expected to endorse. The thought is that citizens, finding themselves living together in political society, and exercising the coercive power of government over one another, should, at least on fundamental political questions, justify their opinions and deeds by reference to what they may suppose others could accept consistent with their freedom and equality.^[6]

That is, citizens ought to appeal to public reason rather than their own comprehensive views simply. Moreover, “[w]e add to this that in making these justifications, we are to appeal only to presently accepted general beliefs and forms of reasoning found in common sense, and the methods and

conclusions of science when these are not controversial.”^[7] Rawls grants that arguments based on comprehensive views can be introduced into public discourse, but only on condition that other arguments, acceptable to those with different reasonable comprehensive views, are used as well.

In his later work, Rawls was pursuing a new goal (beyond replacing utilitarianism as the foundation for liberalism). He wanted to answer the question: “How is it possible that there may exist over time a stable and just society of free and equal citizens profoundly divided by reasonable though incompatible religious, philosophical, and moral doctrines?”

Why *this* question? The apparent ground for the centrality of public reason in *Political Liberalism* is that, in its absence, society will inevitably collapse into internal warfare, as occurred in Europe during the Reformation. The natural outcome of the use of reason in free societies, Rawls thought, is a deep pluralism of comprehensive views that threatens to make impossible a just and viable society. The alternative to political liberalism is an unstable “modus vivendi” in which different groups find it in their interest to accept a policy of tolerance toward each other in the short term, but are constantly jockeying for a position of dominance in which toleration can be dispensed with.

Rawls is aware that a society that is “neutral” among competing comprehensive theories still promotes certain ways of life (e.g., tolerance). But, he argues, those ways of life are promoted, not because they correspond to some comprehensive theory of the good life, but because they advance a “political” conception of justice that is necessary for fair social cooperation among free and equal citizens.

Rawls and Perfectionism

Rawls focuses almost exclusively upon utilitarianism as an alternative to his contract-based theory in *A Theory of Justice* because “no constructive alternative theory has been advanced which has the comparable virtues of clarity and system: . . . intuitionism is not constructive, perfectionism is unacceptable.”^[8] Why is perfectionism—which would include natural law theories—“unacceptable”? Among the reasons offered are: the insecurity of freedom in perfectionist regimes, the logic of the original position, and the stultifying homogeneity of a single “dominant end” form of perfectionism.

Rawls argues that the basic liberties of a democratic regime are most firmly secured by his conception of justice, rather than any form of perfectionism, since it “relies upon weak and widely held presumptions,” and therefore “may win quite general acceptance”^[9]—presumably unlike the stronger presumptions of perfectionism. The response to Rawls’ theory—which, for all its influence, has hardly carried the academic world, and much less American society as a whole—raises doubt about exactly how firm a ground it provides for liberties (and properly-defined liberties). Perhaps the stronger presumptions shared by perfectionists of various stripes (whatever their other differences) is a stronger ground for (properly defined) basic liberties.

Rawls maintains that “the only understanding that the persons in the original position can reach is that everyone should have the greatest equal liberty consistent with a similar liberty for others. They cannot risk their freedom by authorizing a standard of value to define what is to be maximized by a teleological

principle of justice.”^[10] First, why not? The risk—“[t]o acknowledge any such standard would be, in effect, to accept a principle that might lead to a lesser religious or other liberty, if not to a loss of freedom altogether to advance many of one’s spiritual ends”^[11]—is not, by itself, a self-evident or compelling reason not to choose perfectionism. Perhaps the possible loss of freedom in the effort to induce society to adopt a particular set of perfectionist ends is a price worth paying. Second, why should we feel compelled to adopt an original position in which we do not know the most fundamental things about us, including, above all, our conceptions of reality? Rawls does not offer a compelling reason why we must adopt that framework for making fundamental political decisions.

In his discussion of “dominant end” theories (including St. Ignatius of Loyola and [Aquinas](#)), Rawls argues that the “extreme nature” of such views is often concealed by their vagueness: for the end of serving God above all else “is left unspecified to the extent that the divine intentions are not clear from revelation, or evident from natural reason.”^[12] He maintains that “[h]uman good is heterogeneous because the aims of the self are heterogeneous. Although to subordinate all our aims to one end does not strictly speaking violate the principles of rational choice . . . , it still strikes us as irrational, or more likely as mad.”^[13]

Who is the “us,” one might ask? If the dominant end is political power or material wealth (other, non-religious ends Rawls mentions, whose “underlying fanaticism and inhumanity are manifest”^[14]), perhaps it is recognizably irrational or mad. But Rawls gives no reason to think that this is necessarily true of every “dominant end” view, including religion, since a comprehensive religious view might plausibly account for pursuit (in many ways) of a wide variety of (heterogeneous) subordinate ends that are unified and ordered by the dominant end of serving God.

Rawls and Natural Law

From one perspective—that of a “minimalist” natural law^[15]—Rawls could perhaps be said to be a natural law thinker. For example, Rawls’s theory includes the idea that there are certain “primary social goods,” which are “things which it is supposed a rational man wants whatever else he wants.” These primary goods include “rights and liberties, opportunities and powers, income and wealth” as well as “a sense of one’s own worth.”^[16] Whatever else this entails, it entails at least “a more or less clearly articulated theory of human nature.”^[17] Moreover, Rawls’s assumptions about the relative value of social peace, on one hand, and the pursuit of a social order based on some comprehensive conception of truth, on the other, likewise entail some theory of human nature.

From the broadest perspective, however, Rawls’s political philosophy is strikingly “conventional” (that is, based on common agreement, not nature). It simply assumes too much to be regarded as truly philosophical, as political theorist Pierre Manent notes. Manent wrote that answering key questions of political philosophy requires being able to give “a thorough analysis of political life within an account of the human world.” But, Manent comments, American thinkers do not aspire to so broad a goal—they “take the democratic regime for granted.” Rawls “*presupposes* the validity, truth, and excellence of our democratic principles and institutions, and so cannot do more than ingeniously tinker with parochial details.”^[18]

Rawls cannot get to the most fundamental issues of political philosophy because that would entail a comprehensive theory, which is too divisive, in his own view, to serve as the basis for a public philosophy.

[1] John Rawls, *A Theory of Justice* (Cambridge, Mass.: Harvard University Press, 1971); and John Rawls, *Political Liberalism* (New York: Columbia University Press, 1993).

[2] My summary of Rawls relies heavily on Michael Pakaluk's excellent exposition of Rawls, "The Liberalism of John Rawls: A Brief Exposition," in *Liberalism at the Crossroads*, eds. Christopher Wolfe and John Hittinger (Lanham, Md.: Rowman and Littlefield, 1994).

[3] Rawls, *Political Liberalism*, xv.

[4] Part Two of *Political Liberalism* discusses "Three Main Ideas" of which two—the idea of an overlapping consensus and the priority of right over good—were discussed extensively in *A Theory of Justice*. Public reason is the third main idea.

[5] Especially John Rawls, "The Idea of Public Reason Revisited," Chapter 26 in *Collected Papers*, ed. Samuel Freeman (Cambridge, Mass.: Harvard University Press, 1999); and John Rawls, "The Idea of Public Reason: Further Considerations" (unpublished manuscript, on file with *Loyola of Los Angeles Law Review*; cited in Kent Greenawalt, "Some Problems with Public Reason in John Rawls's Political Liberalism," *Loyola of Los Angeles Law Review* 28 [1995]: 1303-17).

[6] Rawls, "Public Reason: Further Considerations," 7.

[7] Rawls, *Political Liberalism*, 224.

[8] Rawls, *Theory of Justice*, 52.

[9] Rawls, *Theory of Justice*, 243-44.

[10] Rawls, *Theory of Justice*, 327-28.

[11] Rawls, *Theory of Justice*, 327-28.

[12] Rawls, *Theory of Justice*, 554.

[13] Rawls, *Theory of Justice*, 554.

[14] Rawls, *Theory of Justice*, 554.

[15] See Russell Hittinger, "Liberalism and the American Natural Law Tradition," *Wake Forest Law Review* 25 (1990): 429. See also Russell Hittinger, "Varieties of Minimalist Natural Law Theories," *American Journal of Jurisprudence* 34 (1989): 133: "I . . . define minimalist natural law as a theory that (1) posits one or more human goods or values as the condition(s) of practical reason, and (2) excludes teleological order from the foundations" (at 136). This is contrasted with "the earlier natural law position . . . identified with neo-scholastic theorists like Maritain, Simon, and Gilson. These theorists laid claim to Aquinas, and to the later scholastic tradition of commentators, and casuists. Natural law was discussed in the context of a rich, and highly determinate, theory of nature, human nature, finality, and so forth" (at 135).

[16] Rawls, *Theory of Justice*, 92.

[17] Hittinger, "Liberalism and American Natural Law," 481, commenting on what is implicit in the work of David A. J. Richards, a constitutional scholar influenced by Rawls.

[18] Pierre Manent, "The Task of Political Philosophy: Pierre Manent Replies," in Letters to the Editor, *First Things*, no. 106 (October 2000): 9. These observations occur in a response to a letter criticizing an earlier article by Manent, in which he passed over Rawls completely in his discussion of contemporary political philosophy: Pierre Manent, "The Return of Political Philosophy," *First Things*, no. 103 (May 2000): 15-22.

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