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### CHAPTER

## 2 Justice After Rawls

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### Abstract

This article examines the changes in the conception of justice after John Rawls. It explains that Rawls single-handedly revived Anglo-American political philosophy and his theory consists in an egalitarian vision of justice. It discusses criticisms on Rawls' theory of justice and identifies some alternative paths. It suggests that while Rawls' book *The Law of Peoples* adopted a conservative and somewhat anti-cosmopolitan stance, the doctrine of egalitarianism within national borders and minimal duties across borders may ultimately prove to be unstable under examination.

**Keywords:** justice, John Rawls, political philosophy, political theory, *The Law of Peoples*, egalitarianism

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IN the mid-twentieth century John Rawls single-handedly revived Anglo-American political philosophy, which had not seen significant progress since the development and elaboration of utilitarianism in the nineteenth century. Rawls reinvented the discipline by revising the social contract tradition of Locke, Rousseau, and Kant. A series of essays starting with “Justice as Fairness” in 1958 culminated in a monumental treatise, *A Theory of Justice* (Rawls 1999a [originally published 1973]). That theory of justice was in turn qualified and set in a new framework by an account of legitimate political authority to which Rawls gave a definitive formulation in his second book, *Political Liberalism* (Rawls 1996 [originally published 1993]). Rawls also produced an important monograph on justice in international relations, *The Law of Peoples* (Rawls 1999c). Rawls's achievements continue to set the contemporary terms of debate on theories of social justice. This chapter comments on the present state of play in the political philosophy discussions that Rawls initiated and stimulated.

# 1 Rawls's Theory of Justice in a Nutshell

Rawls's theory consists in an egalitarian vision of justice, specified by two principles, and the original position, a method for comparing and justifying candidate principles of justice that is supposed to single out his proposed principles as uniquely reasonable. The vision is recognizably liberal in its striving to combine the values of equality and liberty in a single conception, and controversial both in the kind of equality that is espoused and in the particular freedoms that are given special priority. The principles are claimed to be ones that free and equal persons could accept as a fair basis for social cooperation.

The principles are as follows:

1. Each person has an equal claim to a fully adequate scheme of equal basic 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.
2. 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 the greatest advantage of the least advantaged members of society (quoted from Rawls 1996, Lecture 1).

The first principle is called the *equal liberty principle*. In discussion, the second is often divided into its first part, *fair equality of opportunity*, and its second part, the *difference principle*.

The equal basic liberties protected by the first principle are given by a list: “political liberty (the right to vote and to hold public office) and freedom of speech and assembly; liberty of conscience and freedom of thought; freedom of the person, which includes freedom from psychological oppression and physical assault and dismemberment (integrity of the person), the right to hold personal property and freedom from arbitrary arrest and seizure as defined by the concept of the rule of law” (Rawls 1999a, 53). Roughly, the idea is to protect civil liberties of the sort that might well be entrenched in a political constitution.

The protection accorded to the basic liberties is augmented by the further stipulation that the first principle has strict lexical priority over the second. ↵ This means that one is not permitted to trade off basic liberties for gains in the other justice principle. In addition, fair equality of opportunity, the nondiscrimination principle, has strict lexical priority over the difference principle. The principles just stated make up Rawls's special conception of justice. This conception does not apply at all historical times, but only when economic growth produces a situation in which the basic liberties can be effectively exercised. Rawls's more general conception of justice holds that social and economic advantages must be arranged to be of greatest benefit to the least advantaged members of society.

The measure of individual benefits in Rawls's theory is the individual's holding of multi-purpose goods known as “primary social goods.” In *A Theory of Justice* these goods are defined as those it is rational for a person to want more rather than less of, whatever else he wants. In later writings, primary social goods are defined as goods that any rational person would strive to have who gives priority to developing and exercising two moral powers, the capacity to adopt and pursue a conception of the good and the capacity to cooperate with others on fair terms (Rawls 1996, 106, 178). Primary social goods are held to consist mainly of “the basic rights and liberties covered by the first principle of justice, freedom of movement, and free choice of occupation protected by fair equality of opportunity of the first part of the second principle, and income and wealth and the social bases of self-respect” (Rawls 1996, 180).

According to Rawls, the primary subject of justice is the basic structure of society, the way that major institutions such as the political system, the economic system, and the family interact to shape people's life prospects. The principles of justice are intended to regulate the basic structure. The duties imposed by social

justice on individuals are ancillary: Individuals have a duty to conform to the rules of just institutions, if they exist, and if they do not exist, to strive to some extent to bring them about.

Fair equality of opportunity may be contrasted with formal equality of opportunity or careers open to talents. The latter principle is satisfied if positions such as places in universities and desirable jobs and entrepreneurial opportunities (access to investment capital) are open to all who might wish to apply, positions being filled according to the relevant fitness of the candidates for the position in question. Formal equality of opportunity is violated if positions of advantage are passed out on any basis other than the relevant merits of the candidates. The more demanding fair equality of opportunity requires that institutions are arranged so that any individuals with the same ↵ native talent and the same ambition have the same chances for competitive success—success in competitions for positions that confer above-average shares of primary social goods. A society in which fair equality of opportunity is satisfied is, in a sense, a perfect meritocracy.

Why accept Rawls's principles? Rawls offers two arguments. One appeals to the implications of applying these principles in a modern setting. To the extent that the principles imply policies and outcomes for individuals that match our reflective judgments about these matters, the principles will appear reasonable. A second form of argument, a novelty introduced by Rawls, is the original position construction. The idea is to refine the social contract tradition. Justice is conceived to be what persons would agree to under conditions for choosing principles to regulate the basic structure of society that are ideally fair. The original position argument exemplifies a fair proceduralist standard of justification: What is right is what people following an ideal procedure would accept as right.

The original position argument carries the social contract idea to a higher level of abstraction. The object of the agreement is to be basic principles for regulating social life not actual social arrangements. The agreement is conceived to be hypothetical not actual. Actual contracts reached by people in ordinary life reflect their bargaining strength and other contingencies. Rawls's notable innovation is to try to ensure that the agreement that defines principles of justice is fair by depriving the parties who make the agreement of any information that might corrupt or bias the choice of principles. In Rawls's phrase, the parties are to choose under a veil of ignorance. Rawls urges a thick veil, with the result that parties in the original position know no particular facts about themselves, not even their own aims and values, but only general facts such as social science provides. The parties are assumed to prefer more rather than fewer primary social goods and choose principles according to their expectation of the primary social goods they would get in a society run according to the principles chosen in the original position.

Rawls conjectures that, in the original position so specified, the parties as defined would choose a maximin rule of choice (choose the policy that will make the worst possible outcome as good as possible) and on this basis would favor his principles.

The original position argument as Rawls presents it is significantly shaped by his conviction that to render his view plausible the formidable opponent that must be defeated is utilitarianism. According to Rawls, utilitarianism, although wrong, has received impressive formulation as a genuine normative ↵ theory of right conduct and institutions. A theory is a set of principles that specifies the facts relevant to social decision and that, once these relevant facts pertaining to any decision problem are known, determines what ought to be chosen in that decision problem without any further need for intuitive judgment. You cannot beat a theory except with a better theory, Rawls thinks. Rawls provides a partial theory, a theory of just institutions, that can stand as a rival to a utilitarian account. Rawls identifies utilitarianism with the view that one ought always to choose that action or policy that maximizes the aggregate (or average level) of informed desire satisfaction.

As Rawls sets up the original position argument, three arguments are prominent. One is that given the special circumstances of choice in the original position, it would be rational for the parties to choose to maximin and thus to adopt Rawls's principles. Another argument is that those in the individual position are choosing for a well-ordered society in which everyone accepts and complies with the principles chosen, so they cannot in the original position choose principles that they expect they might not be disposed to accept and follow in the society ruled by the principles chosen. A related argument or stipulation is that the parties are supposed to be choosing principles for a public conception of justice, so a choice of principles that could be successfully implemented only by being kept esoteric is ruled out.

Rawls adds to the original position argument a discussion of stability. He thinks his theory is only acceptable if it can be shown that in a society regulated by his principles of justice, people will embrace the principles and institutions satisfying their requirements and will be steadily motivated to comply with the principles and the institutions that realize them. Here in retrospect Rawls locates a pivotal mistake in *A Theory of Justice* (see Rawls 1996, "Introduction"). In later writings, culminating in *Political Liberalism* (1996), he maintains that he initially appealed to a comprehensive Kantian account of human autonomy and fundamental human aims to establish that people living under Rawlsian institutions will have good reason and sufficient motivation to comply with them. But he comes to believe this appeal was misguided. In any liberal society that sustains a clearly desirable freedom of speech, people will fan out into different and conflicting comprehensive views of morality and the good life, so any appeal to a narrow Kantian ideal of autonomy and the nature of persons is bound to be sectarian (Rawls 1996).

p. 50 *Political Liberalism* affirms that a society that avoids sectarianism satisfies a liberal ideal of legitimacy: Basic political arrangements, the fundamental ↪ constitution of society, are justified by considerations that all reasonable persons, whatever their comprehensive views, have good and sufficient reason to accept.

## 2 Criticisms and Alternative Paths

From its first elaboration, Rawls's theory of justice has been scrutinized by an enormous amount of criticism. In my view, Rawls's theory has been broken on the rack of this critique. But the upshot is not a defeat for the theory of justice. New suggestions, not yet fully elaborated for the most part, point in a variety of promising, albeit opposed, directions.

### 2.1 Primary Social Goods and Sen's Critique

Rawls holds that just institutions distribute primary social goods fairly. Roughly, a fair distribution is identified with the distribution in which the worst off are as well off as possible according to the primary social goods measure. Amartya Sen objects that individuals born with different physical and psychological propensities will generally be unequally efficient transformers of resources such as primary social goods into whatever goals they might seek (Sen 1992). Consider two individuals with the same allotments of primary social goods. One is fit, hardy, and quick-witted; the other is lame, illness-prone, lacking in physical coordination, and slow-witted. In any terms that we care about, the condition of the two persons is unequal, but a primary social goods metric does not register the disparity. Sen proposes that we should look beyond the distribution of opportunities and income and other primary goods and see to what extent individuals are able to be and do with their primary goods allotments given their circumstances. The basis of interpersonal comparisons for a theory of justice should, according to Sen, be a measure of people's real freedom to achieve functionings they have reason to value.

p. 51 A Rawlsian response is that the theory of justice assumes that all individuals are able to be fully contributing members of society throughout their ↪ adult life. Problems of disability and chronic debilitating illness are

assumed away. Moreover, for those within the normal range of native talents and propensities, it is reasonable to hold individuals responsible for taking account of the primary goods shares they can expect and fashioning a reasonable plan of life on this basis. As Rawls says, justice as fairness “does not look beyond the use which persons make of the rights and opportunities available to them in order to measure, much less to maximize, the satisfactions they achieve” (Rawls 1999a, 80).

The response does not meet the difficulty. Differences in native talents and trait potentials exist among all persons, including those within whatever range is deemed to be normal. These differences strike many of us as relevant to what justice demands, what we owe to one another. Moreover, one can grant that a person endowed with poor traits would be well advised not to form unrealistic ambitions and to tailor his plan of life to what he can achieve. Expecting people to make such adjustments in their plan of life leaves entirely open whether compensation is owed to individuals to mitigate the freedom-reducing effect of poor natural endowment.

Although there is something salutary and correct about Sen's train of thought, it immediately runs into a puzzle. There are enormous numbers of capabilities to function, and they vary from the trivial to the momentously important. We need some way of ranking the significance of different freedoms if the capability approach is to yield a standard of interpersonal comparison (Arneson 1989; Nussbaum 1992). Viewed this way, carrying through Sen's critique would have to involve elaborating a theory of human good.

## 2.2 The Priority of the Right over the Good

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A core ambition of Rawls's work on justice is to free the idea of what is right and just from the idea of what is good or advantageous for a person. This is a crucial part of the enterprise of constructing a theory that is a genuine alternative to utilitarianism. For the utilitarian, as Rawls correctly notes, the idea of what is good for a person is independent of moral notions; Robinson Crusoe alone on his island still has need of a notion of prudence, of what he needs to do to make his life go better rather than worse over the long haul. If we could get clear about what is really intrinsically good, the rest would be easy—what is morally right is maximizing, efficiently promoting the good. In contrast, Rawls aims to construct an account of rights that people have, specified by principles of justice, that is substantially independent of any particular notions of what is good, which are always bound to be disputable. Rawls's paradigm case of a dispute about how to live is religious controversy, which must end in stalemate. Reasonable people will persist in disagreeing about such matters. To reach objective consensus on issues of social justice, we must bracket these disagreements about God and more generally about the good, and in fact the willingness to set aside controversial conceptions of good in order to attain shared agreement on rules of social cooperation is for Rawls a prime mark of reasonableness.

But if the requirements of justice are conceived as disconnected in this way from human good, we have to countenance the possibility that in a perfectly just society people lead avoidably squalid lives. Perhaps they are even condemned to such lives; Rawlsian justice is no guarantee that your life goes well or has a good chance of going well. Moreover, the squalor might be pointless, in the sense that it is not that the misery of some is needed to avoid worse misery for others. Furthermore, the numbers do not count: If my small right is inviolable, then it must be respected, no matter the cost in the quality of human lives and in the number of persons who suffer such losses.

To the extent that we have an adequate conception of human good, that singles out what is truly worth caring about and what makes a life really go better for the person who is living it, it makes sense to hold that what people in a society fundamentally owe each other is a fair distribution of human good.<sup>1</sup> An adequate conception will surely be pluralistic, recognizing that there are many distinct goods and valuable ways of life, and will not claim more than the possibility or rough and partial commensurability of good across lives.

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Many substantive claims about human good, such as that the list of valuable elements in a human life includes loyal friendship, reciprocal love, healthy family ties, systematic knowledge, pleasure, meaningful work, and significant cultural and scientific achievement, seem to me to be pretty ↵ uncontroversial, part of commonsense lore. But what is widely accepted is still sometimes disputed. Thinking straight about how to live is difficult, and we make mistakes. Prejudice, ignorance, superstition, and unthinking acceptance of convention play roles in rendering ethical knowledge controversial. Hence it does not offend against human dignity and respect for persons to endorse the implementation by a society of controversial but (by our best lights) correct conceptions of human good. The liberal legitimacy norm that Rawls embraces should be put in question if it is read as denying this. It all depends on what we mean by “reasonably” in the norm that one should treat people only according to principles that no one could reasonably reject. If “reasonably” refers to the ideal use of practical reason, then one reasonably rejects only incorrect principles and accepts correct ones. The norm is then unproblematic, but it allows imposition of views that are controversial in the ordinary sense of being contested among normal reasonable people (who may be making cognitive errors). But if “reasonably” is used in a weaker sense, so that one could reasonably make errors in judgment, then the weaker the standard of reasonableness that is invoked, the stronger and more constraining is the idea that one should not impose on people in the name of principles that are controversial among weakly reasonable people (but for a defense of Rawls, see Dreben 2003).

Here one might object that I am just pounding the table and dogmatically insisting that we can know the good, a controversial claim for which I have presented no argument. But I am just insisting on symmetry. Skepticism about knowledge of human good is a possible option, but by parity of reasoning, the grounds for that skepticism will carry over to claims about what is morally right and just as well. Only a sleight of hand would make it look plausible that reasonable people, if left uncoerced, will forever disagree about what is good but that all men and women of good will, if they are reasonable, will agree on principles of right such as the difference principle.

Restoring substantial claims about the content of human good to the theory of what is right and just does not necessarily lead back to utilitarianism. A good-based theory of justice asserts that we should choose actions and institutional arrangements to maximize some function of individual well-being, but maximizing aggregate or average well-being is just one option. In particular, more egalitarian principles beckon. In fact, Rawls has initiated an exploration of broadly egalitarian principles that is still ongoing.

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## 2.3 The Difference Principle, Maximin, and the Original Position

The difference principle says that given the constraints imposed by the equal liberty and fair equality of opportunity principles, the social and economic primary social goods of the least advantaged should be maximized. Rawls's general conception of justice holds more simply that the basic structure of society should maximize the level of advantage, calculated in terms of primary social good holdings, of the least advantaged.

On its face, these principles assert an extreme priority weighting.<sup>2</sup> The principles insist that no gain, no matter how large, and no matter how large the number of already better off people to whom the gain accrues, should be pursued at the cost of any loss, no matter how tiny, and no matter how small the number of worse off persons who would suffer the loss (provided the change leaves intact people's status as belonging to the better off or worse off group). Rawls himself points out that this is counterintuitive (Rawls 1999a, 135–6) but remains unfazed on the ground that it is empirically wildly unlikely that in any actual society we would be faced with such a choice. But if this response is deemed satisfactory, this must mean the principles are no longer being pitched as fundamental moral principles but rather as practical policy guides, rules of thumb for constitution-makers and law-makers.

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The claim that the strict lexical priority that the difference principle accords to the worst off, although admittedly too strict, will never lead to mistakes in practice, merits close scrutiny. To the extent this is plausible, its plausibility is entirely an artifact of the fact that Rawls would have us compare the condition of people only in terms of their primary goods allotments. If a possible policy would produce a huge gain in dollars for many better off people, surely some of that gain can be siphoned off to those worse off. But if we instead believe that the theory of justice should attend to people's actual overall quality of life over the entire life course, then we do face conflicts in which very tiny benefits for a few can be purchased only at huge cost in other people's lives. We could devote huge resources to the education of the barely educable or to extraordinary medical care that only slightly raises the life expectancy of those with grave medical conditions, and so on. Some of us are very inefficient transformers of resources into an enhanced quality of life. The hard issue of how much priority to accord to the achievement of gains for the worse off must be faced.

The difference principle lies at the extreme end of a continuum of views that accord variously greater weight for achieving a gain of a given size for a person, depending on how badly off in absolute terms the person would be, absent receipt of this gain. At the other end lies utilitarianism, which accords no extra weight at all to achieving a gain for a person depending on the prior goodness or badness of her condition. The entire range between these end points corresponds to the prioritarian family of principles, according to which, the worse a person's lifetime condition, the morally more valuable it is to achieve a gain or avoid a loss for her. The distinction between valuing priority and valuing equality has been clarified in work by Derek Parfit (2000).

Counterintuitive or not, the difference principle and the broader maximin conception might be derivable by iron logic from undeniable premises. Rawls gestures at provision of this sort of support in his original position argument, but in the area in which Rawls is pointing I submit that no good argument is to be found (see the critical discussions cited in footnote 2). Suffice it to say that the innovation of the original position has not resonated in recent political philosophy in anything like the way that Rawls's powerful but controversial vision of justice as social democratic liberalism continues to shape the agenda of political philosophy for both proponents and opponents. In my view the underlying reason for the relative neglect of original position arguments is that the basic hunch that motivates the project is wrong. Recall that the idea of the original position is that the principles of justice are whatever would emerge from an ideally fair choice procedure for selecting principles of justice. The presupposition is that we have pretheoretic intuitions, which can be refined, concerning what are the fairest conditions for choosing basic moral principles. But why think this? Perhaps one should say that the fair set-up of a procedure for choosing principles of justice is whatever arrangement happens to produce the substantially best principles. We have commonsense beliefs about the conditions under which contracts and private deals are fairly negotiated, but there is no intuitive content to the idea of a fair procedure for choosing basic principles of social regulation. (If we knew that a particular person, Smith, was very wise and knew a lot about principles of justice and had thought more deeply about these matters than the rest of us, perhaps the "fairest" choice procedure would be, "Let Smith decide.")

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This takes us back to a conflict of intuitions that needs to be clarified and perhaps resolved via theory. Some affirm equality: it is good if everyone has the same, or is treated the same, in some respect (Temkin 1993). Others affirm doing the best that can be done for the worst off. Priority weakens this strict maximin tilt in favor of the worst off. An unresolved Goldilocks issue arises here; how much priority arising from the badness of one's condition is too little, too much, or just enough? Another option worth mention is sufficientarianism: What matters morally and what justice requires is not that everyone has the same but that everyone has enough. Each should achieve, or be enabled to achieve, a threshold level of decent existence, the level being set by whatever we had better take to be the best standard of interpersonal comparison for a theory of justice (primary goods shares, or capabilities to function in valuable ways, or

utility construed as pleasure or desire satisfaction, or well-being corresponding to achievement of the items on an objective list of goods, or whatever). Expressions of sufficientarian or quasi-sufficientarian opinion are common in recent political philosophy (Frankfurt 1987; Anderson 1999; D. Miller 2004; Nussbaum 2000), but the doctrines other than the difference principle mentioned in this paragraph need further elaboration and interpretation before we would be in a position definitively to gauge how compelling they are.

## 2.4 Nozick and Lockean Libertarianism

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According to Rawls, the choice of economic systems—capitalist, socialist, or some other—need not reflect a fundamental moral commitment. At least, either a liberal capitalist or a liberal socialist regime could in principle implement the Rawlsian principles of egalitarian liberalism. Against this view Robert Nozick developed a powerful response of right-wing inspiration (Nozick 1974). His starting point is the idea that each person has the moral right to live as she chooses on any mutually agreed terms with others so long as she does not thereby harm nonconsenting other people in ways that violate their rights. These latter rights not to be harmed form a spare set. Each of us has the right not to be physically assaulted or menaced with the threat of physical assault, not to be imposed on by the actions of others in ways that cause physical harm to oneself or one's property, not to be defrauded, not to suffer theft or robbery. Nozick finds antecedents for these ideas in the writings of John Locke, who does not fully commit to them.<sup>3</sup> From this standpoint, the moral authority of the state to coerce people without their consent even just to maintain minimal public order appears problematic. The idea that society has the right and obligation to redistribute property to achieve a more fair distribution cannot find a place in Lockean natural rights theory. Property is owned by people, and the state, acting as agent of society, has no more right to take from some and give to others than a robber does.

The right of each person to act as she chooses has as its core a universal right of self-ownership: Each adult person is the full rightful owner of herself, possessing full property rights over her own person. The next question that arises here is how an individual may legitimately come to acquire rights to use or own particular pieces of the world. Without some such rights self-ownership would come to very little. The Lockean project is to specify how legitimate private ownership of property arises in a world in which objects are initially unowned, and what the terms and limits of such legitimate ownership are. The main stream of Lockean views defends the idea that private property ownership can be fully legitimate, given certain conditions, no matter how unequal the distribution of privately owned property. Left-wing Lockeans demur (Steiner 1994). They try to defend the view that each person is the full rightful owner of herself but that the distribution of ownership of the world must be roughly equal.

Mainstream Lockean views concerning the legitimacy of private property ownership resonate strongly and positively with commonsense opinion in modern market societies, but the philosophical elaboration of these views is still a project that largely awaits completion. Nozick's arguments are sometimes brilliant but his views are sketchy. We are not yet in a good position definitively to compare Lockean versions of liberal justice with their more egalitarian rivals.



## 2.5 Desert, Responsibility, and Luck Egalitarianism

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Surprisingly, Rawls rejects the platitude that justice is giving people what they deserve (Rawls 1999a). He argues against the idea that notions of desert belong in fundamental principles of justice (although, of course, norms of desert might serve as means to implement justice goals). A notion of individual responsibility is implicit in Rawls's principles. The basic notion is that given a social context in which people's rights to access to primary social goods are assured, each person is responsible for deciding how to live, constructing a plan of life, and executing it. If one's choices have bad results and one has a poor quality of life, this fact does not trigger a valid moral claim to further compensation from others.

Some see problems in this picture (see Olsaretti, this volume). One line of objection holds that a sharper line needs to be drawn between what we owe to one another and what each individual must do for herself. What we owe to each other is compensation for unchosen and uncourted bad luck. Some bad events just befall people in ways they have no reasonable opportunity to avoid, as when a meteor strikes. Some bad events are such that one does have reasonable opportunity to avoid them. A paradigm case would be losses that issue from voluntarily undertaken high-stakes gambling. Social justice demands a differential response to bad luck, depending on how it arises. A complication here is that each person's initial genetic endowment of propensities to traits along with her early socialization is evidently a matter of unchosen and uncourted luck, good or bad. But my later, substantially voluntary choice to embrace bad values and make unwise decisions about how to live may simply express my initial unchosen bad luck in inherited traits and socialization experiences. Does justice then demand *some* compensation for courted bad luck traceable in part to uncourted earlier bad luck, paternalistic restriction of individual liberty to limit the harm to self that my lack of intelligence generates, or what? Ronald Dworkin has done the most to clarify these tangles and develop a coherent position concerning distributive justice on the basis of this line of thought (Dworkin 2000). Some sympathetic to this general line are trying to refine it (Roemer 1998). Others find the entire approach, labeled "luck egalitarianism" by critics, to be unpromising (Scanlon 1989; Fleurbaey 1995; Anderson 1999; Scheffler 2003). Luck egalitarianism is said to be too unforgiving to individuals who make bad choices. Its critics accuse it of exaggerating the significance of choice and of giving undue weight to the distribution-of-resources aspect of social justice.

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A different but related line of thought finds that egalitarian principles of social justice inevitably must imply that individuals have moral duties to live their lives so that the principles are more rather than less fulfilled. How much more? If we must live our lives in ways that maximize justice fulfillment, the demands of justice on the conduct of individual lives will be very stringent and likely counterintuitive. Rawls suggested that the principles of justice for the basic structure of society are stringently egalitarian but that individuals are free to live their lives as they choose so long as they abide by the rules of just institutions. G. A. Cohen finds this position to be unstable (Cohen 2000). If well-off persons accept the difference principle (which holds that inequalities that are not to the maximal benefit of the least advantaged are unacceptable), they cannot benefit in good conscience from hard bargaining. Instead of threatening to strike for higher wages, already well-paid medical doctors, committed to the difference principle, could agree to work extra hours for no extra pay, or voluntarily to embrace pay cuts, for example. A large question arises here concerning the degree to which a modern liberal theory of justice can or should be libertarian in the sense of embracing some close relative of the principles defended by J. S. Mill in *On Liberty*.

## 2.6 Civil Liberties, Diversity, Democracy, and More-than-formal Equality of Opportunity

Liberalism in normative political theory is more an attitude or stance toward politics than a specific set of doctrines. Liberalism is strongly associated with strong protection of freedom of speech and assembly and related liberties. One argument is good-based: If what I fundamentally want is to lead a life that achieves truly worthwhile and valuable goals, I will want not just to satisfy whatever preferences I now have, but to enjoy a sound education and a culture of free speech, which has some tendency to undermine my false beliefs and bad values. (Of course free speech can also cause a person to abandon true beliefs and good values; the liberal position involves a broad faith that the free use of reason by ordinary persons will tend over time to lead to improvement rather than corruption.) Rawls appeals to the interest that persons as such are assumed to have in developing and exercising their moral powers to adopt conceptions of the good and to cooperate with others on reasonable terms (Rawls 1996). These arguments have some force, but they are also in some tension with each other, and it is not clear that either one or both can be worked into a doctrine that picks out privileged liberties and justifies according them strict priority.

p. 60 Civil liberties traditionally understood strike some as insufficient to resolve problems of diversity in contemporary society. Women, members of minority ethnic groups and supposed races, people with nonheterosexual sexual orientation, and others who experience themselves as unfairly pushed to the margins of society seek recognition of their differences and common humanity (see Markell and Squires, both in this volume).

Another question is the place of democratic political rights in liberal theory (Christiano 1996). Democratic rights are not central in the Lockean tradition. One might suppose that egalitarian liberals will hold democratic rights to be of mainly instrumental value in securing other more fundamental rights. An egalitarian might hold that whatever political arrangements are most likely to achieve a fair distribution of good quality lives or opportunities for good quality lives to people should be instituted and upheld.

Advocates of democratic equality (e.g. Anderson 1999; J. Cohen 2003) hold a sharply contrasting view. They hold that the moral equality and equal dignity of persons rightly interpreted require above all equal fundamental liberty for all persons and that prominent among these liberties is the right to participate on equal terms with other members of one's society in collectively setting the laws that coercively regulate all members' lives.<sup>4</sup> In this perspective, the right to democracy can appear to be the right of rights, the crown jewel of individual rights.

A society can be more or less democratic along several dimensions of assessment. How democratic should society be? Rawls stakes out a demanding position in answer to this question. His final statement of his equal liberty principle states that the equal political liberties are to be guaranteed their "fair value." What he means is that any two citizens with equal political ability and equal ambition to influence political outcomes should have the same chances of influencing political outcomes. A kind of fair equality of opportunity is to operate in the political sphere that is close in spirit to the fair equality of opportunity that he holds should prevail in the competition for positions conferring economic and social advantages.

p. 61 Rawlsian fair equality of opportunity is a strong, controversial doctrine. Rawls pushes to its logical limit an ideal that others either reject outright or hold should be constrained by conflicting values (Nozick 1974; Arneson 1999).

## 2.7 Global Justice

Do we owe more to fellow citizens than to distant needy strangers (Chatterjee 2004)? Should we embrace a two-tier theory of justice, which imposes demanding egalitarian requirements within each society but much less demanding requirements on members of one nation toward the members of other nations? A certain type of cosmopolitan view proposes a resounding “No” to both questions (Beitz 1979; Pogge 1989; Nagel 1991). This cosmopolitanism can take a right-wing form, which asserts that duties are minimal in both the national and the global context, and a left-wing form, which affirms strong duties within and across borders.

This issue can be regarded as a part of the morality of special ties (Miller 1998; Scheffler 2001). Many of us intuitively feel that we have especially strong moral obligations to those who are near and dear to us, to family members, friends, members of our community, and perhaps fellow citizens, but it is unclear to what extent a sound theory of justice will vindicate or repudiate these pretheoretical feelings. And what about putative special obligations to fellow members of our own social class, ethnic group, or racial lineage?<sup>5</sup>

A related issue arises if we imagine a society that is just internally by our lights, and faces the task of choosing a just international relations policy. Should the just foreign policy of such a society press for ideal justice everywhere or rather extend strong sincere toleration and respect to any political regime that meets a threshold standard of decency?

Rawls's book *The Law of Peoples* (Rawls 1999c) adopts a conservative and somewhat anti-cosmopolitan stance toward the issues just mentioned. But the doctrine of egalitarianism within national borders and minimal duties across borders may ultimately prove to be unstable under examination. The arguments that urge minimal duties toward outsiders, if found acceptable, may undermine the case for egalitarian arrangements among insiders, and ↵ the arguments that urge egalitarian arrangements within borders, if found acceptable, may compel a similar egalitarianism across borders.

Thinking about global justice issues tends to unsettle one's prior convictions (see C. Brown, this volume). A reflective equilibrium among our justice beliefs may be hard to achieve, and at any rate not within sight, in the present state of theory. This claim applies not just to global justice beliefs but to all beliefs about the content of social justice. The pot that Rawls has stirred up is still bubbling.

## References

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Ackerman, B. 1980. *Social Justice in the Liberal State*. New Haven, Conn.: Yale University Press.

[Google Scholar](#) [Google Preview](#) [WorldCat](#) [COPAC](#)

Anderson, E. 1999. What is the point of equality? *Ethics*, 109: 287–337. [10.1086/233897](#)

[Google Scholar](#) [WorldCat](#) [Crossref](#)

Arneson, R. 1989. Equality and equal opportunity for welfare. *Philosophical Studies*, 56: 77–93. [10.1007/BF00646210](#)

[Google Scholar](#) [WorldCat](#) [Crossref](#)

——— 1999. Against Rawlsian equality of opportunity. *Philosophical Studies*, 93: 77–112. [10.1023/A:1004270811433](#)

[WorldCat](#) [Crossref](#)

——— 2000. Perfectionism and politics. *Ethics*, 111: 37–63. [10.1086/233418](#)

[WorldCat](#) [Crossref](#)

Barry, B. 1995. *Justice as Impartiality*. Oxford: Oxford University Press.

[Google Scholar](#) [Google Preview](#) [WorldCat](#) [COPAC](#)

——— 2001. *Equality and Culture*. Cambridge, Mass.: Harvard University Press.

[Google Scholar](#) [Google Preview](#) [WorldCat](#) [COPAC](#)

Beitz, C. 1979. *Political Theory and International Relations*. Princeton, NJ: Princeton University Press.

[Google Scholar](#) [Google Preview](#) [WorldCat](#) [COPAC](#)

Chatterjee, D. (ed.) 2004. *The Ethics of Assistance: Morality and the Distant Needy*. Cambridge: Cambridge University Press.

[Google Scholar](#) [Google Preview](#) [WorldCat](#) [COPAC](#)

Christiano, T. 1996. *The Rule of the Many*. Boulder, Colo.: Westview Press.

[Google Scholar](#) [Google Preview](#) [WorldCat](#) [COPAC](#)

Cohen, G. A. 2000. *If You're an Egalitarian, How Come You're So Rich?* Cambridge, Mass.: Harvard University Press, lectures 8–9.

[Google Scholar](#) [Google Preview](#) [WorldCat](#) [COPAC](#)

Cohen, J. 2003. For a democratic society. Pp. 86–138 in *The Cambridge Companion to Rawls*, ed. S. Freeman. Cambridge: Cambridge University Press.

[Google Scholar](#) [Google Preview](#) [WorldCat](#) [COPAC](#)

Dreben, B. 2003. On Rawls and political liberalism. Pp. 316–46 in *The Cambridge Companion to Rawls*, ed. S. Freeman. Cambridge: Cambridge University Press.

[Google Scholar](#) [Google Preview](#) [WorldCat](#) [COPAC](#)

Dworkin, R. 2000. *Sovereign Virtue: The Theory and Practice of Equality*. Cambridge, Mass.: Harvard University Press.

[Google Scholar](#) [Google Preview](#) [WorldCat](#) [COPAC](#)

Fleurbaey, M. 1995. Equal opportunity or equal social outcome? *Economics and Philosophy*, 11: 35–55.

[Google Scholar](#) [WorldCat](#)

Frankfurt, H. 1987. Equality as a moral ideal. *Ethics*, 98: 21–43. [10.1086/292913](#)

[Google Scholar](#) [WorldCat](#) [Crossref](#)

Freeman, S. (ed.) 2003. *The Cambridge Companion to Rawls*. Cambridge: Cambridge University Press.

[Google Scholar](#) [Google Preview](#) [WorldCat](#) [COPAC](#)

- p. 63 Harsanyi, J. 1953. Cardinal utility in welfare economics and in the theory of risk-taking. *Journal of Political Economy*, 61: 434–5. [10.1086/257416](#)  
[Crossref](#)
- 1975. Can the maximin principle serve as a basis for morality? A critique of John Rawls's theory. *American Political Science Review*, 69: 594–606. [10.2307/1959090](#)  
[WorldCat](#) [Crossref](#)
- Hurka, T. 1993. *Perfectionism*. Oxford: Oxford University Press.  
[Google Scholar](#) [Google Preview](#) [WorldCat](#) [COPAC](#)
- Kagan, S. 1999. Equality and desert. Pp. 298–314 in *What Do We Deserve?*, ed. L. Pojman and O. McLeod. Oxford: Oxford University Press.  
[Google Scholar](#) [Google Preview](#) [WorldCat](#) [COPAC](#)
- Kymlicka, W. 1989. *Liberalism, Community, and Culture*. Oxford: Oxford University Press.  
[Google Scholar](#) [Google Preview](#) [WorldCat](#) [COPAC](#)
- 1995. *Multicultural Citizenship*. Oxford: Oxford University Press.  
[Google Scholar](#) [Google Preview](#) [WorldCat](#) [COPAC](#)
- Larmore, C. 1987. *Patterns of Moral Complexity*. Cambridge: Cambridge University Press.  
[Google Scholar](#) [Google Preview](#) [WorldCat](#) [COPAC](#)
- Locke, J. 1980. *Second Treatise of Government*, ed. C. Macpherson. Indianapolis: Hackett; originally published 1690.  
[Google Scholar](#) [Google Preview](#) [WorldCat](#) [COPAC](#)
- McKim, R. and McMahan, J. (eds.) 1997. *The Morality of Nationalism*. New York: Oxford University Press.  
[Google Scholar](#) [Google Preview](#) [WorldCat](#) [COPAC](#)
- Mill, J. 1978. *On Liberty*, ed. E. Rapaport. Indianapolis: Hackett; originally published 1867.  
[Google Scholar](#) [Google Preview](#) [WorldCat](#) [COPAC](#)
- Miller, D. 2004. National responsibility and international justice. Pp. 123–43 in *The Ethics of Assistance: Morality and the Distant Needy*, ed. D. Chatterjee. Cambridge: Cambridge University Press.  
[Google Scholar](#) [Google Preview](#) [WorldCat](#) [COPAC](#)
- Miller, R. 1998. Cosmopolitan respect and patriotic concern. *Philosophy and Public Affairs*, 27: 202–24. [10.1111/j.1088-4963.1998.tb00068.x](#)  
[Google Scholar](#) [WorldCat](#) [Crossref](#)
- Nagel, T. 1991. *Equality and Partiality*. New York: Oxford University Press.  
[Google Scholar](#) [Google Preview](#) [WorldCat](#) [COPAC](#)
- Nozick, R. 1974. *Anarchy, State, and Utopia*. New York: Basic Books.  
[Google Scholar](#) [Google Preview](#) [WorldCat](#) [COPAC](#)
- Nussbaum, M. 1992. Human functioning and social justice: in defense of Aristotelian essentialism. *Political Theory*, 20: 202–46. [10.1177/0090591792020002002](#)  
[Google Scholar](#) [WorldCat](#) [Crossref](#)
- 1999. Women and cultural universals. In M. Nussbaum, *Sex and Social Justice*. Oxford: Oxford University Press.  
[Google Scholar](#) [Google Preview](#) [WorldCat](#) [COPAC](#)
- 2000. *Women and Human Development: The Capabilities Approach*. Cambridge: Cambridge University Press.

[Google Scholar](#)   [Google Preview](#)   [WorldCat](#)   [COPAC](#)

——— 2004. *Hiding from Humanity: Disgust, Shame, and the Law*. Oxford: Princeton University Press.

[Google Scholar](#)   [Google Preview](#)   [WorldCat](#)   [COPAC](#)

Okin, S. 1989. *Justice, Gender, and the Family*. New York: Basic Books.

[Google Scholar](#)   [Google Preview](#)   [WorldCat](#)   [COPAC](#)

Parfit, D. 2000. Equality or priority? Pp. 81–125 in *The Ideal of Equality*, ed. M. Clayton and A. Williams. New York: St. Martin's Press.

[Google Scholar](#)   [Google Preview](#)   [WorldCat](#)   [COPAC](#)

——— 2004. What we could rationally will. Pp. 285–369 in *The Tanner Lectures on Human Values*, vol. 24, ed. G. Peterson. Salt Lake City: University of Utah Press.

[Google Scholar](#)   [Google Preview](#)   [WorldCat](#)   [COPAC](#)

Pogge, T. 1989. *Realizing Rawls*. Ithaca, NY: Cornell University Press.

[Google Scholar](#)   [Google Preview](#)   [WorldCat](#)   [COPAC](#)

Rawls, J. 1958. Justice as fairness. Reprinted in J. Rawls, *Collected Papers*, pp. 47–72. Cambridge, Mass.: Harvard University Press.

[Google Scholar](#)   [Google Preview](#)   [WorldCat](#)   [COPAC](#)

——— 1996. *Political Liberalism*. New York: Columbia University Press.

[Google Scholar](#)   [Google Preview](#)   [WorldCat](#)   [COPAC](#)

Rawls, J. 1999a. *A Theory of Justice*. Cambridge, Mass.: Harvard University Press; originally published 1973.

[Google Scholar](#)   [Google Preview](#)   [WorldCat](#)   [COPAC](#)

p. 64 ——— 1999b. *Collected Papers*, ed. S. Freeman, Cambridge, Mass.: Harvard University Press.

[Google Scholar](#)   [Google Preview](#)   [WorldCat](#)   [COPAC](#)

——— 1999c. *The Law of Peoples*. Cambridge, Mass.: Harvard University Press.

[Google Scholar](#)   [Google Preview](#)   [WorldCat](#)   [COPAC](#)

Raz, J. 1986. *The Morality of Freedom*. Oxford: Oxford University Press.

[Google Scholar](#)   [Google Preview](#)   [WorldCat](#)   [COPAC](#)

Roemer, J. 1996. *Theories of Distributive Justice*. Cambridge, Mass.: Harvard University Press.

[Google Scholar](#)   [Google Preview](#)   [WorldCat](#)   [COPAC](#)

——— 1998. *Equality of Opportunity*. Cambridge, Mass.: Harvard University Press.

[Google Scholar](#)   [Google Preview](#)   [WorldCat](#)   [COPAC](#)

——— 2002. Egalitarianism against the veil of ignorance. *Journal of Philosophy*, 99: 167–84. [10.2307/3655614](#)

[WorldCat](#)   [Crossref](#)

Scanlon, T. 1989. The significance of choice. In *The Tanner Lectures on Human Values*, vol. 8, ed. S. McMurrin. Salt Lake City: University of Utah Press.

[Google Scholar](#)   [Google Preview](#)   [WorldCat](#)   [COPAC](#)

Scheffler, S. 2001. *Boundaries and Allegiances: Problems of Justice and Responsibility in Liberal Thought*. Oxford: Oxford University Press.

[Google Scholar](#)   [Google Preview](#)   [WorldCat](#)   [COPAC](#)

———. 2003. What is egalitarianism? *Philosophy and Public Affairs*, 31: 5–39. [10.1111/j.1088-4963.2003.00005.x](https://doi.org/10.1111/j.1088-4963.2003.00005.x)  
[WorldCat](#)   [Crossref](#)

Sen, A. 1992. *Inequality Reexamined*. Cambridge, Mass.: Harvard University Press.  
[Google Scholar](#)   [Google Preview](#)   [WorldCat](#)   [COPAC](#)

Sher, G. 1997. *Beyond Neutrality: Perfectionism and Politics*. Cambridge: Cambridge University Press.  
[Google Scholar](#)   [Google Preview](#)   [WorldCat](#)   [COPAC](#)

Simmons, A. 1992. *The Lockean Theory of Rights*. Princeton, NJ: Princeton University Press.  
[Google Scholar](#)   [Google Preview](#)   [WorldCat](#)   [COPAC](#)

———. 2001. *Justification and Legitimacy*. Cambridge: Cambridge University Press.  
[Google Scholar](#)   [Google Preview](#)   [WorldCat](#)   [COPAC](#)

Steiner, H. 1994. *An Essay on Rights*. Oxford: Blackwell.  
[Google Scholar](#)   [Google Preview](#)   [WorldCat](#)   [COPAC](#)

Temkin, L. 1993. *Inequality*. Oxford: Oxford University Press.  
[Google Scholar](#)   [Google Preview](#)   [WorldCat](#)   [COPAC](#)

Waldron, J. 1988. *The Right to Private Property*. Oxford: Oxford University Press.  
[Google Scholar](#)   [Google Preview](#)   [WorldCat](#)   [COPAC](#)

## Notes

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- 1 Raz (1986, part II), Nussbaum (1992, 1999, 2000), Arneson (1989, 2000), Sher (1997), and Hurka (1993) (among others) advance arguments on this theme. Ackerman (1980), Larmore (1987), and Barry (1995, part II) defend versions of liberal neutrality on controversial conceptions of the good. On this issue, Nussbaum's current view appears in the final chapter of Nussbaum (2004).
- 2 This problem was first raised by Harsanyi (1975). A response that defends Rawls is in Freeman (2003, editor's introduction). A version of the original position idea appears in Harsanyi (1953), where it is used in an argument for utilitarianism. For discussion, see Roemer (1996, ch. 4; 2002); also Parfit (2004, 341–53).
- 3 See Locke (1980). See also the interpretation of Locke in Simmons (1992) and Waldron (1988, ch. 6) and developments of Lockean ideas in Simmons (2001).
- 4 Another aspect of democratic equality is what we have called “diversity”—how society must be arranged, in order to assure equality of the appropriate sort between members of groups, for example, between men and women and between members of different ethnicities or supposed races. On the former division, see Okin (1989). On the latter, see discussions of the rights of minority peoples in democratic society, for example, Kymlicka (1989, 1995) and Barry (2001).
- 5 See the essays in McKim and McMahan (1997). Also Barry (2001) and Kymlicka (1995).