

Rawls Revising Himself: A Political Conception of Justice

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In a series of connected papers written between 1982 and 1987 a revisionist Rawls emerges. He puts his conception of justice as fairness to more clearly circumscribed work than in *A Theory of Justice* by quite explicitly preferring it as an attempt to specify what just social structures and just institutions would be in constitutional democracies under conditions of moderate scarcity and to, as well, articulate the methodology of such an ascertainment. It is a powerful and subtle account that invites critical inspection. That critical task will not be mine in this paper. The design and overall thrust of Rawls's argument is not always pellucid. Given its originality and importance, I shall seek here, hoping to capture some of its complexity, nuance and force, to elucidate the structure and make evident the plausibility of Rawls's revisionary account, holding extensive critical assessment in abeyance for the nonce. We need a clearer articulation of the account to facilitate the more demanding job of critique and assessment.

I

I want, at first principally working with John Rawls's "Justice as Fairness: Political not Metaphysical", to follow out Rawls's own survey of the basic ideas of justice as fairness and to show how, by contrast with the moral theory of someone like Derek Parfit or Thomas Nagel, these conceptions belong to a political conception of justice.

The overarching and fundamental intuitive idea of justice as fairness, "within which other basic intuitive ideas are systematically connected, is that of society as a fair system of cooperation between free and equal persons."¹ (I 231) This is also an idea which Rawls takes to be "implicit in the public culture of a democratic society." (I 231)

He next characterizes three central elements of his conception of social cooperation.

1. Cooperation is distinct from merely socially coordinated activity, for example, from activity coordinated by orders issued by some central authority. Cooperation is guided by publicly recognized rules and procedures which those who are cooperating accept and regard as properly regulating their conduct.

2. Cooperation involves the idea of fair terms of cooperation: these are terms that each participant may reasonably accept, provided that everyone else likewise accepts them. Fair terms of cooperation specify an idea of reciprocity or mutuality: all who are engaged in cooperation and who do their part as the rules and procedures require, are to benefit in some appropriate way as assessed by a suitable benchmark of comparison. A conception of political justice characterizes the fair terms of social

¹ References to Rawls's later works will be given in the text in the following manner:

I = "Justice as Fairness: Political not Metaphysical," *Philosophy and Public Affairs* 14, no. 3 (Summer 1985): 223–251.

II = "The Idea of an Overlapping Consensus", *Oxford Journal of Legal Studies* 7 (1987): 1–25.

III = "Social Unity and Primary Goods" in A. Sen and B. Williams (eds.), *Utilitarianism and Beyond* (Cambridge, England: Cambridge University Press 1982), pp. 159–185.

cooperation. Since the primary subject of justice is the basic structure of society, this is accomplished in justice as fairness by formulating principles that specify basic rights and duties within the main institutions of background justice over time so that the benefits produced by everyone's efforts are fairly acquired and divided from one generation to the next.

3. The idea of social cooperation requires an idea of each participant's rational advantage or good. This idea of good specifies what those who are engaged in cooperation, whether individuals, families, or associations, or even nation-states, are trying to achieve, when the scheme is viewed from their own standpoint. (I 232)

It is not only the idea of social cooperation but the idea of the person that is essential for Rawls's conception of justice as fairness. Starting with a conception of society as a fair system of cooperation, justice as fairness "adopts a conception of the person to go with this idea." (I 232–3) Unlike some sparse metaphysical or epistemological conceptions of the person, it is a conception that understands the concept of a person "as the conception of someone who can take part in or who can play a role in, social life, and hence exercise and respect its various rights and duties. Thus, we say that a person is someone who can be a citizen, that is, a fully cooperating member of society over a complete life." (I 233)

It is in virtue of their moral powers and, as well, their "powers of reason, thought and judgment" that persons can, given certain material circumstances, be free. We say persons are equal in virtue of their all having these powers to the degree sufficient for them "to be fully cooperating members of society." (I 233) In order for them, as justice as fairness requires, to be full participants in a fair system of social cooperation we must ascribe to them two very vital moral powers: "a capacity for a sense of justice and a capacity for a conception of the good." (I 233) What is it to have a *sense* of justice? It is to have "the capacity to understand, to apply, and to act from the public conception of justice which characterizes the fair terms of social cooperation." (I 233) And what is it to have the capacity for a conception of the good? To have a capacity for a conception of the good is to have the "capacity to form, to revise, and rationally to pursue a conception of one's rational advantage or good."² (I 233) A conception of the good here must be understood as a conception of what is valuable in human life. Typically, it consists in "a more or less determinate scheme of final ends" – ends "we want to realize for their own sake, as well as because of attachment to other persons and loyalties, to various groups and associations." (I 233)

Starting, as justice as fairness does, with "the idea of society as a fair system of cooperation," we make the simplifying assumption that persons are citizens who "have all the capacities that enable them to be normal and fully cooperating members of society."³ (I 234) By making these various simplifications and idealizations, we are able to gain a "clear and uncluttered view of what for us is the fundamental question of political justice, namely, what is the cooperation between citizens regarded as free and equal persons and as normal and fully cooperating members of society over a complete life?" (I 234) An essential idealization here which will help us gain a clearer conception of what social cooperation comes to in the original position. Rawls remarks initially that the idea of the original position "is introduced in order to work out which traditional

² Note here that Rawls seems to be talking about a prudential rather than a moral conception of the good.

³ Thinking of our class, gender and racially divided societies as fair systems of cooperation has the smack of a liberal illusion. But, if we are clear about social realities, it may still be of value as a model in depicting what a just society would look like.

conception of justice or which variant of one of those conceptions specifies the most appropriate principles for realizing liberty and equality once society is viewed as a system of cooperation between free and equal persons.” (I 235) To see what is involved start by asking: how are fair terms of cooperation determined? For someone taking a constructivist and contractarian turn “the fair terms of social cooperation are conceived as agreed to by those engaged in it, that is, by free and equal persons as citizens who are born into the society in which they lead their lives.” (I 235) For it to be a valid agreement their agreement must be entered into under appropriate conditions. The original position with its attached conception of the *veil of ignorance* is a *device of representation* designed to show in general terms what these appropriate conditions are. The original position must simulate the appropriate sense of impartiality requisite for the terms of social cooperation to be adequate. It must not be a position where one person can be in a better bargaining position than another. Where that obtains we do not have fair terms of agreement and agreements reached under such conditions are not, on Rawls’s account, valid agreements. Moreover, in the original position to get the appropriate agreement between the parties in addition to no one having a greater bargaining advantage, there must also be no “threats of force and coercion, deception and fraud and so on . . .” (I 233)

The conception of a contractarian method utilized by Rawls must be sufficiently thorough to extend to the background framework itself, to the background institutions of the basic structure of society. We want to put ourselves in a position, a position Bernard Williams thinks we can never attain, in which we are utterly free of ethnocentrism and cultural bias or even preconceptions.⁴ What we are seeking is “to find some point of view, removed from, and not distorted by the particular features and circumstances of the all encompassing framework, from which a fair agreement between free and equal persons can be reached.” (I 235) The original position, together with the veil of ignorance, is the device of representation to give us this point of view. We abstract from the contingent features of the world until we get a characterization of the situation that is fair. The thing is to state conditions under which the agreement is to be reached in such a way that contingent advantages and accidental influences cannot influence “an agreement on the principles which are to regulate the institutions of the basic structure itself from the present time into the future.” (I 236) The parties in the original position in order to model the requisite impartiality are not allowed to know their social position, their place in history, their particular life plans or particular conception of the good, though they do know, and indeed must know, about the primary goods. They, as such artificial persons, have a conception of the good, so to say, only sufficient for them to make choices as parties in the original position. When they so choose under these restrictions we say the parties are behind the veil of ignorance. *The original position is, as I remarked, simply a device of representation.* Its function is to describe “the parties, each of whom are responsible for the essential interests of a free and equal person, as fairly situated and as reaching an agreement subject to appropriate restrictions on what are to count as good reasons.” (I 237)

It is important to be clear about the relation between the original position and you and me here and now as moral agents in the real world. The relation is this: “The conception of justice the parties would adopt identifies the conception we regard – here and now – as fair and supported by the best reasons.” (I 230) What we try to do is “to model

⁴ Bernard Williams, *Ethics and the Limits of Philosophy* (Cambridge, MA: Harvard University Press, 1985), pp. 77–81, 99–102.

restrictions on reasons in such a way that it is perfectly evident which agreement would be made by the parties in the original position as citizen representatives.” (I238) To attain a clarified public conception of justice we use the device of the original position. We use the original position, here and now, to help us understand better what we think about a just society “once we are able to take a clear and uncluttered view of what justice requires when society is conceived as a scheme of cooperation between free and equal persons over time from one generation to the next. The original position serves as “a unifying idea by which our considered convictions at all levels of generality are brought to bear on one another so as to achieve greater material agreement and self-understanding.” (I238) Finally, in thinking about the relation between ourselves and the parties in the original position, we must remember that “we can, as it were, enter this position any time simply by reasoning for principles of justice in accordance with the enumerated restrictions.” (I238–9)

The original position brings in restraints about *reasonable* conditions of choice; that is, fair terms of cooperation articulated in an idea of reciprocity and mutuality which makes the original position fair. (II 528 and I 237) This conception of reasonability is prior to any conception of rationality and “gives the priority of right.” (I 237) Because of this, Rawls now sees it as an error in *A Theory of Justice*, and “a very misleading one” at that, to “describe a theory of justice as part of the theory of rational choice.” (I 237) Given the extensive decision theoretic playing around with Rawls, it is important to take note of his own correction of his theory. He remarks that what he should have said “is that the conception of justice as fairness uses an account of rational choice subject to reasonable conditions to characterize the deliberations of the parties as representatives of free and equal persons, and all of this within a political conception of justice, which is, of course, a moral conception. There is no thought of trying to derive the content of justice within a framework that uses the idea of rational as the sole normative idea.” (I 237)

II

Rawls next argues that in justice as fairness “no metaphysical doctrine of the person is presupposed.” (I239) Michael Sandel, in his *Liberalism and the Limits of Justice*, argues that Rawls has a distinctive conception of the self, and that this conception of the self is necessary for Rawls’s articulation of the original position. But this conception of the self, Sandel believes, is a conception of the self “shorn of all its contingently given attributes,” a self that “assumes a kind of supra-empirical status . . . and given prior to its ends, a pure subject of agency and possession, ultimately thin.”⁵ Rawls responds that nothing like this is intended or inadvertently involved. The parties in the original position are “described as merely artificial agents who inhabit a construction.” (I 239) In this, and in similar moves, Rawls is trying – and, I believe, succeeding – by what he calls “the method of avoidance,” not to get entangled in such metaphysical questions. He remarks:

If we look at presentation of justice as fairness and note how it is set up, and note the ideas and conceptions it uses, no particular metaphysical doctrine appears among its premises or seems required by it argument. If metaphysical presuppositions are involved, perhaps they are so general that they

⁵ Michael Sandel, *Liberalism and the Limits of Justice* (Cambridge, England: Cambridge University Press, 1982), pp. 93–5.

would not distinguish metaphysical views – Cartesian, Leibnizian or Kantian, realist, idealist or materialist — with which philosophy traditionally has been concerned. In this case, they would not appear to be relevant for the structure and content of a political conception of justice one way or the other. (I 240)

So setting aside all puzzles of metaphysics or philosophical psychology about the nature of the person or the self or the ultimate nature of the person or the self, whatever that means, Rawls does sketch an “account of the political conception of the person” – a conception of the person as citizen – “involved in the original position as a device of representation.” (I 240)

Persons, viewed as citizens in the original position, are viewed as free in three respects. First, they are “free in that they conceive of themselves and of one another as having the moral power to have a conception of the good.” (I 240) And they are regarded in having this conception of the good as reasonable persons capable of reflectively and coherently revising and changing their particular conception of the good. Their public identity is not affected by their changes over time in their conception of the good. As free persons they “claim the right to view their persons as independent from and as not identified with any particular conception of the good as a scheme of final ends.” (I 241) The idea – to translate into the concrete – is that if you shift from being a Catholic to being a Protestant, from being an Arab secularist to an Islamic fundamentalist, or from being a Randian to being a Communist, there is to be no loss, in a constitutional democracy regulated by justice as fairness, in public identity, your “identity as a matter of basic law.” (I 241) You will continue, these rather deep changes notwithstanding, to have the same basic civil rights and the same privileges and public duties; you can own the same property and have available to you the same public goods such as health care, access to schools, the civil service and to military positions and the like. Your status as a citizen will not have changed.

How perfectly this is observed in many constitutional democracies is, of course, another matter. We are talking of *models* here. And there are, of course, plenty of societies distant from the secularized constitutional democracies of which Rawls speaks where this does not obtain and indeed where it is not even remotely aspired to. Indeed there are places where such an aspiration would be regarded as evil. But these societies have a different political conception of the person. The dominant political conception of justice, say in Saudi Arabia or Iran or South Africa or perhaps even Israel, is not that of justice as fairness, or anything like it, where being a free citizen goes with the conception of society as “a fair system of cooperation for mutual advantage between free and equal persons.” (I 241)

The second way in justice as fairness in which, in the political conception of the person, the person is regarded as free is that persons in the original position are regarded as, and they regard themselves as, “self-originating sources of valid claims.” (I 242) No one, to take an extreme contrast to fix ideas, in the original position or in a democratic society could be a slave or be in any way viewed as a slave is viewed: that is, as someone who clearly is not counted as a self-originating source of valid claims. This is a political conception of how a person is free, a conception that “fits into a political conception of justice founded on the idea of society as a system of cooperation between its members as free and equal.”⁶ (I 243) Moreover, it fits very well with our idea of autonomy, with our idea of self-directed persons.

⁶ Again there is the unrealism of that assumption.

Thirdly, and finally, the citizens in the original position are regarded as free, and regard themselves as free, in the following additional respect: they are regarded as “capable of taking responsibility for their ends.” (I 243) This in turn effects “how their various claims are assessed.” (I 243) Where we have a society which is a genuine system of cooperation, where the background institutions are just, we expect agents to adjust their aims and aspirations in line with the principles of justice in such a society. This is what is meant by these citizens being regarded as capable of taking responsibility for their ends. (I 243) In viewing people as persons who are capable of “engaging in social cooperation over a complete life” we also must see them as beings capable of taking responsibility for their own ends. The two things go together.

It is not only the parties in the original position who, as artificial persons, are defined as being free in these respects, but in order to maintain the viability of a constitutional democracy, we must work on the general presumption that, generally speaking, its citizens are free in this respect. That is, we assume that they are, for the most part, beings with the moral capacity to have a conception of the good; we must also assume they are self-originating sources of valid claims and we must assume they are capable of taking responsibility for their own ends. This is a central part of Rawls’s political conception of persons and it meshes with his conception (also part of that political conception) of persons as free and equal in virtue of their possessing to the requisite degree, in addition to the powers of reason, thought and judgment, the two powers of moral personality “the capacity for a sense of justice and the capacity for a conception of the good.” (I 244) Without these features of being free persons and these two powers of moral personality, along with the allied powers of reason, the aims of justice as fairness would be utterly undetermined, for without them it would make little sense to try to claim that society could be coherently viewed “as a fair system of social cooperation in which the fair terms of cooperation are agreed upon by the citizens themselves . . .” (I 244) This political conception of the person is absolutely essential to Rawls’s theory.

III

Rawls next attempts perspicuously to characterize how justice as fairness is a liberal view meant to give a new and more adequate articulation, away from the dominant utilitarian conception, of the underlying rationale for a liberal society. However, we must move very carefully here if we are properly to understand what Rawls is about and to grasp the distinctiveness of his claims. He takes the absence of commitment to “any particular comprehensive ideal,” including even the characteristic liberal ideals of autonomy and individuality, to be “essential to liberalism as a political doctrine.” (I 245) If, after the fashion of J. S. Mill or Kant, we stress, as essential to liberalism as a political doctrine, the comprehensive moral ideals of autonomy and individuality, not as ideals that we may choose to hold privately (to model one’s life on them, for example), but as comprehensive moral-cum-political ideals which are to be part of a public conception of justice, as part of the “foundation for a constitutional regime,” they are in that case revealed, Rawls would have it, as being, if they really are *so viewed*, as just “another sectarian doctrine.” Very frequently, perhaps even typically, those who have the political conception of justice Rawls articulates, which is surely a liberal one, will also have as ‘inner’ personal guides these comprehensive liberal ideals. Indeed this is very likely to be true of Rawls himself. But then again they may not. They may instead, for example,

be Catholics. Yet, though they are Catholics, they can quite consistently with their Catholicism accept liberalism *in the political sense* as spelled out by justice as fairness.

The reason that these comprehensive moral ideals of liberalism are unsuited for a political conception of justice – indeed a liberal conception of justice – is that when “pursued as comprehensive ideals” they are “incompatible with other conceptions of the good, with forms of personal, moral and religious life consistent with justice and which, therefore, have a proper place in a democratic society.” (I 245) A religious sect, for example, may have a requirement for members of their sect which says they may not read books that are on an index of forbidden books without special permission from their religious leaders. As long as they do not try to force people to remain in their faith or any faith, for that matter, they show, if their other behavior is consistent with that, that they accept the principles of religious toleration. They also show, in so acting, that they are accepting the liberal principles of justice, but they are certainly, if they stick with this forbidden books business, not acting in accordance with the comprehensive moral ideals of autonomy and individuality. That very act shows that they have no commitment to that. But without any commitment at all to autonomy and individuality as a comprehensive ideal about how to live your life, they perfectly consistently could very well have a firm commitment to justice as fairness and thereby to liberalism as a political doctrine. (But would it then, after all, be a commitment rooted in nothing more than a *modus vivendi*?)⁷

Liberalism, as a political conception of justice, cannot have those ideals as comprehensive moral ideals, Rawls argues, but it must have principles like justice as fairness, which, though it is a moral conception, is not “intended as a comprehensive moral doctrine.” (I 245) It allows for many life plans, many comprehensive conceptions of the good. The only requirement is that they all be compatible with the principles of justice. But no conception of the good, not even the liberal ideals of autonomy and individuality, are to be taken as the authoritative conception of the good required by morality. For political liberalism there can be no insistence that the moral point of view requires such comprehensive ideals or that people *must* have such ideals on pain of becoming *persona non grata* in the society. There is, on Rawls’s liberal political conception of justice, no such authoritative conception of the good life. Here his distance from a communitarian such as Alasdair MacIntyre is very great. Again, vis-à-vis such moral ideals, justice as fairness is, in a studied way, philosophically neutral.

In modern life in a constitutional democratic state there are “bound to exist conflicting and incommensurable conceptions of the good.” (I 245) For good or for ill, modern culture has gone that way since the Reformation. “Any viable political conception of justice,” Rawls remarks, “that is not to rely on the autocratic use of state power must recognize this fundamental social fact.” (I 245) Given such a background, the conception of the citizen as a free and equal person will not yield a “moral ideal to govern all of life, but rather an ideal belonging to a conception of political justice which is to apply to the basic structure” of society. (I 245) In contrast with liberalism as a “comprehensive moral doctrine, justice as fairness tries to present a conception of political justice rooted in the basic intuitive ideas found in the public culture of a constitutional democracy.” (I 246) Rawls believes that people within a democratic society with their conflicting and not infrequently incomprehensible conceptions of the good

⁷ See Jean Hampton, “Should Political Philosophy be Done Without Metaphysics?” *Ethics* 99, no. 4 (July 1989): 791–814. I have criticized her account in “Rawls and the Societal Ideal” (forthcoming).

will come to accept justice as fairness, when they understand fully its implications and rationale, where, by contrast, they would not all accept liberalism as a comprehensive moral doctrine such as we find it in Kant or J. S. Mill. (An Orthodox Jew or a Catholic, for example, might accept justice as fairness but hardly the full Millian view of things.) “. . . Justice as fairness seeks to identify the kernel of an overlapping consensus, that is, the shared intuitive ideas which when worked up into a political conception of justice turn out to be sufficient to underwrite a just constitutional regime.”⁸ (I 246–7) Rawls then adds significantly: “this is the most we can expect, nor do we need more.” (I 247) Still, in a way, the ideals of the liberalisms of Kant and Mill are not entirely lost in such a conception, though they are surely transformed. I say they are not entirely lost because, while justice as fairness has no comprehensive moral doctrine, nonetheless “when justice as fairness is fully realized in a well-ordered society, the value of full autonomy is likewise realized.” (I 247) And if we have full autonomy, we can hardly not also have individuality.

IV

Rawls contrasts liberalism as a political doctrine with the dominant teleological tradition going back to Plato and Aristotle which he takes to be antithetical to it. It is also the conception of communitarian theories of morality.⁹ Liberals “allow for the plurality of opposing and even incommensurable conceptions of the good” while teleologists, which include Plato and Aristotle, Augustine and Aquinas, and the classical utilitarians, Bentham, James Mill and Sidgwick, “hold that there is but one conception of the good which is to be recognized by all persons as far as they are fully rational.” (I 248) Rawls goes on to point out that “conceptions of justice which fall on opposite sides of this divide are distinct in many fundamental ways.” (I 248) We have already seen how his liberal conception contrasts with the classical teleological tradition. But let us sharpen this contrast a bit. The teleologists, as comes out clearly in Plato, Aristotle and Aquinas, believe in the one rational good and hold that “institutions are just to the extent that they effectively promote this good.” (I 248) Here, of course, in contrast with Rawls’s political conception of justice, it is vital to have a philosophical defense with a moral philosophy and perhaps even a metaphysics and/or philosophical theology or a philosophical anti-theology or atheology to back up and foundationally support one’s claims that so and so is the one through and through rational conception of the good. A very strong Archimedean point indeed is required. On such a conception the aim of moral philosophy, together with metaphysics, and, on some conceptions, theology, is to determine the nature of that one true good. We must have, in short, a full-blooded philosophical account with all the contestability of such accounts.

Liberalism, as a political doctrine, believes, as we have seen, that nothing like this can be achieved in modern societies. Sometimes this rests, as it does with philosophers such as J. L. Mackie or Gilbert Harman, on a philosophical skepticism about the capacity of philosophers or anyone else to determine such a true rational good. Whatever Rawls

⁸ See here for more detail “The Idea of an Overlapping Consensus.”

⁹ The following are paradigmatic. Alasdair MacIntyre, *After Virtue* (London, England: Duckworth, 1981), Charles Taylor, *Hegel and Modern Society* (Cambridge, England: Cambridge University Press, 1979) and Michael Sandel, *Liberalism and the Limits of Justice*. See also Part II of Michael Sandel’s (ed.), *Liberalism and Its Critics* (Oxford, England: Basil Blackwell, 1984).

may think personally about the soundness of such philosophical moral scepticism, his principle of avoidance in matters philosophical and his principle, for political affairs, of philosophical tolerance, will not allow him to take such a philosophical turn or avail himself of such a philosophical defense. And indeed, as he makes it very clear in his "Social Unity and Primary Goods," his account here does not rest on or imply a moral scepticism. (III 183) Moral scepticism here is viewed as but one philosophical view among others and we cannot in cultures such as ours realistically expect any public resolution of such philosophical issues. In a society under the conditions of modernity with the culture and traditions of a democratic society, "a teleological *political* conception of the good simply cannot be obtained." (I 249) What must be accepted, instead, and what a political theory of justice must presuppose for such a society, is not that there is to be discovered the one rational conception of the good, something moral and political philosophers must work hard to at long last discover, and, once discovered, rational publicists must socialize people into accepting. Such ways of viewing things must be resisted (a) because they are simply unachievable under conditions of modernity and (b) because attempts to achieve them would simply under such conditions lead to social strife that could only be resolved by authoritarian methods. We neither can realistically expect it nor do we need it. Indeed the implementation of it would inevitably be, if it could be done at all, authoritarian and dictatorial. It would require an extensive state power: a state power that is incompatible with a state being a liberal state. Rather, what is essential is to realize that we must, for political and practical purposes, just come to accept instead the sociological fact that there are many "conflicting and incommensurable conceptions of the good, each compatible with the full rationality of human persons . . ." (I 248) A free democratic culture cannot in *that sense* fail to be a liberal culture. It recognizes that in modern societies there will be no consensus about what is the one true good. Justice as fairness will accept that fact – a sociological fact about modern societies – and will then proceed to construct a conception of justice commensurable with this fact – a conception that fully articulates an idea of a just ordering of social institutions in the belief that there will be, and will continue to be, "a plurality of conflicting and incommensurable conceptions of the good" affirmed by its citizens. (I 248) (Isn't this just a Hobbesian appeal to a *modus vivendi*? Does not Hampton's critique return like the repressed?)¹⁰

It is a central task of contemporary liberalism to explain how social unity is to be understood "given that there can be no public agreement on the one rational good, and a plurality of opposing and incommensurable conceptions must be taken as given." (I 249) In justice as fairness, the social unity that involves the allegiance of citizens to their common institutions is based "on their publicly accepting a political conception of justice to regulate the basic structure of society" rather than on a common conception of good. In contrast with Aristotelianism and utilitarianism, in justice as fairness the "concept of justice is independent from and prior to the concept of goodness in the sense that its principles limit the conceptions of the good which are permissible." (I 249) On utilitarian and Aristotelian conceptions, you first determine the correct conception of the fundamental good – the one true rational good – and then on the basis of that you determine what is just. In justice as fairness, by contrast, the determination of what is just is not determined by ascertaining what is to be regarded as the fundamental good or goods for human beings or by determining what is, intrinsically good or, everything considered,

¹⁰ Hampton, *op. cit.*

good on the whole. We cannot determine what is just from determining these things, even assuming we could determine those things. It is also the case that we cannot determine the correct conception of good from determining what is just, though we can rule out certain conceptions of good as impermissible from determining what justice requires. Those conceptions of the good which are incompatible with the principles of justice are ruled out. But there still are a not inconsiderable number of incommensurable, or at least seemingly incommensurable, conceptions of the good which are equally compatible with the principles of justice in justice as fairness. Those conceptions of good are neither ruled *out* nor ruled *on* by the principles of justice in justice as fairness. Liberalism, as a *political* doctrine, is neutral with respect to them. Rather Rawls, developing in a more precise way and in a more self-conscious way, the liberal views of Constant, de Tocqueville and J. S. Mill, conceives of a just basic social structure and its background institutions as establishing a framework within which permissible conceptions of the good can be advanced. (I 249–50)

We can, moreover, expect justice as fairness to be stable where there is an overall extensive overlapping consensus about it in the culture, rooted in commitment in the public culture to religious toleration and to a similar toleration for divergent philosophical conceptions and different moral conceptions of what the good life consists in or concerning what is worth doing and having and how it is best to order one's life. Where such toleration is lacking justice as fairness will be unstable. It will work, that is, in present day Scandinavia but hardly present day Iran or Israel.

V

Rawls, as we have seen, gives priority to justice over the good and he, for related reasons, gives priority of the right over the good as well. And yet – and this is not in a backhanded way to take back the above – Rawls also says that unless we have some understanding of goodness and a belief that certain very fundamental things are good (something that would not add up to a distinctive conception of the good), neither the parties in the original position, nor you and I simulating them, could possibly choose principles of justice. If we had no antecedent beliefs that some things are good and some bad we would have nothing on which to base our choice of what would be just social arrangements. We need what Rawls called in *A Theory of Justice* a *thin* theory of the good here.

It is here where Rawls articulates his account of the primary natural and social goods. These are things that at least in constitutional democracies he takes it would be thought by everyone, or at least every sane person, to be unproblematically good because they are things that anyone would need to realize any life plan she might have. Put differently, for all the various, arguably incommensurable conceptions of the good (including thicker theories of the good), these primary goods, would be things that we would have to have to achieve the realization of the ends specified in any of these various conceptions of the good.

Much of the argumentation for the above was developed in Part III of *A Theory of Justice* but Rawls in later writings has come to believe that some of that was importantly misleading and indeed even mistaken. (I 250–51) In Part III, Chapter 7 of *A Theory of Justice*, Rawls gave an account of goodness as rationality. He sees it now as a fault of that account that it “often reads as an account of the complete good for a comprehensive moral conception.” This was not his intent and, more importantly, it is not necessary for

the purposes for which he developed his account of goodness as rationality. An essential rationale for that account was to “provide the basis for identifying primary goods, those goods which, given the conception of persons, the parties are to assume are needed by the persons they present.” (I 251; *A Theory of Justice*, pp. 397, 433) What Rawls needed his account of goodness as rationality for was, as he puts it now, “to explain the list of primary goods and the basis of various natural goods recognized by common sense and in particular, the fundamental significance of self-respect and self-esteem . . . and so of the social basis of self-respect as a primary good.” (I 251) A second, and related, rationale for his account of goodness as rationality was to account in particular for what he takes to be the stability in constitutional democracies of justice as fairness and more generally of plausible related conceptions of justice. A third rationale for his account of goodness as rationality was “to give an account of the good of a well-ordered society, that is, of a just society in which justice as fairness is the publicly affirmed and effectively realized political conception of justice.” (I 251)

In a 1982 article “Social Unity and Primary Goods,” Rawls developed his conception of the primary goods and their placement in his overall theory. There he elaborates his notion of primary goods (a notion which has occasioned much misunderstanding) and explains “the connection between the notion of primary goods and a certain conception of the person which leads in turn to a certain conception of social unity.” (III 159) He stresses again his acceptance of the presupposition of liberalism, namely the rejection of the traditionalist conception that “there is but one rational conception of the good” and the acceptance instead of the belief “that there are many conflicting and incommensurable conceptions of the good, each compatible with the full autonomy and rationality of human persons.” (III 160)

A political consequence of this presupposition, also accepted and stressed by liberalism, is that “it is a natural condition of a free democratic culture that a plurality of conceptions of the good is pursued by its citizens.” (III 160) Utilitarianism, though it wants to align itself with liberalism, cannot, Rawls argues, consistently do so, for it is a presupposition of utilitarianism that there can, as difficult as it may be to ascertain, be but one correct conception of the good. (This would also seem to be true of perfectionism.) But his own view, as a form of Kantian constructivism, fully accepts the liberal view. Indeed, it gives it a clear rationale.

As a Kantian view, justice as fairness accepts the liberal presupposition. The consequence is that the unity of society and the allegiance of its citizens to their common institutions rest not on their espousing one rational conception of the good, but on an agreement as to what is just for free and equal moral persons with different and opposing conceptions of the good. This conception of justice is independent of and prior to the notion of goodness in the sense that its principles limit the conceptions of the good which are admissible in a just society. These principles of justice are to be regarded as the public principles for what I shall call ‘a well-ordered society’. In such a society each citizen accepts these principles and each knows that everyone else accepts them as well. Moreover, the basic institutions of society actually satisfy these public principles, and that this is the case is recognized by all citizens for good and sufficient reasons. The role of basic social institutions is to set up a framework within which citizens may further their ends, provided that these ends do not violate the prior and independent principles of justice. (III 160–61)

(This seems, at least, *pace* Hampton, no mere appeal to a *modus vivendi*.)

However, “given the different and opposing, and even incommensurable, conceptions of the good in a well-ordered society,” how is such a public understanding possible? How could we or how do the parties in the original position choose principles of justice

if we or they have no conception at all of what is good or what, for everyone considered, would be advantageous? Rawls's answer is that in spite of the priority of the right over the good we must, to even have principles of justice, have some minimal understanding and acceptance as well as some firm consensus, though in a specially limited area, that certain things are good or advantageous to everyone. Without that thin theory of the good we wouldn't even be able to choose principles of justice. Without that the parties in the original position would be able to make no choices at all. They would have nothing to base their choices on. (Here there is no shift at all between the theory in *A Theory of Justice* and his later account.)

However, this minimal recognition of certain things being good is not the same as having a conception of the good (a rational plan in accordance with which one seeks to live out one's life). It is rather the recognition that there are certain things one needs (any human being needs) and that one must to some extent secure to realize any rational life plan that one might have. It is here where the primary goods come in. The existence of different and opposing and even incommensurable conceptions of the good, to the contrary notwithstanding, there is also, as Rawls points out, with those people with such different conceptions of the good, "a partial similarity" as well and this partial similarity, Rawls claims, "is sufficient for political and social justice." (III 161) It is enough that people in a well-ordered society "view themselves as moved by the two highest-order interests of moral personality" and that they recognize as integral elements in their own conceptions of the good, whatever they may be, the same primary goods. They recognize, to take a vital part of it, as strategic human goods "the same rights, liberties and opportunities, as well as certain all-purpose means such as income and wealth." (III 161) This plainly seems at least to be no appeal to a mere *modus vivendi*.

VI

It is important in this context to find an acceptable index of primary goods. Just an acceptance of the list of primary goods without any index at all would leave us in a very indeterminate situation indeed. Such an index, Rawls tells us, is "part of the two principles of justice." (III 163) The parties in the original position know that and an acceptance of that index is part of their agreement when these principles are adopted. The "index of primary goods is to be used to compare everyone's social situation so that this index defines a public basis of interpersonal comparisons of social justice." (II 163) It is important to recognize that they are not used in all situations where comparisons, rankings and weightings are to be made but only in those situations where "questions of justice . . . arise in regard to the basic structure." (III 163) It is essential for there to be a well-ordered society, that there be "a public understanding as to what claims are appropriate for citizens to make in matters of justice." (III 164) Rawls's theory maintains that the "fulfillment of appropriate claims specifies what is publicly counted as advantageous and as improving situations of citizens." (III 164) In a society regulated by the two principles of justice in justice as fairness, "appropriate claims are to certain primary goods, and the relative weight of such claims is settled by these principles, which include an index of these goods." (III 164)

What, more exactly, are the primary goods and how do we determine the index of primary goods? Rawls classifies and characterizes the primary goods under five headings:

- (a) First, the basic liberties as given by a list, for example: freedom of thought and liberty of conscience, freedom of association, and the freedom defined by the liberty and integrity of the person, as well as by the rule of law; and finally the political liberties.
- (b) Second, freedom of movement and choice of occupation against a background of diverse opportunities.
- (c) Third, powers and prerogatives of offices and positions of responsibility, particularly those in the main political and economic institutions.
- (d) Fourth, income and wealth.
- (e) And finally, the social bases of self-respect. (III 162)

When we consider what Rawls's two principles of justice specify and the priority rules between them which are, of course, essential in seeing what they actually specify, we will come to understand Rawls's conception of the index of primary goods. The first principle (the equal liberty principle) has priority over both parts of the second principle of justice; the fair equality of opportunity, part of the second principle, has priority over the other sub-principle of the second principle, the *difference* principle. (III 161–62) Since the first principle has priority over the second, the index of primary goods is such that "all citizens are assured equal basic liberties." (III 162) (Recall here we are limiting our discussion – this is one of Rawls's key strictures – to constitutional democracies under conditions of moderate scarcity.) Only if that is secured can we go on to consider how we are to divide up income and wealth and those benefits and burdens, which are distinct from those liberties. One of the primary goods is that we have fair equality of opportunity. But we can only seek to secure that if in doing that we do not upset the social institutions of a well-ordered society in such a way that the assured equal basic liberties of all citizens are affected. We cannot, given Rawls's priority rules, aim at equality of opportunity if doing so would undermine our equal basic liberties. Similarly, the *difference* principle, once the equal liberty principle and the fair equality of opportunity principle have been satisfied, provides a further specification of the index of primary goods. First, the above restrictions limit how advantages and benefits can be distributed. They cannot, if we are to attain the proper index of primary goods, be so distributed so as to undermine equal basic liberties and they cannot be so distributed such that fair equality of opportunity is not maintained. But, once that is assured, the index of the primary goods is to be arranged so as to maximally benefit the least advantaged. (But see footnote 15, III 175.)

Given these priority rules and the two principles of justice themselves, the index of primary goods is designed to work out so that "all citizens in a well-ordered society have the same equal basic liberties and enjoy fair equality of opportunity" and the "only permissible difference among citizens is their share of the primary goods in (c), (d) and (e)." (III 162) It seems to me not differences in the latter, namely (e), are immoral. However, and be that as it may, inequalities in income and other wealth (the stock of means of society), in power and prerogatives, and in the social basis of self-respect are only justified and only just, according to Rawls, when they are necessary to make it the case that the institutions of society are so arranged "that the life-time expectations of the least advantaged, estimated in terms of income and wealth, are as great as possible given fixed background institutions that secure the equal basic liberties and establish fair equality of opportunity." (III 162–63) Rawls remarks that this deliberately takes the principles of justice in their simplest form. And by so proceeding we only get an illustration of how he uses primary goods to make interpersonal comparisons, but, stressing income as it does, he "ignores the primary goods under (c) and (e) and hence

avoids the problem of defining an index.” (III 163) (But until he actually carries out this more complex task or shows how it is plausible to believe that it can be done is not his account definitely flawed?)

After remarking on this, Rawls then remarks, showing he is not here taking up the kind of criticisms I raised in my *Equality and Liberty*, “On the assumption that the question of private property democracy versus democratic socialism involves the weighting of primary goods under (c), (d) and (e), using income and wealth alone in the difference principle presumably cannot solve this historic question.” (III 163) But that is a very central question that needs to be addressed. Rawls, however, ducks it. Without its being carefully addressed we have some idea of what an index of primary goods would look like but it is anything but clear whether we have an idea sufficient to resolve all our problems, or even our most crucial problems, about an index of primary goods.¹¹

VII

I want now to turn to Rawls’s account of the basis on which the primary goods come to be accepted. He attempts to show that the parties’ reliance on the primary goods in the original position is rational and that by extension ours is as well. He believes that if we take a realistic note of “the normal conditions of human social life” and have a clear understanding of what our highest-order interests are as persons, we will not only be able to “single out the primary goods but also specify their relative importance.” (III 166) When we are thinking about a practical political conception of justice for our public culture we will, as we have seen, operate with a much richer conception of the person than we would if we were metaphysicians worrying about personal identity. In such a conception where it is closely related to, as it also is for Rawls, a conception of justice for a constitutional democracy, we will “start by assuming that citizens are free and equal moral persons who can contribute to and honor the constraints of social cooperation for the material benefit of all.” (III 164) This gives us a conception of the person and as well sets some of the parameters for what justice will come to for us.

Rawls views society as not just something that involves “coordinated social activity efficiently organized for some overall collective end.” (III 164) Rather, as we have seen, society is “regarded as a system of social cooperation” operating with a conception of fair terms of cooperation which the citizens of the society can be expected to accept. Persons are regarded, in justice as fairness, as persons who both wish to and can take part in fair social cooperation for mutual advantage. Persons on such a conception are viewed as moral persons “moved by two highest-order interests, namely, the interests to realize and to exercise the two powers of moral personality.” (III 165) They are “the capacity for a sense of right and justice (the capacity to honor fair terms of cooperation), and the capacity to decide upon to revise and rationally to pursue a conception of the good.” (III 165)

Each citizen is represented by a party in the original position and the parties in seeking to reach an agreement on principles of justice in the original position are instructed to “do the best they can for those they represent subject to the constraints of the original position, such as restrictions on information, the fact that the parties are symmetrically

¹¹ Kai Nielsen, “Equality, Justice and Class,” *Dialectica* 32, no. 2 (1978): 126–133. See also my “The Choice Between Perfectionism and Rawlsian Contractarianism,” *Interpretation* (1976).

situated and so on.” (III 165) They can best provide for them “by deciding between alternative principles of justice according to how securely these principles provide for all citizens the primary goods.” (III 165) Remember that the citizens are assumed not only to have these highest-order moral interests, they are also assumed to have ends they wish to advance, sometimes differing ends, and that these ends, particularly the ends they take to be ‘final ends’, specify each person’s good. *But whatever ends they have will require the primary goods to achieve them and so it is rational for them to want principles of justice that will secure those primary goods.* The basic liberties are necessary to come to develop and sustain one’s sense of justice and they are even more obviously necessary “for the development and exercise of the capacity to decide upon and revise, and rationally to pursue, a conception of the good.” (III 165) Similar things should be said about freedom of movement and free choice of occupation. Such freedom is important for the pursuit of one’s final ends whatever they may be. And we also need, Rawls tells us, “certain powers and prerogatives of offices of responsibility” to “give scope to various self-governing and social capacities of the self.” (III 166) Thus if one is an M. D. one needs a certain authority to prescribe medicines and a regime of treatment for a patient and if one is a professor one should be able to have an important control over how and what one teaches and over the direction one’s research takes and if one is a secretary one should have a reasonable control over how one spaces one’s work and over what goes with a job description. People, in whatever they do, need certain powers and prerogatives that go with the responsibilities of their offices. This is needed “to give scope to various self-governing and social capacities of the self.” (III 166) Citizens also need some secure institutional basis to develop and sustain self-respect. If the principles of justice do not sustain institutions which protect this, citizens will not have “a lively sense of their own worth as moral persons.” (III 166) Moreover, without a secure social basis of self-respect, it will be very difficult indeed for them to be able to “realize their highest-order interests and advance their ends with self-confidence.” (III 166) Finally, and most obviously by way of specifying a rationale for primary social goods, it is plain that to achieve any of their ends or to sustain their highest-order interests or indeed any of their interests, people must have some reasonable amount of income and wealth (the society’s stock of means). In short, in these ways the various primary goods are shown to be rational. They are necessary for people to be able to achieve and sustain their ends whatever these ends may be.

VIII

In a key paragraph (III 169–70) Rawls makes clear how distinct his account is from utilitarianism and how his conception of the index of primary goods is not at all like a utilitarian calculus. In seeking a workable public conception of justice, the “primary goods help to provide a public standard which all may accept.” (III 170) The primary goods give us “workable criteria for a public understanding of what is to count as advantageous in matters of justice. . .” (III 170) There is no claim on his account that we can establish what the good is (publicly we shouldn’t even try) or what are or not correct life plans – the right life plans, the one true good. There is no estimating “the extent to which individuals succeed in advancing their ends” or evaluating “the merits of these ends (so long as they are compatible with the principles of justice)” and there is not going

to be any use of the primary goods to measure or ascertain psychological well-being. "In relying on primary goods, justice as fairness rejects the idea of comparing and maximizing satisfaction in questions of justice." (III 169) Whether some are situated better than others is not determined by trying to ascertain their relative happiness or levels of satisfaction. Rather, the interpersonal comparison is founded on their access to primary goods. Primary "goods are social background conditions and all-purpose means generally necessary for forming and rationally pursuing a conception of the good." (III 169) The role of the principles of justice is "to ensure to all citizens the equal protection of an access to these conditions and to provide each with a fair share of the requisite all purpose means." (III 169)

In talking about justice many theories talk about desires, needs and deserts. Rawls's theory of justice is for the basic structure of society and, as can be seen from his theory of the primary goods, he restricts claims here to a consideration of needs. As Rawls puts it himself, "the idea of restricting appropriate claims to primary goods is analogous to taking certain needs alone as relevant in questions of justice." (III 172) This rather asks for a reading and Rawls gives it as follows:

The explanation [of the above claim] is that primary goods are the things generally required, or needed, by citizens as free and equal moral persons who seek to advance (admissible and determinate) conceptions of the good. It is the conception of citizens as such persons, and as normal cooperating members of society over a complete life, which determines what they require. Since the notion of need is always relative to some conception of persons, and of their role and status, the requirements, or needs, of citizens as free and equal moral persons are different from the needs of patients and students. And needs are different from desires, wishes and likings. Citizens' needs are objective in a way that desires are not, that is, they express requirements of persons with certain highest-order interests who have a certain social role and status. If these requirements are not met, persons cannot maintain their role or status, or achieve their essential aims. (III 172-73)

So we have a theory of justice in which the conceptions of the primary goods of moral persons of a well-ordered society and of justice are rightly linked. On this conception – that is in justice as fairness – individuals are assumed, as we have seen, to have responsibility for their own ends and to have the right to live as they please as long as their ends do not conflict with the principles of justice. Society – "the citizens as a collective body" – by contrast "accepts the responsibility for maintaining the equal basic liberties and fair equality of opportunity, and for providing a fair share of the other primary goods for everyone within this framework . . ." (III 170) Justice as fairness articulates principles of justice according to which, with respect to their various conceptions of the good, all citizens are to be treated as equals. There is, as a matter of public political stance, to be no preferred authoritative conception of the good in the society: some conception that everyone must march lock-step to. But it is important for there to be a publicly agreed on conception of justice and, if it is justice as fairness, as Rawls believes it would be, if, the decision was made under conditions in which impartiality is secured, then its principles of justice would prescribe that all "citizens have the same basic liberties and enjoy fair equality of opportunity" and that they share in other primary goods in accordance with the principle that "some can have more only if they acquire more in ways which improve the situation of those who have less." (III 171-72) And even this is a grudging acceptance of harsh facts of social reality, for we start, in justice as fairness, with the belief that an "equal division of primary goods" is "the benchmark of comparison" given justice as fairness. (III 173) Departures from that benchmark are only justified when doing so will maximally improve the lot of the worst off strata in society.

It is Rawls's belief that it is some such conception of justice that we would come up with if we were people in a constitutional democracy who, starting with and continuing to give considerable critical weight to our most deeply embedded considered convictions, reasoned carefully and impartially.

It is such principles applied in this way which define a just scheme of social cooperation in a well-ordered society in which citizens are regarded as free and equal moral persons. Social unity on Rawls's conception of a well-ordered society is not secured because there is a shared conception of the good life – there isn't such a shared conception. Instead it is just assumed that there will be different and sometimes conflicting or incommensurable conceptions of the good life – Sven goes for certain aesthetic values and the contemplation of nature and Olaf goes for self-discipline, struggle and the conquering of nature – and no attempt is to be made for the purposes of a public stance “to assess the comparative adequacy of these divergent conceptions of the good.” (III 180) Any assessment of such conceptions of the good is, as far as public philosophy is concerned, purely a private affair. It will not be part of the public conception of what the just ordering of a society would come to or at least it will not be part of the just ordering of a society which is also a constitutional democracy. Put otherwise, it will not be used in determining what a just social order is in societies such as our own or in societies that are a feasible extension of our own societies.

If something like Rawls's Kantian Constructivism is accepted, the social unity that we will find is not based on a shared conception of the good but “upon how far the conceptions of the good which actually exist cohere with and lend support to the public conception of justice.” (III 180) In this way social unity is secured but so is individuality, for in Rawls's well-ordered society what counts as an acceptable social unity is one in which in the society in question there is the equal acceptability of “a plurality of conceptions of the good (within the limits of justice)” between which citizens are at liberty to choose. There is this deep underlying acceptance of a principle of mutual tolerance. Surely in such social conditions the flourishing of people's individuality is assured. (III 183)

Such a conception of social unity, more than a perfectionist one or a utilitarian one, both of which in loyalty to some conception of the one rational good might widely depart from democracy, would with respect to providing firm foundations for democratic institutions, not be as stable as justice as fairness. But it is just that providing a firm foundation for “democratic institutions that justice as fairness takes as its underlying reason for being.” (III 182–83) It is, as Rawls puts it, “the liberal alternative to the tradition of the one rational good.” (III 184) Justice, on such a conception, “is prior to the good in the sense that it limits the admissible conceptions of the good, so that those conceptions the pursuit of which violate the principles of justice are ruled out absolutely: the claims to pursue inadmissible conceptions have no weight at all.” (III 184) But this severe Kantian Constructivism is not empty Kantian formalism for it is also firmly recognized by Rawls that the having of just institutions “would have no point unless citizens had conceptions of the good they strove to realize and these conceptions defined ways of life fully worthy of human endeavor.” (III 184) Moreover, Rawls's principled refusal, from the standpoint of a public conception of justice, to take sides about the good life does not at all imply, as we have already noted, or even suggest, a moral scepticism about such conceptions of the good. From the standpoint of persons in the society the various life plans and ends can be evaluated; as Rawls puts it, “they can be assessed by rational principles given someone's interests, abilities and situation, and persons (and

those who advise them) regard some ways of life more worthy of pursuit than others.” (III 183) And in such personal assessments for such private purposes some people may indeed be right, or more nearly so, in their assessments in some suitably objective sense of ‘right’ than others. But such evaluations can “have no effect on citizen’s claims to basic liberties and other primary goods.” (III 183) Concerning such private claims about the good a public philosophy, a political conception of the just society, must remain studiously philosophically and morally neutral. But that need not at all be because of any residual scepticism about the nature and content of the good for human beings. Rather it will be out of a thorough going commitment to democratic institutions and a parallel respect for human autonomy and individuality and more generally a respect for persons. This is, of course, a very deep going commitment to liberalism, but is also, as Rawls is perfectly aware, compatible with a democratic socialism which will not turn its back on that side of liberalism.

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