

POLITICAL CONCEPTS

A Reader and Guide

Edited by
Iain MacKenzie

Political Concepts

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Iain MacKenzie

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GENERAL INTRODUCTION

WHAT ARE POLITICAL CONCEPTS?

Iain MacKenzie

INTRODUCTION

Arguably, to think at all is to think conceptually: that is, to deploy generalities that survey particular cases by way of connecting and synthesising those cases but also by way of establishing differences or differentiating between the particularities as well. If we take the example of ‘the state’, this political concept brings together a number of particular forms of political organisation under one conceptual banner – nation-states, nascent or emerging states, democratic states and so on – but it also implies that we differentiate ‘the state’ from other forms of political organisation – communities, nations, supra-national organisations etc. I began with ‘arguably’, however, because already the general claim is packed full of assumptions that we shall see need to be unpacked and refined: Is a concept always a generality? Can we have concepts that express particulars, for example ‘particularity’ itself? Are we assuming already that concepts are the product of thinking by individuals and that ‘individuals’ here really means ‘individual human beings endowed with certain capacities for thought’? What exactly is the relationship between the connective and the differentiating requirements of conceptual thinking; in what way do concepts link some things together and exclude others from their survey of any set of cases? Continuing the example of ‘the state’, what *exactly* is it that links different kinds of organisation under this umbrella concept and what *exactly* is it that allows us to differentiate states from other political formations? Moreover, what *exactly* do we imply about conceptual thinking in general when we make such links and distinctions? Already, therefore, we can see that to think

about concepts in general is to *think about thinking in general* and this is no straightforward matter.

Of course, the task of this volume is to present a series of key *political* concepts, so we need only be concerned with a subset of concepts: those that refer directly to the realm of politics. This, however, is both a help and hindrance. It is a help because it limits the scope of our enquiries to a list of broadly familiar concepts, by which I mean concepts that we employ commonly in our everyday lives whenever we engage directly or indirectly in political life. As such, we have an intuitive benchmark established for much of our thinking about political concepts, namely that our understanding of them should accord with our experiences of taking part in the world of politics, at least to some degree. But this caveat, ‘at least to some degree’, also expresses one of the key hurdles that must be overcome in thinking conceptually about politics: namely, that we must not be led astray by our intuitive understanding of particular political concepts and political concepts in general, into a series of dead ends that reveal more about our biases and prejudices than they do about our capacity to think conceptually – rigorously, analytically, creatively – about the political world. In order to avoid these dead ends and in order to keep our focus on political concepts, we must walk a fine line between purely abstract ‘thinking about thinking’ and simply reinforcing our political biases by thinking that political concepts can be analysed *without* thinking about what they imply about our conceptual understanding of the world and our relationship to it, in the most general sense.

There are two principal ways of treading this fine line. First, we must conduct in-depth studies into the nature and meaning of the concepts that make up our everyday grasp of political life. This is the task of the main body of this book in that each of the introductory essays and selected readings expresses the complexities surrounding and suffusing many of the concepts that shape our understanding of politics. Second, we must ask ourselves, as we read through all the material on particular concepts, ‘what are political concepts?’ so that we can always maintain a certain critical distance on the assumptions that guide our thinking about any particular concept. This general question, therefore, can be split into others that will help our navigation through the seas of conceptual political thinking: What does argument X about concept Y reveal about writer Z’s approach to political concepts in general? Do the different perspectives on concept Y that make up the debates surrounding it express different assumptions about political concepts in general, in which case can the debates be resolved, refined or removed by thinking about politics at the level of political concepts in general? Are there some concepts – ideology, for example – which necessarily express this general level of discussion and some – equality, for example – which do so but only indirectly, and if this is the case, are there different

kinds of political concept or, perhaps less dramatically, concepts that relate to political life in quite starkly different ways?

Within these general remarks and guiding questions there is one key element that must always be at the forefront of our concerns as we try to tread the fine line involved in thinking conceptually about politics. We must always remember that the phrase ‘political concepts’ already contains a concept within it, namely ‘the political’. (Arguably, the idea of ‘concept’ is also already a concept, such that there are two concepts expressed within the phrase, but the quagmire of reflection and analysis that this gets us into can be neatly side-stepped for the purposes of this volume!) The point is this: in thinking about *political* concepts as a sub-set of concepts in general we have already conceptualised, implicitly for the most part, what we mean by ‘the political’. Bringing to light the different conceptualisations of ‘the political’ that inform our grasp of particular political concepts is one of the key aims of this text. Moreover, thinking conceptually about ‘the political’ is one of the key features that differentiates students of politics (from the A-level student to the most ‘esteemed’ professor of the discipline, from the reflective participant in politics to the informed policy-makers shaping our global institutions) from unreflective participants in political life (similarly occupying all areas of the political realm) who assume implicitly a definition of ‘the political’ and who also assume that whatever definition guides their thinking about politics is so obvious as to be unquestionable. To think conceptually about politics, therefore, is not just to think about the concepts that we use in political life; it is also to think conceptually about ‘the political’ itself. In all good political analysis there is a constant interplay between the analysis of particular political concepts like ‘justice’, ‘power’, ‘multiculturalism’ and ‘globalisation’ and the analysis of ‘the political’ itself.

POLITICAL CONCEPTS: A MULTIDIMENSIONAL APPROACH

As these introductory remarks make clear, it is not sufficient to think of political concepts as simple one-dimensional phenomena that can be straightforwardly defined in order that the ‘real’ business of getting on with political analysis and reform of our political institutions (assuming they are in need of reform) can begin. Rather, as students of politics, we need to work in parallel; the analysis of political life – its dynamism, its institutions, its histories and the possibilities for its future – must be conducted with a constant eye on the many different dimensions of the concepts we employ in these analyses. But if this is the case, then we need to have a preliminary grasp of the multidimensional nature of political concepts so that we can keep these dimensions in mind as we conduct our analyses and so that the vitality and vibrancy of political studies can be conveyed at its most general level; in the hope, perhaps, that all the different kinds of students of politics who may use this book will be inspired to reflect upon, and maybe even provide, answers

that have yet to be given to the guiding question of this introduction: ‘what are political concepts?’.

The first, and perhaps most obvious, dimension of political concepts is that they should *reflect* political reality. When we think about a political concept like ‘globalisation’ we tend to assume that it ‘works’ as a concept precisely because it provides insight into the nature of current political realities. Political concepts, we might argue, should act like mirrors to the world of politics, representing the realities of that world to our minds so that we can grasp that reality ‘in our heads’. This reflective dimension of political concepts, however, needs to be treated with some caution as it carries with it a number of assumptions about conceptual thinking in general that may be overly simplistic. As the example of globalisation makes clear, in reflecting political ‘realities’ we must be wary of assuming that those realities are unchanging. Indeed, the vibrancy and dynamism of political realities, their tendency to change over time and mutate in different contexts, is precisely what makes the study of politics such a lively and engaging pursuit. Of course, while few would hold that the reality described by political concepts is unchanging and immutable, many would still argue that the main function of political concepts is to reflect and describe the *changing* realities of political life: globalisation is a relative newcomer to the conceptual scene in politics because the processes it reflects are new and emerging realities of political life. But is this ‘reflective’ dimension of political concepts the whole, or even the main part, of the story about political concepts?

As the essay on globalisation in this volume makes clear, it is not simply a reflective or a descriptive concept: it is also an *evaluative* one. Political reality is not just reflected through concepts; it is evaluated through concepts, that is, students of politics use concepts to assess the reality as they see it by giving it value (or not). Even where the main focus of the analysis is descriptive, by virtue of using concepts evaluations are made: is any given feature of global political life part of this ‘thing’ we call ‘globalisation’ or not? By evaluating what is worthy of inclusion under a conceptual banner and what is not, we are already moving beyond any simple account of concepts as purely or simply reflective or descriptive. We might be tempted at this stage to invoke the famous philosophical distinction between ‘is’ and ‘ought’ to distinguish different kinds of political concepts: those that merely reflect the political world as it is and those that evaluate this reality by asking how it ought to be. In this way, moreover, it might be tempting to say that we should distinguish conceptual definition – globalization is X, therefore reality Y is included and reality Z is not – from conceptual evaluation – globalization is X, therefore it is ‘good’ or ‘bad’ etc. As such, it could be said, we can distinguish between two senses of ‘evaluation’ – the evaluation of what counts as a salient feature of the concept and the evaluation of the concept against some standards which dictate how we ought to respond to the

reality being described. But, at least when dealing with political concepts, this distinction is extremely hard and maybe even impossible to maintain.

As argued above, every attempt to think conceptually about politics already involves a definition, at least implicitly, of what counts as 'the political'. In this light, the notion that we can distinguish the two different senses of 'evaluation' just discussed begins to look rather thin. As soon as we invoke a conceptual definition that is supposed to reflect political realities we have already made an evaluation about how 'the political' itself ought to be conceived. Behind every political 'is' there is already a political 'ought' by virtue of invoking political concepts at all. It might be said that this is putting the matter too starkly, that there is indeed broad agreement about what constitutes 'the political' realm and that this can be distinguished from a number of other realms without much controversy: family life, economic life, religious life and so on. But, as is now commonly recognised within political studies, this manoeuvre is no longer tenable. If we have learned anything from the history of debates surrounding political concepts it is that whenever there is even a temporary agreement within the literature about the nature of politics in general this is immediately called into question and the fundamental battles about what 'the political' actually is begin again. In recent times, one can think of the interventions of feminist political theorists in this way; the often cosy assumptions of mainstream/male-stream political thinkers have been and continue to be shattered by revealing their implicit and explicit patriarchal construction of the political. For many feminists, indeed, we can say that the attempt to define 'the political' as it actually *is* – say, an arena in which rational individuals compete for scarce resources – has masked claims about what it *ought* to be – namely, that all who engage in politics ought to have the qualities of 'competitiveness', 'individualism' and 'rationality', where these are defined in peculiarly 'masculine' ways.

That said, this does not mean that we should give up on the guiding intuition that political concepts do have and should have some bearing on the realities of the political world. If we take the example of the concepts that open this collection – justice, liberty, equality and rights – we can see that all these explicitly evaluative concepts gain their prescriptive force from having a plausible and compelling descriptive dimension to them. Indeed, the very nature of their prescriptive force usually emanates from the insightful diagnoses thinkers who deal with these concepts make about political realities. Our wish to see a 'just' world where 'liberty' is fostered, 'equality' attained and our 'rights' respected would be merely empty theorising were it not for the descriptions of injustices, infringements of liberty, inequalities and abuses of our rights; descriptions that make a claim to reflect the present realities of political life. It is with this in mind, that it is preferable to talk of the different dimensions within political concepts rather than to talk of different kinds of political concepts for different kinds of political analysis.

But do these two dimensions – the reflective and the evaluative – exhaust the multi-dimensional make-up of political concepts?

A problem that has beset both our reflective and our evaluative thinking about politics is the persistent sense that both these dimensions are abstract from the lived experience of being in the political world. Thinking from a perspective that prioritises the descriptive dimension of political concepts has, at times, tended to create an overly academic language of politics suffused with concepts that generalise our experiences as political actors to the point where we feel they no longer adequately represent that experience. Similarly, overly prescriptive evaluations of how we ought to organise our political life are often presented as if they are impositions upon the way we conduct our political lives, impositions emanating from the ‘ideal’ world of enquiries into the rational meaning of certain concepts that make untenable demands upon us as ‘real’ political actors. Clearly, a technical, specialised language of political studies is defensible as an integral part of gaining insight into the complex mechanisms of political life and, what is more, the gains to our understanding made by way of such academic languages testify in support of this defence. It is also certainly the case that the rational interrogation of what we mean by many of the core political principles that guide our sense of how we ought to conduct our political affairs has had and continues to have enormous impact on clarifying our thinking, removing prejudices and criticising our all-too-often unquestioned assumptions about ‘the right thing to do’ in political life. Accepting these views, however, does not necessarily remove or assuage our sense that much of the conceptual work in political studies has little to offer when it comes to getting *inside* our experience of life as political actors. It is not so much that political thinkers do not aim to do this – they clearly do, almost without exception – but that they often unconsciously prioritise the two dimensions of political concepts just addressed (the reflective and evaluative) over and above two other important dimensions of political concepts, dimensions I shall call the *effective* and the *affective*.

The *effective* dimension of political concepts is this: thinking conceptually about politics does not only reflect political realities, nor simply provide evaluations of how we ought to organise political life; it can actually effect a change in the political world itself. At one level, this is quite obvious: to think of the global political order as made up of nations, for example, can change the ways in which certain political groups respond to that order; some may seek to claim nationhood so as to gain acceptance within the global arena, some may respond by citing nations as the political bodies that are deemed to oppress them such that any member of a given nation becomes a ‘legitimate target’ in a war of liberation, as it might be perceived. This dimension of conceptual analysis is not simply one of reflecting political reality, nor of simply evaluating it against core political principles; rather, it is a dimension that actually changes the reality of the situation, for some at

least, and brings about changes in how our core political principles are to be understood. At another level, the effective dimension of political concepts is rather more complicated. To say that concepts can have an effect in the make-up of the political world is to include our conceptual thinking in the causal chains that construct the dynamism of the political itself. In this way, the image of the impartial researcher of politics studying political life ‘at a distance’, as it were, is one which cannot be held onto for very long. At the very least, it demands a careful and rigorous analysis of what may remain of the ideal of ‘impartiality’ once we recognise the effect of political concepts on the political world. At most, it may lead us to conclude that ‘impartial’ political research is merely a pipe-dream from a long-gone age of Enlightenment. Whatever view one takes, and there are plenty of options between these two positions, what we may think of as the distance between political concepts and political reality is eroded by virtue of the concepts we deploy being agents that bring about change in that which we are trying to study in the first place.

Closely allied to this dimension is the *affective* dimension of political concepts. Political concepts do not simply bring about change in the world that we are studying; they can also bring about change in ‘us’, as students of politics (meaning anyone who reflects upon the political, not just those students that are at school, college or university ‘studying politics’). Perhaps the best way of explaining this affective dimension is to think of it as a change of perspective. As those who encounter the work of Karl Marx or Simone de Beauvoir for the first time (to give just two possible examples from a potentially infinite list) often testify, they emerge from reading their work with a different view of the world. In a literal and profound sense, their perspective on the world has changed: new realities emerge, old realities disappear, concepts they once held dear are now no longer important and new concepts take their place. However, for those of us who have some sense of this experience, it is not just a change of perspective on a world assumed to have its own reality ‘out there’, it is a change of how the world *feels* to us as political actors; it is a change that manifests itself as a transformation in how the world *affects* us, as felt from ‘the inside’, as it were. Indeed, the image of a political reality that exists ‘out there’ coupled with a view of that reality from ‘inside our heads’ begins to look like an insufficient metaphor to express our ‘embeddedness’ in the world of politics and the ‘embodiment’ of the world of politics in us. The power of political concepts, therefore, does not just derive from their ability to reflect reality, to guide our evaluation of that reality or to effect change in political reality itself; it also derives from their capacity to transform our most intimate affections – how we feel about those around us, the communities we inhabit, the institutions that shape so much of our lives and so much more.

However, even bringing our *thinking about political thinking* to this most intimate level does not exhaust the different dimensions of political

concepts. Implicit within much of the discussion so far has been the idea that political concepts have a *critical* function. Even within the reflective dimension of conceptual thinking this is evident: concepts are defined in ways that challenge other definitions of the concept (or other related concepts) and as such challenge what is deemed to be the reality of the situation. But equally the critical dimension of political concepts is not the sole preserve of academics criticising each other's definitions, it is also a matter of deploying concepts that foster a critical attitude to the organisations and formations that make up the political world itself. Moreover, if we accept the idea that political concepts have an effective and an affective dimension to them as well, then the critical dimension is not simply a matter of theorising critically about politics and then putting that critical theory into practice, as this implies the very distance between 'the political' and our thinking about it that was found wanting. More plausibly, the critical dimension of political concepts is one that traverses the theory/practice divide such that our political theories are always already embedded within our political practices and our political practices are always already embodied versions of our theoretical perspectives on what counts as political and how the political functions. Indeed, to put it in the terms used throughout this discussion, the critical dimension is precisely this interplay of and interaction between the reflective, evaluative, effective and affective dimensions. As we think about politics, using (amongst others) the concepts gathered in this collection and being guided by the authors of the essays and the selected readings, we engage critically with the concepts by thinking in these four dimensions simultaneously: To what extent, if any, does concept X really reflect political reality? How should we evaluate the different arguments being made in support of concept X? To what extent does concept X bring about changes in the way the political world operates? How do the discussions surrounding concept X affect the way I and others may interact with the world of politics?

In pursuit of answers to these critical questions, it is tempting to suppose that there must be a priority given to one over the others so that a foundation for one's critical endeavours can be secured. It may be supposed that, whatever the difficulties, we must prioritise the guiding intuition that concepts reflect reality or, alternatively, that the main task of political analysis is the evaluation of reality in the name of a better future to come. Once the multidimensional nature of political concepts is exposed, however, then the hard task of trying to justify why one dimension is more important or foundational than any other has to be addressed. It is not that this is an impossible task or that answers could not be given to prioritise as well as differentiate the dimensions of political concepts; rather it is that all too often discussions of what we mean when we talk of political concepts are carried out without consideration of one or more of these dimensions. One of the main aims of this introduction, therefore, is to ask of readers, just as they will be asked to suspend hasty judgements about the meaning of the concepts

in this collection, that they suspend any hasty judgements about the meaning and nature of political concepts in general; thinking about politics requires a good grasp of the intricacies of political concepts and thinking about political concepts *as* political concepts requires a good grasp of what we mean by ‘the political’ and what is involved in thinking about thinking.

THE STRUCTURE OF THIS BOOK

The key feature of this text is that it provides, almost uniquely amongst the literature on political concepts, both original and insightful introductory essays that survey the main debates surrounding a concept and a number of key readings from leading scholars in the respective field reprinted from elsewhere but chosen by the contributors to accompany their essays. Taken together, the essays and the readings throughout the book provide both an invaluable overview into the vibrant and vital nature of contemporary political analysis and exemplary instances of the intricacies involved in constructing conceptual debates within political studies. The exact relationship between the introductory essay and the accompanying readings has been left to the contributors to determine but they fall into broadly two camps: those essays that establish a context for the readings that follow and those that refer directly to the readings so as to guide the reader through the arguments. Both approaches involve decisions about what to include and what not to include and it is important that the reader is aware of this so as to encourage a critical perspective on the essays and readings and so as not to assume that the selected readings are the only ones that need to be tackled in thinking about any particular concept. With this critical perspective in place, however, readers will find in all the contributions insights, arguments and debates that will happily fill their conceptual tool-box as long as they continue to think about politics.

The book is structured in five parts. Each part is designed to reflect broad family resemblances among its members as it is expected that readers who intend to study ‘justice’ will move easily on to ‘liberty’, ‘equality’ and ‘rights’, just as those that wish to know about ‘ideology’ will find much of resonance in ‘discourse’, ‘difference’ and ‘the body politic’. That said, conceptual thinking in general does not come in parts and it is important that readers who use the parts as guides also peek beyond the boundaries that they establish and follow not just the guidance they will find in the essays and readings towards concepts in other parts but their own intuitions and gut-feelings as well. It is often by ‘thinking outside the box’ – or ‘thinking outside the part’ in this case – that creative and innovative work takes place. The brief editor’s introduction to each part both explains the rationale for the grouping within parts and suggests ways in which the reader may want to link these concepts with others in the collection. Another way of reflecting upon the connections within and between parts is to look at the ‘questions for discussion’ that immediately follow each essay. They have

been chosen to encourage reflection upon the essay that precedes them but also to encourage cross-fertilisation of conceptual debates throughout the collection.

It would be presumption of the worst kind to try to summarise the issues raised by the twenty contributors to this collection and the thirty-seven authors of the selected readings for the purpose of introducing this book (a sentiment that in part explains the meta-conceptual feel of the body of this general introduction). In place of such a summary I would rather offer some advice and reveal what I hope may emerge from following it. My advice to the reader is to dive into the riches of these texts by beginning with whatever concept seems most pressing for your own concerns and then to follow the leads around the text as you find them. My hope is that you will then find your way to reading the whole book and to garnering the subtle and rigorous insights to be found on every page. In that way, you may acquire not just a reader and guide to political concepts but an invaluable tool-kit for unlocking the complexities of the contemporary political world.

PART I
POLITICAL PRINCIPLES

INTRODUCTION

The concepts discussed in this part are the guiding political principles that have come to dominate contemporary political thinking. Whatever one's view of the make-up of the political world – whether one thinks of politics in terms of individuals competing for scarce resources, or economic classes at war with each other, or different genders constructing the realm of the political differently, and so on – there is an almost inexorable pull within one's analysis to ask if the current situation and any future forms of political organisation can meet the demands of justice, of maximising liberty and equality and of ensuring the fundamental rights of all. Of course, that these political principles are now at the core of political thinking should not blind us to two obvious facts. First, and with the exception of justice, which can claim to have been a central preoccupation of political thinking since its inception (at least in the western tradition), these principles are relative newcomers on the scene, at least as principles that our political thinking ought to follow. That is, the tradition of thinking about liberty, equality and rights as political principles is distinctly modern, and their status as virtually unassailable principles of political thinking is distinctly contemporary. Even justice, with its foundational role in political thought, has only recently been brought back to the centre of political life, largely thanks to the work of John Rawls. Secondly, the meaning and relative value of each of these political principles is deeply contested within political life and thought. As each of the essays and readings in this part deftly points out, there is actually very little agreement on the meaning and relative value of these principles beyond the polemical point that they are generally thought to be principles to which we should adhere. In many respects, it is this paradoxical position

that provides the fuel that drives the engine of political thinking: we agree about so much in contemporary political thought and yet we agree about so little of what this basic consensus actually entails. Put like this, we are forced to enquire into the nature of political dis/agreements in general and the pursuit of institutions and apparatuses which can facilitate agreement or ensure that our disagreements do not forestall our ability to live together. As such, and this is to mention just a few connections that can be made, the concepts of democracy, human nature, ideology and power are never far away from the intricate analyses of what exactly we mean when we talk about justice, liberty, equality and rights and how we ought to weigh up the relative demands that each of these principles makes upon our political thinking.

JUSTICE^I

David Stevens

INTRODUCTION

Imagine that I have some doughnuts to share amongst the students in my class. I give three to Alice, two to Bert, none to Claude, and one each to the rest of the class. There are no doughnuts left. When Claude says, in response to this act of distribution, that it is unjust, we understand the sort of complaint he is making. Whilst the details of Claude's objection might be unclear, the *type* of claim being made is a familiar one. It signals, most likely, a sense of unfairness Claude feels. Perhaps he views the distribution as arbitrary. Maybe Claude thinks there are relevant considerations to be taken into account when distributing, and these have been ignored or confused. For a distribution of doughnuts to be just it must not make arbitrary distinctions between people. In this sense we can be said to have an understanding of the *concept* of justice.

How we flesh out what counts as arbitrary distinctions – the content of the concept – is a different matter, and here things get more complicated. If asked to explain why the distribution was unjust, Claude might claim that doughnuts ought to be distributed equally because this reduces envy. But what if Bert objects to Claude's egalitarian principle of distribution on the grounds that doughnuts ought to be distributed according to need? An equal distribution ignores the fact that the need of some is greater than the need of others. Bert needs more doughnuts than Claude, therefore he should be allocated more. Alice might offer a different view: that doughnuts ought to be distributed on the basis of enjoyment. Most people like doughnuts so they should each get one. Alice is a true connoisseur and will derive far more

pleasure from extra doughnuts. Claude, not particularly liking doughnuts, will receive little pleasure from any amount of doughnuts, and should not therefore get any.

Alice, Bert, and Claude all have a shared understanding of the concept of justice. When it comes to distributing doughnuts they all agree that the resulting state of affairs should be just, but they simply disagree as to what constitutes a just state of affairs. That is, they all offer different, and competing, *conceptions* of justice.

It is the enterprise of expounding and defending different conceptions of justice that lies at the heart of contemporary political philosophy. The concept of justice – specifically social justice – has come to dominate political thought over the past few decades. Questions of social justice – how a political community should distribute its scarce resources between individuals with competing claims – have subsumed nearly the entire spectrum of political concerns and concepts. Concepts such as rights, liberties and equality have been sucked into justice’s sphere of influence. Justice, to borrow a phrase, is where the action is.

The concept itself has always been important to political theory, at least since Plato penned his *Republic* over two millennia ago. But, until recently, it was only one political concept amongst others. The rise of justice to its place of prominence in political thought is due largely to John Rawls’s *A Theory of Justice* (1971, rev. ed. 1999). Rawls’s work brought new analytical and philosophical techniques and tools to bear on the subject of justice, shedding new light on an old problem. Rawls opens *A Theory of Justice* by observing the importance of justice as the primary political virtue: ‘justice is the first virtue of social institutions’, and that ‘laws and institutions no matter how efficient and well-arranged must be reformed and abolished if they are unjust’ (Rawls 1999b: 3). If a society is unjust then any other praiseworthy features of it are of secondary worth. Historians tell us that Hitler’s Germany developed a remarkably efficient set of public institutions and services. The fact that the trains ran on time, however, in no way justifies or mitigates the massive injustices perpetrated by the Nazi regime. If justice is this central to politics then it deserves considerable attention.

In contemporary political philosophy virtually all roads lead back to Rawls. The question of where to begin an examination of the various debates about justice is therefore a simple one. We shall focus our attention on the task of excavating the Rawlsian foundations of the subject. We shall examine the basics of Rawls’s view, including his proposed principles of justice and his hypothetical device, the original position. This will allow us to consider two main opposing lines in the battle over justice. These are lines that share certain similarities, but exist at different ends of the political spectrum. Surveying all the different issues that have arisen from the burgeoning literature on the subject of justice would be an impossible task. The positions considered here, however, provide a foundation for

understanding the myriad of arguments that have been made over the past few decades.

THE CIRCUMSTANCES OF JUSTICE AND RAWLS'S
TWO PRINCIPLES

The example with which we began contains at least three important features that are analogous to questions of social justice. First, there is a limited set of resources to be distributed. There is no abundance of doughnuts from which the students can help themselves without exhausting that supply. If there were, then questions of justice would not arise. This limited supply of goods is part of what David Hume ([1739] 1978) called 'the circumstances of justice'. According to Hume it is 'only from the selfishness and confin'd generosity of men, along with the scanty provision nature has made for his wants, that justice derives its origins' ([1739] 1978: 495). The idea is that the need for principles of justice arises because of an innate propensity to satisfy one's own interests, coupled with a limited supply of resources such that we cannot all have everything we want.

Second are the principles of justice themselves. Alice, Bert and Claude all offer different principles. These principles are the *outcomes* of a conception of justice. They are intended to govern the distribution of whatever resources are at stake. The third feature is the need for a process or *method* for judging between competing principles. Why should we prefer Bert's suggestion to Alice's, or vice versa? How do we tell a superior view of justice from an inferior one?

Rawls's own conception of justice – what he calls 'justice as fairness' – contains all these elements. It recognises the circumstances of justice, offers principles for governing the distribution of resources in society, and provides a mechanism for defending those principles as appropriate. Let us begin, then, with the outcomes. Justice as fairness offers two principles of justice:

First Principle: Each person is to have an equal right to the most extensive system of equal basic liberties compatible with a similar system of liberty for all [The Equal Liberty Principle].

Second Principle: Social and economic inequalities are to be arranged so that they are both: (a) to the greatest benefit of the least advantaged [The Difference Principle], and (b) attached to offices and positions open to all under conditions of fair equality of opportunity [The Fair Equality of Opportunity Principle]. (Rawls 1999b: 302)

A society is just, according to Rawls, when its basic structure – its social, economic and political institutions, as well as its constitution – manifests these two principles. The first principle governs the distribution of various rights and liberties within society, such as rights to vote and take public office (political liberties), freedom of association and worship (freedom of

conscience), rights protecting the freedom and integrity of the individual, and rights associated with the rule of law, such as protection from arbitrary arrest. All citizens, under this principle, have an equal set of these civil and political freedoms.

The second principle, which has two parts, governs the distribution of such resources as occupational and educational opportunities, as well as the other goods that arise from these, most notably wealth and income. The first principle is lexically prior to the second principle (and the fair equality of opportunity principle is lexically prior to the difference principle), meaning that the rights and liberties guaranteed under the first principle have priority and cannot be traded off for gains in opportunities or wealth provided by the second principle. Taken together, these rights, liberties, opportunities and other goods, such as wealth, income and the social bases of self-respect, form what Rawls calls *primary social goods*. These are the ‘things’ that get distributed within a society; they form the *currency* of social justice. Rawls’s own list is supposed to represent a truncated set of goods that all individuals require in life, regardless of their specific plans, beliefs or ambitions. The correct currency for social justice has been widely contested.² Though the differences between the various views are important, there exist more general issues about distribution that apply to them all. We shall concentrate our attention on these more general issues.

EQUALITY AND PRIORITY

Let us begin with Rawls’s difference principle, because this raises the question of on what *basis* goods should be distributed. The difference principle governs the distribution of wealth and income within a society. It holds that departures from a baseline of equality are justifiable if this would make everyone better off. For example, allowing inequalities might incentivise talented citizens to work harder and produce more wealth which can, in turn, be used to raise the standard of living of others. Rawls’s primary concern here is with those who are in the worst-off group in terms of wealth and income. Under any inegalitarian distribution the difference principle requires that the worst-off group be placed in the best possible position (through such mechanisms as redistributive taxation schemes and so on).

Rawls is no strict egalitarian. Rather, this type of principle is best described as *prioritarian* because of the priority it gives to a specific group (the worst off) in the distribution process. The differences between prioritarianism and egalitarianism stem from what their defenders view as being the most important consideration. For egalitarians the important consideration is often that of how each person’s level of advantage compares with the level of other people. Egalitarianism is, then, a comparative view of justice. By contrast, prioritarianism is concerned with absolute, rather than relative, levels of advantage. What is important is that those who are worst off are as well off as they can be in absolute terms. Derek Parfit writes that

prioritarians ‘do of course think it bad that some people are worse off. But what is bad is not that these people are worse off than *others*. It is rather that they are worse off than *they* might have been’ (2000: 104; emphasis in original).

On this view, benefits to the worst off simply matter more. Rawls’s difference principle embodies this concern by allowing departures from equality, but in so doing, requires that the position of the worst off be maximised. To see this imagine a society comprised, for the sake of simplicity, of just two social classes (Groups A and B). The economic system can be arranged in several different ways, such that three resulting distributions of income (represented by numerical levels) are possible across those groups. This can be represented thus:

	Group A	Group B	Total
Distribution 1	100	100	200
Distribution 2	100	170	270
Distribution 3	120	140	260

Under D1 both groups are equally well off. However, either D2 or D3, though unequal, can make both groups better off. Maintaining D1 in the face of the other two possibilities suffers from the defect that this would mean holding people’s levels of resources back – what is often termed ‘levelling down’. Indeed, D2 makes society, as a whole, much better off than it would be under D1. For utilitarians this is attractive, because what is of primary importance to them is that people are better off (how these benefits are distributed across people is a secondary consideration). However, the difference principle supports D3 over D1 and D2 because D3 makes the worst-off group the best off it can be from the available options. What is important is not primarily the total amount of goods in society, nor the relative relationship between groups, but the issue of who gets what, in particular what the worst-off group gets (in absolute terms).

But why should we accept these principles and all they entail? What reasons are there for thinking it more urgent to benefit the worst off? Such questions lead us neatly to a discussion of the method component of a conception of justice.

THE ORIGINAL POSITION

When Alice, Bert and Claude offer different principles for distributing doughnuts, how can we decide between them? Each, no doubt, has its merits, but is it possible to rank these merits so that a particular principle can be selected as the most appropriate? One immediate stumbling block is the role that self-interest often plays in our deliberations about justice. If we possess a marketable talent then we might prefer a conception of justice that is not heavily redistributive because we are likely to earn a lot of money. Our own

interests, that is, have the potential to skew our deliberations, and if this happens then it is likely that we will never agree upon a single conception. In order to achieve agreement we need to clear any damaging bias out of the way. The dominant trend has been to try and achieve a level of *impartiality* in our deliberations that enables the securing of such an agreement.

Rawls suggests one way of achieving this. If we are to deliberate about justice in a fair manner, then we must abstract from those features of our selves, or exclude knowledge, that would make our decisions partisan. Rawls's hypothetical device, the original position, attempts exactly this. According to Rawls, sound principles of justice are ones that 'free and rational persons concerned to further their own interests would accept in an initial position of equality as defining the fundamental terms of their association' (1999b: 5). The original position models this initial situation of equality. It is a device for thinking in a hypothetical way about justice.

When we think about justice from within the original position we are placed behind what Rawls calls a 'veil of ignorance'. The veil hides certain pieces of knowledge from us. We do not know such things as our class position, level of intelligence, talents or disabilities, family background, or our conception of the good life (our beliefs about what gives our life meaning and value). Without access to this knowledge, Rawls argues, we are able to reach agreement on principles of justice for distributing social resources (primary social goods). This stems from the *impartiality* that the veil creates. Partiality requires information (think here of anonymised exam scripts: removing names from scripts combats any possible partiality on the part of examiners) and this is excluded by the veil.³

At the foundations of the original position is a view of fairness common to many (broadly) egalitarian thinkers, namely, that no one should be worse off through no *fault* of their own. Fault, luck, and responsibility are key elements in much recent work on social justice. The point of social justice for such theorists is to neutralise the contingencies of the world. We have no control over which family or social group we are born into, nor over the raw natural talents or disabilities that we might possess. These things are simply matters of brute luck; we cannot be said to deserve them or be held responsible for them. We should not, therefore, be advantaged or disadvantaged because of them – they are morally arbitrary features – so it is the purpose of social institutions to neutralise the effects of luck. Whilst the natural distribution of these things is not, in itself, just or unjust, the way that institutions treat them can be. Rawls explains: 'Aristocratic and caste societies are unjust because... the basic structure of these societies incorporates the arbitrariness found in nature. But there is no necessity for men to resign themselves to these contingencies' (1999b: 102).

Constrained by the conditions of the original position we will supposedly select Rawls's two principles. The criterion for adjudicating between competing principles is what Rawls terms 'maximin', or maximising the

minimum position.⁴ If we do not know which group in society we belong to then we should, Rawls argues, choose as though we might end up at the very bottom of the social strata. Given that the decision over which principle to select will dictate all our life chances, a certain level of risk-averse decision-making seems warranted. This offers an answer to the earlier question of why we should prioritise the position of the worst off. We prioritise the worst-off position to make sure it has sufficient in absolute terms, just in case we happen to be in the worst-off group when the veil is lifted.

Rawls's reasoning has received much critical attention. The debates have followed two main lines. The first is whether the two principles of justice would be chosen in the original position. Rational choice-based critiques question whether maximin is the appropriate criterion or whether we should gamble, in conditions of uncertainty, on not being in the worst-off group. Similarly, commentators such as Thomas Nagel (1979) have questioned the *absolute* priority given to the worst off in Rawls's reasoning. Nagel wonders whether other considerations might sometimes outweigh the urgency of benefiting the worst off. For example, a significant gain for the best-off group (and no gain for the worst-off group) would be sacrificed by such an absolute criterion for a tiny gain for the worst-off group (and no significant gain for the better off).⁵

The second line of criticism takes issue with the construction of the original position itself. One common view is that the characteristics excluded by the veil of ignorance are the very things that make us who we are. As individuals, we are simply the sum of our cultural, religious and familial parts. Take those away, as the original position requires, and there is no 'self' left to do any choosing. This unencumbered self has no basis on which to make decisions about justice. That Rawls believes we will choose his principles of justice betrays, this criticism suggests, an attempt to smuggle a non-neutral view of what constitutes a good life into a supposedly neutral process.

Rawls has attempted to rebut such objections by stressing the hypothetical nature of the original position (1993b: 22–9). Nevertheless, there is something to this line of criticism, and the emphasis on the sociocultural origins of the 'self' lives on in the writings of multiculturalists and defenders of the politics of difference.

What is important here, however, is not the details of the original position, but the idea that it is supposed to represent. The purpose of this device is to secure *agreement* – or *agreeableness*, since the agreement is only hypothetical – on principles of justice. Without such agreement the state runs the risk of losing its legitimacy. If a framework of justice is imposed on a society where a significant proportion of its population rejects it, then those people are being coerced. The search for principles that are acceptable to all is a long-standing tradition in political theory, and the one that currently dominates the field. Rawls's original position is one possible device for trying to achieve that consent. More recent attempts have jettisoned

the contrived circumstances of the original position but retained the need for impartiality in the contractualist method of constructing principles of justice. For Thomas Scanlon (1982, 1998, 2003), and more recently, Brian Barry (1995), the agreement on principles is to be secured by searching for principles that no one could reasonably reject. Scanlon develops his view in terms of morality rather than justice, but his statement of the position is instructive: 'An act is wrong if its performance under the circumstances would be disallowed by any system of rules for the general regulation of behaviour which no one could reasonably reject as a basis for informed, unforced general agreement' (1982: 110).

Much turns here on what would count as reasonable grounds for rejecting a principle. Reasonableness, as a virtue of citizens who seek agreement on principles of justice, has been the focus of contractualist efforts to move the justice debate forward whilst maintaining the concern for legitimacy and toleration of difference. But what about views that reject this foundation of justice in agreement? The idea of natural rights provides an alternative position from which to start discussions of justice. We shall turn to consider one variant of that view next.

NOZICK AND THE VIOLATION OF PROPERTY RIGHTS

The views examined so far regard justice as compensating for undeserved disadvantages. But is this 'no fault' view of justice warranted? One concern is that it glosses over the fact that the goods being distributed are already owned. Taking goods from one person to give to another, even in the name of justice, might reasonably be thought to violate the rights of the original owner.

This is a line pursued most forcefully by Robert Nozick in *Anarchy, State, and Utopia* (1974). Nozick claims the preoccupation with matching distributive outcomes to preconceived patterns, typical of views like Rawls's, neglects a set of already existing freedoms and ownership rights. When the state removes goods from an individual it rides roughshod over those rights and freedoms. Instead, Nozick argues, justice should be concerned with the historical development of a distribution. As long as no coercion or fraud exists in the process of transferring goods, then a distribution is just.

To illustrate how distributive schemes violate freedom Nozick invokes his potentially devastating Wilt Chamberlain example. Nozick invites us to pick our ideal distribution. Let us assume, for simplicity, we pick an egalitarian one (the difference principle would also suffice). Call this distribution D1. Next, Nozick asks us to imagine that in this society there is a basketball player – Wilt Chamberlain – who is very much in demand. Knowing this, Wilt contracts with his team that 25 cents be added to the price of admission to his games. This 25 cents goes directly to Wilt. Over the course of a season one million fans gladly pay the extra 25 cents to see Wilt play. Wilt rakes in \$250,000. The resulting distribution (D2) is now remarkably inequalitarian.

We cannot object to D1 because we chose it. But how can we object to D2 either, when all that has happened is that the people in D1 have chosen how to spend 25 cents of their money? Maintaining our preferred pattern would mean preventing individuals in our egalitarian society from using their resources – even very small amounts – as they wish. Any activity that upsets the pattern would have to be prohibited. Nozick assumes that our intuitions will balk at restricting freedom this much. Suddenly our egalitarian society is looking less than ideal. Either we allow inequality to develop or we trample freedom.

The analogy with distributive justice is obvious. When the state taxes us it interferes with our rights to control our resources. Nozick puts the point forcefully: ‘Taxation of earnings from labor is on a par with forced labor’ (1974: 169). There would be something unsavoury about a society that forced us to do our jobs at gunpoint. But why is taking the earnings of n hours’ labour any different to taking the same number of hours from the person? The upshot of this is that ‘no end-state principle or distributional patterned principle of justice can be continuously realized without continuous interference with people’s lives’ (Nozick 1974: 163).

If correct then this devastates schemes of justice like Rawls’s. The illegitimacy of redistributive mechanisms, such as taxation, means that the state can have no role in the provision of public goods and services, such as healthcare, education, welfare benefits, public transport and the like. All things currently provided by the state would have to be provided by voluntary private schemes. The only legitimate state becomes a minimal one – one that protects the system of contracts that underpin the unfettered market. This libertarian doctrine gained much currency in the 1980s, forming the ideological backbone of the New Right governments of Ronald Reagan and Margaret Thatcher. The effects of its attempt to divorce welfare from the state are still being felt today.

Nevertheless, Nozick’s example, if not his wider theory, suffers from a defect that makes this type of position less convincing than initially thought. Notice that the Wilt example contains a cunning sleight of hand. Nozick invites us to pick a *distribution* of resources, and then shows how liberty decimates it. But this misrepresents most theories of distributive justice.⁶ The Rawlsian-type view does not promote particular distributional patterns. Instead, it proposes rules or principles for the organisation of *institutions*. Once the institutions are set up according to the dictates of justice, whatever distribution of goods arises from them is just. Such views are procedure rather than outcome driven. The Wilt example elides this distinction. We pick a distribution and Nozick covertly installs a set of capitalist rules on top of it. It is unsurprising, therefore, that absolute rights over property subvert an egalitarian distribution. However, once aware of the distinction we can insist on picking egalitarian institutions and rules to go with our preferred distribution. If citizens truly desired an egalitarian distribution then it seems

reasonable to assume that they would also desire institutions that uphold it. This might include redistributive taxation schemes to maintain a particular pattern of distribution. Nozick gives no reason for thinking this not to be the case, he simply assumes capitalist motivations and rules. There is no reason to think that the intuitions of twentieth-century capitalist societies are representative of human nature as a whole.

THE SITE OF DISTRIBUTIVE JUSTICE

What this does draw our attention to, however, is the different levels or sites at which principles of justice apply. Rawls's principles apply to the basic structure of society, and not to the actions of individuals or non-state bodies. Many thinkers follow Rawls in this. Rawls writes in his work on global justice:

The principles of justice for the basic structure of a liberal democratic society are not... fully general principles. They do not apply to all subjects: not to churches or universities, or even to the basic structures of all societies. And they also do not hold for the Law of Peoples, which is autonomous. (1999a: 85–6)

This delineation of autonomous spheres is, again, something that is attributable to Rawls. Liam Murphy writes: 'Though Rawls's conception of the difference between political justice and personal ethics now seems very much the mainstream view, it is a significant innovation in political philosophy' (1998: 252–3). Prior to Rawls, this strict separation was non-existent. Indeed, utilitarianism – the dominant view of ethics before Rawls – makes no such distinction. Its principle of happiness maximisation applies at the levels of individual action, political institutions and public policy. It might assist theorists to limit principles of justice to institutions – the basic structure – but a simple desire is not sufficient to warrant such a demarcation. The boundaries between spheres cannot be drawn arbitrarily, or merely according to convenience. In order to countenance different principles for different spheres, we must be able to point to some relevant difference between those spheres that legitimises their separate treatment. The relevant difference, for Rawls, is as follows:

The basic structure is the primary subject of justice because its effects are so profound and present from the start. The intuitive notion here is that the structure contains various social positions and that men born into different positions have different expectations of life determined, in part, by the political system as well as by economic and social circumstance. (1999b: 7)

The criteria, then, are the profound effects of these institutions on our lives, and that they are present from the beginning of our lives. As various commentators have pointed out, it is unclear exactly *which* institutions meet these criteria. Rawls himself is ambiguous here. Three examples should make this problem clear.

First, feminists have long pointed out the profound effects of the family on the lives of its members. 'The personal is political' is a well-known feminist dictum. The family can be a significant site for the oppression of women. It would certainly seem to meet Rawls's criteria for inclusion within the basic structure. Susan Moller Okin (1989) has noted Rawls's ambivalence about the family, and has herself argued for its inclusion. However, intrusion into the family is something that liberal theorists have typically resisted. The unwillingness to completely dismantle the public-private distinction is founded in a desire to tolerate things like diverse family arrangements (for example, ones based on religious beliefs). Including the family in the basic structure would mean intervening in it to ensure its organisation in accordance with principles of justice. This has led some feminist thinkers to abandon the justice approach to political morality as inadequate because of its failure to address the issue of the family.⁷

The second example is the market. This, again, seems to meet the criteria for inclusion within the basic structure. Yet including it means the economic actions of individuals (for example, what job to take) would be subject to regulation by the principles of justice. This would break down the distinction between political institutions and personal ethics as the site of distributive justice. Instead, theorists like Rawls prefer to restrict the principles to institutions that regulate the market, thus excluding everyday economic decisions from the basic structure, and allowing individuals to act in self-interested ways within the confines of those institutions. This allows individuals to be economic egoists, but within a structure regulated by a redistributive principle such as the difference principle.

Critics such as G. A. Cohen (1997) find this dual position perverse. If talented individuals in a Rawlsian society really do support the principles of justice, then why would they demand greater economic remuneration? Cohen writes:

Either the relevant talented people themselves affirm the difference principle or they do not. That is: either they themselves believe that inequalities are unjust if they are not necessary to make the badly off better off, or they do not believe that to be a dictate of justice. If they do not believe it, then their society is not just in the appropriate Rawlsian sense, for a society is just, according to Rawls, only if its members themselves affirm and uphold the correct principles of justice. (1997: 8)

The only other response the talented have to justify their greater economic reward is that it is necessary in order to benefit the worst off. Much turns on the meaning of 'necessary'. It is likely that 'necessary' actually means an *unwillingness* to work for less. The talented themselves make it necessary. If it is unwillingness then the bind remains: how can they claim to believe in the difference principle, but demand remuneration that runs contrary to its aim?

Talented people who affirm the difference principle would find those questions hard to handle. For they could not claim, *in self-justification*, ... that their high rewards are necessary to enhance the position of the worst off, since ... it is they themselves who *make* those rewards necessary, through their own unwillingness to work for ordinary rewards as productively as they do for exceptionally high ones, an unwillingness which ensures that the untalented get less than they otherwise would. (Cohen 1997: 9; emphasis in original)

If this is correct, then principles of justice reach beyond institutions and into our daily decision-making.

The third example is global justice. Rawls sees global politics as distinct from domestic state institutions and justice. In his recent work (1999a) he has argued that certain principles of justice do apply at the global level, but these are different to those that apply within states. Importantly, no global equivalent of the difference principle – a requirement to distribute resources to the world's poor – exists. Rawls's justification is that there is no global basic structure that would qualify it for inclusion under his two principles of justice.

This claim seems dubious – out of touch with the reality of world politics. Such global 'institutions' as the European Union, the World Trade Organization, the World Bank and the International Monetary Fund indicate the existence of a global basic structure. These institutions often outweigh the effects a domestic basic structure has on the life of its citizens. As globalisation theorists point out, the global basic structure shapes domestic regimes, and pervades many aspects of our lives. Indeed, recent international political protests have been aimed at the unaccountability of institutions and organisations that have a more profound effect on our lives than do many domestic institutions. This would seem to make the global basic structure – contra Rawls's intentions – the legitimate site of social justice.

If any of these claims for inclusion are correct, and there are good reasons for thinking they might be, then liberal egalitarian conceptions of justice such as Rawls's are too narrow in their focus. Principles of justice might not be restricted in their application to legally coercive state institutions, but might extend to international organisations, the family and our individual choices within those institutions.

CONCLUSION

Our job of unpacking the concept of justice has taken us through several different views and conceptions. We have explored some of the basic ideas within the view of justice that pioneered the revival of interest in the subject – Rawls’s justice as fairness – in particular the difference principle and the original position. These features have spawned a multitude of reactions and counter-reactions in the debate over justice. Of all the possible lines of opposition we have considered two of the strongest and most well known: the libertarian challenge and the critique of the site of justice. The Rawlsian response to the libertarian critique – that justice is concerned with institutions, not distributions *per se* – opens the view up to criticism about the delineation of the basic structure.

These basic positions do not exhaust the justice debate; rather, they represent its foundations. Much of the recent work within the field of social justice builds upon these important interventions. A good grounding in the aims, assumptions and content of these views provides an invaluable roadmap for steering a course through the layers of often complex and detailed arguments of contemporary political thought.

QUESTIONS FOR DISCUSSION

- Does the fact that I would agree to a set of principles of justice under specific conditions mean that I am in fact bound by those principles? Or do hypothetical contracts have no moral force?
- Is impartiality really necessary for achieving justice?
- Is it possible to bring liberty and equality into harmony, or do they always pull in opposite directions?
- Is justice fully compatible with democracy, or are there some areas in which democratically made decisions should have no purchase?

NOTES

1. I thank Christopher Woodard for his excellent comments on an earlier draft of this essay.
2. For a detailed treatment of the currency of social justice – the ‘equality of what?’ question – see Stephen De Wijze’s essay in this volume.
3. I owe this example to Chris Woodard.
4. It is important to note that the original position is not the only method Rawls proposes for reaching agreement on his two principles of justice. The device of the original position is merely representative of Rawls’s driving idea that principles of justice should match, or cohere with, our considered convictions on such matters. This is a process, or moral method, termed ‘reflective equilibrium’. Rawls argues that we can arrive at the same principles of justice by building upon our shared intuitions about the arbitrary allocation of goods. I mention this to offset the criticism that maximin is too closely related to the difference principle to do any serious work. For the non-original-position route to the two principles see Rawls (1999b), sections 12–13. For an accessible reconstruction of this argument see Barry (1989: 217–234) and Kymlicka (2002: 57–60).

POLITICAL PRINCIPLES

5. As illustration consider the following example:

	Group A	Group B	Total
Distribution 1	100	100	200
Distribution 4	101	110	211
Distribution 5	100	160	260

- Rawls's reasoning supports the rejection of D5 (a significant gain for the better off, but no gain for the worst off) in favour of a marginal gain for the worst off, but which does not significantly improve the amount of social good in the society. The inability to consider such possibilities strikes commentators such as Nagel as too restrictive.
6. More precisely, it misrepresents most liberal egalitarian conceptions of justice. As G. A. Cohen has pointed out, Nozick's position is more troubling for some Marxian views because, unlike liberal theories, they do not restrict principles of justice to the basic structure. See Cohen (1995: 144–64).
7. See, for example, Gilligan (1982).

JOHN RAWLS

EXTRACTS FROM A *THEORY* *OF JUSTICE*

JUSTICE AS FAIRNESS

[. . .]

The role of justice

Justice is the first virtue of social institutions, as truth is of systems of thought. A theory however elegant and economical must be rejected or revised if it is untrue; likewise laws and institutions no matter how efficient and well-arranged must be reformed or abolished if they are unjust. Each person possesses an inviolability founded on justice that even the welfare of society as a whole cannot override. For this reason justice denies that the loss of freedom for some is made right by a greater good shared by others. It does not allow that the sacrifices imposed on a few are outweighed by the larger sum of advantages enjoyed by many. Therefore in a just society the liberties of equal citizenship are taken as settled; the rights secured by justice are not subject to political bargaining or to the calculus of social interests. The only thing that permits us to acquiesce in an erroneous theory is the lack of a better one; analogously, an injustice is tolerable only when it is necessary to avoid an even greater injustice. Being first virtues of human activities, truth and justice are uncompromising.

These propositions seem to express our intuitive conviction of the primacy of justice. No doubt they are expressed too strongly. In any event I wish to inquire whether these contentions or others similar to them are

sound, and if so how they can be accounted for. To this end it is necessary to work out a theory of justice in the light of which these assertions can be interpreted and assessed. I shall begin by considering the role of the principles of justice. Let us assume, to fix ideas, that a society is a more or less self-sufficient association of persons who in their relations to one another recognize certain rules of conduct as binding and who for the most part act in accordance with them. Suppose further that these rules specify a system of cooperation designed to advance the good of those taking part in it. Then, although a society is a cooperative venture for mutual advantage, it is typically marked by a conflict as well as by an identity of interests. There is an identity of interests since social cooperation makes possible a better life for all than any would have if each were to live solely by his own efforts. There is a conflict of interests since persons are not indifferent as to how the greater benefits produced by their collaboration are distributed, for in order to pursue their ends they each prefer a larger to a lesser share. A set of principles is required for choosing among the various social arrangements which determine this division of advantages and for underwriting an agreement on the proper distributive shares. These principles are the principles of social justice: they provide a way of assigning rights and duties in the basic institutions of society and they define the appropriate distribution of the benefits and burdens of social cooperation.

Now let us say that a society is well-ordered when it is not only designed to advance the good of its members but when it is also effectively regulated by a public conception of justice. That is, it is a society in which (1) everyone accepts and knows that the others accept the same principles of justice, and (2) the basic social institutions generally satisfy and are generally known to satisfy these principles. In this case while men may put forth excessive demands on one another, they nevertheless acknowledge a common point of view from which their claims may be adjudicated. If men's inclination to self-interest makes their vigilance against one another necessary, their public sense of justice makes their secure association together possible. Among individuals with disparate aims and purposes a shared conception of justice establishes the bonds of civic friendship; the general desire for justice limits the pursuit of other ends. One may think of a public conception of justice as constituting the fundamental charter of a well-ordered human association.

Existing societies are of course seldom well-ordered in this sense, for what is just and unjust is usually in dispute. Men disagree about which principles should define the basic terms of their association. Yet we may still say, despite this disagreement, that they each have a conception of justice. That is, they understand the need for, and they are prepared to affirm, a characteristic set of principles for assigning basic rights and duties and for determining what they take to be the proper distribution of the benefits and burdens of social cooperation. Thus it seems natural to think of the concept of justice as distinct from the various conceptions of justice and as being

specified by the role which these different sets of principles, these different conceptions, have in common.¹ Those who hold different conceptions of justice can, then, still agree that institutions are just when no arbitrary distinctions are made between persons in the assigning of basic rights and duties and when the rules determine a proper balance between competing claims to the advantages of social life. Men can agree to this description of just institutions since the notions of an arbitrary distinction and of a proper balance, which are included in the concept of justice, are left open for each to interpret according to the principles of justice that he accepts. These principles single out which similarities and differences among persons are relevant in determining rights and duties and they specify which division of advantages is appropriate. Clearly this distinction between the concept and the various conceptions of justice settles no important questions. It simply helps to identify the role of the principles of social justice.

[. . .]

The subject of justice

Many different kinds of things are said to be just and unjust: not only laws, institutions, and social systems, but also particular actions of many kinds, including decisions, judgments, and imputations. We also call the attitudes and dispositions of persons, and persons themselves, just and unjust. Our topic, however, is that of social justice. For us the primary subject of justice is the basic structure of society, or more exactly, the way in which the major social institutions distribute fundamental rights and duties and determine the division of advantages from social cooperation. By major institutions I understand the political constitution and the principal economic and social arrangements. Thus the legal protection of freedom of thought and liberty of conscience, competitive markets, private property in the means of production, and the monogamous family are examples of major social institutions. Taken together as one scheme, the major institutions define men's rights and duties and influence their life-prospects, what they can expect to be and how well they can hope to do. The basic structure is the primary subject of justice because its effects are so profound and present from the start. The intuitive notion here is that this structure contains various social positions and that men born into different positions have different expectations of life determined, in part, by the political system as well as by economic and social circumstances. In this way the institutions of society favor certain starting places over others. These are especially deep inequalities. Not only are they pervasive, but they affect men's initial chances in life; yet they cannot possibly be justified by an appeal to the notions of merit or desert. It is these inequalities, presumably inevitable in the basic structure of any society, to which the principles of social justice must in the first instance apply. These principles, then, regulate the choice of a political constitution

and the main elements of the economic and social system. The justice of a social scheme depends essentially on how fundamental rights and duties are assigned and on the economic opportunities and social conditions in the various sectors of society.

The scope of our inquiry is limited [...]. [...] I am concerned with a special case of the problem of justice. I shall not consider the justice of institutions and social practices generally, nor except in passing the justice of the law of nations and of relations between states. Therefore, if one supposes that the concept of justice applies whenever there is an allotment of something rationally regarded as advantageous or disadvantageous, then we are interested in only one instance of its application. There is no reason to suppose ahead of time that the principles satisfactory for the basic structure hold for all cases. These principles may not work for the rules and practices of private associations or for those of less comprehensive social groups. They may be irrelevant for the various informal conventions and customs of everyday life; they may not elucidate the justice, or perhaps better, the fairness of voluntary cooperative arrangements or procedures for making contractual agreements. The conditions for the law of nations may require different principles arrived at in a somewhat different way. I shall be satisfied if it is possible to formulate a reasonable conception of justice for the basic structure of society conceived for the time being as a closed system isolated from other societies. The significance of this special case is obvious and needs no explanation. It is natural to conjecture that once we have a sound theory for this case, the remaining problems of justice will prove more tractable in the light of it. With suitable modifications such a theory should provide the key for some of these other questions.

[. . .]

The original position and justification

I have said that the original position is the appropriate initial status quo which insures that the fundamental agreements reached in it are fair. This fact yields the name 'justice as fairness'. It is clear, then, that I want to say that one conception of justice is more reasonable than another, or justifiable with respect to it, if rational persons in the initial situation would choose its principles over those of the other for the role of justice. Conceptions of justice are to be ranked by their acceptability to persons so circumstanced. Understood in this way the question of justification is settled by working out a problem of deliberation: we have to ascertain which principles it would be rational to adopt given the contractual situation. This connects the theory of justice with the theory of rational choice.

If this view of the problem of justification is to succeed, we must, of course, describe in some detail the nature of this choice problem. A problem of rational decision has a definite answer only if we know the beliefs

and interests of the parties, their relations with respect to one another, the alternatives between which they are to choose, the procedure whereby they make up their minds, and so on. As the circumstances are presented in different ways, correspondingly different principles are accepted. The concept of the original position, as I shall refer to it, is that of the most philosophically favored interpretation of this initial choice situation for the purposes of a theory of justice.

But how are we to decide what is the most favored interpretation? I assume, for one thing, that there is a broad measure of agreement that principles of justice should be chosen under certain conditions. To justify a particular description of the initial situation one shows that it incorporates these commonly shared presumptions. One argues from widely accepted but weak premises to more specific conclusions. Each of the presumptions should by itself be natural and plausible; some of them may seem innocuous or even trivial. The aim of the contract approach is to establish that taken together they impose significant bounds on acceptable principles of justice. The ideal outcome would be that these conditions determine a unique set of principles; but I shall be satisfied if they suffice to rank the main traditional conceptions of social justice.

One should not be misled, then, by the somewhat unusual conditions which characterize the original position. The idea here is simply to make vivid to ourselves the restrictions that it seems reasonable to impose on arguments for principles of justice, and therefore on these principles themselves. Thus it seems reasonable and generally acceptable that no one should be advantaged or disadvantaged by natural fortune or social circumstances in the choice of principles. It also seems widely agreed that it should be impossible to tailor principles to the circumstances of one's own case. We should insure further that particular inclinations and aspirations, and persons' conceptions of their good do not affect the principles adopted. The aim is to rule out those principles that it would be rational to propose for acceptance, however little the chance of success, only if one knew certain things that are irrelevant from the standpoint of justice. For example, if a man knew that he was wealthy, he might find it rational to advance the principle that various taxes for welfare measures be counted unjust; if he knew that he was poor, he would most likely propose the contrary principle. To represent the desired restrictions one imagines a situation in which everyone is deprived of this sort of information. One excludes the knowledge of those contingencies which sets men at odds and allows them to be guided by their prejudices. In this manner the veil of ignorance is arrived at in a natural way. This concept should cause no difficulty if we keep in mind the constraints on arguments that it is meant to express. At any time we can enter the original position, so to speak, simply by following a certain procedure, namely, by arguing for principles of justice in accordance with these restrictions.

It seems reasonable to suppose that the parties in the original position are equal. That is, all have the same rights in the procedure for choosing principles; each can make proposals, submit reasons for their acceptance, and so on. Obviously the purpose of these conditions is to represent equality between human beings as moral persons, as creatures having a conception of their good and capable of a sense of justice. The basis of equality is taken to be similarity in these two respects. Systems of ends are not ranked in value; and each man is presumed to have the requisite ability to understand and to act upon whatever principles are adopted. Together with the veil of ignorance, these conditions define the principles of justice as those which rational persons concerned to advance their interests would consent to as equals when none are known to be advantaged or disadvantaged by social and natural contingencies.

[. . .]

THE PRINCIPLES OF JUSTICE

[. . .]

Two principles of justice

I shall now state in a provisional form the two principles of justice that I believe would be chosen in the original position. In this section, I wish to make only the most general comments, and therefore the first formulation of these principles is tentative. As we go on I shall run through several formulations and approximate step by step the final statement to be given much later. I believe that doing this allows the exposition to proceed in a natural way.

The first statement of the two principles reads as follows.

First: each person is to have an equal right to the most extensive basic liberty compatible with a similar liberty for others.

Second: social and economic inequalities are to be arranged so that they are both (a) reasonably expected to be to everyone's advantage, and (b) attached to positions and offices open to all. There are two ambiguous phrases in the second principle, namely 'everyone's advantage' and 'equally open to all'.

[. . .]

By way of general comment, these principles primarily apply, as I have said, to the basic structure of society. They are to govern the assignment of rights and duties and to regulate the distribution of social and economic advantages. As their formulation suggests, these principles presuppose that the social structure can be divided into two more or less distinct parts, the first principle applying to the one, the second to the other. They distinguish

between those aspects of the social system that define and secure the equal liberties of citizenship and those that specify and establish social and economic inequalities. The basic liberties of citizens are, roughly speaking, political liberty (the right to vote and to be eligible for public office) together with freedom of speech and assembly; liberty of conscience and freedom of thought; freedom of the person along with the right to hold (personal) property; and freedom from arbitrary arrest and seizure as defined by the concept of the rule of law. These liberties are all required to be equal by the first principle, since citizens of a just society are to have the same basic rights.

The second principle applies, in the first approximation, to the distribution of income and wealth and to the design of organizations that make use of differences in authority and responsibility, or chains of command. While the distribution of wealth and income need not be equal, it must be to everyone's advantage, and at the same time, positions of authority and offices of command must be accessible to all. One applies the second principle by holding positions open, and then subject to this constraint, arranges social and economic inequalities so that everyone benefits.

These principles are to be arranged in a serial order with the first principle prior to the second. This ordering means that a departure from the institutions of equal liberty required by the first principle cannot be justified by, or compensated for, by greater social and economic advantages. The distribution of wealth and income, and the hierarchies of authority, must be consistent with both the liberties of equal citizenship and equality of opportunity.

It is clear that these principles are rather specific in their content, and their acceptance rests on certain assumptions that I must eventually try to explain and justify. A theory of justice depends upon a theory of society in ways that will become evident as we proceed. For the present, it should be observed that the two principles (and this holds for all formulations) are a special case of a more general conception of justice that can be expressed as follows.

All social values – liberty and opportunity, income and wealth, and the bases of self-respect – are to be distributed equally unless an unequal distribution of any, or all, of these values is to everyone's advantage.

Injustice, then, is simply inequalities that are not to the benefit of all. Of course, this conception is extremely vague and requires interpretation.

As a first step, suppose that the basic structure of society distributes certain primary goods, that is, things that every rational man is presumed to want. These goods normally have a use whatever a person's rational plan of life. For simplicity, assume that the chief primary goods at the disposition of society are rights and liberties, powers and opportunities, income and wealth. (Later on in Part Three the primary good of self-respect has

a central place.) These are the social primary goods. Other primary goods such as health and vigor, intelligence and imagination, are natural goods; although their possession is influenced by the basic structure, they are not so directly under its control. Imagine, then, a hypothetical initial arrangement in which all the social primary goods are equally distributed: everyone has similar rights and duties, and income and wealth are evenly shared. This state of affairs provides a benchmark for judging improvements. If certain inequalities of wealth and organizational powers would make everyone better off than in this hypothetical starting situation, then they accord with the general conception.

Now it is possible, at least theoretically, that by giving up some of their fundamental liberties men are sufficiently compensated by the resulting social and economic gains. The general conception of justice imposes no restrictions on what sort of inequalities are permissible; it only requires that everyone's position be improved. We need not suppose anything so drastic as consenting to a condition of slavery. Imagine instead that men forego certain political rights when the economic returns are significant and their capacity to influence the course of policy by the exercise of these rights would be marginal in any case. It is this kind of exchange which the two principles as stated rule out; being arranged in serial order they do not permit exchanges between basic liberties and economic and social gains. The serial ordering of principles expresses an underlying preference among primary social goods. When this preference is rational so likewise is the choice of these principles in this order.

In developing justice as fairness I shall, for the most part, leave aside the general conception of justice and examine instead the special case of the two principles in serial order. The advantage of this procedure is that from the first the matter of priorities is recognized and an effort made to find principles to deal with it. One is led to attend throughout to the conditions under which the acknowledgment of the absolute weight of liberty with respect to social and economic advantages, as defined by the lexical order of the two principles, would be reasonable. Offhand, this ranking appears extreme and too special a case to be of much interest; but there is more justification for it than would appear at first sight. Or at any rate, so I shall maintain. Furthermore, the distinction between fundamental rights and liberties and economic and social benefits marks a difference among primary social goods that one should try to exploit. It suggests an important division in the social system. Of course, the distinctions drawn and the ordering proposed are bound to be at best only approximations. There are surely circumstances in which they fail. But it is essential to depict clearly the main lines of a reasonable conception of justice; and under many conditions anyway, the two principles in serial order may serve well enough. When necessary we can fall back on the more general conception.

The fact that the two principles apply to institutions has certain consequences. Several points illustrate this. First of all, the rights and liberties referred to by these principles are those which are defined by the public rules of the basic structure. Whether men are free is determined by the rights and duties established by the major institutions of society. Liberty is a certain pattern of social forms. The first principle simply requires that certain sorts of rules, those defining basic liberties, apply to everyone equally and that they allow the most extensive liberty compatible with a like liberty for all. The only reason for circumscribing the rights defining liberty and making men's freedom less extensive than it might otherwise be is that these equal rights as institutionally defined would interfere with one another.

Another thing to bear in mind is that when principles mention persons, or require that everyone gain from an inequality, the reference is to representative persons holding the various social positions, or offices, or whatever, established by the basic structure. Thus in applying the second principle I assume that it is possible to assign an expectation of well-being to representative individuals holding these positions. This expectation indicates their life prospects as viewed from their social station. In general, the expectations of representative persons depend upon the distribution of rights and duties throughout the basic structure. When this changes, expectations change. I assume, then, that expectations are connected: by raising the prospects of the representative man in one position we presumably increase or decrease the prospects of representative men in other positions. Since it applies to institutional forms, the second principle (or rather the first part of it) refers to the expectations of representative individuals. As I shall discuss below, neither principle applies to distributions of particular goods to particular individuals who may be identified by their proper names. The situation where someone is considering how to allocate certain commodities to needy persons who are known to him is not within the scope of the principles. They are meant to regulate basic institutional arrangements. We must not assume that there is much similarity from the standpoint of justice between an administrative allotment of goods to specific persons and the appropriate design of society. Our common sense intuitions for the former may be a poor guide to the latter.

Now the second principle insists that each person benefit from permissible inequalities in the basic structure. This means that it must be reasonable for each relevant representative man defined by this structure, when he views it as a going concern, to prefer his prospects with the inequality to his prospects without it. One is not allowed to justify differences in income or organizational powers on the ground that the disadvantages of those in one position are outweighed by the greater advantages of those in another. Much less can infringements of liberty be counterbalanced in this way. Applied to the basic structure, the principle of utility would have us maximize the sum of expectations of representative men (weighted by the

number of persons they represent, on the classical view); and this would permit us to compensate for the losses of some by the gains of others. Instead, the two principles require that everyone benefit from economic and social inequalities. It is obvious, however, that there are indefinitely many ways in which all may be advantaged when the initial arrangement of equality is taken as a benchmark. How then are we to choose among these possibilities? The principles must be specified so that they yield a determinate conclusion.

NOTE

1. Here I follow H. L. A. Hart, *The Concept of Law* (Oxford, The Clarendon Press, 1961), pp. 155–9.

G. A. COHEN
EXTRACTS FROM 'WHERE
THE ACTION IS: ON THE SITE
OF DISTRIBUTIVE JUSTICE'

I

In this paper I defend a claim which can be expressed in the words of a now familiar slogan: the personal is political. That slogan, as it stands, is vague, but I shall mean something reasonably precise by it here, to wit, that principles of distributive justice, principles, that is, about the just distribution of benefits and burdens in society, apply, wherever else they do, to people's legally unconstrained choices. Those principles, so I claim, apply to the choices that people make *within* the legally coercive structures to which, so everyone would agree, principles of justice (also) apply. In speaking of the choices that people make *within* coercive structures, I do not include the choice whether or not to comply with the rules of such structures (to which choice, once again, so everyone would agree, principles of justice (also) apply), but the choices left open by those rules because neither enjoined nor forbidden by them.

[. . .]

In defending the claim that the personal is political, the view that I oppose is the Rawlsian one that principles of justice apply only to what Rawls calls the 'basic structure' of society. Feminists have noticed that Rawls wobbles, across the course of his writings, on the matter of whether or not the family belongs to the basic structure and is therefore, in his view, a site at which

G. A. Cohen (1997), 'Where the Action is: On the Site of Distributive Justice', *Philosophy and Public Affairs*, 26:1.

principles of justice apply. I shall argue that Rawls's wobble on this matter is not a case of mere indecision, which could readily be resolved in favor of inclusion of the family within the basic structure: that is the view of Susan Okin,¹ and, in my opinion, she is wrong about that. I shall show (in Section V below) that Rawls cannot admit the family into the basic structure of society without abandoning his insistence that it is to the basic structure only that principles of distributive justice apply. In supposing that he could include family relations, Okin shows failure to grasp the *form* of the feminist critique of Rawls.

II

[. . .]

My criticism of Rawls is of his application of the difference principle. That principle says, in one of its formulations,² that inequalities are just if and only if they are necessary to make the worst off people in society better off than they would otherwise be. I have no quarrel here with the difference principle itself,³ but I disagree sharply with Rawls on the matter of *which* inequalities pass the test for justifying inequality that it sets and, therefore, about how *much* inequality passes that test. In my view, there is hardly any serious inequality that satisfies the requirement set by the difference principle, when it is conceived, as Rawls himself proposes to conceive it,⁴ as regulating the affairs of a society whose members themselves accept that principle. If I am right, affirmation of the difference principle implies that justice requires (virtually) unqualified equality itself, as opposed to the 'deep inequalities' in initial life chances with which Rawls thinks justice to be consistent.⁵

It is commonly thought, for example by Rawls, that the difference principle licenses an argument for inequality which centers on the device of material incentives. The idea is that talented people will produce more than they otherwise would if, and only if, they are paid more than an ordinary wage, and some of the extra which they will then produce can be recruited on behalf of the worst off.⁶ The inequality consequent on differential material incentives is said to be justified within the terms of the difference principle, for, so it is said, that inequality benefits the worst off people: the inequality is necessary for them to be positioned as well as they are, however paltry their position may nevertheless be.

Now, before I mount my criticism of this argument, a *caveat* is necessary with respect to the terms in which it is expressed. The argument focuses on a *choice* enjoyed by well-placed people who command a high salary in a market economy: they can choose to work more or less hard, and also to work at this occupation rather than that one, and for this employer rather than that one, in accordance with how well they are remunerated. These well-placed people, in the foregoing standard presentation of the

argument, are designated as ‘the talented’, and [. . .] I shall so designate them throughout my criticism of the argument. Even so, these fortunate people need not be thought to be talented, in any sense of that word which implies something more than a capacity for high market earnings, for the argument to possess whatever force it has. All that need be true of them is that *they are so positioned that, happily, for them, they do command a high salary and they can vary their productivity according to exactly how high it is.*

[. . .]

Now, for the following reasons, I believe that the incentives argument for inequality represents a distorted application of the difference principle, even though it is its most familiar and perhaps even its most persuasive application. Either the relevant talented people themselves affirm the difference principle or they do not. That is: either they themselves believe that inequalities are unjust if they are not necessary to make the badly off better off, or they do not believe that to be a dictate of justice. If they do not believe it, then their society is not just in the appropriate Rawlsian sense, for a society is just, according to Rawls, only if its members themselves affirm and uphold the correct principles of justice. The difference principle might be appealed to in justification of a government’s toleration, or promotion, of inequality in a society in which the talented do not themselves accept it, but it then justifies a public policy of inequality in a society some members of which – the talented – do not share community with the rest:⁷ their behavior is then taken as fixed or parametric, a datum vis-à-vis a principle applied to it from without, rather than as itself answerable to that principle. That is not how principles of justice operate in a just society, as Rawls specifies that concept: within his terms, one may distinguish between a just society and a just government, one, that is, which applies just principles to a society whose members may not themselves accept those principles.

So we turn to the second and only remaining possibility, which is that the talented people do affirm the difference principle, that, as Rawls says, they apply the principles of justice *in their daily life* and achieve a sense of their own justice in doing so.⁸ But they can then be asked why, in the light of their own belief in the principle, they require more pay than the untalented get, for work that may indeed demand special talent, but which is not specially unpleasant (for no such consideration enters the Rawlsian justification of incentives-derived inequality). The talented can be asked whether the extra they get is *necessary* to enhance the position of the worst off, which is the only thing, according to the difference principle, that could justify it. Is it necessary *tout court*, that is, independently of human will, so that, with all the will in the world, removal of inequality would make everyone worse off? Or is it necessary only insofar as the talented would *decide* to produce less than they now do, or not to take up posts where they

are in special demand, if inequality were removed (by, for example, income taxation which redistributes to fully egalitarian effect⁹)?

Talented people who affirm the difference principle would find those questions hard to handle. For they could not claim, *in self-justification*, at the bar of the difference principle, that their high rewards are necessary to enhance the position of the worst off, since, in the standard case,¹⁰ it is they themselves who *make* those rewards necessary, through their own unwillingness to work for ordinary rewards as productively as they do for exceptionally high ones, an unwillingness which ensures that the untalented get less than they otherwise would. Those rewards are, therefore, necessary only because the choices of talented people are not appropriately informed by the difference principle.

Apart, then, from the very special cases in which the talented literally *could* not, as opposed to the normal case where they (merely) would not, perform as productively as they do without superior remuneration, the difference principle can justify inequality only in a society where not everyone accepts that very principle. It therefore cannot justify inequality in the appropriate Rawlsian way.

Now, this conclusion about what it means to accept and implement the difference principle implies that the justice of a society is not exclusively a function of its legislative structure, of its legally imperative rules, but also of the choices people make within those rules. The standard (and, in my view, misguided) Rawlsian application of the difference principle can be modeled as follows. There is a market economy all agents in which seek to maximize their own gains, and there is a Rawlsian state that selects a tax function on income that maximizes the income return to the worst off people, within the constraint that, because of the self-seeking motivation of the talented, a fully equalizing taxation system would make everyone worse off than one which is less than fully equalizing. But this double-minded modeling of the implementation of the difference principle, with citizens inspired by justice endorsing a state policy which plays a tax game against (some of) them in their manifestation as self-seeking economic agents, is wholly out of accord with the (sound) Rawlsian requirement on a just society that its citizens themselves willingly submit to the standard of justice embodied in the difference principle. A society that is just within the terms of the difference principle, so we may conclude, requires not simply just coercive *rules*, but also an *ethos* of justice that informs individual choices. In the absence of such an ethos, inequalities will obtain that are not necessary to enhance the condition of the worst off: the required ethos promotes a distribution more just than what the rules of the economic game by themselves can secure.

To be sure, one might imagine, in the abstract, a set of coercive rules so finely tuned that universally self-interested choices within them would raise the worst off to as high a position as any other pattern of choices would produce. Where coercive rules had and were known to have such a character,

agents could choose self-interestedly in confidence that the results of their choices would satisfy an appropriately uncompromising interpretation of the difference principle. In that (imaginary) case, the only ethos necessary for difference principle justice would be willing obedience to the relevant rules, an ethos which Rawls expressly requires. But the vast economics literature on incentive-compatibility teaches that rules of the contemplated perfect kind cannot be designed. Accordingly, as things actually are, the required ethos must, as I have argued, guide choice within the rules, and not merely direct agents to obey them. (I should emphasize that this is not so because it is *in general* true that the point of the rules governing an activity must be aimed at when agents pursue that activity in good faith: every competitive sport represents a counterexample to that generalization. But my argument for the conclusion stated above did not rest on that false generalization.)

III

There is an objection which friends of Rawls's *Theory of Justice* would press against my argument in criticism of his application of the difference principle. The objection is that my focus on the posture of talented producers in daily economic life is inappropriate, since their behavior occurs within, and does not determine, *the basic structure* of society, and it is only to the latter that the difference principle applies.¹¹ Whatever people's choices within it may be, the basic structure is just provided that it satisfies the two principles of justice. To be sure, so Rawls acknowledges, people's choices can themselves be assessed as just or unjust, from a number of points of view. Thus, for example, appointment to a given job of candidate A rather than candidate B might be judged unjust, even though it occurs within the rules of a just basic structure.¹² But injustice in such a choice is not the sort of injustice that the Rawlsian principles are designed to condemn. For, *ex hypothesi*, that choice occurs within an established basic structure: it therefore cannot affect the justice of the basic structure itself, which is what, according to Rawls, the two principles govern. Nor, similarly, should the choices with respect to work and remuneration that talented people make be submitted for judgment at the bar of the difference principle. So to judge those choices is to apply that principle at the wrong point. The difference principle is a 'principle of justice for institutions'.¹³ It governs the choice of institutions, not the choices made within them. The development of the second horn of the dilemma argument [...] misconstrues the Rawlsian requirement that citizens in a just society uphold the principles that make it just: by virtue of the stipulated scope of the difference principle, talented people do count as faithfully upholding it, as long as they conform to the prevailing economic rules *because* that principle requires those rules.

Call that 'the basic structure objection'. Now, before I develop it further, and then reply to it, I want to point out that there is an important

ambiguity in the concept of the basic structure, as that is wielded by Rawlsians. The ambiguity turns on whether the Rawlsian basic structure includes only coercive aspects of the social order or, also, conventions and usages that are deeply entrenched but not legally or literally coercive. I shall take the phrase ‘basic structure’, as it appears in the basic structure objection, as denoting *some* sort of structure, be it legally coercive or not, but whose key feature, for the purposes of the objection, is that it is indeed a structure, that is, a framework of rules within which choices are made, as opposed to a set of choices and/or actions.¹⁴ Accordingly, my Rawlsian critic would say, whatever structure, precisely, the basic structure is, the objection stands that my criticism of the incentives argument misapplies principles devised for a structure to individual choices and actions.

In further clarification of the polemical position, let me make a background point about the difference between Rawls and me with respect to the site or sites at which principles of justice apply. My own fundamental concern is neither the basic structure of society, in any sense, nor people’s individual choices, but the pattern of benefits and burdens in society; that is neither a structure in which choice occurs nor a set of choices, but the upshot of structure and choices alike. My concern is *distributive justice*, by which I uneccentrically mean justice (and its lack) in the distribution of benefits and burdens to individuals. My root belief is that there is injustice in distribution when inequality of goods reflects not such things as differences in the arduousness of different people’s labors, or people’s different preferences and choices with respect to income and leisure, but myriad forms of lucky and unlucky circumstance. Such differences of advantage are a function of the structure *and* of people’s choices within it, so I am concerned, secondarily, with *both* of those.

[. . .]

In discussion of my claim [. . .] that social justice requires a social *ethos* that inspires uncoerced equality-supporting choice, Ronald Dworkin suggested¹⁵ that a Rawlsian government might be thought to be charged with a duty, under the difference principle, of promoting such an ethos. Dworkin’s suggestion was intended to support Rawls, against me, by diminishing the difference between Rawls’s position and my own, and thereby reducing the reach of my criticism of him. I do not know what Rawls’s response to Dworkin’s proposal would be, but one thing is clear: Rawls could not say that, to the extent that the indicated policy failed, society would, as a result, be less just than if the policy had been more successful. Accordingly, if Dworkin is right that Rawlsian justice requires government to promote an ethos friendly to equality, it could not be for the sake of making society more distributively just that it was doing so, *even* though it would be for the sake of making its distribution more *equal*. The following three-fold conjunction, which is an inescapable consequence of Rawls’s position,

on Dworkin's not unnatural interpretation of it, is strikingly incongruous: (1) the difference principle is an egalitarian principle of distributive justice; (2) it imposes on government a duty to promote an egalitarian ethos; (3) it is not for the sake of enhancing distributive justice in society that it is required to promote that ethos. Dworkin's attempt to reduce the distance between Rawls's position and my own threatens to render the former incoherent.

[. . .]

V

I now provide a more fundamental reply to the basic structure objection. It is more fundamental in that it shows, decisively, that justice requires an ethos governing daily choice that goes beyond one of obedience to just rules,¹⁶ on grounds which do not, as the preliminary reply did, exploit things that Rawls says in apparent contradiction of his stipulation that justice applies to the basic structure of society alone. The fundamental reply interrogates, and refutes, that stipulation itself.

A major fault line in the Rawlsian architectonic not only wrecks the basic structure objection but also produces a dilemma for Rawls's view of the subject¹⁷ of justice from which I can imagine no way out. The fault line exposes itself when we ask the apparently simple question: what (exactly) *is* the basic structure? For there is a fatal ambiguity in Rawls's specification of the basic structure, and an associated discrepancy between his criterion for what justice judges and his desire to exclude the effects of structure-consistent personal choice from the purview of its judgment.

The basic structure, the primary subject of justice, is always said by Rawls to be a set of institutions, and, so he infers, the principles of justice do not judge the actions of people within (just) institutions whose rules they observe. But it is seriously unclear *which* institutions are supposed to qualify as part of the basic structure. Sometimes it appears that coercive (in the legal sense) institutions exhaust it, or, better, that institutions belong to it only insofar as they are (legally) coercive.¹⁸ In this widespread interpretation of what Rawls intends by the 'basic structure' of a society, that structure is legible in the provisions of its constitution, in such specific legislation as may be required to implement those provisions, and in further legislation and policy which are of central importance but which resist formulation in the constitution itself.¹⁹

The basic structure, in this first understanding of it, is, so one might say, the *broad coercive outline* of society, which determines in a relatively fixed and general way what people may and must do, in advance of legislation that is optional, relative to the principles of justice, and irrespective of the constraints and opportunities created and destroyed by the choices that people make within the given basic structure, so understood.

Yet it is quite unclear that the basic structure is *always* thus defined, in exclusively coercive terms, within the Rawlsian texts. For Rawls often says that the basic structure consists of the *major* social institutions, and he does not put a particular accent on coercion when he announces *that* specification of the basic structure.²⁰ In this second reading of what it is, institutions belong to the basic structure whose structuring can depend far less on law than on convention, usage, and expectation: a signal example is the family, which Rawls sometimes includes in the basic structure and sometimes does not.²¹ But once the line is crossed, from coercive ordering to the non-coercive ordering of society by rules and conventions of accepted practice, then the ambit of justice can no longer exclude chosen behavior, since the usages which constitute informal structure (think, again, of the family) are bound up with the customary actions of people.

‘Bound up with’ is vague, so let me explain how I mean it, here. One can certainly speak of the structure of the family, and it is not identical with the choices that people customarily make within it; but it is nevertheless impossible to claim that the principles of justice which apply to family structure do not apply to day-to-day choices within it. For consider the following contrast. The *coercive* structure arises independently of people’s quotidian choices: it is formed by those specialized choices which legislate the law of the land. By contrast, the non-coercive structure of the family has the character it does only because of the choices that its members routinely make. The constraints and pressures that sustain the non-coercive structure reside in the dispositions of agents which are actualized as and when those agents choose to act in a constraining or pressuring way. With respect to coercive structure, one may fairly readily distinguish the choices which institute and sustain a structure from the choices that occur within it.²² But with respect to informal structure, that distinction, though conceptually intelligible, collapses extensionally: when A chooses to conform to the prevailing usages, the pressure on B to do so is reinforced, and no such pressure exists, the very usages themselves do not exist, in the absence of conformity to them.

Now, since that is so, since behavior is *constitutive* of *non-coercive* structure, it follows that the only way of protecting the basic structure objection against my claim that the difference principle condemns maximizing economic behavior (and, more generally, of protecting the restriction of justice to the basic structure against the insistence that the personal, too, is political) is by holding fast to a purely coercive specification of the basic structure. But that way out is not open to Rawls, because of a further characterization that he offers of the basic structure: this is where the discrepancy adverted to in the second paragraph of this section appears. For Rawls says that ‘the basic structure is the primary subject of justice because its effects are so profound and present from the start’.²³ Nor is that further characterization of the basic structure optional: it is needed to explain why it is primary, as far as justice is concerned. Yet it is false that only the *coercive* structure

causes profound effects, as the example of the family once again reminds us.²⁴ Accordingly, if Rawls retreats to coercive structure, he contradicts his own criterion for what justice judges, and he lands himself with an arbitrarily narrow definition of his subject matter. So he must let other structure in, and that means, as we have seen, letting chosen behavior in. What is more, even if behavior were not, as I claim it is, constitutive of non-coercive structure, it will come in by direct appeal to the profundity-of-effect criterion for what justice governs. So, for example, we need not decide whether or not a regular practice of favoring sons over daughters in the matter of providing higher education forms part of the *structure* of the family to condemn it as unjust, under that criterion.²⁵

Given, then, his stated rationale²⁶ for exclusive focus on the basic structure – and what *other* rationale could there be for calling it the *primary* subject of justice? – Rawls is in a dilemma. For he must either admit application of the principles of justice to (legally optional) social practices, and, indeed, to patterns of personal choice that are not legally prescribed, *both* because they are the substance of those practices, *and* because they are similarly profound in effect, in which case the restriction of justice to structure, in any sense, collapses; or, if he restricts his concern to the coercive structure only, then he saddles himself with a purely arbitrary delineation of his subject matter. I now illustrate this dilemma by reference to the two contexts that have figured most in this paper: the family, and the market economy.

Family structure is fateful for the benefits and burdens that redound to different people, and, in particular, to people of different sexes, where ‘family structure’ includes the socially constructed expectations which lie on husband and wife. And such expectations are sexist and unjust if, for example, they direct the woman in a family where both spouses work outside the home to carry a greater burden of domestic tasks. Yet such expectations need not be supported by the law for them to possess informal coercive force: sexist family structure is consistent with sex-neutral family law. Here, then, is a circumstance, outwith the basic structure, as that would be coercively defined, which profoundly affects people’s life-chances, *through the choices people make in response to the stated expectations, which are, in turn, sustained by those choices*.²⁷ Yet Rawls must say, on pain of giving up the basic structure objection, that (legally uncoerced) family structure and behavior have no implications for justice in the sense of ‘justice’ in which the basic structure has implications for justice, since they are not a consequence of the formal coercive order. But that implication of the stated position is perfectly incredible: no such differentiating sense is available.

John Stuart Mill taught us to recognize that informal social pressure can restrict liberty as much as formal coercive law does. And the family example shows that informal pressure is as relevant to distributive justice as it is to liberty. One reason why the rules of the basic structure, when

it is coercively defined, do not by themselves determine the justice of the distributive upshot is that, by virtue of circumstances that are relevantly independent of coercive rules, some people have much more power than others to determine what happens *within* those rules.

The second illustration of discrepancy between what coercive structure commands and what profoundly affects the distribution of benefits and burdens is my own point about incentives. Maximizing legislation,²⁸ and, hence, a coercive basic structure that is just as far as the difference principle is concerned, are consistent with a maximizing ethos across society which, under many conditions, will produce severe inequalities and a meager level of provision for the worst off, yet both have to be declared just by Rawls, if he stays with a coercive conception of what justice judges. And that implication is, surely, perfectly incredible.

Rawls cannot deny the difference between the coercively defined basic structure and that which produces major distributive consequences: the coercively defined basic structure is only an instance of the latter. Yet he must, to retain his position on justice and personal choice, restrict the ambit of justice to what a coercive basic structure produces. But, so I have (by implication) asked: why should we *care* so disproportionately about the coercive basic structure, when the major reason for caring about it, its impact on people's lives, is *also* a reason for caring about informal structure and patterns of personal choice? To the extent that we care about coercive structure because it is fateful with regard to benefits and burdens, we must care equally about the ethi that sustain gender inequality, and inegalitarian incentives. And the similarity of our reasons for caring about these matters will make it lame to say: ah, but only the caring about coercive structure is a caring about *justice*, in a certain distinguishable sense. That thought is, I submit, incapable of coherent elaboration.

NOTES

1. Okin is singularly alive to Rawls's ambivalence about admitting or excluding the family from the basic structure: see, e.g. her '*Political Liberalism*, Justice and Gender', *Ethics* 105, no. 1 (Oct. 1994): 23–4, and, more generally, her *Justice, Gender and the Family* (New York: Basic Books, 1989), Chapter 5. But, so far as I can tell, she is unaware of the wider consequences, for Rawls's view of justice in general, of the set of ambiguities of which this one is an instance.
2. See 'incentives, inequality, and community', in Grethe Peterson, ed., *The Tanner Lectures on Human Values*, Vol. 13 (Salt Lake City: University of Utah Press, 1992), p. 266, n. 6 (this article is henceforth referred to as 'incentives'), for four possible formulations of the difference principle, all of which, arguably, find support in *A Theory of Justice* (Cambridge, Mass.: Harvard University Press, 1971). The argument of the present paper is, I believe, robust across those variant formulations of the principle.
3. I do have some reservations about the principle, but they are irrelevant to this paper. I agree, for example, with Ronald Dworkin's criticism of the 'ambition-Insensitivity' of the difference principle: see his 'What is Equality? Part 2: Equality of Resources', *Philosophy & Public Affairs*, 10, no. 4 (Fall 1981): 343.

4. 'Proposes to conceive it': I use that somewhat precious phrase because part of the present criticism of Rawls is that he does not succeed in so conceiving it – he does not, that is, recognize the implications of so conceiving it.
5. *A Theory of Justice*, p. 7.
6. This is just the crudest causal story connecting superior payment to the better off with benefit to the worst off. I adopt it here for simplicity of exposition.
7. They do not, more precisely, share *justificatory community* with the rest, in the sense of the italicized phrase that I specified at p. 282 of 'Incentives'.
8. 'Citizens in everyday life affirm and act from the first principles of justice'. They act 'from these principles as their sense of justice dictates' and thereby 'their nature as moral persons is most fully realized'. (Quotations drawn from, respectively, 'Kantian Constructivism in Moral Theory', *The Journal of Philosophy*, 77, no. 9 (Sept. 1980): 521, 528, and *A Theory of Justice*, p. 528.)
9. That way of achieving equality preserves the information function of the market while extinguishing its motivational function: see Joseph Caren, *Equality, Moral Incentives, and the Market* (Chicago: University of Chicago Press, 1981).
10. See 'Incentives', p. 298 *et circa*, for precisely what I mean by 'the standard case'.
11. For a typical statement of this restriction, see, John Rawls, *Political Liberalism* (New York: Columbia University Press, 1993), pp. 282–3.
12. See the first sentence of Sec. 2 of *A Theory of Justice* ('The Subject of Justice'): 'Many different kinds of things are said to be just and unjust: not only laws, institutions, and social systems, but also particular actions of many kinds, including decisions, judgments, and imputations' (*ibid.*, p. 7). But Rawls excludes examples such as the one given in the text above from his purview, because 'our topic... is that of social justice. For us the primary subject of justice is the basic structure of society' (*ibid.*).
13. *A Theory of Justice*, p. 303.
14. The contrast between structure and action is further explained, though also, as it were, put in its place, in the Endnote to this article.
15. At a seminar in Oxford, in Hilary Term of 1994.
16. Though not necessarily an ethos embodying the very principles that the rules formulate [...]. Justice will be shown to require an ethos, and the basic structure objection will thereby be refuted, but it will be a contingent question whether the ethos required by justice can be read off the content of the just rules themselves. Still, [...] the answer to that question is almost certainly 'Yes'.
17. That is, the subject matter that principles of justice judge. I follow Rawls's usage here (e.g. in the title of Lecture VII of *Political Liberalism*: 'The Basic Structure as Subject'; and cf. n. 12 above).
18. Henceforth, unless I indicate otherwise, I shall use 'coercive', 'coercion', etc. to mean 'legally coercive', etc.
19. Thus, the difference principle, though pursued through (coercively sustained) state policy, cannot, so Rawls thinks, be aptly inscribed in a society's constitution: see *Political Liberalism*, pp. 227–30.
20. Consider, for example, the passage at pp. 7–8 of *A Theory of Justice* in which the concept of the basic structure is introduced:

Our topic ... is that of social justice. For us the primary subject of justice is the basic structure of society, or more exactly, the way in which the major social institutions distribute fundamental rights and duties and determine the division of advantages from social cooperation. By major institutions I understand the political constitution and the principal economic and social arrangements. Thus the legal protection of freedom of thought and liberty of conscience, competitive markets, private property in the means of production, and the monogamous family are examples of major social institutions. ... I shall not consider the justice of institutions and social practices generally. ... [The two principles of justice]

may not work for the rules and practices of private associations or for those of less comprehensive social groups. They may be irrelevant for the various informal conventions and customs of everyday life; they may not elucidate the justice, or perhaps better, the fairness of voluntary cooperative arrangements or procedures for making contractual agreements.

I cannot tell, from those statements, what is to be included in, and what excluded from, the basic structure, nor, more particularly, whether coercion is the touchstone of inclusion. Take, for example, the case of the monogamous family. Is it simply its 'legal protection' that is a major social institution, in line with a coercive definition of the basic structure (if not, perhaps, with the syntax of the relevant sentence)? Or is the monogamous family itself part of that structure? And, in that case, are its typical usages part of it? They certainly constitute a 'principal social arrangement', yet they may also count as 'practices of private associations or ... of less comprehensive social groups', and they are heavily informed by the 'conventions and customs of everyday life'.

Puzzlement with respect to the bounds of the basic structure is not relieved by examination of the relevant pages of *Political Liberalism*, to wit, 11, 68, 201–2, 229, 258, 268, 271–2, 282–3, and 301. Some formulations on those pages lean toward a coercive specification of the basic structure. Others do not.

21. See the final paragraph of Sec. 1 of this chapter.
22. For more on structure and choice, see the Endnote to this article. Among other things. I there entertain a doubt about the strength of the distinction drawn in the above sentence, but, as I indicate, if that doubt is sound, then my case against Rawls is not weakened.
23. *A Theory of Justice*. p. 7.
24. Or consider access to that primary good which Rawls calls 'the social basis of self-respect'. While the law may play a large role in securing that good to people vulnerable to racism, legally unregulable racist attitudes also have an enormous negative impact on how much of that primary good they get.
But are the profound effects of the family, or of racism, 'present from the start' (see the text to n. 23)? I am not sure how to answer that question, because I am unclear about the intended import, here, of the quoted phrase. Rawls probably means 'present from the start of each person's life': the surrounding text at *Theory*, p. 7 supports this interpretation. If so, the family, and racial attitudes, certainly qualify. If not, then I do not know how to construe the phrase. But what matters, surely, is the asserted profundity of effect, not whether it is 'present from the start', whatever may be the sense which attaches, here, to that phrase.
25. Note that one can condemn the said practice without condemning those who engage in it. For there might be a collective action problem here, which weighs heavily on poor families in particular. If, in addition to discrimination in education, there is discrimination in employment, then a poor family might sacrifice a great deal through choosing evenhandedly across the sexes with whatever resources it can devote to its children's education. This illustrates the important distinction between condemning injustice and condemning the people whose actions perpetuate it.
26. See the text to n. 23 above.
27. Hugo Adam Bedau noticed that the family falls outside the basic structure, under the coercive specification of it often favored by Rawls, though he did not notice the connection between non-coercive structure and choice that I emphasize in the above sentence: see his 'Social Justice and Social Institutions', *Midwest Studies in Philosophy*, 3 (1978): 171.
28. That is, legislation which maximizes the size of the primary goods bundle held by the worst off people, given whatever is correctly expected to be the pattern in the choices made by economic agents.

LIBERTY

Patrick Bernhagen

INTRODUCTION

The *Declaration of the Rights of Man and of Citizens* by the National Assembly of France in 1789 stipulated that the ‘end of all political associations is the preservation of . . . Liberty’. Earlier in history, liberty features as a central motive in the political theories of Aristotle and Cicero in classic antiquity, and later in Niccolò Machiavelli’s Renaissance republicanism. And more recently, the peaceful revolutions that brought about the fall of the authoritarian regimes in central and eastern Europe and the former Soviet Union were driven by the desire of the people to live in freedom. Indeed, we may safely speak of liberty as the supreme value in liberal societies and in Western political thought.¹

Yet despite the importance people attach to it, some have ascribed little more than an instrumental value to freedom, suggesting that freedom is good because, where it prevails, other highly prized things will be promoted. For the utilitarian philosophers of the nineteenth century, for example, liberty was interesting to the extent that it allows people to achieve maximum happiness. More recently, Ronald Dworkin found that it is not so much liberty itself that liberals really value, but things like justice, equality, or some list of rights such as the rights to freedom of worship, of expression and of association, but to which they misleadingly refer as liberty (1977: 266–78). In the tradition of Jean-Jacques Rousseau’s democratic republicanism, by contrast, liberty is all about participation in government and is as such worthy in its own right. For contemporary civil-liberties and human-rights advocacy groups such as Amnesty International (2004) or Freedom

House (2004), furthermore, freedom serves as a yardstick for evaluating the performance of governments and entire countries. These groups regularly assess the successful (or otherwise) implementation of various civil and political liberties – including freedom of assembly, freedom of expression and belief, and free choice of occupation – in countries around the world.

Despite such nearly universal acclaim, politicians and political theorists alike find it difficult to agree on, firstly, what exactly liberty is and, secondly, which political practices, programmes and institutions are best suited for protecting and increasing freedom. Adherents of left-wing, social-democratic welfare politics, for instance, have justified the creation of the welfare state out of a concern for liberty, while neo-liberal economists and conservative politicians invoke liberty when arguing the case for its demolition. We will return to this contradictory theme further on. At this point it is useful to emphasise that we are concerned with political or social freedom, as opposed to philosophical freedom. The grand debates concerning freedom in the philosophical sense are about freedom of the will *versus* philosophical necessity; they are concerned with the question of whether humans possess ‘free will’ or whether their states of mind and actions are entirely determined by causal forces that are part of the natural order.² Social or political freedom, by contrast, is concerned with the interactions between human beings, and with the rules and institutions that are designed to shape these interactions.

LIBERTY VERSUS LICENCE

In its simplest sense, freedom means to do what one wants. In the words of Bertrand Russell (1952: 169), ‘freedom in its most abstract sense means the absence of external obstacles to the realisation of desires’. The focus on wants and desires in this formulation can have peculiar consequences for how we think about freedom. If freedom is the power to satisfy wants, then one way to enlarge freedom would be to manipulate people’s wants. In this sense, a happy slave can be freer than a frustrated citizen. A different position was taken by T. H. Green ([1888] 1991: 21), for whom freedom is ‘a positive power or capacity of doing or enjoying something *worth doing or enjoying*’ (emphasis added). This view implies the possibility that people may desire doing things that are *not* worth doing, or, conversely, that people may fail to recognise what *is* worth doing and therefore remain unfree. From this perspective, as Martin Hollis (1997: 150) points out, happy slaves are unfree because they could not satisfy wants which they do not have!

Green’s concept of freedom suggests, furthermore, that the distinction between things that are ‘worth doing’ and those that are not may be *morally* relevant for what we mean by liberty. The drafters of the French *Declaration of the Rights of Man and of Citizens* actually built this criterion into their

definition of liberty. For them, 'Political Liberty consists in the power of doing *whatever does not injure another*' (emphasis added). Following the French revolutionaries, we can look at liberty as a 'right' or entitlement: liberty means acting within one's rights, while acting outside these rights would be *licence*. Taken to the extreme, this position can lead to the view that liberty corresponds to the power to do all the things, and only those things, that are positively sanctioned by a given belief system, such as the Judeo-Christian-Islamic set of values, for instance, or whatever happens to be permitted under the law in a given country. The problem with such a rights-based definition of liberty is that, by using it, we deprive ourselves of a standard by which we can judge whether a particular right or entitlement promotes or restricts people's freedom.

John Stuart Mill's definition of liberty, by contrast, is unconstrained from any concern for the interests of others. For Mill ([1859] 1969: 15), 'the only freedom which deserves the name is that of pursuing our own good in our own way'. Because he devised such a non-moralised, rights-neutral definition of freedom, Mill added a standard for justifying restrictions on individual liberty. According to his 'harm principle', the only valid justification for restricting individual freedom is to prevent harm to others (Mill [1859] 1969: 12). It should come as little surprise that what is to count as 'harm to others' is then itself fiercely disputed. One way of avoiding this minefield is to view liberty as an entitlement enjoyed equally by all people. After all, if liberty is thought to be a fundamental value, surely it must be one to which all human beings are entitled to an equal degree. According to John Rawls (1971: 60), 'each person is to have an equal right to the most extensive basic liberty compatible with a similar liberty for others'. Yet how are we to judge whether the amount of freedom enjoyed by you is similar to mine? And, if it is not, how can we rectify the situation?

To guarantee people's equal entitlements to freedom, institutions must be in place to prevent the liberty of some being invaded or unduly restricted by the actions of others. In this perspective, the law does not restrict liberty so much as defend or enlarge it. Traffic regulations, for instance, increase the freedom of those using the roads by enabling them to travel freely from *A* to *B* without constantly bumping into others. Socialists and modern liberals argue, moreover, that the principle of equal liberty points to the need to redistribute wealth and resources more equally in society. They claim that the welfare state enlarges freedom by empowering individuals and *freeing* them from the social evils that otherwise blight their lives – unemployment, homelessness, poverty, ignorance, disease, and so forth (Green [1888] 1991; Plant 1985). However, critics from the right have argued that this doctrine has given rise to new forms of unfreedom since, by justifying broader state powers, it robs individuals of control over their own economic and social

circumstances, for example by levying higher taxes on high-income earners (Hayek 1960; Nozick 1974).

So far, we have encountered conflicting views on two analytically distinct issues of liberty: The first conflict is about whether liberty is about doing *what one wants*, or about doing *what is worth doing*. The second conflict is over whether collectively binding arrangements, such as those entailed in social-democratic welfare politics, enlarge or restrict liberty. Underlying these conflicting views are distinct conceptions of the nature of liberty, with some viewing liberty in a strictly negative sense as the freedom from interference by others, above all the state, while others portray liberty as the ability to be positively in control of one's own life plan. A precursor to this classification was first introduced by the French politician and theorist Benjamin Constant ([1819] 1988), who distinguished between the 'liberty of the moderns', by which he meant independence from government and from encroachment by others, and the 'liberty of the ancients', which refers to direct and collective participation in political life. In an influential adaptation of this theme, Isaiah Berlin (1969, see the extract reprinted in this volume) distinguishes two concepts of liberty, a *negative* one corresponding roughly to Constant's 'liberty of the moderns' and a *positive* one that is closer to the 'liberty of the ancients'.

NEGATIVE AND POSITIVE LIBERTY

Freedom in the *negative* sense is usually described as a realm of action unimpeded by external rules or interference by others (Berlin [1969] 2002: 122). It begins where politics ends, especially in what we conceive of as the 'private life' (Miller 1991: 3). This links freedom very closely to privacy, suggesting a distinction between a private or personal realm of existence and some kind of public world. Advocates of negative freedom often regard this private sphere of life, consisting largely of family and personal relationships, as a realm within which people can 'be themselves', without being told by others or the state what to do and how to do it.

The view of freedom as privacy is contested among feminist political theorists. Some endorse conceptions of privacy as tools for expressing ideals of independent decision-making with respect to sex, reproduction and family (Roberts 1991). Viewed in this way, privacy consists of freedom from unwanted physical observation or bodily contact. It also demands neutrality on the part of the state with respect to the free pursuit of different lifestyles and is inconsistent with privileging any one form of the family or of sexual relationships by the basic institutions of society (Cornell 1998: 180). However, privacy can also be seen as synonymous with the private sphere of home and family life – a context of traditional female subordination in dependent socio-economic, and sometimes violent, relationships. Here, governments cannot protect vulnerable citizens from abuse, exploitation and marital rape if high boundaries of legally and constitutionally