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Rawlsian Liberalism

A Constructive Critique

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Abstract

This dissertation makes three major assertions. The first is that the philosophical foundations of Rawls' most famous and influential work, *A Theory of Justice*, are so flawed that, upon detailed investigation, we are forced to reject both the foundations themselves and the resultant theories on which they are based. Following consideration of various attacks and defences from both sides of the "Liberal / Communitarian" debate, Rawls' findings are found to contain an unacceptable number of unjustified assumptions that could just as easily be taken to be true as false. Rawls himself later admits and highlights the mistakes and assumptions of his previous work, leading he himself to eventually dismiss their validity.

This leads to the second assertion, that the differences between the theories of the Rawls of *A Theory of Justice* and the Rawls of *The Law of Peoples* are so great that a distinction in terminology should be adopted. I assert that we must now begin to speak of the "early" and "later" Rawls to make the distinction in his philosophical legacy clear.

The third assertion is that the theories of Rawls' later works continue to utilise a methodology which is overly reliant on assumption. After discussing a number of broad ideas and concepts that Rawls raises at their most abstract possible level, the thesis seeks to provide some very basic foundational premises that are taken to be preferential. Given the limits of this thesis, these premises are intended as suggestions more than fully thought out conclusions. The dissertation ends with a discussion of Rawls' legacy, how it might be interpreted and used, and my recommendations for how his ideas might be improved upon.

Introduction

The recurring undertone in this work is a belief that the theories of John Rawls, especially as contained in his most famous *A Theory of Justice*, are critically flawed. This was the relatively unrefined feeling which initially led to my choosing this topic. I believe the following thesis not only confirms this view, but so powerfully reinforces it that the version of liberalism to be found in *A Theory of Justice* must be seen by all in an entirely different light. As we will find as we move through the work, Rawls' critics highlight such a wealth of inadequacies as to force the abandonment of the most important claims of the original work. The fact that the later Rawls actually becomes one of the critics of his earlier self, thereby admitting his failures and seeking to rectify them, is taken to be proof enough of this fact.

The earlier chapters may prove somewhat tedious reading for those familiar with Rawls for they are intended to set the thesis on as good a foundation as possible. The first chapter is intended as a guide to those unfamiliar with Rawls' *Theory*, intermixed with queries and potential difficulties that I attempt to raise with regards to some of the most important points of Rawls' thinking. The idea is that someone who has never read Rawls' work themselves should still find this thesis readily accessible after having read the first chapter. I do not claim to have written even a particularly exceptional exposition of Rawls' *Theory*. My only hope is that it contains enough of the most important aspects of the theory as to make the investigation that follows fully intelligible.

The second and third chapters have the aim of covering what are often taken to be two sides of the same coin: the debate that has emerged since the publication of *A Theory of Justice*. Despite the fact that the critics within the given leaning vary immensely in their views as with any names applied to a tradition of thought or particular school, I have followed the usual termings of 'communitarian' and 'liberal'. This is as much for clarity and ease as anything else. I have taken what I believe to be the most powerful critics on both sides, and dealt with each individually. It is a far cry from claiming to have produced any kind of definitive guide. The emphasis is on the deficiencies and strengths of the ideas contained in *A Theory of Justice*. While I have strived to present the ideas of the authors in as authentic a way as possible, my own ideas and criticisms are also included. I hope that the ideas of the critics and those of my own are clearly distinguishable.

The fourth chapter contains a twofold purpose. The first is to make clear the changes that took place in Rawls' thinking and the reasons why he saw this as necessary. I concentrate on *Political Liberalism* and *The Law of Peoples* as being the most finalised versions of his later thought. As I hope the reader will notice, it is at this stage that I make a

slight change in terminology, beginning to talk of the 'early' and 'later' Rawls. I see this as necessary because alterations made at essential cruses of Rawls' arguments make the theories more dissimilar than alike. I then, within the fourth chapter, begin to move away from the concentration on texts to my own discussions of the general philosophical issues brought to the fore in the preceding investigation. These discussions are split into broad questions regarding Rawls' theories. The style of writing also becomes somewhat different at this stage, being almost entirely without footnotes, for example, as it is meant to concentrate on ideas in the most pure form I was able to muster.

All preceding chapters are taken to lead to the final, in which I seek to lay the foundations of a new theory of political philosophy. For myself, this is the most important part of this work, and the most exciting. Following on from the results of the discussions of Rawls laid out in the second half of chapter four, I attempt to create a basis for a theory which is not susceptible to the weaknesses which are quite clearly inherent in Rawls' ideas. I begin with the difficulty of knowledge and absolutes, moving on to the problem of creating a theory in the face of moral and theoretical subjectivity. Then, incorporating what I see as the only proper aim and methodology of political and moral philosophy, I argue that different aspects of theory should be split according to their ability to claim that they are based on 'fact', or observable phenomena. The result is what I hope is a rock-solid foundation of what one day may be developed into a more complete theory.

Chapter One:

Rawls' Project

Context and Reasons for Writing

The context of writing, especially in the United States, was one of a widespread dissatisfaction with the status quo. Civil rights, anti-racism and anti-war movements were rocking the country and bringing difficult questions to the fore. As Norman Daniels states, in the introduction to *Reading Rawls*, '*A Theory of Justice* was published on the heels of a period of intense political struggle and questioning, a period of serious challenge to liberalism'¹. However, I would suggest that the period did not so much challenge liberalism, as highlight the flaws and inconsistencies in the liberal system of the time. The United States especially, while theoretically espousing the idea of universal equality and political freedom, was quite often demonstrating a very different system to be in existence.

There were also problems in the theoretical arena, as Rawls notes in *A Theory of Justice*. The problem as he sees it is that we are being offered only two alternatives; utilitarianism on the one hand, intuitionism on the other. Both of these are equally unacceptable. Utilitarianism is rejected at the outset because 'each person possesses an inviolability founded on justice that even the welfare of society as a whole cannot override ... [justice] does not allow that the sacrifices imposed on a few are outweighed by the larger sum of advantages enjoyed by many ... the rights secured by justice are not subject to political bargaining or to the calculus of social interests'². The greatest fault is that 'it does not matter, except indirectly, how [the] sum of satisfactions is distributed among individuals'³, meaning that utilitarianism can often lead to 'falsehood and oversimplification'⁴. Any system that does not guarantee the rights of each person is to be discarded.

Intuitionist theories have two particular features. 'First, they consist of a plurality of first principles which may conflict to give contrary directives in particular types of cases; and second, they include no specific method, no priority rules, for weighing these principles against one another: we are simply to strike a balance by intuition, by what seems to us most clearly right'⁵. Such a method would be seriously flawed as it is subject to 'custom and current expectations'⁶. If each individual or society were asked to judge a particular issue without reference to any form of independent or objective argument then we are likely to simply be left with the deadlock of moral relativism. Rawls states that in

¹ Norman Daniels, Introduction to *Reading Rawls: Critical Studies of A Theory of Justice*, (Oxford, Basil Blackwell, 1975), pp. xiv-xv

² John Rawls, *A Theory of Justice*, revised edition (Oxford, Oxford University Press, 1971 & 1999), pp. 3-4

³ J. Rawls, *A Theory of Justice*, rev ed, pp. 23

⁴ J. Rawls, *A Theory of Justice*, rev ed, pp. 35

order to counter this, a form of argument must be presented that goes beyond such a possibility so that we are able to judge a myriad of societies using similar criteria. Or, in other words, 'a refutation of intuitionism [must consist] in presenting the sort of constructive criteria that are said not to exist'⁷. Rawls' goal, then, is to provide some form of system by which we are objectively able to discern the justice of any given society. He, as so many before him, is in search of the Archimedean point through which we can establish a universal justice applicable to all.

⁵ J. Rawls, *A Theory of Justice, rev ed*, pp. 30

⁶ J. Rawls, *A Theory of Justice, rev ed*, pp. 31

⁷ J. Rawls, *A Theory of Justice, rev ed*, pp. 35

The most important statement of justice that Rawls presents is simple in its fundamental idea and forms the basis of all subsequent arguments on justice in *A Theory of Justice*. Rawls names this the 'general conception of justice'. It is expressed as follows:

All social values – liberty and opportunity, income and wealth, and the social bases of self-respect – are to be distributed equally unless an unequal distribution of any, or all, of these values is to everyone's advantage⁸.

Injustice is taken to be 'simply inequalities that are not to the benefit of all'⁹. Formulated as such, it would be quite justified to apply Rawls' own criticisms of intuitionism to his own theory, as it is so general as to make any kind of distinctions in the real world meaningless, something which Rawls is quite aware of himself. He therefore attempts to restate the general conception more specifically. In doing this, he splits it into parts, each supposedly having exactly the same meaning as the general conception, where each part is given a priority relative to the others (lexical priority).

The final formulation of the principles of justice, or the 'special conception', as he calls it, is given as follows:

⁸ J. Rawls, *A Theory of Justice*, rev ed, pp. 54

⁹ Ibid.

First Principle

Each person is to have an equal right to the most extensive total system of equal basic liberties compatible with a similar system of liberty for all.

Second Principle

Social and economic inequalities are to be arranged so that they are both:

- a) to the greatest benefit to the least advantaged, consistent with the just savings principle, and
- b) attached to offices and positions open to all under conditions of fair equality of opportunity.

First Priority Rule (The Priority of Liberty)

The principles of justice are to be ranked in lexical order and therefore the basic liberties can be restricted only for the sake of liberty. There are two cases:

- a) a less extensive liberty must strengthen the total system of liberties shared by all;
- b) a less than equal liberty must be acceptable to those with the lesser liberty.

Second Priority Rule (The Priority of Justice Over Efficiency and Welfare)

The second principle of justice is lexically prior to the principle of efficiency and to that of maximizing the sum of advantages; and fair opportunity is prior to the difference principle. There are two cases:

- a) an inequality of opportunity must enhance the opportunities of those with the lesser opportunity;
- b) an excessive rate of saving must on balance mitigate the burden of those bearing the hardship¹⁰.

When stated as such we realise what the principles of justice have come to mean. Equal liberties take precedence over equal opportunity, which in turn takes precedence over the equalization of resources. The equal liberties stated here are compatible with the liberties that we take for granted in liberal democratic states: those of the right to vote, free speech, due process, the freedom of assembly, the freedom of movement.

I have something to say about Rawls' theory, its propositions and assumptions, but shall postpone this for the moment, instead confining myself to as succinct and clear an exposition of Rawls' theory as possible. Following this methodology, therefore, it is left for me to expound Rawls' two arguments for his principles of justice. One is considered more important by Rawls, and is by far the more famous of the two, while both are necessary to a true understanding of *A Theory of Justice*. The first, better known theory, is the one that attempts to follow the tradition of social contract theorists such as Locke and Rousseau, and imagines what rationally self-interested persons, deprived of certain information about themselves and the society they live in, would choose. The deprivation of this information is well known as the 'veil of ignorance' and Rawls supposes that the application of this particular form of ignorance to those in the 'original position' would render them unable to choose any other form of strategy than the one Rawls imagines, which he names the 'maximin' strategy. The second argument is less controversial and involves Rawls demonstrating that his conception of fairness is preferable to what he takes to be the dominant view of justice: simple equality of opportunity. I shall state both arguments, beginning with the equality of opportunity argument, before moving on to analysis and critique.

¹⁰ J. Rawls, *A Theory of Justice, rev ed*, pp. 266

The reasoning behind Rawls' intuitive argument relates to what he terms the 'liberal' conception of equality, which he sees as being inherently flawed. The liberal conception is taken to be the current view and involves the prescription that 'those who are at the same level of talent and ability, and have the same willingness to use them, should have the same prospects of success regardless of their initial place in the social system'¹¹. However, while there are great benefits to be seen in this system, Rawls points out that 'intuitively it still appears defective'¹². The liberal view attempts to compensate for the lottery of social position at birth but does not compensate for, or even recognise, the arbitrariness of what Rawls terms the 'natural lottery'. The current system as Rawls sees it 'still permits the distribution of wealth and income to be determined by the natural distribution of abilities and talents'¹³. However, 'there is no more reason to permit the distribution of income and wealth to be settled by the distribution of natural assets than by historical and social fortune ... from a moral standpoint the two seem equally arbitrary'¹⁴. As such, he goes on to say, the prevailing view is therefore 'unstable' and requires rectification.

Rawls' view is that, in a similar way to the liberal equality of opportunity, there should be some form of compensation for those elements of one's standing in society that are 'morally arbitrary'. A society can only truly be called 'fair' if it provides real equality and, in this context, that means acknowledging and providing compensation for the differences in natural assets. The 'difference principle' is used to provide this compensation. 'It transforms the aims of the basic structure [of society] so that the total scheme of institutions no longer emphasizes social efficiency and technocratic values. The difference principle represents, in effect, an agreement to regard the distribution of natural talents as in some respects a common asset and to share in the greater social and economic benefits made possible by the complementarities of this distribution. Those who have been favored by nature, whoever they are, may gain from their good fortune only on terms that improve the situation of those who have lost out'¹⁵. Rawls' proposition is not as radical, however, as might be imagined when one reads such a statement. 'No-one deserves his greater natural capacity nor merits a more favorable starting place in society. But, of course, this is no reason to ignore, much less to eliminate these distinctions. Instead, the basic structure can be arranged so that these contingencies work for the good of the less fortunate. Thus we are led to the difference principle if we wish to set up the social system so that no one gains or loses from his arbitrary place in the distribution of natural assets or his initial position in society without giving or

¹¹ J. Rawls, *A Theory of Justice*, rev ed, pp. 63

¹² J. Rawls, *A Theory of Justice*, rev ed, pp. 64

¹³ Ibid.

¹⁴ J. Rawls, *A Theory of Justice*, rev ed, pp. 64-5

¹⁵ J. Rawls, *A Theory of Justice*, rev ed, pp. 87

receiving compensating advantages in return'¹⁶. Naturally talented people can expect to receive greater income, as in the prevailing liberal system, but, because they do not deserve their natural advantages, their better incomes are just only if they also work to the advantage of those who are not so lucky.

He takes pains to point out that the difference principle is not simply the same idea as the principle of redress. It is intended to be wider than that. For example, Rawls speaks of the role of education as being more than simply making people more productive and efficient. Education in Rawls' society would be an essential part of improving the prospects of the less advantaged in terms of living standards, but would also play an important role in improving their general quality of life through a greater level of self respect and worth. Investing in the education of the losers in the natural lottery, via the difference principle, would mean that they would also be able to enjoy the culture of their society, in effect to become more involved in 'its affairs', this being linked to the importance of one's fundamental 'self-respect'. I now move on to the more famous of the two arguments, Rawls' theory of the 'original position' and 'veil of ignorance'.

¹⁶ Ibid.

Rawls' aim with regards to the original position argument is stated as follows: 'To present a conception of justice which generalizes and carries to a higher level of abstraction the familiar theory of the social contract as found, say, in Locke, Rousseau, and Kant'¹⁷. Before moving on to explicate Rawls' theory in more detail, however, there are two points of common misunderstanding that are worth stating explicitly at the outset so as to avoid foolish criticisms or misunderstandings. The first involves the view that Rawls is, as Hobbes or Rousseau might be said to have been, attempting to imagine people as they might have been in some kind of pre-societal state and the actual values and qualities that they could actually have had in such a situation. With regards to Rawls, this is quite false. He states quite explicitly at the outset that 'this original position is not, of course, thought of as an actual historical state of affairs, much less as a primitive condition of culture. It is understood as a purely hypothetical situation characterized so as to lead to a certain conception of justice'¹⁸. It would therefore be a waste of time to endeavour to criticise Rawls for his psychological account of pre-societal man. This is quite simply a position that Rawls does not take. The second point is connected with the idea that Rawls makes the mistake of not beginning from first principles in his argument because he does not fully appreciate the consequences of what a veil of ignorance would entail. While more will be said later on this point, it is enough at this stage to note the reason *why* the original position is invoked at all. It is important to bear in mind exactly what state the original position is meant to realise, that the original position is meant to enshrine the idea of 'an *initial position of equality*'¹⁹. It is from this original position of equality that the principles of justice are to be chosen, with the proviso that 'free and rational persons [are] concerned to further their own interests'²⁰. It is, therefore, with the idea that the principles chosen are being selected from a hypothetical position of pure equality that Rawls is able to call his principles of justice 'justice as fairness'²¹. Claims that Rawls' theory are 'unrealistic', in the sense of presenting a false picture of pre-societal human groups or people's psychological propensities, are dismissible due to the fact that the premise of Rawls' argument here is equality and *not* some form of actual contract.

The original position, in attempting to bring out a true state of equality, in effect means that certain qualities of the future members of society are withheld from them while they take their decisions. 'Among the essential features of [the original position] is that no one knows his place in society, his class or social status, nor does any one know his fortune in the distribution of natural assets and abilities, his intelligence, strength, and the like'²². This is quite clearly

¹⁷ J. Rawls, *A Theory of Justice*, rev ed, pp. 10

¹⁸ J. Rawls, *A Theory of Justice*, rev ed, pp. 11

¹⁹ J. Rawls, *A Theory of Justice*, rev ed, pp. 10

²⁰ *Ibid.*

²¹ *Ibid.*

²² J. Rawls, *A Theory of Justice*, rev ed, pp. 11

related to the intuitive argument. Rawls is here attempting to remove the lottery of both natural and societal assets. There are then two other qualities that those in the original position have that are quite fundamental to an understanding of Rawls. The first is that 'the parties do not know their conceptions of the good or their special psychological propensities'²³. The parties are therefore supposed to be ignorant of what kind of life they would strive for, and this ignorance of any 'special psychological propensities' allows Rawls to more easily argue for his 'maximin' strategy when it later comes to choosing the outcomes of the original position²⁴. He has been particularly criticised for this as others have argued that it would be quite possible to have parties in Rawls' original position choose a more risky strategy if they were so inclined. However, as will be shown in due course, Rawls designs the original position in large part to gain precisely the outcome that he desires. The parties in the original position are given only the qualities that will lead to his ends. A good example of this is highlighted by the second fundamental quality Rawls assigns to those in the original position. While having first said that they have no particular psychological propensities, he then immediately points out that they 'are conceived as not taking an interest in one another'²⁵. Thus, 'since each desires to protect his interests, his capacity to advance his conception of the good, no one has a reason to acquiesce in an enduring loss for himself in order to bring about a greater net balance of satisfaction'²⁶. We can see from these extracts an important aspect of Rawls' methodology when choosing his principles of justice, he is not concerned with attempting to imagine a non-societal state with any sense of probability or impartiality, it is simply designed to provide support for his conception of justice. The idea here is simply to make vivid to ourselves the restrictions that it seems reasonable to impose on arguments for the principles of justice, and therefore on these principles themselves'²⁷. 'One excludes the knowledge of those contingencies which set men at odds and allows them to be guided by their prejudices'²⁸.

I think it is worthwhile bringing out another characteristic of Rawls' methodology at this point, so that we are correctly informed in all of our future discussions. It is important as it marks a very significant shift from the tradition into which he reports he is attempting to place himself. While it is almost certain that such writers as Rousseau and Locke designed their states of nature in such a way as to lead to the outcomes they had previously chosen, I do not believe this is stated explicitly in their comments on their own methods. Rawls, however, is quite different:

²³ J. Rawls, *A Theory of Justice, rev ed*, pp. 11

²⁴ J. Rawls, *A Theory of Justice, rev ed*, pp. 132-3

²⁵ J. Rawls, *A Theory of Justice, rev ed*, pp. 12

²⁶ J. Rawls, *A Theory of Justice, rev ed*, pp. 13

²⁷ J. Rawls, *A Theory of Justice, rev ed*, pp. 16

²⁸ J. Rawls, *A Theory of Justice, rev ed*, pp. 17

In searching for the most favoured description of [the original position] we work from both ends. We begin by describing it so that it represents generally shared and preferably weak conditions. We then see if these conditions are strong enough to yield a significant set of principles. If not, we look for further premises equally reasonable. But, if so, and these principles match our considered convictions of justice, then so far well and good. But presumably there will be discrepancies. In this case we have a clear choice. We can either modify the account of the initial situation or we can revise our existing judgments, for even the judgments we take provisionally as fixed points are liable to revision. By going back and forth, sometimes altering the conditions of the contractual circumstances, at others withdrawing our judgments and conforming them to principle, I assume that eventually we shall find a description of the initial situation that both expresses reasonable conditions and yields principles which match our considered judgments duly pruned and adjusted. This state of affairs I refer to as reflective equilibrium²⁹.

So, unlike the traditional contractual theorists, he does not suppose himself to be appealing to any sense of self-evidence in his work, a point that is a common criticism of the theories of Locke, for example. However, on the other hand, he immediately exposes the true nature of the original position and, I believe, this hugely detracts from its potency. One of his stated aims is to find an impartial perspective from which to view society. Quite clearly, though, no such impartiality is to be found. I shall say more on this when I move on to analysis and critique but at this point, it is enough to note that Rawls in essence sees the original position as a device which means that 'the principles of justice are the result of a fair agreement or bargain'³⁰.

²⁹ J. Rawls, *A Theory of Justice*, rev ed, pp. 18

³⁰ J. Rawls, *A Theory of Justice*, rev ed, pp. 11

Let us begin by noting one of the basic premises that Rawls makes, one that is traditionally not associated with contract theorists but with Aristotle: the idea of a good life. The good life forms an important part of Rawls' theory and provides the basis of the argument for both the difference principle and the maximin strategy.

Let us begin with Rawls' conception of a good life. 'A person's good is determined by what is for him the most rational long-term plan of life given reasonably favourable circumstances. A man is happy when he is more or less successful in the way of carrying out this plan. To put it briefly, the good is the satisfaction of rational desire. We are to suppose, then, that each individual has a rational plan of life drawn up subject to the conditions that confront him'³¹. As we progress through our lives, as long as we make the best choices available to us in accordance with rationality, we should be considered as happy as we could conceivably be. Even if we subsequently experience misfortune that is no fault of our own we can still be considered as happy as we could have been. Rawls' theory further attempts to move beyond any singular conception of the good, and allows that the good is not independently judgeable but valid for each individual. 'It may be objected that expectations should not be defined as an index of primary goods anyway but rather as the satisfactions to be expected when plans are executed using these goods. After all, it is in the fulfillment of these plans that men gain happiness, and therefore the estimate of expectations should not be founded on the available means. Justice as fairness, however, takes a different view. It is assumed that the members of society are rational persons able to adjust their conceptions of the good to their situation'³². As such, the role of society in Rawls' view is to provide the framework within which people will find happiness through executing their own rational plans. 'It is worth noting that this interpretation of expectations represents, in effect, an agreement to compare men's situations solely by reference to things which it is assumed they all normally need to carry out their plans'³³. These, in Rawls' theory, are described as 'primary goods' and constitute the minimum set of goods that are necessary for each of us to pursue a good life. The primary goods correspond to the two aspects of the lottery of birth that Rawls is attempting to rectify.

³¹ J. Rawls, *A Theory of Justice*, rev ed, pp. 81

³² J. Rawls, *A Theory of Justice*, rev ed, pp. 82

³³ *Ibid.*

Primary goods are split into two kinds:

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, liberties, and opportunities, and income and wealth. These are the social primary goods. Other primary goods such as health and vigor, intelligence and imagination, are natural goods³⁴.

Although each of us has a different set of goals, dreams and desires, these primary goods constitute the most essential prerequisites all of us will have in our pursuit of happiness or fulfilment. Each of us should have these essentials guaranteed and the minimum level of these goods should be as high as possible. This leads us to the difference principle. Rawls' argument in favour of the difference principle is as follows: 'Since it is not reasonable for [someone] to expect more than an equal share in the division of social primary goods, and since it is not rational for him to agree to less, the sensible thing is to acknowledge as the first step a principle of justice requiring an equal distribution. Indeed, this principle is so obvious given the symmetry of the parties that it would occur to everyone immediately. Thus the parties start with a principle requiring equal basic liberties for all, as well as fair equality of opportunity and equal division of income and wealth'³⁵. However, 'if there are inequalities in income and wealth, and differences in authority and degrees of responsibility, that work to make everyone better off in comparison with the benchmark of equality, why not permit them? ... Because the parties start from an equal division of all social primary goods, those who benefit least have, so to speak, a veto. Thus we arrive at the difference principle. Taking equality as the basis of comparison, those who have gained more must do so on terms that are justifiable to those who have gained the least'³⁶. The difference principle is chosen because it helps everyone to secure their primary goods, and the effect is that only if the poorest are better off than they would have been under another system is it to be called 'just'. The result is rather a strange alteration to what one normally associates with rational self-interest. As we soon discover, this is one of the major reasons behind the veil of ignorance being employed. 'Once we consider the idea of a contract theory it is tempting to think that it will not yield the principles we want unless the parties are to some degree at least moved by benevolence, or an interest in one another's interests'³⁷. Rawls' solution to this question is to take two aspects of his theory and make an interesting, if not odd, conclusion. 'Now the combination of mutual disinterest and the veil of ignorance achieves much the same purpose as benevolence. For this combination of conditions forces each person in

³⁴ J. Rawls, *A Theory of Justice, rev ed*, pp. 54

³⁵ J. Rawls, *A Theory of Justice, rev ed*, pp. 130

³⁶ J. Rawls, *A Theory of Justice, rev ed*, pp. 130-1

³⁷ J. Rawls, *A Theory of Justice, rev ed*, pp. 128

the original position to take the good of others into account'³⁸. It is only at this point that we find out the true nature of Rawls' rational self-interest as he goes on to say that 'the feeling that this conception of justice is egoistic is an illusion fostered by looking at but one of the elements of the original position. Furthermore, this pair of assumptions has enormous advantages over that of benevolence plus knowledge. As I noted, the latter is so complex that no definite theory at all can be worked out'³⁹. In essence, therefore, Rawls seems to be here using a device of rational self-interest to achieve benevolence, essentially turning self-interest entirely on its head through the use of the veil of ignorance. I move on to criticise this position in the next section of this chapter after first completing the most important remaining aspects of Rawls' theory.

³⁸ J. Rawls, *A Theory of Justice, rev ed*, pp. 128-9

³⁹ J. Rawls, *A Theory of Justice, rev ed*, pp. 129

The strategy Rawls argues would be invariably chosen by those in the original position is named 'maximin'. It is supposed to 'maximise' the standing of those who are in the 'minimum' position of society, hence its name. The meaning of the strategy is illustrated by way of an analogy involving what 'a person would choose for the design of a society in which his enemy is to assign him his place. The maximin rule tells us to rank alternatives by their worst possible outcomes: we are to adopt the alternative the worst outcome of which is superior to the worst outcomes of the others'⁴⁰. The given explanation for this is that the alternative is unacceptable. Each person in the original position does not have any idea exactly what position he is to take up in society once the veil of ignorance is 'lifted'. Therefore, 'it is not worthwhile for him to take a chance for the sake of a further advantage, especially when it may turn out that he loses much that is important to him'⁴¹. Due to the necessity of primary goods and their guaranteed place in society, it becomes foolish for those in the original position to choose to gamble away their goods for unknown odds of increased wealth. We have only one life to lead, we cannot know what our place in society is likely to be, 'and having the ready alternative of the two principles of justice which secure a satisfactory minimum, it seems unwise, if not irrational, for them to take a chance that these conditions are not realized'⁴². The aim of life is to lead a good life. A good life cannot be led without access to primary goods. Therefore, it will always be rational to guarantee one's primary goods and always irrational to gamble them away. Rawls thus arrives at a justification for protecting rights and a principle which allows inequalities the possibility of being considered just, so long as the poorest section of society is provided with as much of a share of the total goods as is reasonably possible.

Worth quickly noting before moving on is an experiment conducted by Frolich and Oppenheimer in which exactly this question was asked. Those being tested were asked to choose what form of group rewards they would prefer to have if they did not know what future position in this group they were to occupy. The final result was actually a kind of hybrid of utilitarianism and Rawls' maximin strategy. They chose to maximise the general level of utility, subject to some minimum floors that actually proved to be higher than Rawls might have predicted⁴³.

⁴⁰ J. Rawls, *A Theory of Justice, rev ed*, pp. 133

⁴¹ J. Rawls, *A Theory of Justice, rev ed*, pp. 134

⁴² J. Rawls, *A Theory of Justice, rev ed*, pp. 135

⁴³ Norman Frohlich & Joe A. Oppenheimer, *Modern Political Economy* (Englewood Cliffs, N.J., Prentice-Hall, 1978)

Analysis and Critique

I do not propose to move through Rawls' entire theory and analyse each and every aspect to be found. Instead, I will proceed by taking what I see to be the most important links in the chain, as it were, and put forward my views before then moving on to look at the views and reactions of others in chapter two. I will try to keep my views as concise as possible.

The Intuitive Argument

I find the intuitive argument really quite sound. Rawls highlights a flaw in the prevailing view of justice when he states that not all of the potential inequalities are always recognised. If we are to follow the view that all individuals should be regarded as morally equal, and should therefore receive compensating advantages for whichever morally arbitrary facets are given to them at birth, then I believe that Rawls is right to highlight natural assets as just another morally arbitrary quality. In subscribing to the view that in true fairness all should be given an equal opportunity in life, it seems that not only compensating for one's social position but also for whether one happens to have such natural talents as intelligence or an aptitude for music should be given some form of consideration. One of the main examples of the compensation for the 'natural lottery' Rawls chooses is extra schooling for those of lesser natural aptitude. I agree with such a view because it is surely one of the 'goods' of life to be able to understand the world around you, and any lesser ability to do this on the part of an individual is by no means their own fault.

There is, however, a very important feature of moral arbitrariness that Rawls either does not recognise or fully endorses which I see as a major oversight of his theory. It is a fundamental assumption that he makes early on and gives very little consideration to, as shown by the following statement: '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'⁴⁴. Throughout Rawls' discussions this line of thinking is continued, always seeing society as an independent unit. I beg the question, however, of why this should be. It appears that Rawls' strongest wish is to give equal consideration to the plight of each and every person as a morally valuable individual, which involves recognising and removing those features of the individual that are morally arbitrary. In doing so, however, I contend that he does not fully follow the logic of his own line of reasoning. Let us consider the nature of societies and one's membership of them for a moment. Firstly, let us

⁴⁴ J. Rawls, *A Theory of Justice*, rev ed, pp. 7

note that what is commonly thought of when one talks of 'society' – a country – is very much a morally arbitrary unit in and of itself. While there is undoubtedly some truth to the view that many countries embody a great deal of moral worth, be it because the members of society share one language, a similar history, or a similar set of values, this is far from the whole picture. A country can be more logically conceived of as an economic and political unit as it is only these qualities of a country that remain closed. Language, values and culture do not adhere to the boundaries that we place on maps. They are firstly extremely hard to define and delineate, and secondly exist as a rough aggregation of the personalities of millions of people. Economic and political units, on the other hand, operate singularly and centrally, and are thus very easy to define. This is what we usually mean when referring to 'society'. We may feel that we are not a member of our country in emotional terms but, at least officially, this is largely irrelevant. We gain a passport from birth by default. Furthermore, the particular boundaries that a country happens to have at any one point in time are very much influenced by circumstance. Be it war, the splitting of one political unit or the amalgamation of others, much of the boundaries we now hold dear exist as the result of chance and violence. Our membership of any one society at any particular time is essentially arbitrary. My own view is that the society that an individual belongs to is actually irrelevant from the viewpoint of moral equality. Consequently, if we are committed to alleviating those constraints that are morally arbitrary because they are given involuntarily, this must include compensation for the membership of whatever country one happens to have been born in. Any view that is attempting to treat all individuals as morally equal also needs to acknowledge this aspect of our lives. Can the difference principle therefore be invoked for American, Japanese or European citizens with regards to Nepal or the Sudan? I believe that it must be as an extension of Rawls' own argument. But this will be returned to in due course.

The Original Position

While the original position presents a very interesting argument, in its essential propositions it is rather poor. As we have seen above, a detailed investigation highlights the fact that Rawls is confused in his goal of gaining an objective viewpoint from which to judge the justice of any particular society. While he gives the *illusion* that he is beginning with the qualities he believes those in the original position might have, he has prechosen the final principles of justice he will 'discover' and then adjusts the original position accordingly. His response to this would be that he has invoked the process of 'reflexive equilibrium' but in choosing the 'results' of one's theory and the arguments supporting them at the same time, one cannot also profess to have reached an objective position from which to judge society. Why then present the principles of justice as being gained from a consideration of an original position in the first place? In effect, the qualities that he gives those in the original position are arbitrary, as the choosing of one quality over another is given with partial reference to the results he wants to achieve. For example, because he has already decided to choose the strategy of maximin, those in the original position are only allowed a particular propensity with regards to gambling. This is as arbitrary as me giving those in *my* original position a propensity to gamble everything they have because the guaranteed goods for the least fortunate members of society should be lower. Why should we choose my view over Rawls', or Rawls' over mine? It seems quite clear that, while it is foolish to criticise Rawls on the actual qualities he gives those in his original position because 'people are not really like that', it is quite valid to criticise him for using this method of reasoning at all. When saying this, I have at the back of my mind the methodology of Aristotle in which one takes the evidence or first principles that can be objectively observed and then works towards a conclusion through logical deduction. This appears to be far closer to any idea of objectivity. Overall, it seems that Rawls, in contrast, is invoking a form of argument that is as prone to the criticisms of intuitionism as those he himself makes about intuitionism.

Another tenet of Rawls' theory that strikes me as strange is his use of rational self-interest to discern a theory which in practice essentially becomes empathy. Isn't this seeking to turn black into white? Rational self-interest that has been, in essence, turned on its head is surely no longer rational self-interest in the same sense. It is rational self-interest subject to the many qualifications and hypothetical situations that Rawls puts it through. Therefore, why call it by the same name? This is the first point. The second is the way in which Rawls seems to take something away from benevolence itself. I believe that a degree of what can be said to be praiseworthy in his theory is lost because of the way in which it is formulated. Rawls, to a greater or lesser extent, is proposing a form of sharing, giving and the protection of those most unable to protect themselves so that they may also lead a good life. However, it is not called

by what it would be in its simple and straightforward sense. I think this detracts from the essential humanity that can be said to be an admirable aspect of Rawls' underlying propositions. I do not see why generosity, caring for others, and the securing of a satisfactory minimum standard of life for all cannot simply be stated to be good qualities. Why is it not possible to state that we, as a society, choose to endorse these qualities because we empathise with those worse off than ourselves and therefore wish to help? This is a discussion we will return to.

A further, closely related question again concerns rational self-interest. I do not believe that Rawls spends a great deal of time relating why rational self-interest should be taken to be the most valid form of consideration when investigating questions of morality and justice. As human beings, we are in real life a mixture of rationality and belief, and selfless characteristics are also significant. I contend that making our life decisions based on a consideration of rational self-interest alone is incomplete. For example, part of my own perception of a good life is leaving the world a better place than that in which I found it.

Having now criticised Rawls' theory on several points, I move on to counter these with what I see as being the main advantage of the contractual argument. While I believe the argument in and of itself has serious flaws, I do recognise the fact that it very much captures one's imagination. We will see in the chapters to follow how the original position argument received a great deal more attention than the other aspects of Rawls' theory and it is difficult to deny that Rawls added something new and fascinating to the contract tradition. It is important to recognise this aspect of Rawls' theory in its own right. One soon comes to the conclusion that the power of capturing the imagination should not be underestimated. Much of the academic community were surprised at the time of publication at the reaction Rawls' book received in the more popular press⁴⁵. Perhaps this is a feature of political theory that deserves a greater deal of recognition. Perhaps, in fact, one may even say that the ability to capture the attention of as wide an audience as possible is an integral part of a good political theory. A political theory does not need to be excessively complex to be effective. The central ideas of Rawls' theory are straightforward and powerful. As can be said of the theories of Marx, the essential concepts are simple, powerful, and have the ability to capture the imagination.

The other main issue that strikes me about Rawls' theory is again related to the use of rational self-interest in achieving what is essentially benevolence. It might be said that an argument supporting generosity that uses self-

⁴⁵ Amy Gutmann, provost of Princeton University and Laurance S. Rockefeller University Professor of Politics and the University Center for Human Values, states that: "Although Rawls avoided publicity like the plague, he could not control the reception of *A Theory of Justice*, which was unprecedented in contemporary philosophy within and outside the academy. The intricately argued book has sold more than a quarter-million copies in English, and has been translated into 20 languages." Quote taken from the Princeton University website - http://www.princeton.edu/~paw/archive_new/PAW02-03/08-0129/features3.html

interest was necessary in the cynical world in which we live. While I feel it to be rather unfortunate to have to do so, if the *effect* of a theory is an overall increase in benevolence, then perhaps the method should not be underestimated. If there is a way to gain a greater general sense of selflessness in Western societies that happens to use self-interest as its basis, but works, surely this cannot be a bad thing.

The alternative interpretation of Rawls' theory, as one might have it, would be rather different. This is not so much a criticism of Rawls because, as stated earlier, attempting to criticise Rawls for having a false view of human nature in the original position might be seen to be missing the point of his theory. However, this does not prevent someone from imagining a different original position. I would beg the question of if we are to use a veil of ignorance at all, why not extend ignorance to its full extent? If we were ignorant of who was a member of our own family, for example, then I would imagine that this would bring out a feeling of benevolence in a truer sense of the word. If we were to place ourselves in a hypothetical situation in which *all* knowledge about our circumstances was removed from us: what particular country we happened to live in, what particular family we happened to be a member of, as well as our social position and given natural assets, the conclusions we might reach would be rather different. If each and every person was treated as a moral equal in this way, as a potential member of one's own family, then the care given to all people should be greatly enhanced. This would bring out a sense of benevolence that would not need to be hidden behind a veil of selfishness. I believe that I am correct in stating that this is a practice that Buddhists partake of during meditative practices. Perhaps if we were to have an 'original position' with a *true* sense of ignorance, more good would actually come of it in the end. We might even be able to arrive at generosity and actually be able to admit it to ourselves.

Chapter Two:

“Communitarian” Responses to Rawls

Charles Taylor

Rawls explicitly states that he bases a great deal of his theory on the work of Kant and then attempts to make it more applicable to modern society. Hegel’s work highlighted flaws in Kant’s theories and, as such, is therefore particularly relevant to a study of Rawls because it can throw light on some of the fundamental premises of Rawls’ theory. I would therefore like to spend some time on Taylor’s article before moving on to its implications for Rawls’ work.

The first thing to note is related to a fundamental point of Hegel’s theory. Hegel believes that freedom is an essential aim of man, and that this freedom can only be obtained by having society ordered in accordance with reason. This ties into Hegel’s ontological view, whereby the universe is rational and ordered⁴⁶. The fact that society is or can be ordered in accordance with reason is thus an aspect of nature. His views on this are complex and fascinating, although ultimately somewhat implausible – the idea of there being a ‘cosmic spirit’ which orders all of existence; *Geist* which is in the process of self-realisation or becoming self-conscious and will result in the ‘end of History’. However, these wider philosophical questions are less relevant to a discussion of liberalism and Rawls so I will not pursue them here. The main point I wish to raise with regards to Hegel relates to the issue of freedom, the individual, and his relation to society.

Freedom for Hegel is a concept that can only be realised within society. ‘Full realization of freedom requires a society for the Aristotelian reason that a society is the minimum self-sufficient human reality. In putting *Sittlichkeit* at the apex, Hegel is – consciously – following Aristotle.’⁴⁷ *Sittlichkeit* ‘enjoins us to bring about what already is’⁴⁸. It is the moral obligation to maintain what exists within society, its customs and practices as well as its values, where ‘there is no gap ... between *Sollen* and *Sein*’⁴⁹. This is in contrast to *Moralität*, the main element of Kant’s theory in Hegel’s eyes, in which ‘we have an obligation to realize something which does not exist. What ought to be contrasts with what is’⁵⁰. Kant’s categorical imperative is the primary example of *Moralität*, a set of values that exist only hypothetically,

⁴⁶ Iain Hampsher-Monk, *A History of Modern Political Thought: Major Political Thinkers From Hobbes to Marx* (Oxford, Blackwell Publishers Ltd, 1992), pp. 419–429

⁴⁷ Charles Taylor, *Hegel: History and Politics* in Michael Sandel (ed), *Liberalism and Its Critics* (Oxford, Basil Blackwell, 1984), pp. 179

⁴⁸ C. Taylor in M. Sandel, *Liberalism and Its Critics*, pp. 177

⁴⁹ C. Taylor in M. Sandel, *Liberalism and Its Critics*, pp. 178

⁵⁰ *Ibid.*

but that we should attempt to realise because the use of universalisable reason tells us so. As such, what *is* differs greatly from what should be. We have goals and aims that are almost impossibly beyond us.

We can see that society is a natural aspect of man's nature because he cannot be fully 'complete' without it. One of man's most important ends or aims is the attainment of freedom, and freedom is something which can only be attained within a society. Man can only achieve his true ends within society and, subsequently, can only attain fulfilment if not alone. Moreover, in rather stark contrast to liberal theories, individuals take their 'substance' or 'essence' from their society. 'Substance' and 'essence' in Hegel's usage mean that individuals are only what and who they are because of 'their inherence in the community'⁵¹. 'Everything that man is he owes to the state; only in it can he find his essence. All value that a man has, all spiritual reality, he has only through the state'⁵². It is important to note at this point that the term 'state' for Hegel does not refer to the institutional machinery of government that we tend to associate with this term but a more general political grouping that is often referred to as 'society'. Therefore, man is not only a part of society but a part of society, and an important part at that, forms a part of man.

The result of Hegel's basis of society is that the relationship between man and his society is radically and fundamentally different from that of liberal theories. Rawls' theory, for example, characterises society as the means through which man is to achieve his own, private, rational ends and is not concerned with any further type of relationship. However, when we look at Hegel this view is not only quite false but actually impossible. Hegel provides a strong contrast from Kant and Rawls when he states that 'this relation of ends and means is quite inappropriate [between individuals and their society] ... for the state is not something abstract, standing over the citizens; but rather they are moments as in organic life, where no member is end and none means'⁵³. The individual, therefore, if not separable from his society, *cannot* be serving an end that is separate from him. He is only who he is in this larger life of which he is a part.

This view of the individual and his relation to society has important implications. The most noteworthy is the fact that if the relationship between man and society is not simply one-sided but reflexive, this will mean that a significant part of what I think and do as an individual will be influenced and shaped by my having grown up in the society that I have. Clearly, this will have ramifications for the degree of objectivity that an individual is able to have with respect to his society. It would mean that each individual would need to at least acknowledge the fact that a significant number of

⁵¹ C. Taylor in M. Sandel, *Liberalism and Its Critics*, p. 181

⁵² Hegel, *Die Vernunft in der Geschichte*, ed. J. Hoffmeister (Hamburg, 1955), 111

⁵³ Hegel, *Die Vernunft in der Geschichte*, ed. J. Hoffmeister, 112

his own opinions had been formed in large part by the views that he had absorbed. Our experience is partly shaped by our interpretation of it, and this relies heavily on our cultural backgrounds. A very good example is given to illustrate this - that of language:

We can think that the individual is what he is in abstraction from his community only if we are thinking of him *qua* organism. But when we think of a human being, we do not simply mean a living organism, but a being who can think, feel, decide, be moved, respond, enter into relations with others; and all this implies a language, a related set of ways of experiencing the world, of interpreting his feelings, understanding his relation to others, to the past, the future, the absolute, and so on. It is the particular way he situates himself within this cultural world that we call his identity.

But now a language, and the related set of distinctions underlying our experience and interpretation, is something that can only grow in and be sustained by a community⁵⁴.

This acknowledgement of our being situated within society is dramatically different from Rawls' presumptions. The idea of what it means to be free also changes greatly. For Rawls, an individual is free when he is able to pursue his own sense of what is good, unhampered by society in any way. However, an interesting alternative is given by Taylor as he discusses Hegel, and is strongly related to identity. Hegel looked back to the ancients and, in doing so, saw a view of the relationship between man and his society that was far more attractive than liberalism. 'The happiest, unalienated life for man, which the Greeks enjoyed, is where the norms and ends expressed in the public life of a society are the most important ones by which its members define their identity as human beings. For then the institutional matrix in which they cannot help living is not felt to be foreign. Rather it is the essence, the "substance" of the self. "Thus in universal spirit each man has self-certainty, the certainty that he will find nothing other in existing reality than himself"⁵⁵. Hegel holds that the inconsistency between our everyday reality and what is right creates a conflict that is destructive and makes identity difficult for the individual. In other words, modern man looks to *Moralität* in universal reason for what is to be considered right and correspondingly criticises the real world and society that he sees around him. He cannot accept what he sees as correct, and thus has trouble feeling an affinity with his origins. The other view, the one that the Greeks supposedly held, is to be considered a state of freedom. 'To live in a state of this kind is to be free. The opposition between social necessity and individual freedom disappears'⁵⁶. The state is not restraining my essential, self-evident freedom in this case because the state is mine, is a part of me, and I do not therefore resent it for not allowing me to do certain things that are generally considered to be right.

⁵⁴ C. Taylor in M. Sandel, *Liberalism and Its Critics*, pp. 182

⁵⁵ C. Taylor in M. Sandel, *Liberalism and Its Critics*, pp. 185, quoting Hegel, *Phänomenologie des Geistes*, G. Lasson edition (Hamburg, 1952), pp. 258

Modern theories have led to society coming to be seen as little more than an instrument of my own desires and ends, as we see in the relationship proposed by Rawls. The society in which I was born, grew up in, and took so much from then means little to me aside from a way for me to achieve whatever I think is right for me. The problem is then one of identification for, upon this view of my relationship with society, what am I left with? To what do I belong? As Taylor states:

The revolution of modern subjectivity gave rise to another type of political theory. Society was justified not by what it was or expressed, but by what it achieved, the fulfilment of men's needs, desires and purposes. *Society came to be seen as an instrument* and its different modes and structures were to be studied scientifically for their effects on human happiness ... But this modern theory has not provided a basis for men's identification with their society ... modern societies have actually functioned with a large part of their traditional outlook intact, or only slowly receding ... or modern societies have had recourse either in revolutionary or "normal" times to the powerful secular religion of nationalism. And even societies which seem to be founded on the utilitarian tradition, or an earlier, Lockean variant, like the United States, in fact have recourse to "myth"⁵⁷.

So in modern society we have a problem of identification that is a result of the theory of liberalism. There is a gap, a question of belonging that cannot be answered by our dominant philosophical views and this gap is currently filled by nationalism and recourse to 'myth'. While this can have powerfully positive effects as being the glue that binds diverse societies together, it can also have perilous consequences. The total wars of the twentieth century are testimony enough.

Therefore, there is a deficiency in liberal theories. The fact is that they simply do not acknowledge the realities of life and the result is an inconsistency of identification that has to be filled with a form of belief. We must acknowledge that people are individuals, and this is very important, but this is only one aspect of being a human being. Should people fundamentally be considered individuals first and only members of their society second? Or is this a question that is essentially nonsensical? Does being an individual who 'constructs' his society actually make any sense? Surely, to take this point of view, we must first accept the view that an individual has and retains meaning independently from his society. However, without society what are we? To imagine an individual capable of being independent from his society is to imagine an individual capable of existing without language; to imagine an individual without culture, to

⁵⁶ C. Taylor in M. Sandel, *Liberalism and Its Critics*, pp. 185

imagine an individual who has devised his own set of values. Modern liberals would probably counter such a proposition, as Rawls does, with the view that making individuals independent of their society is not supposed to be taken literally, it is only a hypothetical situation designed to provide an idea of 'initial equality'. In doing this, Rawls avoids the accusation of imagining an 'unrealistic' conception of society rather well as the theory is not a reflection of some pre-societal or primitive situation, as mentioned above. However, he thus makes the mistake of not addressing the issue of what basis society then actually has. He sidesteps it by making his entire theory concerned with the hypothetical. In the process, however, he reduces the power of his theory from how things actually are or must be to little more than advice in the form: '*If we accept these preconditions then it should be so...*' In a similar way to Kant's *Moralität*, he becomes prone to the criticism of inapplicability. His theory tells us little about how things should be in the real world when we are not actually abstracting ourselves from society because his theory has little relation to any real society. It has little similarity to empirical fact. We can observe in the world around us that people share the vast majority of their views with their society and cannot live alone. Having once understood Rawls' theory, therefore, we are still left with the question of how we are supposed to reconcile his theory with a society where people are not actually fundamentally self-interested and cannot actually be separated from society in any way, but form a group of people who tend to care for each other and could not realistically live without each other.

⁵⁷ C. Taylor in M. Sandel, *Liberalism and Its Critics*, pp. 191-2, italics added.

MacIntyre develops several ideas that are of particular interest, not least because they break from general, currently held opinions so strongly. The idea of being 'born with a past', for example, is one that would not suit the palates of many contemporary writers and thinkers. However, despite this, or even because of it, he has much to add to the recent debate on liberalism and Western values. His discussion of Aristotelian ideas in a modern context and criticism of Sartre, Locke and Hume presents a valid counterpoint to large areas of liberal thinking.

One of MacIntyre's major criticisms of liberalism is that the individual is thought to be what he chooses to be, and, subsequently, that the good for each individual is what that individual thinks it is and nothing more. Within such a description the idea of a starting point or point of reference is not mentioned and not regarded as important. This can be said to be true of Rawls' theory when he abstains from discussing the realm of the individual's good life, instead providing the basis of a just society within which the individual can find his own good. The extreme, as MacIntyre mentions, is to be found in Sartre who goes as far as saying that one re-creates oneself daily and actions only take on meaning upon reflection, being at the time supposedly devoid of any kind of purpose⁵⁸. This viewpoint, however, is taken by MacIntyre to be meaningless because the idea of 'extracting' the self or making the self independent is quite impossible. Each person does not simply exist as though he or she were in some kind of timeless, unattached state, but has a 'setting' in MacIntyre's language. Furthermore, each 'setting has a history, a history within which the histories of individual agents not only are, but *have to be*, situated, just because without the setting ... the individual agent and his changes through time will be unintelligible'⁵⁹. Each individual takes his starting point as his societal inheritance. Where he then goes from there is unlimited, being the result of his own thoughts and decisions. There is nothing to stop the individual then searching for ideals and universals, but he must first acknowledge the influences that his background have had on him. MacIntyre makes what I believe to be a very good point in this vein when he states that even 'the rebellion against my [inherited] identity is always one possible mode of expressing it'⁶⁰. Also related to this, that 'the story of my life is always embedded in the story of those communities from which I derive my identity. I am born with a past; and to try to cut myself off from that past, in the individualist mode, is to deform my present relationships. *The possession of an historical identity and the possession of a social identity coincide*'⁶¹. Therefore, when theorists like Locke try to escape from particularity into a 'realm of entirely universal maxims', existing simply

⁵⁸ Norman Melchert, *The Great Conversation: A Historical Introduction to Philosophy*, 2nd ed. (Mountain View, CA, Mayfield Publishing, 1991), pp. 601

⁵⁹ Alasdair MacIntyre: *The Virtues, The Unity of a Human Life and the Concept of a Tradition* – A. MacIntyre, *After Virtue* (University of Notre Dame, Notre Dame, Indiana, 1981), pp. 128, italics added.

⁶⁰ A. MacIntyre, *After Virtue*, pp. 143

⁶¹ *Ibid.* italics added.

because of the fact that we are human beings, it is nothing other than an illusion with painful consequences. Any and all theories of the individual or human nature need to take account of the fact that I cannot escape being the bearer of a tradition. The idea of a person as an isolated individual is quite false.

Instead, MacIntyre proposes that actions are *only* intelligible as part of a narrative. This is due to the fact that 'we cannot ... characterize behaviour independently of intentions'⁶² and these intentions are only understandable within context or 'settings'. All actions are subjective, in that all actions are only intelligible once the intentions are known. Without intentions, an action will be entirely meaningless to us. Indeed, performing actions without any rationale is a sign of madness. Furthermore, the same action can be characterised in a number of ways, depending on the intentions of the person performing the action. To correctly understand an action, the purpose or *telos* of the action must also be known. This is something which is not at all foreign but is in fact used every day. MacIntyre makes the distinction between an 'occurrence' and an 'action', saying that an action can only be identified as 'flowing intelligibly from a human agent's intentions, motives, passions and purposes'⁶³. This is one of the things that separates human beings from other types of being. Upon seeing a ball roll across the floor, for example, a cat will immediately give chase, whereas a human being will turn to see why this event occurred. 'The notion of a history is as fundamental a notion as the notion of an action. Each requires the other'⁶⁴.

MacIntyre goes on to say, in relation to action only being understandable as part of a history, that a basic teleology is necessary to human life. The idea of an individual without it is the idea of no person who has ever existed. 'There is no present which is not informed by some image of some future and an image of the future which always presents itself in the form of a *telos* – or of a variety of ends or goals – towards which we are either moving or failing to move in the present'⁶⁵. This point is especially important in terms of the debate surrounding liberal premises. Liberal theorists have tended to produce ahistorical theories, which take absolutely no account of the teleological nature of human beings. This is true as much of present day thinkers as it was of those in the past: 'Empiricists, such as Locke or Hume [and analytical philosophers], tried to give an account of personal identity solely in terms of psychological states or events [and therefore] ... have failed to see that a background has been omitted, the lack of which makes the problems insoluble'⁶⁶. These theorists are taking a false understanding of human identity as the basis of their thinking. The idea of the 'individual' understood in the liberalist mode is impossible because an individual is not something that simply *is*

⁶² A. MacIntyre, *After Virtue*, pp. 127-8

⁶³ A. MacIntyre, *After Virtue*, pp. 131

⁶⁴ A. MacIntyre, *After Virtue*, pp. 136

⁶⁵ A. MacIntyre, *After Virtue*, pp. 137

⁶⁶ A. MacIntyre, *After Virtue*, pp. 139

but must have a history, a context and a *telos*. ‘The concept of a person is that of a character abstracted from a history’⁶⁷.

The idea of a *telos* in human actions and life is something reminiscent of Aristotle but is not the only aspect of MacIntyre’s work to show this. A further similarity is MacIntyre’s acknowledgement of the essential gregariousness of humankind. This comes across as he is speaking of the agent being not only an ‘actor’ in his own narrative, but also an ‘author’⁶⁸. He notes that all of us are deeply affected by others, even to the point where ‘we are never more (and sometimes less) than the co-authors of our own narratives ... In life, as both Aristotle and Engels noted, we are always under certain constraints ... Each of us being a main character in his own drama plays subordinate parts in the dramas of others, and each drama constrains the others’⁶⁹. MacIntyre is, I believe, here being self-consciously Aristotelian in raising an interesting and perhaps unusual point in modern debates, that it is inconceivable that we are anything other than a part of a whole.

A view such as MacIntyre’s becomes increasingly relevant to our investigation when we turn back to a discussion of Rawls’ theory. The insistence on the part of MacIntyre that all action and aspects of human life require the acknowledgement of a narrative or history highlights a lacking shown by Rawls. The first way in which this is shown is in Rawls’ non-recognition of his *own* narrative in his theory, MacIntyre stating in relation to this that ‘all reasoning takes place within the context of some traditional mode of thought, transcending through criticism and invention the limitations of what had hitherto been reasoned in that tradition’⁷⁰. While he does acknowledge that he takes many of his ideas from Kant, he still proposes that many of his ideas are *self-evident*, especially with regards to the veil of ignorance. This highlights Rawls’ very heavy reliance on intuition. The primary example is his assumption that all people are primarily self-interested without giving any particular supporting logic, only saying that the alternative would be too complicated to include. This assumption is then used as one of Rawls’ theory’s fundamental building blocks. He does not acknowledge that this view could simply have been a result of his *own* context, the influences that his surroundings had on him, and the possibility that these assumptions may not be true. It is simply taken as a given. Furthermore, Rawls explicitly strips individuals of their narratives so as to complete the construction of his theory. However, if we are to follow MacIntyre here, then this assumption on Rawls’ part is not acceptable, even in a purely theoretical formulation. If an absolutely fundamental aspect of being a human being is to have a narrative and *telos*, the exclusion of these for whatever reason will make the results that follow quite meaningless. This is clearly true of

⁶⁷ Ibid.

⁶⁸ A. MacIntyre, *After Virtue*, pp. 135

⁶⁹ Ibid.

Rawls' theory. He excludes the characteristics of being human that we commonly take to be what most separate us from other beings. The result is that he builds his overarching theory upon a theory of the individual that is false. Without the theory of the individual that Rawls proposes, the aspects of his theory that flow from the veil of ignorance would be unrecognisably different. Therefore, if we take MacIntyre's statements regarding the essential embeddedness of a human life as convincing, Rawls' theory of the individual and the resulting theories regarding society must be taken to be impossible.

MacIntyre goes on to say that this is a typical falsity found in modernity in that it separates life into compartmentalised sections taken to be independent of each other. This is true of age as much as it is of the different roles in which we may find ourselves at different times, such as work or home life, this separation being quite characteristic, 'not only of Sartre's existentialism, but also of the sociological theory of Ralf Dahrendorf'⁷¹. Such a view is not correct for MacIntyre. In fact, life is a full, seamless, historical narrative, situated in a background that precedes us and yet partly creates us, and is informed by expectations of the future towards which we aim. Narrative is a part of our lives that is inescapable. 'We dream in narrative, day-dream in narrative, remember, anticipate, hope, despair, believe, doubt, plan, revise, criticise, construct, gossip, learn, hate and love by narrative'⁷². Without a narrative, the life of an individual has no *foundation*.

It is interesting to note that MacIntyre invokes the medieval notion of a 'quest' as he attempts to find a provisional answer to the question of what the good for man might be. He states, 'it is important to emphasize that it is the systematic asking of these two questions ["What is the good for me?" and "What is the good for man?"] and the attempt to answer them in deed as well as in word which provide the moral life with its unity. The unity of a human life is the unity of a narrative quest'⁷³. This narrative quest involves concepts that are again typically Aristotelian. The purpose of a human life is only understandable in terms of the goals of the life in question. Without goals a life is essentially meaningless and having goals means that 'some conception of the good for man is required'⁷⁴. A human life is to be taken up with searching for the good for man, or '*the* good which will enable us to order other goods'⁷⁵. And, 'without some at least partly determinate conception of the final *telos* there could not be any beginning to a quest'⁷⁶. The quest is necessary so as to provide the moral life with its unity, this involving the systematic asking of moral questions and the attempt to answer them. These Aristotelian premises lead to a typically Aristotelian answer,

⁷⁰ A. MacIntyre, *After Virtue*, pp. 144

⁷¹ A. MacIntyre, *After Virtue*, pp. 125-6

⁷² Barbara Hardy (Hardy, 1968), pp. 5, quoted in A. MacIntyre, *After Virtue*, pp. 133

⁷³ A. MacIntyre, *After Virtue*, pp. 141

⁷⁴ *Ibid.*

⁷⁵ *Ibid.*

namely that 'a provisional conclusion about the good life for man [is] the good life for man is the life spent in seeking for the good life for man, and the virtues necessary for the seeking are those which will enable us to understand what more and what else the good life for man is'⁷⁷.

MacIntyre reaches an interesting conclusion but can we consider this to be good enough? In fact, could this conclusion be better than Rawls' simple individualism? The meaning of MacIntyre's conclusion is not entirely clear. It could mean that each is simply to attempt to decide what his own good is, independently of others, and with no kind of criteria that might say whether one answer is better than another. If MacIntyre is following Aristotle quite closely, then this conclusion might mean something similar to Aristotle's, this being that the highest good for man is the use of his higher functions, his rationality. However, as it is, a conclusion like this helps us very little. The continual searching for a good life, if we are to take MacIntyre literally, is quite unlikely to give us any sense of satisfaction or fulfilment. If we are always looking and there is no point at which we are able to stop and conclude, then there would be no end to the searching. It is difficult to see how searching in itself could particularly help us and it is thus difficult to see why this should have any great sense of value to us. A more helpful conclusion would surely be something towards which we could all aim and, even if we did not entirely agree with the conclusion, it could at least be an approximation of what we think is right so that we can have a point at which can feel that we have reached fulfilment. But is this all we can do? This is a question we will return to in chapter five.

⁷⁶ Ibid.

⁷⁷ A. MacIntyre, *After Virtue*, pp. 142

Walzer is directly relevant to our discussion, but does differ in his analysis of Rawls' theory. Instead of challenging Rawls' claims, as others have done, he first speaks of Rawls' theory as being theoretically quite valid. His criticism, however, then comes when the theory is applied to real life.

Rational men and women in the original position, deprived of all particular knowledge of their social standing and cultural understanding, would probably opt, as Rawls has argued, for an equal distribution of whatever goods they were told they needed. But this formula doesn't help very much in determining what choices people will make, or what choices they should make, once they know who and where they are ... There isn't going to be a single universally approved path that carries us from a notion like, say, 'fair shares' to a comprehensive list of the goods to which that notion applies. Fair shares of what?⁷⁸

So Rawls' theory is quite valid, even quite probable. However, its 'higher level of abstraction', one of Rawls' goals, is actually its downfall. Because it deals with and, more importantly, is based on a purely hypothetical situation, its relevance is greatly diminished. A simple, universal formula such as Rawls' is going to be inapplicable or, even worse, singularly irrelevant in the world in which we live. 'Rational agents ignorant of their own social standing ... would agree too easily [to redistribution], and their agreement doesn't help us understand what sort of a redistribution is required: How much? For what purposes? In practice, redistribution is a political matter'⁷⁹. Even if we could decide what a 'fair share' was, we would still have to decide which things to share fairly and, just as importantly, what not to share. In terms of Rawls' theory, it would appear that even if his theoretical members of society would choose the 'maximin' strategy, there is no reason why anyone in reality will or should do so.

Walzer is more concerned with how things actually are. As such, he proposes a way of thinking about needs within society that encompasses more than Rawls' ignorant citizens. It seems like a very fair point when he notes that 'people don't just have needs, they have ideas about their needs'⁸⁰, ideas which are influenced by their history, culture and priorities. Therefore, members of society actually *create* one another's needs as well as simply recognising them. As a result, the system of socially recognised needs has no natural form. 'Though there are some goods that are needed absolutely ... the nature of a need is not self-evident'⁸¹. The point of this is that, unlike with Rawls, it then becomes very difficult, if not impossible, to criticise another society, different in place and time, because of the particular needs

⁷⁸ Michael Walzer: *Welfare, Membership and Need* – Michael Walzer, *Spheres of Justice* (Basic Books, Inc., 1983), pp. 204-5

⁷⁹ Michael Walzer: *Welfare, Membership and Need*, pp. 207

⁸⁰ Michael Walzer: *Welfare, Membership and Need*, pp. 202

they have chosen to support and how they have decided to do so. The example given is of the Ancient Athenians and Jews and the fact that they chose public baths and theatre over providing unemployment benefit and public health services. We cannot say that they were *wrong* to do this in an absolute sense, as it was right for them at the time⁸². Much of what we believe now and consider right would then have been quite simply foreign, possibly even unintelligible. The reasoning behind this is that 'the category of socially recognised needs is *open-ended*. For the people's sense of what they need encompasses not only life itself but also the *good life*, and the appropriate balance between the two is a matter of dispute'⁸³. There is a general, social, communal sense that the good life is something real and worth supporting, and what this then means in practice. The finer details will always be a matter for discussion, but it is possible to say that a society has a view of what is generally correct for that particular society at that particular point in time. This *must* take something away from Rawls' version of ahistorical liberalism. It is something that he quite simply does not acknowledge. In fact, because of the way his theory was designed, there is no possibility of encompassing this societal sense of right, at least if we are attempting to give his hypothetical situation any sense of practical meaning. Walzer goes on to say that 'no *a priori* stipulation of what needs ought to be recognized is possible; nor is there any *a priori* way of determining appropriate levels of provision'⁸⁴. Such decisions are political rather than philosophical.

There is an important distinction to be made in this context, and it is one that is relevant not only to Rawls' theory, but liberalism in general. Essentially, when a community decides upon the welfare rights to be supported within society, or the rights of political freedom for that matter, it is important to note that the decision has *not* been about the nature of rights in an absolute sense, but the character of a political community. This was as true at the founding of the United States of America as it is now. Holding a particular set of rights to be 'self-evident' does not and *cannot* mean that those rights will be universal and timeless; if we have any sense of history and other cultures we will know this is quite simply not true. It is more accurate, and makes more sense, to say that those rights are 'self-evident' to that particular society at that particular point in time. As Walzer correctly states, 'no-one's rights were violated because the Athenians did not allocate public funds for the education of children'⁸⁵. If we are arguing for a particular set of rights, it is also important to recognise the given historical context. It may be possible for a society to legitimately say, therefore, that a certain segment of the Universal Declaration of Human Rights is not applicable or relevant to it. As a logical extension of this point, it is worth pointing out that it is absolutely illegitimate to try to impose political

⁸¹ Michael Walzer: *Welfare, Membership and Need*, pp. 201

⁸² It is perhaps worth mentioning Rawls' idea of the 'good life', which essentially means choosing what one thinks to be right at the time. Rawls here recognises the fact that a person cannot do any better than this. This principle is perhaps then also applicable to society in general, as a society as a whole must also choose what is right and wrong.

⁸³ Michael Walzer: *Welfare, Membership and Need*, pp. 208-9, italics added

⁸⁴ Michael Walzer: *Welfare, Membership and Need*, pp. 216-7

freedoms at the point of a gun. Many political freedoms are culturally relative, making their imposition entirely unjustifiable.

It is worth investigating the conception of the social contract if we are to gain a full understanding of Walzer's viewpoint. For him it is a concept with meaning and is quite real in a temporal sense. It is an agreement to provide socially chosen goods for each other. The exact nature of this agreement – whether it is supposed to be tacit, explicit, continually remade and the like – he does not discuss, instead essentially relating it to an agreement to provide a common share in the good life. 'It is an agreement to redistribute the resources of the members in accordance with some shared understanding of other's needs, subject to ongoing political determination in detail. The contract is a moral bond'⁸⁶. It is interesting that he does not mention the contract in relation to a state of nature or some other form of pre-societal state, instead putting forward a very different view. 'Men and women come together because they literally cannot live apart'⁸⁷. Or, more specifically, 'one of our needs is *community itself*: culture, religion, and politics'⁸⁸. We cannot live alone and, therefore, a society conceived of as an aggregation of separate individuals is actually no society at all. As such, Walzer criticises those who only value the social contract insofar as it provides for our needs. It has a value over and above this. This view of society, encompassing a more organic conception than many liberals would have it, has important implications for what rights can be taken to be. Further to what has been said above, Walzer takes the view that 'welfare rights are fixed only when a community adopts some programme of mutual provision'⁸⁹. This, again, informs us of the *order* in which we are able to conceive of rights. Rights, in this case welfare rights, but also rights of political freedom, are made valid and given content by the community from which they stem. Otherwise, they will be words and concepts without meaning. A right which is not interpreted and then *enforced* by a political community will, in practice, be little more than words in a certain order. The international community provides the perfect example of this. While the concept of international or universal rights exists, it all too often means little in practice as there is no body dedicated to making them a reality. Instead, they are left to individual states to enforce, individual states which follow their own internal logic and thus often put their own interests at the top of their agendas.

To return to Walzer's *Welfare, Membership and Need*, we are now only left with giving an account of his conclusion. Quite simply, he finds a revised version of Marx's maxim to best fit what he wants to say, stating, 'From each

⁸⁵ Michael Walzer: *Welfare, Membership and Need*, pp. 204

⁸⁶ Michael Walzer: *Welfare, Membership and Need*, pp. 208

⁸⁷ Michael Walzer: *Welfare, Membership and Need*, pp. 201

⁸⁸ Michael Walzer: *Welfare, Membership and Need*, pp. 201

⁸⁹ Michael Walzer: *Welfare, Membership and Need*, pp. 204

according to his ability (or his resources); to each according to his socially recognized needs. This, I think, is the deepest meaning of the social contract⁹⁰.

⁹⁰ Michael Walzer: *Welfare, Membership and Need*, pp. 216-7

In *Liberalism and the Art of Separation* the liberal art of separation is conceived as being the success historical liberalism has had in responding to abuses of power by governments. The response was to come to the theoretical defence of institutions on the one hand, and individuals on the other, by claiming that each were absolutely separate unto themselves and therefore to be protected from all forms of interference. It can be seen in Locke's argument that 'the church ... is a thing absolutely separate and distinct from the commonwealth. The boundaries ... are fixed and immovable'⁹¹. This is the historical achievement of liberalism and not to be taken lightly, for it is indeed a remarkable achievement. If one looks back through history at the strength of government and the extensive restrictions on it that now exist in liberal societies, it is certainly something that cannot be praised enough. However, says Walzer, this achievement has gone too far in the case of individuals, and not far enough in the case of what he terms the 'new power' in society, wealth. As it is his critique of liberal theory itself that I am most interested in, I will discuss this first before moving on to his recommendations for increasing freedom within liberal societies.

The problem with liberal theory is the false view it inevitably takes as its basis, and this is the criticism which is often repeated and probably does liberalism the most damage. The criticism comes because liberalism goes quite against what is apparent in every day life and proposes that all groupings, all gregarious activity, comes purely as a result of voluntary agreements. As we saw above, because liberalism takes isolated individuals as its basis, all subsequent non-individual bodies are only understandable as a product of voluntary acts. Thus we have the social 'contract', which is an agreement supposedly made between individuals, supposedly tacitly, to form society. However, Walzer makes a good point when arguing that these groupings are conceived of as 'the products of wilful agreements among individuals, valuable because of the agreement they embody but at the same time subject to schism, withdrawal, cancellation, and divorce'⁹². This viewpoint has its uses as a defence against tyranny because it gives the defenders a position from which to argue that their permission to be governed, for example, is firstly theirs to be given or retracted and, when removed, gives them a legitimate position from which to fight for political freedoms. Again, this is a valuable use of liberalism and an important aspect of political theory which should not be lost. However, the problem comes when we move from theory to looking at the world in which we actually live. To put it quite simply, it is extremely difficult to say that we actually voluntarily form the groupings that we become a part of in any real sense. While liberalism is essentially timeless, real people never are. While liberalism is an aggregation of separate individuals, society is something we are born into and creates a part of us as we assume its characteristics and beliefs. While liberalism argues that individual freedoms are absolute and society is built upon those freedoms, in reality the

⁹¹ John Locke, *A Letter Concerning Toleration*, pp. 27, in Michael Walzer, *Liberalism and the Art of Separation* – Political Theory, Vol. 12 No. 3, August 1984 315-330 (Sage Publications, Inc., 1984), pp. 327

⁹² Michael Walzer, *Liberalism and the Art of Separation*, pp. 324

order is reversed: political freedoms are granted by society and are essentially meaningless without political support. On the liberal view, individuals are free *from* society, whereas in reality we see that they are, and can only ever really be, free *within* society.

The consequence of the liberal theory of the relation between the individual and society is the championing of a view of an individual that does not exist. We, because of our theories, imagine the normal person as one who is egoistical and does not regard fellow members as important enough. Walzer talks about this 'liberal hero' as being someone who is 'author of self and of social roles'⁹³, then saying that this person is, in fact, a 'mythical invention'. This is again an argument against Satre's existentialist, the individual who has no attachments or meaningful context, who is able to reinvent himself every day. Subsequently, when 'turned into a philosophical ideal and a social policy, this claim has frightening implications, for it is endlessly disintegrative, reaching a kind of culmination, perhaps, in recent discussions about the rights of children to divorce their parents and parents their children'⁹⁴. This is a poor philosophical standpoint to take, as 'the individual does not ... wholly shape the obligations he or she assumes. The individual lives in a world he or she did not make'⁹⁵. A difference becomes clear when we bear this in mind and come to talk of freedom. Instead of taking a position where we are arguing for freedom in an absolute sense, we come to speak of freedom within a context, a context which must be first understood and acknowledged to make the freedom itself meaningful. As we move away from the liberal view of individuals being free from society to individuals being free within a society, we come to see freedom as a social construction rather than a Platonic universal Idea. This then brings us to the importance of the political community in granting and defending rights. They are not sustainable without help from the state. A further point that Walzer adds about rights is the fact that 'freedom is additive; it consists of rights within settings, and we must understand the settings, one by one, if we are to guarantee the rights'⁹⁶. As a member of society I come to have responsibilities as well as rights. The rights I have are mine and mine to defend as best I can. However, as a member of the society that protects those rights, I also have a responsibility to all my fellow members to protect their rights as well. On the view just outlined, we come to realise that rights, because of the fact that they are not universal and timeless, are actually more fragile and valuable than commonly thought. As such, therefore, they are to be guarded with even greater care than ever. Furthermore, we come to realise that the exact rights that are provided and guaranteed by the political community are not set in stone, and will vary from one society to the next. Cultural objectivity in the case of rights, therefore, becomes less feasible.

⁹³ Michael Walzer, *Liberalism and the Art of Separation*, pp. 324

⁹⁴ Michael Walzer, *Liberalism and the Art of Separation*, pp. 324-5

⁹⁵ Michael Walzer, *Liberalism and the Art of Separation*, pp. 324

⁹⁶ Michael Walzer, *Liberalism and the Art of Separation*, pp. 326

One of the most important contributions that Sandel makes regarding Rawls' theory of justice is the fact that his deontological view is above all an epistemological claim and misunderstood as a claim about human psychology. Rawls is not in actual fact claiming that all people are egoists and that this provides the basis for the primacy of justice, but believes we are all more unintelligible to each other than we might otherwise have thought. Justice finds its occasion because we simply cannot know each other or the particular good we would choose well enough to govern by the common good alone. Rawls' view is contrasted with that of Hume's, who held that 'if every man had a tender regard for another ... the jealousy of interest, which justice supposes, could no longer have place'⁹⁷. Rawls, however, does not base his primacy of justice on the self-interestedness of the individuals who make up society, but on the fact that we are all taken to be individuals who have a self essentially prior to whatever particular ends we subsequently 'choose' to take. No matter what values we have at any one point in time, we are to be perennially able to separate these from our 'true' selves and realise that our values do not make us what we are. No matter where I grew up and what I learned to see as right and wrong, I 'must regard myself as the bearer of a self distinct from my values and ends, whatever they may be'⁹⁸.

It is worth reminding ourselves of Rawls' philosophy of the self. It forms one of the fundamental pillars of his general outlook and it is probably fair to say that *Justice as Fairness* would not be possible in its given form without it. Rawls' self is unencumbered, permanently fixed, and given boundaries prior to any other form of consideration. It is, for example, nonsense for Rawls to think of a person whose nationality or family ties make up a fundamental aspect of that person's self. This viewpoint is quite simply not possible. As with Kant, we are meant to stand at a distance from our circumstances, forever able to re-evaluate where we are and reject the necessary values if necessary. This should remind us again of Sartre. Where Kant sees us as being a transcendental subject possessing our all important rationality, Rawls sees us as individuals in the original position prior to any attachments that might subsequently be forced upon us by our particular circumstances⁹⁹. The result of this view of the self is that all values, all meaning, everything that we hold dear and have done all our lives is thought to be purely a product of choice. One could almost call this an existentialist outlook writ large. On the deontological view, 'the values and relations we have are the products of choice, the possessions of a self given prior to its ends'¹⁰⁰. Sandel relates this back to the deontological view of an essentially meaningless universe, something that Rawls again shares entirely with Kant. He also reaches the

⁹⁷ M. Sandel, *Justice and the Good*, (Cambridge, CUP, 1982)

⁹⁸ M. Sandel, *Justice and the Good*, pp. 175

⁹⁹ Rawls, 1979, pp. 7, 1980, pp. 544-5

¹⁰⁰ M. Sandel, *Justice and the Good*, pp. 169

conclusion that it is quite possible to create a moral universe as a supplement. Because no meaning is given, we are left with a responsibility to construct meaning for ourselves. Rawls' particular slant on this view is, of course, that while fairness or right for society is constructible, the particular good that each individual chooses is to be left entirely to himself, with none being any better than another. It is an important assumption, and one that I will return to. For the moment it is worth considering why Rawls takes each person's good to be so independent of others. Again, this relates back to his epistemological assumptions.

It seems remarkable that empathy is an empty concept for Rawls. Such a well recognised aspect of what is taken to be goodness - attempting to understand others, trying to imagine the pain they might be going through when in trouble, feeling a sense of commonality with people sharing your background and history - all of these seemingly given aspects of being human are disregarded in *A Theory of Justice*. The reason is that we have absolutely no cognitive access to our fellow man. The distinctiveness between persons makes it impossible for me to know what my brother might be thinking, no matter how well I think I might know him. The result of this is the primacy of justice as a regulative principle. So where Hume requires justice as a regrettable necessity because we do not show a sufficient degree of the nobler virtues such as benevolence and love, Rawls requires justice because we simply cannot know one another well enough for love alone to serve¹⁰¹. I and I alone can choose what my own good is because I and I alone am able to know what I really want. Any notion, therefore, of trying to determine what a standard good life is in a similar way to Aristotle becomes immediately pointless.

There is a clarification to be made about what justice actually means for Rawls that is required at this point. Justice is not to be confused with such feelings as love. Such feelings are to be considered as 'lesser' virtues as they are predicate on other, egoistic, feelings. In contrast, justice is to be considered the grand framework which constrains and regulates such lesser virtues and it is of higher worth because of its relative independence. It is seen to be above the other virtues because of its freedom from the 'contingencies and accidents of the world'¹⁰². This, as we saw above, is the Archimedean point for which Rawls announced he was searching at the beginning of his *Theory of Justice*. As Sandel states, 'given the limited role for reflection on Rawls' account, the virtues of benevolence and love, as features of the good, are forms of sentiment rather than insight, ways of feeling rather than knowing. Unlike personal or first-order sentiments and feelings, whose objects are given more or less directly to my awareness, benevolence and love are desires whose object is the good of another ... "The reason why the situation remains obscure is that love and benevolence are second-order notions: they seek to further the good of beloved individuals that is already given"

¹⁰¹ M. Sandel, *Justice and the Good*, pp. 166

(Rawls, 1971, pp. 191)¹⁰³. The question of whether love has to have content is not addressed here. But is it not possible for us to have ‘blind love’, love which has no effect or consequences but is simply the adoration of another? Must it, as Rawls seems to think, always seek to better the good of another person, something which he takes as an impossibility, or is it possible for us to love a significant other for what they are without necessarily trying to imagine what exactly they want and seeking to better it?

Sandel is interesting in noting some of the ways in which Rawls still supports some aspects of utilitarian theory, especially with regards to the private moral sphere¹⁰⁴. He sees this as symptomatic of deontological liberalism in general, saying that it ‘accepts an essentially utilitarian account of the good, however its theory of right might differ’¹⁰⁵. Also with regards to ‘Dworkin’s defence of affirmative action; once no individual rights were seen to be at stake, utilitarian considerations automatically prevailed’¹⁰⁶. The particular conception of the good which the individual then happens to choose, he goes on to say, is actually irrelevant from a moral standpoint. Our public identity is here being differentiated from our private identity, as our public identity is ‘not affected by changes over time’¹⁰⁷. One’s private identity, however, is entirely unfixed. Sandel criticises Rawls’ theory because, as with utilitarianism, it has no apparent problem with the good being nothing but arbitrarily given desires ‘undifferentiated as to worth’¹⁰⁸. Rawls’ problem with utilitarianism comes from the fact that utilitarianism conflates all people into one, not giving their important distinctiveness its due regard. In this, he sees society as taking on an importance over and above that of the individuals which compose it, supposedly at the automatic detriment of those persons. He strongly objects to an organic view of society, conceiving it as being ‘an organic whole with a life of its own distinct from and superior to that of all its members in their relations with one another’¹⁰⁹. That it might be possible for there to be an organic conception of society where the value of individuals and the whole are taken in equal regard does not seem to be feasible to him. It is, of course, possible to conceive of a society, as with the ancient Stoics, which takes people as being social creatures by nature. This leads to the novel situation in modern political theory whereby individuals can only achieve their good within a social setting, and society’s good is dependent on the goods of all of its members. We then find a situation where both the good of society and its members are cared for in equal regard, neither gaining

¹⁰² M. Sandel, *Justice and the Good*, pp. 164

¹⁰³ M. Sandel, *Justice and the Good*, pp. 164-5

¹⁰⁴ Bearing in mind, of course, that Rawls was himself a utilitarian in a previous incarnation.

¹⁰⁵ M. Sandel, *Justice and the Good*, pp. 160

¹⁰⁶ Ibid.

¹⁰⁷ J. Rawls, *Kantian Constructivism in Moral Theory*, *Journal of Philosophy*, 77 (1980), pp. 544-5

¹⁰⁸ M. Sandel, *Justice and the Good*, pp. 160-1

¹⁰⁹ J. Rawls, *Theory of Justice*, pp. 264

advantage over the other but simply being co-existent and interdependent. The goods are inseparable and must therefore be fostered together¹¹⁰.

The impoverished nature of the good on Rawls' account is a point with which Sandel strongly disagrees, but I am unsure as to whether his objection is entirely accurate. He accuses Rawls of simply allowing any and all goods to be as valid as another without any proper reflection of what our deeper goals and meanings might be. However, does Rawls not state that the individual should take his good to be whatever he thinks most appropriate at the time of decision? If so, are we actually able to argue with this? Firstly, we need to point out, as Sandel does, that Rawls states there is a 'system of desires' which corresponds to each individual human being, although, unfortunately, he never says what exactly a 'system of desires' consists of or why exactly each person is taken to have one¹¹¹. Instead, we are only able to speculate. If we then ask ourselves whether Rawls has a valid point, we can answer that this largely depends on what he means. If he means that this system of desires is nothing more than the fulfilment of arbitrary wants, then we are essentially left with little more than hedonism, a theory with relatively few moral merits. However, it is also possible that Rawls meant something deeper, encompassing the possibility of deliberating about what our life goal should be and the best way of achieving it. This takes on another aspect entirely. A view such as the latter could allow that an individual is given an inherited set of values from the society in which he grows up but then attempts to challenge it. Or a more Aristotelian notion of a life of virtue and philosophical speculation in search of the highest good. It is a shame to say, and can only reflect poorly on the incompleteness of Rawls' theory, that we cannot know for certain and are left only with speculation. However, with an eye to the rest of Rawls' theory, I would imagine that Rawls believed that each good is to be taken to be as valid as the next, indicated by the fact that the distinctiveness between individuals is so complete. I believe he would find it presumptuous to imagine what another person holds to be good for himself. It is only a small step from this view to saying that it is presumptuous to try to say what any individual believes to be his good, and that none of us should make any such attempt at all.

Bearing what I have just mentioned in mind, we now again turn back to Sandel. He makes a direct link between Rawls' poor description of the good and individual morality, and the primacy of the right and justice. His reasons are as follows: 'If the good is nothing more than the indiscriminate satisfaction of arbitrarily-given preferences, regardless of worth, it is not difficult to imagine that the right (and for that matter a good many other sorts of claims) must outweigh it. But in fact the morally diminished status of the good must inevitably call into question the status of justice as well. For once it is conceded that our conceptions of the good are morally arbitrary, it becomes difficult to see why

¹¹⁰ For a very readable overview of Stoic thought see A. C. Grayling, *What is Good?* (London, Butler & Tanner Ltd., 2003), pp. 44-55

the highest of all (social) virtues should be the one that enables us to pursue these arbitrary conceptions “as fully as circumstances permit”¹¹². This is an extremely pertinent point. If the aim of justice is to allow each person to pursue their own good as far as possible, this being the overall goal of society, why is the good given so little consideration?

The next issue that Sandel raises is again related to Rawls’ notion of personal identity. He states, ‘If our agency is to consist in something more than the exercise in “efficient administration” which Rawls’ account implies, we must be capable of a deeper introspection than a “direct self-knowledge” of our immediate wants and desires allows’¹¹³. This view of a fuller individual, more akin to a real person than Rawls allows, does not fit well with the idea of ‘wholly unencumbered subjects of possession, individuated in advance and given prior to our ends, but must be subjects constituted in part by our central aspirations and attachments’¹¹⁴. It makes quite a fundamental difference to the kind of person we are imagining. It would make the idea of a veil of ignorance meaningless as it would become quite nonsensical to use a person taken to be independent of the social surroundings into which he or she has been absorbed. Sandel believes that our ‘constitutive self-understandings’ encompass far more than Rawls admits. We do not simply view ourselves as individuals alone, but as members of this particular family, tribe, nation, or community. What makes a community distinctive is a common understanding and background within which the inaccessibility of one individual to another is greatly reduced. This is more than optional membership, it is in fact a fundamental part of who and what we are. Importantly, as Hume argued, it is something which is impossible for us to entirely escape. The most we could hope to gain is a degree of relative independence in which we might attempt to be objective, while acknowledging the fact that some of our views are perhaps pre-given and thus not the result of a process of reasoning. In essence, Sandel is arguing that we assimilate much of the social context in which we grow up without necessarily realising it and this becomes a more or less permanent feature of our very being. He then relates this back to the fundamental priority of justice for Rawls, saying that the improved view of identity would alter the very necessity of Rawls’ justice itself. ‘In so far as justice depends for its pre-eminence on the separateness or boundedness of persons in the cognitive sense, its priority would diminish as that opacity faded and this community deepened’¹¹⁵. It is a valid point, and one could be forgiven for asking why, if we do not and can not ever truly know each other, is it that so much of what we believe and are is shared with the society or family in which we happen to be raised? It is possible to make broad generalisations (of course, bearing in mind that generalisations must be made cautiously) about a particular society, saying perhaps that one community is more conservative than another, that one is more tolerant than another, that each has certain characteristics that most of the people share. It becomes a very improbable argument when one attempts to say that

¹¹¹ M. Sandel, *Justice and the Good*, pp. 161

¹¹² M. Sandel, *Justice and the Good*, pp. 162, italics added.

¹¹³ M. Sandel, *Justice and the Good*, pp. 166

each and every person within a society is actually, truly first a self independent of their views, therefore meaning that each person has chosen each and every characteristic they possess. Such things as national characteristics then begin to take on an extremely odd character if one were to accept Rawls' theoretical assumptions without question. It is this failure to acknowledge the communal aspects of our identity that Sandel attacks most strongly, and his attacks highlight a very weak aspect of deontological liberalism in general. 'If utilitarianism fails to take seriously our distinctiveness, justice as fairness fails to take seriously our communality. In regarding the bounds of the self as prior, fixed once and for all, it relegates our communality to an aspect of the good, and relegates the good to a mere contingency, a product of indiscriminate wants and desires "not relevant from a moral standpoint"'¹¹⁶. As Sandel points out, 'I ask, as I deliberate [out of enduring qualities of character], not only what I really want but who I really am, and this last question takes me beyond an attention to my desires alone to reflect on my identity itself ... some relative fixity of character appears essential to prevent the lapse into arbitrariness which the deontological self is unable to avoid'¹¹⁷. It seems to again raise the question of whether it is a valid exercise to start from non-observable premises as the basis of a theory, as Rawls quite clearly does in his view of personal identity. If the people which the theory encompasses in its construction are merely fictitious, it could be argued that the resulting theory is really only of true value to those fictitious people and has little to say to us as we live here and now. But perhaps that is in the very nature of a 'thought experiment'. While the argument of the imaginary situation may hold power, we must continually remind ourselves of the fact that it is nothing more than an imaginary state, and therefore of reduced value to us.

Sandel finally takes issue with Rawls' proposition that theories that take account of a constitutive conception of community should be rejected 'for reasons of clarity among other things'¹¹⁸, saying that 'a constitutive conception of community is no more metaphysically problematic than a constitutive conception of justice such as Rawls defends'¹¹⁹. Clarity is not a particularly good reason for having a political philosophy be one way rather than another. It often tends to be the case that some of the most powerful theories are quite simple in their basic elements, but this is by no means a necessity and a theory should not bow to simplicity at the expense of being better.

There is an illogical step in Rawls' argument which Sandel accentuates well. It comes as Rawls is arguing for a revised version of the social system, stating that as well as compensation for the accidental occurrence of social standing upon birth we should also be compensated for the physical and mental assets we either do or do not have when born. Sandel

¹¹⁴ Ibid.

¹¹⁵ Ibid.

¹¹⁶ M. Sandel, *Justice and the Good*, pp. 167-8

¹¹⁷ M. Sandel, *Justice and the Good*, pp. 173

¹¹⁸ J. Rawls, *Theory of Justice*, pp. 264

¹¹⁹ M. Sandel, *Justice and the Good*, pp. 167

notes that Rawls begins with the typically deontological view of these assets being only accidentally mine but ends by assuming that these assets should therefore be the property of society at large. Sandel's problem with this is not so much the morality of the argument but the conclusions it reaches from the given premises. This argument 'either disempowers the deontological self or denies its independence. Either my prospects are left at the mercy of institutions established for "prior and independent social ends" (*Liberalism and the Limits of Justice*, pp. 313), ends which may or may not coincide with my own, or I must count myself a member of a community defined in part by these ends, in which case I cease to be unencumbered by constitutive attachments. Either way, the difference principle contradicts the liberating aspiration of the deontological project'¹²⁰. Rawls' argument is that each person needs a certain level of income or goods to be able to live in a reasonable way, to be able to attain his own particular good or satisfy his 'system of desires', to use Rawls' language, and each person is owed this by his fellow man on account of his theoretical choice in favour of this from behind the veil of ignorance. Each person would choose to be given this in theory. Sandel's point is that what this actually means in practice is a form of responsibility, and a responsibility towards the community in which one happens to find oneself in. In practice, Rawls is essentially saying, as a result of his assuming an essentially unencumbered self, that each person would and must choose to be responsible for the good of his fellow community member. That we actually do this in practice may be taken to back up this theory, but it must also be pointed out that this is a relatively recent phenomenon if one actually looks at a period of time stretching back at least as far as ancient Greece or if we cast our eye slightly wider than the societies of the rich West. The plausibility of such a proposition must, again, be called into question. It is highly doubtful whether all people in all places and points in history would choose exactly what Rawls says they would. Unless, of course, one happens to strip the person in question down to precisely the beliefs which one would like them to have. This could be said to be symptomatic of the attempt to gain a point for self-reflection which is wholly objective and outside history, a fundamental aim of theorists like Rawls and Kant. It is at precisely this all-important point that one finds the most disagreement. Sandel provides almost the polar opposite as he states that 'as a self-interpreting being, I am able to reflect on my history and in this sense to distance myself from it, but the distance is always precarious and provisional, the point of reflection never finally secured outside of history itself ... Where the self is unencumbered and essentially dispossessed, no person is left for self-reflection to reflect upon. This is why, on the deontological view, deliberation about ends can only be an exercise in arbitrariness'¹²¹. One could even ask of such theorists as Rawls whether they themselves would actually be looking for this point 'outside of history' if it weren't for *their* particular place in history. It seems like an ironic point, but actually highlights a valid question as Rawls himself admits that he himself is attempting to follow in a tradition of political theory by adapting the social contract argument. Within this argument, he is attempting to

¹²⁰ M. Sandel, *Justice and the Good*, pp. 171

postulate that it is possible for him to gain his Archimedean point and find a point that is then outside of all history, outside of any and all traditions. However, if both facts are to be taken at face value, we find a strange conflict. We find a theorist arguing for timeless values because of his ideological inheritance. If this is the case, Rawls is making an error and actually contradicting himself within the structure of his own argument. Overall, I have to say that I find Sandel's acknowledgement of context and history far more plausible than Rawls' more narrow assumptional arguments.

¹²¹ M. Sandel, *Justice and the Good*, pp. 171-2

Chapter Three:

“Liberal” Responses to Rawls

Robert Nozick

Nozick differs from other authors. Instead of simply criticising Rawls and suggesting improvements or alterations, he argues for a radically different conception of justice which most would recognise as falling into a broadly libertarian way of thinking. He argues for a whole-hearted rejection of ‘end-state’ assessments of justice in favour of a ‘historical’ methodology: one that judges the current state of affairs on the ways in which it came to be, not how it is at this moment in time. Built upon this conception of how we are to assess justice is his so-called ‘entitlement theory’ which attempts to describe a highly alternative view of a just society. The theory relies on an interesting but ultimately weak argument, entailing ‘just acquisition’ in an initial state of affairs and just ‘transfer of holdings’ that then follow acquisition. If these two principles are satisfied, then the current situation is automatically just. That Nozick admits this is not the case in reality means that he has to then rely on ‘entitlement without desert’ which turns out to produce a rather confused conclusion.

Let us start with one of Nozick’s key statements:

The entitlement theory of justice in distribution is *historical*; whether a distribution is just depends on how it came about. In contrast, *current time-slice principles* of justice hold that the justice of a distribution is determined by how things are distributed (who has what) as judged by some *structural* principle(s) of just distribution¹²².

The importance of this statement to Nozick’s theory cannot be overemphasised. His entire viewpoint rests on historical means of assessing the justice in society and, therefore, this basic assumption needs to be the first point of evaluation. It is a simple concept. We are to look at the background of particular goods and advantages so as to see if they were gained unjustly at any point in time. The assessment itself is, again, at its basic level not particularly complicated. ‘An entitlement theorist would find acceptable whatever distribution resulted from the party’s voluntary exchanges’¹²³. *Why* exactly this approach is taken is an important consideration, but one that will only become clear once other concepts in Nozick’s theory have been explored in more detail. For the moment, we need to concentrate on the base of Nozick’s theory, with Nozick’s idea of just or legitimate acquisition.

Nozick adopts what he calls the 'Lockean proviso' as his test of legitimate acquisition, which means testing whether anyone is made worse off through the acquisition of previously owned things. It is described as 'a process normally giving rise to a permanent bequeathable property right in a previously unowned thing [unless] the position of others no longer at liberty to use the thing is thereby worsened'¹²⁴. In other words, we are talking about exclusive and absolute property rights, the creation of which depends for its legitimacy on whether it makes those who do not own the thing better off. An example of a test of this would be the appropriation of land previously unowned, as was the case with the 'commons' of Britain's past¹²⁵. The problem with the use of the land is that, because no one has any exclusive rights to it, no one has reason enough to invest, meaning it is never improved. Therefore, the land will be put to better use if someone is able to lay a claim to it, thereby making increased productivity worthwhile. Nozick's assumption is that the individuals who could use the land before but now cannot should also gain from its appropriation. This will result from the aggregate wealth generated increasing markedly, meaning that they will benefit from the 'trickle-down effect' as they, for example, are employed to work on the land. Everyone is made better off and the acquisition is judged to be justified. From this basis of justice then follows the just transfer of holdings which entails nothing more than the voluntary exchange of goods. If these two conditions of justice are found to hold, the current situation must be just by default. This may seem reasonable enough at first, but what is to be made of this upon further analysis?

The first problem to be found with such a view is the apparent contradiction in the importance of choice to Nozick. It is quite clear from his theory of just transfer that the ability to make free or uninterrupted decisions about oneself and one's property are of the highest importance. It then appears rather strange to find that the test of legitimate acquisition incorporates a good degree of arbitrary seizure. It may be the case that according property rights to land, for example, will make it more productive, which may well increase the wealth of all. However, Nozick does not acknowledge the fact that those who do not do the appropriating have no say whatsoever in what happens to the land. It may quite possibly be the case that they did or would not agree, meaning that the acquisition would more likely than not simply become a matter of force. This leads directly to the second problem with Nozick's theory of legitimate initial acquisition, that of violence. Nozick's theory quite explicitly does not want to rely on hypothetical arguments for its justification but tries to look at reality as it is and was and assess whether the current situation is just from there. 'Almost every suggested principle of distributive justice is patterned: to each according to his moral merit, or needs, or marginal product, or how hard he tries, or the weighted sum of the foregoing, and so on. The principle of entitlement

¹²² Robert Nozick, *Anarchy, State, and Utopia* (Oxford, Basil Blackwell, 1974), pp. 153

¹²³ Robert Nozick, *Anarchy, State, and Utopia*, pp. 188

¹²⁴ Robert Nozick, *Anarchy, State, and Utopia*, pp. 178

we have sketched is *not* patterned'¹²⁶. The difficulties become apparent as we begin to look at the world as we find it. Most of the land that is currently held was acquired through the use of violent means. We can look at every country in the world, on every continent, and trace the current ownership back to some form of violence. The history of man is quite simply littered with war and struggles for power. The effect of this on Nozick's theory is to make his entire notion of justice in the present society impossible, for if the original acquisition of the land which I currently possess was unjust, this makes my ownership of it unjust by default, irrespective of whether I had personally acquired it through legitimate means. David Lyons has written on this theme, arguing that Nozick's theory supports the view that much of what is now the USA was acquired through illegitimate means, making virtually the entire foundation of the country unjust. He argues that Nozick effectively supports returning much of New England to the native American Indians¹²⁷. And if this were the case, most of the people now living in Australia, South American, Russia, and so on, would need to be uprooted and removed. And if they were removed, they would have to be removed *to* somewhere, and that would probably involve uprooting even more people. It very quickly becomes clear that such arguments are quite ridiculous, irrational, and entirely inapplicable to reality. So what does this then leave us with? By default, on Nozick's theory, virtually everything that people possess will be illegitimate. It is almost the idea of original sin rehashed, but unfortunately without the prospect of redemption, leaving us with the question of how we can judge any actions to be unjust. The unattractiveness of this idea is immediately obvious. Nozick replies with a concession and argues that no possessions we now have are just. However, he then goes on to say that 'whether or not people's natural assets are arbitrary from a moral point of view, they are entitled to them, and what flows from them'¹²⁸. Despite the fact that Nozick is here talking about natural assets and not land, the point about possession remains the same: it is possible to be entitled to something without deserving it, without the ownership being just. Nozick is here claiming that people are entitled to their possessions as long as this possession does not violate anyone else's Lockean rights, whether or not it is just. We will investigate exactly what Nozick's opinion on rights is when we move on to his views on Rawls' theory.

David Lyons' example is useful, not just to show that Nozick's claims are rather extreme, but also to highlight the fact that the American Indians can be said to have had possession of the land of New England that preceded the arrival of Europeans. The kind of possession that the American Indians had was very different to the concepts the Europeans brought with them, particularly if the tribe in question happened to be nomadic. However, it is difficult to say how this

¹²⁵ See Kymlicka, *Contemporary Political Philosophy, 2nd ed.* (Oxford, Oxford University Press, 2002), pp. 108-28 for this example discussed in greater detail.

¹²⁶ Robert Nozick, *Anarchy, State, and Utopia*, pp. 157

¹²⁷ David Lyons, 'The New Indian Claims and Original Rights to Land', in Jeffrey Paul (ed.), *Reading Nozick* (Totowa, NJ, Rowman and Littlefield, 1981), pp. 355-79

¹²⁸ Robert Nozick, *Anarchy, State, and Utopia*, pp. 226

kind of ownership can be said to be invalid. It was certainly sufficient for those to whom it applied at the time. It is a possibility Nozick does not discuss: non-exclusive concepts of ownership. Despite the fact that various forms of ownership actually exist in the world, Nozick makes the assumption that all possession must of necessity be exclusive and absolute. He does not, for example, entertain the possibility of the common ownership of land, which may have made the appropriation of the commons in our example above unjust¹²⁹. Nozick does not discuss the possible validity of other forms of ownership, nor does he investigate the idea that our current concepts of exclusive ownership are the result of our cultural background. The ancient Greeks might have argued that while people may hold exclusive property rights over things, this does not necessarily prevent other people from being able to use them. It is still a moot point as to whether our systems of absolute exclusivity in ownership are the best when we find black townships in South Africa bordering plush golf courses. While this is not the place for such a discussion, we may still question how just such a situation can be. Should property rights be so absolute as to allow others to starve simply because this may violate my rights? It is a situation which Nozick's theory would allow.

A further problem to be found with the idea of legitimate initial acquisition is related to the fact that it is supposed to be 'real' as opposed to a hypothetical judgement of justice. This means that we would be expected to trace the history of a thing to find if its ownership was valid. If we accept this position, we are then faced with the problem of finding against whom an injustice was committed. Dealing with practical difficulties alone, how are we supposed to trace these people if there are no records in existence, plus, if they are subsequently identified, how do we then go about then rectifying the situation? The people in question will all be long, long dead, and many of the family lines will be utterly confused, if they still exist at all. Another related point concerns the distance of time we are supposed to go back to assess justice. Are we to trace it back to the beginning of recorded history? Or further? Back to the Neanderthals perhaps? Again, as with the redistribution of land based on unjust ownership, the theory is very quickly shown to be quite preposterous. As a corollary of this, therefore, I feel that we must beg the question of why this concept was invoked by Nozick at all. The idea of a historical notion of justice and a subsequent theory of just acquisition and transfer actually makes any form of justice in our society impossible. It is, therefore, hardly relevant to us. If it is not relevant to us and not at all useful, then the only thing left for us is to reject it. An interesting point, as discussed earlier, is that Nozick himself accepts this, realising that no sense of justice will exist in any society. As a result, he falls back on the idea of entitlement without desert.

¹²⁹ See Kymlicka, *Contemporary Political Philosophy*, 2nd ed., pp. 108-28

It is worth espousing Nozick's conception of rights at this point and contrasting it with Rawls', so as to better understand why Nozick uses his historical judgement. The first thing of importance we notice is a point he makes right at the beginning of *Anarchy, State and Utopia*, saying that 'individuals have rights, and there are things which no person or group may do to them (without violating their rights). So strong and far-reaching are these rights that they raise the question of what, if anything, the state and its officials may do'¹³⁰. This means that a 'minimal state, limited to the narrow functions of protection against force, theft, fraud, enforcement of contracts, and so on, is justified; any more extensive state will violate persons' rights not to be forced to do certain things, and is unjustified'¹³¹. It is an important point; 'end-state', 'time-slice' or 'patterned' theories violate people's rights by forcing them to do things they would not otherwise do. This is why a Rawlsian notion of redistributive wealth would be rejected. The notion of rights is necessarily extremely strong, reflecting 'the underlying Kantian principle that individuals are ends and not merely means; they may not be sacrificed or used for the achieving of other ends without their consent'¹³². We must choose our own ends, as we cannot know others well enough¹³³. It is perhaps interesting to note that Rawls also makes this claim, although reaches utterly different conclusions. Nozick associates his strong notion of rights with dignity, saying that 'treating us with respect by respecting our rights, it allows us, individually or with whom we choose, to choose our life and realize our ends and our conception of ourselves, insofar as we can, aided by the voluntary cooperation of other individuals, possessing the same dignity'¹³⁴. There are two points to make about this. The first is the acknowledgement of two seemingly arbitrary assumptions: that rights must of necessity be strong, and that the violation of the thus defined rights violates my 'dignity'. What exactly this means is not mentioned by Nozick. However, Kymlicka makes a good point when he suggests that 'we only feel something to be an attack on our dignity if we are already convinced that it is wrong'¹³⁵. Relying on something we simply assume to support an argument is hardly the best defence. The second point to be made is regarding the restricted view of self-ownership that Nozick employs, which highlights one of the main differences between Nozick and Rawls' theories. Both theorists see the ability to 'choose our life and realize our ends' as a quality of absolute importance but they then differ greatly as to what this then means. For Nozick this means the non-violation of my rights. No one is to bother me or have any say as to how I should conduct my business. This pre-empts any claims that society or other individuals have on any assets I have and any actions I want to perform which do not violate the similar rights of others. Rawls sees rights as involving a fair share of society's resources on the belief that we are only able to pursue our conception of the good life if we have access to a minimum of goods. In this particular argument, I find myself forced to side strongly with Rawls,

¹³⁰ Robert Nozick, *Anarchy, State, and Utopia*, pp. ix

¹³¹ Robert Nozick, *Anarchy, State, and Utopia*, pp. ix

¹³² Robert Nozick, *Anarchy, State, and Utopia*, pp. 30-1

¹³³ Here Nozick agrees with Hayek that 'we cannot know enough about each person's situation to distribute to each according to his moral merit'.

¹³⁴ Robert Nozick, *Anarchy, State, and Utopia*, pp. 334

¹³⁵ Kymlicka, *Contemporary Political Philosophy*, 2nd ed., pp. 125

bearing in mind a distinction between formal and substantive self-ownership¹³⁶. Nozick himself explicitly endorses an exclusively formal conception of self-ownership, saying that people cannot legitimately claim any other form¹³⁷. This means that a person is still held to have a meaningful self-ownership if they are working for an insufficient wage in terrible conditions and have entirely no job security. The point to make about this, however, is that the person in question will not have *effective*, or substantive, self-ownership. Rawls claims this situation would not be sufficient to provide justice. The person in question must be guaranteed access, as far as possible given the wealth of the particular society, to a minimum of goods that will allow them an effective self-ownership, an *effective* freedom. This will entail the ability to determine a good degree of what they will do and where their life will take them, something that Nozick's theory conspicuously lacks.

There are other ways in which Rawls' theory differs from Nozick's, differences that Nozick opposes and rejects. Let us now investigate the claims Nozick makes against Rawls and whether they stand up to reason. One of the main problems Nozick has with Rawls is what Nozick perceives as the aggregation of people into groups:

We should question why individuals in the original position would choose a principle that focuses upon groups, rather than individuals. Won't application of the minimax principle lead each person in the original position to favor maximizing the position of the worst-off individual? ... Moving the focus to groups (or representative individuals) seems *ad hoc*, and is inadequately motivated for those in the individual position¹³⁸.

The first thing to say about this is to remove the pretension that applying the minimax principle in the original position will mean only maximizing the position of the worst-off individual. Rawls explicitly states that when someone hypothesises themselves into the original position they are to imagine that when the places are rearranged as the veil of ignorance lifts, they are to be rearranged in an entirely random way. Therefore, the people in the original position will not only be considering the situation of the worst-off individual in a society, but also of necessity the second worst-off, and third, and so on. If we are to imagine that we could be placed instantly anywhere within a society, then we are forced to consider what would be required to provide us with the means of satisfying our ends at all positions in society. As such, we find that the theorising Rawls proposes would not at all involve considering the position of only the worst-off individual, nor would it involve thinking of people only in groups. Rawls does condone the use of representative individuals to do the theorising in the original position, and thus effectively takes one individual in the

¹³⁶ Kymlicka, *Contemporary Political Philosophy*, 2nd ed., pp. 121-8

¹³⁷ Robert Nozick, *Anarchy, State, and Utopia*, pp. 262-4

original position to speak for all¹³⁹. However, the theorising that takes place does not invoke the idea of representative individuals. This is simply a misinterpretation of Rawls' theory.

A second criticism Nozick makes of Rawls is again related to the issue of ownership. Nozick claims that the redistribution of goods in the original position is based upon a presumption of the communal ownership of those goods, something which he claims is incorrect, resulting from his strong theory of rights and ownership. Nozick criticises Rawls' view of redistribution, saying that 'everyone has some entitlement or claim on the totality of natural assets (viewed as a pool), with no one having differential claims'¹⁴⁰. As a correlative of this, Nozick believes some social claim on the distribution of assets would be necessary as a presupposition to the original position argument – the assets must be *theirs* to distribute¹⁴¹. Sandel replies by pointing out that Rawls' system was only intended as a way of thinking, 'not an actual site of allocation'¹⁴². However, does this deflect the criticism in any way? For, even in a hypothetical situation, we must still deal with whether the goods to be redistributed are theirs to redistribute in the first place. We are again, I believe, here being drawn back to the fundamental question of whether others in a society can lay a legitimate claim to a share of my resources. Nozick, as we have noted above, would entirely reject this view on the assumption that my rights prevent any such claim being valid. Rawls' view, on the other hand, not only allows but encourages this view, on the belief that a minimum standard of living is necessary for all people to achieve their ends. As we have already rejected Nozick's presumptions regarding rights automatically breeding exclusivity, we cannot say that his criticisms here carry weight.

The third criticism Nozick makes of Rawls is due to Rawls' reliance on 'time-slice' methods of assessing justice. We have discussed this above, showing that Nozick's use of purely historical assessments of justice is itself based on assumptions and only serves to weaken his theory. However, is there still something to be said for the criticism of purely end-state assessments of justice? A very short discussion may prove to be of some value. I believe the main problem with pure 'end-state' or 'time-slice' assessments is that we can come to ignore past action. Quite clearly, while the current distribution of wealth and goods is of the highest importance, also important is how this particular distribution came to pass. The danger with a pure end-state assessment is that it can pre-empt, for example, a claim to compensation for previously unjust action. If an action is unjust, and comes to mean that an individual or group comes to be either materially or qualitatively better endowed as a result of it, we then require a historical assessment of justice to incorporate what would then be just compensation. Where one draws the line is a question I will come to, but let me

¹³⁸ Nozick, *Anarchy, State and Utopia*, pp. 190

¹³⁹ Sandel, *Liberalism and The Limits of Justice* (Cambridge, Cambridge University Press, 1982)

¹⁴⁰ Nozick, *Anarchy, State and Utopia*, pp. 228

first provide an example. Take Germany and the Jews, by way of illustration. If we are to assess the just distribution of goods and services it is quite valid to look at the society as it is and ask ‘who has what?’. We can then take the current distribution and compare it to a conception of justice so as to judge it correct or not. Rawls’ *Theory of Justice*, for example, would look at the society to see if the least advantaged benefit from the prosperity of the most advantaged more than they would under an alternative form of justice. The success of the advantaged is linked to the benefit it gives to the least advantaged. However, what is ignored in such an assessment is why a particular society has what it has in the first place. Moving back to our example again, while we assess the justice of the distribution *within* the society, we must also assess the *aggregate* wealth that is there to distribute, and this latter assessment will require an historical evaluation. It could be argued that some of the wealth in Germany was gained through the destruction of the Jews in Europe, their use as slave labour for German industry, and the appropriation of all of their worldly goods, thus making Germany relatively better off¹⁴³. This was unquestionably unjust action but, if we took an end-state assessment of distribution alone, then it would have been impossible to have required Germany to provide compensation after the war. Evidently, in this case, we need some degree of historical justice to rectify the situation to some extent.

The final point regarding Nozick is his dependence throughout on a narrow view of wealth and freedom. He views freedom of exchange as meaning freedom in a wider sense, and thus inherently right. Based upon the view that rights are absolute and inviolable, we find that we are forced to disassociate ourselves from any form of responsibility to one another. The idea that a social system might allow individuals to starve to death and still call itself just seems a contradiction in terms. Nozick does not, as Rawls does, entertain the importance of opportunity or choice. This highlights, again, the difference between formal and substantive self-ownership. Nozick’s critique is crude and does little damage to Rawls.

¹⁴¹ Nozick, *Anarchy, State and Utopia*, pp. 199

¹⁴² Sandel, *Liberalism and The Limits of Justice*, pp. 102

¹⁴³ Obviously, for the sake of argument, we are currently ignoring all other factors involved during the war.

Hayek is a libertarian in the more classical sense of the term. 'Our objection is against all attempts to impress upon society a deliberately chosen pattern of distribution, whether it be an order of equality or of inequality'¹⁴⁴. To understand why this is the case, we need to explain the fundamental values and assumptions he makes at the basic level of his theory. The first, highly important view that Hayek expresses is a view he shares with Rawls: 'no man or group of men possesses the capacity to determine conclusively the potentialities of other human beings and that we should certainly never trust anyone invariably to exercise such a capacity'¹⁴⁵. Due to the fact that we cannot know each other, we are to explicitly reject a form of society with any degree of control. No one should be arrogant enough to assume responsibility for determining other people's happiness for none of us is brilliant enough to fully comprehend the variety of human goods¹⁴⁶. This is an important point and sets the foundation for all that follows.

Another term of critical importance for Hayek is that of 'merit'. The meaning of merit is as follows: 'The term "merit" ... will be used here exclusively to describe the attributes of conduct that make it deserving of praise, that is, the moral character of the action and not the value of the achievement'¹⁴⁷. Hayek is here making what he sees as an important distinction between provable and unprovable individual worth. When discussing the distribution of goods within a society, specifically regarding a 'just' distribution, we must first look at what individuals can be seen to deserve. If we are to relate this to Rawls' theory of justice, for example, which redistributes resources to those with less, we must inevitably find those with less to *deserve* the things they receive, otherwise why should goods be redistributed at all? Hayek, when confronted with a theory like Rawls', asks 'why'. Why should those with little be given goods they have not earned for themselves? This is a particularly difficult question to answer, and many today would retort with something along the lines of 'the inherent worth of all human beings'. However, if we dwell on this for just a moment we find that this answer is really no answer at all if we confine ourselves to rational arguments alone. The belief that each and every human being has an inherent worth is exactly that, a *belief*, and must be recognised as such. This belief has not been dominant forever and will almost certainly wane again at some point in the future. If we are to say that each person has an inherent worth we are, as philosophers, bound to explicitly say *why* this is so. Otherwise, we must either reject the view or see it as far less powerful because of its lack of foundation. Hayek makes this claim regarding human worth, saying that in order to redistribute income, we must first explain why the people receiving the goods deserve them. He believes that merit, as defined above, is an unquantifiable value because it is based on the intentions

¹⁴⁴ Friedrich A. Hayek, *Equality, Value, and Merit* in Michael Sandel (ed), *Liberalism and Its Critics* (Oxford, Basil Blackwell, 1984), pp. 82

¹⁴⁵ Friedrich A. Hayek, *Equality, Value, and Merit*, pp. 83

¹⁴⁶ Here meaning the many ways in which a person can choose what his or her good life is to be; what it is that will achieve a sense of *eudaimonia* for them.

of the doer before and during an action. This, because of the restrictions on our knowing one another, is impossible to assess, meaning that we are unable to use merit or desert as a means of settling disputes over goods within a society. In fact, 'it is an essential characteristic of a free society that an individual's position should not necessarily depend on the views that his fellows hold about the merit he has acquired'¹⁴⁸.

Hayek goes on to claim that some judgements are not, and should not be, moral judgements at all. The value of an individual is included in this. 'Though moral value or merit is a species of value, not all value is moral value, and most of our judgements of value are not moral judgments. That this must be so in a free society is a point of cardinal importance; and the failure to distinguish between value and merit has been the source of serious confusion'¹⁴⁹. There is within this a distinction, almost hidden away in the footnotes, that harks back to age-old arguments. 'I believe that this distinction between merit and value is the same as that which Aristotle and Thomas Aquinas had in mind when they distinguished "distributive justice" from "commutative justice"'¹⁵⁰. These distinctions are two of four which Aristotle first described, those being 'commutative', 'corrective', 'juridical', and 'distributive' justice. 'Commutative' justice is that used in the keeping of contracts within the state, with just action meaning the fair distribution of goods during the process of exchange. 'Distributive' justice is applicable in the dispensing of honours, powers, and goods, being dependent on what one has contributed to the state¹⁵¹. The distinctions made by Aristotle are adopted and carried over into Hayek's theory.

The importance of the distinction just described becomes greatly accentuated by the belief that 'as a statement of fact, it just is not true that "all men are born equal"'¹⁵². Hayek does accept that there is a belief that all people ought to have equal value. He just does not happen to share it. Instead, he takes up the view that each man's worth is not something to be judged by his fellow man. We need to use something more reliable than this, something which can be tangibly tested, and this can only mean taking the results of a person's actions. As in a completely free economic system, with the state confined to the role of a night watchman, an individual has a right to demand that he be treated fairly during exchanges with others but can make no demands on society beyond this. 'Reward for merit is reward for obeying the wishes of others in what we do, not compensation for the benefits we have conferred upon them by doing what we thought best'¹⁵³.

¹⁴⁷ Friedrich A. Hayek, *Equality, Value, and Merit*, pp. 88

¹⁴⁸ Ibid.

¹⁴⁹ Friedrich A. Hayek, *Equality, Value, and Merit*, pp. 92

¹⁵⁰ Friedrich A. Hayek, *Equality, Value, and Merit*, footnote no. 11, pp. 97

¹⁵¹ W. von Leyden, *Aristotle on Equality and Justice* (Basingstoke, Macmillan in association with the London School of Economics and Political Science, 1985), pp. 1-2

¹⁵² Friedrich A. Hayek, *Equality, Value, and Merit*, pp.82

¹⁵³ Friedrich A. Hayek, *Equality, Value, and Merit*, pp.94

To better understand this position, we must understand what Hayek means when he talks about maintaining a ‘free society’. He takes this to be an entirely good thing in itself, and defines it as such: ‘The basic postulate of a free society [is], namely, the limitation of all coercion by equal law’¹⁵⁴. His view is also made clearer as we read that ‘a society in which the proposition of the individuals was made to correspond to human ideas of moral merit would ... be the exact opposite of a free society’¹⁵⁵. So we again find that society is to abstain from making any moral judgements of who deserves what. It is an interesting idea and contrasts with Rawls, not on the validity of abstaining from moral judgement about particular things, but on exactly what we are to abstain from judging. While Rawls takes the desert of those receiving goods in society for granted, Hayek rejects this, saying that one cannot prove whether an individual deserves something unless we can prove his moral worth. Due to the epistemological difficulties inherent in being a human being, there is no way to choose who should deserve anything beyond judging the tangible results of their actions through free exchange. Rawls refrains from judging which kind of good life is more valid than another, saying that this is a postulate moral and political philosophy has no right to make.

Hayek’s views on the family may appear at first to be a side topic to his theory. However, the importance he attaches to the family goes as far as saying that ‘belonging to a particular family *is part of the individual personality*’¹⁵⁶, an extremely strong claim to make. The fact that this may seem to clash rather strongly with his own view that we absolutely cannot know each other may be the first thing that strikes the reader. Or one could perhaps be forgiven for wondering exactly how this particular contention is supposed to function? The observable fact that some people do not psychologically resemble their parents in any way, shape or form might also raise an eyebrow. But Hayek holds it as undeniable that the family is an essential means of transferring education and ‘civilization’ between the generations. The last comment perhaps does not come across as especially unusual in itself until we find that ‘the family’s function of passing on standards and traditions is closely tied up with the possibility of transmitting material goods. And it is difficult to see how it would serve the true interest of society to limit the gain in material conditions to one generation’¹⁵⁷. So my family not only influences who I am but is a *part* of me. It is a means of transferring education and culture between generations, a point which may not be particularly contentious in itself, but Hayek believes an inevitable aspect of this transferral involves the passing on of material wealth. Judging by the general thrust of Hayek’s arguments, it seems that he would object to the state taking a share of the parents’ bequeathals. As a further reason for the state not interfering in what is passed from one generation to the next, Hayek explains that non-taxation

¹⁵⁴ Friedrich A. Hayek, *Equality, Value, and Merit*, pp.83

¹⁵⁵ Friedrich A. Hayek, *Equality, Value, and Merit*, pp. 91

¹⁵⁶ Friedrich A. Hayek, *Equality, Value, and Merit*, pp. 85, italics added.

of inheritance is actually the lesser of two evils: that it is almost dangerous to coerce some people into giving a share of their wealth to society. If we attempted to do so it would be inevitable that rich and powerful families would resort to other, illegitimate means of gaining advancement for their children, thus leading to a greater degree of disrespect for the law. As such, we should simply resign ourselves to the fact that people will not accept sharing a proportion of their goods. 'Those who dislike the inequalities caused by inheritance should therefore recognize that, men being what they are, it is the least of evils'¹⁵⁸. The possibility that some might find the sharing of their resources quite fair does not appear to be worth considering...

The views we have already investigated demonstrate a very strongly individualistic element to them, based on the idea that we cannot know each other and that human worth must be weighed against the individual's value to society. There therefore seems to be a clash when we find an almost organic conception of society, with Hayek saying that 'the acquisition by *any* member of the community of additional capacities to do things which may be valuable must always be regarded as a gain for that community. This implies that the desirability of increasing the abilities and opportunities of any individual does not depend on whether the same can also be done for others'¹⁵⁹. We find that the richest man in a society can benefit himself and his family, entirely disregarding everyone else, and this is still to be regarded as a benefit to that society. The only qualification on this self-enrichment is the 'Lockean proviso' discussed above, meaning 'that others are not thereby deprived of the opportunity of acquiring the same or other abilities which might have been accessible to them had they not been secured by that individual'¹⁶⁰. We are left with a system Hayek regards as 'free', a highly loaded statement, which in practice means an almost complete lack of restriction on all kinds of economic activity with the state being responsible only for the keeping of contracts. We have no right to claim any degree of what another person may have, regardless of the state in which we might find ourselves. In fact, such a claim would be little more than malicious jealousy. 'We find that [demands for social redistribution of goods] rest on the discontent that the success of some people often produces in those that are less successful, or, to put it bluntly, on *envy*. The modern tendency to gratify this passion and to disguise it in the respectable garment of social justice is developing into a serious threat to freedom'¹⁶¹.

What are we to make of such a theoretical position? Hayek often speaks of 'freedom' and the importance of protecting this. However, I believe it is pertinent to ask the question of for whom this freedom is designed. Hayek would surely answer that this is freedom for all, freedom before the law, meaning equal treatment in practice. It is perhaps worth

¹⁵⁷ Friedrich A. Hayek, *Equality, Value, and Merit*, pp. 86

¹⁵⁸ *Ibid.*

¹⁵⁹ Friedrich A. Hayek, *Equality, Value, and Merit*, pp. 83, italics added.

reminding ourselves of the distinction made earlier between formal and substantive freedom. As Hayek fully acknowledges, equal treatment before the law inevitably leads to great inequalities in wealth and power. This is something which he supports, saying that this will benefit the community through the better provision of an elite. Perhaps this is what he means when saying that the benefit gained by any member of the community is a benefit for all. However, as with the view expounded by Robert Nozick, we are left with the possibility of a person being little more than a slave by another name. If someone has equality before the law but absolutely no real power over their own lives, we have formal freedom which means nothing in practice. In my opinion, any form of justice that leads to a lack of freedom in practice is fundamentally flawed. It is something which Hayek fully endorses.

A far more difficult point to contest is Hayek's claim that our value or worth should not be taken for granted but be qualified, being dependant on what we contribute to our society. This may strike us as being 'intuitively' wrong, which might also be Rawls' response to this. However, as mentioned above, I do not believe that this is a sufficient basis for a theory of moral and political philosophy because saying, 'This is true simply because I believe it to be so' (i.e. due to intuition) will leave us entirely unable to distinguish between competing claims to the truth. If we *do* do this, using intuition as a justification for a philosophical point, as Rawls does, then we must be content with saying that this point is *true only for me*, and we cannot make claims beyond this¹⁶². If we are making a claim to generality, then we must move beyond belief and assumption and rest our theories on rational argument that will make sense regardless of our cultural and personal heritage.

Finally, we find a point Hayek makes with which I entirely concur, this being that 'no argument of justice can be based on the accident of a particular individual's being born in one place rather than another'¹⁶³. 'Once the right of the majority to the benefits that minorities enjoy is recognized on a national scale, there is no reason why this should stop at the boundaries of existing states'¹⁶⁴. An example of modern Africa gives a good degree of insight here. When the European powers were forced to leave the continent they generally did so in a rather haphazard way, creating states along arbitrary borders with little regard to differences in language, culture, religion, or values. Now, according to most theories and most practice, the creation of a border between these political units limits the responsibility those states have for any people outside their jurisdictions. But why should this be so? I have chosen this particular example because of the clearly arbitrary division of lands and peoples into units, but it can be applied to all states. Borders have depended on luck, force, political intrigue, and money as much as any notion of the people 'belonging' together. A

¹⁶⁰ Ibid.

¹⁶¹ Friedrich A. Hayek, *Equality, Value, and Merit*, pp. 87, italics added.

¹⁶² A restriction that Rawls later resigns himself to as he adjusts his theory. See the fourth chapter for a greater exploration of this.

sense of belonging to a state has also not always been the highest form of loyalty, as we can easily see if we look into relatively recent history and see that allegiance used to be split between the church and the state, with one triumphing on one occasion and the other on another. The point to be made here is that states, political units, 'communities', or whatever else we wish to call them, are essentially man-made and man-maintained entities. The actual borders do *not* 'exist' in any kind of *absolute* sense but are drawn on maps by human hands. It is human hands which police them, as it is that it is only humans who see them. They are fickle, changeable, and should not be assumed to be valid when discussing justice. If they are to be seen as valid, then their inclusion must first be *justified*.

¹⁶³ Friedrich A. Hayek, *Equality, Value, and Merit*, pp. 95

¹⁶⁴ Friedrich A. Hayek, *Equality, Value, and Merit*, pp. 96

Charles Beitz is a theorist who explicitly questions the validity of national boundaries when considering justice. He takes Rawls' theory and argues that its logical conclusion is the foundation of a global conception of justice 'in which state boundaries have a merely derivative significance'¹⁶⁵. He points out that Rawls simply assumes that justice is only applicable within national borders but there is no valid reason given for this. If we are to make use of the initial position at all, it must, of necessity, be seen internationally.

As we will find when we move on the later thought of Rawls, Rawls does not believe that the question of international justice is a relevant topic of discussion for political philosophy. Beitz, on the other hand, could not disagree more, saying that 'ideal theory prescribes standards that serve as goals of political change in the nonideal world'¹⁶⁶. The practical limits that we find in the real world are not to be seen as restrictions on the consideration of pure theory. The fact that something may not be immediately achievable in practice does not prevent us from considering what *should* be. We are first to believe what we consider to be correct in theory, and then deal with the practicalities of achieving it. Therefore, with regards to theoretical justice, if we find that justice is inherently international, we must include this in all subsequent discussions. This belief is fundamental to Beitz's discussions, and underlies his entire book.

Firstly, then, what is Rawls' view on this subject? The most striking thing to be found in *A Theory of Justice* is the conspicuous lack of discussion regarding the possibility of an international theory of justice. The two main points made regarding international relations are, firstly, the assumption made at the very beginning of the book that the considerations of justice are to be confined entirely to 'a self-contained national community'¹⁶⁷. While developing *A Theory of Justice* there is no attempt to justify this, apart from the need for simplicity. The second point made is of more interest for those interested in the possibility of international justice and involves the reinterpretation of the original position as a kind of 'international conference'. The way Rawls explains this is as follows:

One may extend the interpretation of the original position and think of the parties as representatives of different nations who must choose together the fundamental principles to adjudicate conflicting claims among states. Following out the conception of the initial situation, I assume that these representatives are deprived of various kinds of information. While they know that they represent different nations each living under the normal circumstances of human life, they know nothing about the particular

¹⁶⁵ Charles R. Beitz, *Political Theory and International Relations* (Princeton University Press, Princeton, 1979), pp. 182

¹⁶⁶ C. Beitz, *Political Theory and International Relations*, pp. 156

circumstances of their own society ... Once again the contracting parties, in this case representatives of states, are allowed only enough knowledge to make a rational choice to protect their interests but not so much that the more fortunate among them can take advantage of their special situation. This original position is fair between nations; it nullifies the contingencies and biases of historical fate¹⁶⁸.

So we are to imagine a kind of UN Assembly where the knowledge of the particular state one represents is removed. This removes the random element of the negotiations: who happens to have what on account of luck. The greatest problem is that this is as far as Rawls goes on the subject in *A Theory of Justice*. He does not put forward any particular principles, as he does with domestic justice, only saying that 'the principles chosen would, I think, be familiar ones'¹⁶⁹. It is highly likely that, as with the UN Assembly, the interests that would be represented would be those of the states and their respective populations. And in that order. States' interests first, and those of their populations second. The objection may be raised that states' responsibilities are always to promote the interests of their populations, but this is not the case. Practicalities aside, it is important to note that the representation only of states in an assembly of states, rather than the individuals who live within them, will inevitably lead to the consideration of states' interests first. States are not only composed of their citizens and represent them, but also represent themselves as distinct entities. For example, states often regard the preservation of their own existence as an inherent value, as beyond question, and will put this priority above the interests of many of the individuals living within their borders. It is also invariably the case that a state will not allow groups within it to break away if thereby reducing the power it is able to wield. That this may be unrepresentative of the individuals wanting independence is often of little interest to the state itself as it is primarily concerned with protecting itself. Examples of this are readily found in the continuing support for the gradually receding doctrine of non-intervention, even when the state is conducting violence against its own population. The recent genocide in the Sudan provides a very real, contemporary example of this principle leading to unquestionable injustice in practice. The principle of non-intervention is being upheld even as I write, with other states reluctant to become involved, despite the fact that this is leading to murder on a massive scale. When Beitz deals with this topic, it leads to a very different view from Rawls'. 'It is important to be clear who are the subjects of a global difference principle, especially because it has been questioned whether such a principle should apply to states rather than persons. It seems obvious that an international difference principle applies to persons in the sense that it is the globally least advantaged representative person (or group of persons) whose position is to be maximized'¹⁷⁰. Why is this? An important thing to realise about the currently prevailing view of

¹⁶⁷ J. Rawls, *A Theory of Justice*, 1st ed, pp. 457

¹⁶⁸ J. Rawls, *A Theory of Justice*, 1st ed, pp. 378

¹⁶⁹ Ibid.

¹⁷⁰ C. Beitz, *Political Theory and International Relations*, pp. 152

international relations is that it assumes that states are independent and autonomous units, analogous to persons. However, 'the idea that all states have a right of autonomy is incorrect because the analogy of states and persons is imperfect. States are not sources of ends in the same sense as are persons. Instead, states are systems of shared practices and institutions within which communities of persons establish and advance their ends'¹⁷¹. State boundaries are not something absolute but are purely human constructions, as discussed above. There is no reason why the nation states of the contemporary world are any more valid to political philosophy than the city states of history. There is no reason why a nation state is any more valid, for that matter, to political philosophy than any other possible form of political community. The measure of validity is not absolute and timeless, but dependent on the views of a political unit's citizens. As a result, the international original position should not involve, as Rawls argues, a conference between representatives of nation states, but should involve the extension of the original position we already know from Rawls to the entire world¹⁷². Denying the knowledge that those in the original position have of themselves so as to equalise the arbitrary elements of their situations seems to demand that the nation of birth also be excluded. Why should it be any less arbitrary or accidental than being born into a wealthy family?

Beitz holds great store in the notion of nations' natural resources, pointing out that these are arbitrarily found, yet are currently claimed as an inherent right of whichever state happens to have them. In this, he finds Rawls' discussion of natural abilities almost analogous, quoting Rawls as saying of these that 'these are simply natural facts. What is just or unjust is the way that institutions deal with these facts'¹⁷³. This line of reasoning is just as valid when considering natural resources. In the international original position the parties would regard the distribution of natural resources as morally arbitrary and thus subject to redistribution according to an agreed principle of justice¹⁷⁴. The fact 'that national societies are assumed to be self-sufficient does not make the distribution of natural resources any less arbitrary'¹⁷⁵. However, Beitz also acknowledges that there are important differences between natural talents and natural resources. The first problem, which actually shows natural resource distribution to be more arbitrary than natural talents, is the fact that natural resources are found "out there", available to the first taker¹⁷⁶. Natural talents, on the other hand, are naturally attached to persons and immediately available, while natural resources must first be claimed and exploited. Beitz floats the idea that natural talents are perhaps more than simply possessions and constitute a part of the self which a person chooses to develop and thus may take a special kind of pride in. As such, it may be possible that to interfere with a person's natural talents involves interfering with a self, which would obviously conflict with such

¹⁷¹ C. Beitz, *Political Theory and International Relations*, pp. 180

¹⁷² Barry, *The Liberal Theory of Justice*, pp. 128-32, and Scanlon, *Rawls' Theory of Justice*, pp. 1,066-7

¹⁷³ J. Rawls, *A Theory of Justice*, pp. 102, in C. Beitz, *Political Theory and International Relations*, pp. 132

¹⁷⁴ Compare Kant's *Perpetual Peace* here, pp. 106

¹⁷⁵ C. Beitz, *Political Theory and International Relations*, pp. 141

¹⁷⁶ C. Beitz, *Political Theory and International Relations*, pp. 139

ideas as an individual's rights. Interfering with natural resources is far less complicated and not analogous on this particular point as we have already shown that a state cannot be held to have the same kind of unity and coherence as a single person. The greatest difference I can see between the two is that natural talents cannot be given away, showing a degree of oneness almost impossible with any other kind of property. A natural resource may be shared in a much fuller sense than a natural talent. The results of a natural talent may be liable to sharing, but the thing itself is an aspect of the self. Perhaps, as Beitz queries, 'a person need not justify the possession of talents, despite the fact that one cannot be said to deserve them, because they are already one's own: the prima facie right to use and control talents is fixed by natural fact'¹⁷⁷. Natural resources are not liable to this query, as they are quite clearly independent of any sense of identity. Thus, if we are to accept that an international original position is a valid means of considering international justice, we must come to the conclusion that the redistribution of resources will be required on a global scale.

We must again bear in mind throughout that without a basis to a theory we can have no subsequent obligation. Upon what basis do we find international obligation rests? Beitz here follows Kant closely, arguing that the increasing interdependence of economic relations has meant that the idea of self-sufficient national units has become outdated. 'The conclusion that principles of distributive justice apply globally follows from the premise that international economic interdependence constitutes a scheme of social cooperation like those to which requirements of distributive justice have often been thought to apply ... international relations is more like domestic society than it is often thought to be'¹⁷⁸. The fact that states are now inextricably interconnected then leads to an obligation to see that the results of this interdependence are fair, according to a principle of justice. Any profits gained from the exchanges between states are then liable for consideration using Rawls' difference principle, meaning that disparities of wealth are only permissible if they increase the relative wealth of the poorest nations more than that of the richest. This is immediately obvious as a striking contrast to the current doctrine of international relations as a state of nature in which redistribution is not an obligation, but charity. I fully agree with Beitz that the current view is wrong and requires development into an internationally based theory of justice along the lines outlined. Within this, states' justice would then be of 'derivative significance', with states' justice being encompassed by, and judged in relation to, a principle of global justice. I disagree, however, on the basis upon which the obligation rests. I will expand on and develop this point in chapter five.

¹⁷⁷ C. Beitz, *Political Theory and International Relations*, pp. 138

¹⁷⁸ C. Beitz, *Political Theory and International Relations*, pp. 154

The final point of consideration from Beitz is a point he only briefly raises, again regarding the initial position. His proposition is as follows:

The international original position parties are prevented by the veil of ignorance from knowing their generation; [therefore] they would be concerned to minimize the risk that, when the veil is lifted, they might find themselves living in a world where resources have been largely depleted¹⁷⁹.

As a result, the contracting parties would take measures leading to extensive conservation of the environment and the rationalisation of finite resources. We here find something slightly resembling Rawls' 'savings principle', which attempts to bring a sense of responsibility for future generations into considerations made now. But Beitz's idea of also removing the knowledge of which generation the contracting parties belongs to is a unique and interesting one. Would this not lead to a sufficient consideration of the effect we are having now on those who will have to live after us?

¹⁷⁹ C. Beitz, *Political Theory and International Relations*, pp. 142

Before moving on to discuss Rawls' responses to his critics, and the ways in which he subsequently alters his views, it is worth spending a short time on Dworkin's theory. This is similar to Rawls', in that it is an attempt to use hypothetical reasoning to tease out what justice in a society should be taken to be. However, the way in which we are to theorise within the hypothetical position is quite different.

The tools Dworkin uses are two-fold, the first being the use of an 'auction' system and the second being the use of 'insurance'. Dworkin acknowledges, as does Rawls, that the natural assets one is born with are not in any way earned, and that a just system will only allow those goods which have been gained through personal endeavour and well reasoned choices to be kept by the individual. So as to create the position of equality for all when all participants do not know their own wealth, abilities, or status in society (the equivalent of Rawls' 'veil of ignorance'), Dworkin also proposes providing a system of compensation. This is to take place before any other considerations are factored in, at the beginning of the hypothetical 'thought experiment', as it were, and is to provide compensation especially for the randomly adorned natural assets that one happens to have. Thus, to use Dworkin's example, the costs that an individual will incur as a direct result of their natural disabilities, such as a particular slowness in learning to read and write, will be predicted and repaid to the individual, thus leaving all with the same degree of 'real' spending power. As such, we are left with a just distribution of wealth in which we identify very clearly 'which aspects of any persons' economic position flow from his choices and which from advantages and disadvantages that were not matters of choice'¹⁸⁰.

The next stage of the process is then the 'auction'. Before the 'bidding' begins, each person is asked how much of the portion of wealth given to them they would be prepared to give up as insurance against being a loser in the 'natural lottery'. The aggregate levels chosen are then taken as the limit society has set itself in paying compensation to those disadvantaged by nature¹⁸¹. There must be limits because a lack of them may lead to the enslavement of the talented, as some disabilities incur extremely high costs simply in allowing the person to survive, costs which will rest on the shoulders of the non-disabled. Dworkin then uses the idea of all members being given 100 clamshells with which to participate in the auction, the auction being for the collected resources of the society. From this pool of resources each can choose his own bundle of goods as they are auctioned off, corresponding to what the good life consists of for them. In this way, we find a method of giving equal weight to all possible perceptions of what the good life can mean

¹⁸⁰ Ronald Dworkin, *A Matter of Principle* (Harvard University Press, London, 1985), pp. 208

to an individual. So as to further ensure that everyone has actually received the bundle of goods that will make them most fulfilled or happy, their choice goes through the so-called 'envy test'¹⁸². This verifies whether each person has come to a situation in which they have nothing to envy of those around them, demonstrating that each person has optimised his initial equality and the system of distribution is fair and equal. Such a system introduces and satisfies the requirement of justice in that the distribution be a pure product of societal and individual choice. According to Dworkin, the resultant distribution is a way of having people's goods be purely the outcome of their own choices, such that they can then be taken as fully responsible for all that befalls them.

Why does Dworkin feel that such an evidently complicated theory is necessary? It stems from seeking to correct a shortcoming of Rawls', this being Rawls' non-compensation for the arbitrary nature of natural talents. While Rawls recognises that natural talents are naturally distributed at birth, he places the main emphasis of his theory on the distribution of material goods, rather than whether those goods have been attained through good choices and effort, or through reliance on the arbitrarily given natural talents. Those with natural talents are able to increase their wealth as they wish, as long as the increase in wealth also works to the benefit of the worst-off. Dworkin believes that this does not fully acknowledge the degree to which the increase in wealth of the most talented is essentially undeserved. Instead, he proposes the system just described, so as to provide a more equal starting position for all by compensating for those undeserved natural talents through a system of insurance. In this way, we are to be left with a sense of justice which is more sensitive to people's ambitions and the work they have put into achieving them, and less dependent on the endowments they find they have upon birth.

What is to be made of Dworkin's attempt at making Rawls' theory fairer? Before moving onto what the practical implications of Rawls' theory might be it is worth noting that, even in its purely hypothetical form, the application of Dworkin's theory is wrought with problems. The first and most damaging criticism is the relative nature of natural talents¹⁸³. As Kymlicka points out, the value placed on natural talents is dependent firstly on the place and time we happen to find ourselves in, and secondly on the personal ambitions of the individual in question. The quality of physical strength, for example, is today of far lesser value than that of hypothetical reasoning¹⁸⁴. This was almost certainly not always the case. And the quality of theoretical reasoning will be of less value than physical strength to the individual who finds that his greatest ambition in life is to be the heavy weight boxing champion. A third point is that natural talents normally only form the 'base' of a person's abilities; only in extremely rare cases will an individual be

¹⁸¹ Ronald Dworkin, 'What is Equality? Part I: Equality of Welfare, Part II: Equality of Resources', *Philosophy and Public Affairs*, 10, pp. 296-9

¹⁸² Dworkin, 'What is Equality?', *Philosophy and Public Affairs*, 10, pp. 285

able to do something valuable without having worked at developing the necessary natural talent involved. Even Mozart would have done his daily practice. This exposes the impossibility of the delineation Dworkin is proposing. How are we ever to draw the line between what degree of the goods an individual has are the result of undeserved natural talents and what degree are due to their own ambitions, choices and hard work? Dworkin himself acknowledges this difficulty, actually resigning himself to admitting that the most his theory can give is a second-best option. The ideal is unattainable in practice. The practical results of the theory therefore are, somewhat simply stated, the taxation of the rich to compensate the poor. This has been rather heavily criticised because such taxation is indiscriminate; it is a step back from Dworkin's aim of distinguishing desert from arbitrary talents. The recommendations Dworkin's theory makes for our society are thus criticised as being 'surprisingly modest'¹⁸⁵ and 'indistinguishable in [their] strategic implications'¹⁸⁶ from Rawls' justice as fairness. Despite having argued for the extensive equalisation of wealth through the use of compensation in theory, he gives no indications of how this might be achieved in practice. The end effect is that he does not reach his aim of describing a system of justice in which the arbitrary nature of natural talents is sufficiently compensated for. Moreover, Dworkin's theory is essentially little more than an attempt to alter Rawls' use of the initial position argument. While it highlights Rawls' lack of compensation for the arbitrary character of natural talents, it does not address the many criticisms made of Rawls by such authors as outlined here, nor does it seek to redress the deficiencies of Rawls' intuitive methodology.

Dworkin, in his well-known *Taking Rights Seriously*¹⁸⁷, allows an insight into some of his more fundamental beliefs. At the core of his reasoning is a rejection of perfectionism as a political principle¹⁸⁸ in a similar way to Rawls' rejection of the 'good' over the 'right'. It is taken as the foundation of liberalism because the denial that any one view of a worthwhile life is better than another necessarily forces us to give equal regard and freedom of practice to all. Dworkin's concern, however, is to demonstrate that some rights are more valid than others. He especially chooses the general right to liberty. While believing that there is no absolute, general right to liberty as such, he does argue that our right to specific liberties is valid as being grounded in our general right to equal respect and consideration. Upon what basis can he then found this view? Dworkin uses a distinction between public and private views which he names 'personal' and 'external' preferences. Personal preferences are those with a remit related to the individual alone, and

¹⁸³ See Kymlicka, *Contemporary Political Philosophy*, 2nd ed. (Oxford University Press, Oxford, 2002), pp. 75-87 for a better discussion of Dworkin than provided here.

¹⁸⁴ Kymlicka, *Contemporary Political Philosophy*, 2nd ed., pp. 80

¹⁸⁵ Colin Macleod, *Liberalism, Justice and Markets: A Critique of Liberal Equality* (Oxford University Press, Oxford, 1998), pp. 151 in Kymlicka, *Contemporary Political Philosophy*, 2nd ed., pp. 81

¹⁸⁶ Joseph Carens, 'Compensatory Justice and Social Institutions', *Economics and Philosophy*, 1/1, pp. 67 in Kymlicka, *Contemporary Political Philosophy*, 2nd ed., pp. 81

¹⁸⁷ Ronald Dworkin, *Taking Rights Seriously* (Duckworth, London, 1977)

¹⁸⁸ Dworkin, *Taking Rights Seriously*, pp. 273

external preferences are those relating to others¹⁸⁹. This distinction is applicable to utilitarianism, thereby ‘taming’ it, as it were, as external preferences are to be disregarded when discussing practices within society. As such, the threat of the tyranny of the masses is removed, each person is only permitted to decide what is right for themselves alone and liberty is to reign supreme. The similarity to Rawls in this is obvious, it is hardly worth criticising this afresh. However, it is perhaps worth noting Haksar’s criticism of this view¹⁹⁰, which therefore also applies to Rawls, in asking why we do not have the right to fully express ourselves in public? Dworkin’s perspective, according to Haksar, means not only that our political freedoms are guaranteed by disallowing external preferences to cloud our judgement, but that we will also have to allow people to run naked through the streets as all public censorship will be impossible. If we are to condone any form of censorship at all, we are forced to accept some form of perfectionism in our societies. The other criticism, not mentioned by Haksar, is the apparent lack of a basis for rights in the first place. As far as I am aware, Dworkin is as susceptible to this point as Rawls and thus his theory is weakened in the same way as Rawls’.

¹⁸⁹ Dworkin, *Taking Rights Seriously*, pp. 234

¹⁹⁰ Vinit Haksar, *Equality, Liberty, and Perfectionism* (Oxford University Press, Oxford, 1979)

Chapter Four:

The Later Rawls

As we begin to analyse the theories of the later Rawls we come to realise that many aspects have changed. The foundations, the conclusions, the applicability and the aims of Rawls' theories are all now seen to be quite different. The two major works which we find contain the most finalised versions of Rawls' thought are *Political Liberalism* (1993) and *The Law of Peoples* (1999). Both are expansions and clarifications of theories put forward in previous papers or lectures. *Political Liberalism* stems from six lectures, the first of which given at Columbia University in 1980 entitled 'Kantian Constructivism in Moral Theory'. The next five were presented and published in the period 1980-9. *The Law of Peoples* originally stemmed from a paper of the same name published in 1993. It incorporates two further papers, the first applying the theory of the law of peoples to practice, entitled 'Fifty Years after Hiroshima' (1995), and the second entitled 'The Idea of Public Reason Revisited' (1997). In this chapter I would like to attempt to show how Rawls' theories have changed, why this was deemed necessary, and whether these changes adequately respond to his many critics.

Before moving on to the justifications for the altered theories given in *Political Liberalism*, I believe that a short overview would be worthwhile. The first thing to note is the altered applicability of the later Rawls. This applicability has, in a very few words, been further limited. In the *Theory of Justice* of the earlier Rawls, we were content with finding the theory only applicable to the basic structure of society. This remains, but the theory is no longer taken to be applicable to all societies. Instead, we now find that ‘justice as fairness is framed to apply to what I have called “the basic structure” of a *modern constitutional democracy*’¹⁹¹. In other words, we are dealing with a theory of justice that is now only designed for and applicable to Western-style democracies. Furthermore, we find that the goal of Rawls’ theory has been drastically altered. ‘The social role of a conception of justice is to enable all members of society to make mutually acceptable to one another their shared institutions and basic arrangements, by citing what are publicly recognized as sufficient reasons, as identified by that conception’¹⁹². We are now dealing with creating stability and peace in societies which are inherently pluralistic, incorporating differing and conflicting religious, political and even philosophical views. Rawls therefore aims at a theory with which all can identify and endorse, despite having what may turn out to be mutually antagonistic views in other aspects of life. He states his aim as being to reach ‘a consensus that includes all the opposing philosophical and religious doctrines likely to persist and to gain adherents in a more or less just constitutional democratic society’¹⁹³. As Raz comments regarding this statement, ‘only because our societies are nearly just societies can it be right for political philosophy to regard the pursuit of consensus as its overriding goal’¹⁹⁴. Rawls regards our Western democracies as the primary subject of his investigation and concludes that a theory only dealing with our societies is sufficient for political philosophy.

The second point briefly worth noting here is that Rawls’ theory is now supposedly above all values inherent in society. It denies that there are any metaphysical assessments incorporated in its justification and claims its conclusions are entirely practical in nature. This ties into a new conclusion drawn about the correct *telos* of political philosophy. Rawls claims that ‘the aims of political philosophy depend on the society it addresses’¹⁹⁵, ours then being specific to us and involving creating a stable environment despite the great diversity in our societies. Rawls now looks to observable aspects of society for some of the bases of his theory. His theory of justice now ‘tries to draw solely upon basic intuitive ideas that are embedded in the political institutions of a constitutional democratic regime and the

¹⁹¹ John Rawls, ‘Justice as Fairness: Political not Metaphysical’, *Philosophy and Public Affairs*, 14/3 (1985), 225, pp. 224, italics added

¹⁹² John Rawls, ‘Kantian Constructivism in Moral Theory’, *Journal of Philosophy*, 77 (1980), pp. 517

¹⁹³ Rawls, ‘Justice as Fairness: Political not Metaphysical’, pp. 225-6

¹⁹⁴ Joseph Raz, *Ethics in the Public Domain: Essays in the Morality of Law and Politics* (Oxford, Oxford University Press, 1994), pp. 52

¹⁹⁵ John Rawls, ‘The Idea of an Overlapping Consensus’, *Oxford Journal of Legal Studies*, 7, (1987), 1, pp. 1

public traditions of their interpretation ... it starts from within a certain political tradition'¹⁹⁶. Gone is the idea of the theory of justice being an Archimedean point from which to judge society. The theory is now only valid within certain kinds of society, and is then only applicable to those same societies. 'Conditions for justifying a conception of justice hold only when a basis is established for political reasoning and understanding within a public culture'¹⁹⁷. This is a fundamental and radical change in Rawls' theory, seriously limiting it. It is now somewhat reminiscent of Aristotle's valuing the current views held by the majority of people in a society due to the fact that so many people believing something must mean that the belief holds some element of truth. However, instead of then analysing these beliefs, as Aristotle did, Rawls takes them all to be valid. As Raz states, 'a theory of justice for our time has *shallow foundations*. Its justification starts with the fact that certain beliefs form the common currency of our public culture. It does not seek deep foundations for these beliefs; it concerns itself neither with their justification nor with its absence'¹⁹⁸. We seem to be finding that Rawls' theory is now not what many previously supposed it to be. It is no longer the great theory describing universal justice, applicable to all people, but is limited only to Western-style democracies. It is no longer independently valid, based on hypothetical situations and metaphysical speculations. It no longer aims to describe what justice is in an absolute sense, but has the goal of securing stability. 'The aim of justice as fairness as a political conception is practical ... It presents itself not as a conception of justice that is true, but one that can serve as a basis of informed and willing political agreement'¹⁹⁹.

Before moving on to assessing the adequacy of the changes that have taken place in Rawls' thinking, the similarities still to be seen must be noted. A simple observation is that Rawls' theory still only claims to deal with justice at the basic structure of society. This is as true of the later Rawls as it was in his *Theory of Justice*. The remit of the theory remains restricted, and in fact now applies to even less than was previously thought. The second similarity is the priority of the independence from general morality. As before, when Rawls attempted to 'stand back' from taking decisions about what kind of *telos* or 'good life' any person may choose, we find him again attempting to entirely abstain from making conjectures regarding moral theory. As before, he is aiming to gain agreement on what might be right for a society's basic structure as a whole. What people choose as their 'life project' is, as far as Rawls is concerned, subject to philosophical abstinence.

¹⁹⁶ Rawls, 'Justice as Fairness: Political not Metaphysical', pp. 225

¹⁹⁷ Rawls, 'Kantian Constructivism in Moral Theory', pp. 517

¹⁹⁸ Raz, *Ethics in the Public Domain: Essays in the Morality of Law and Politics*, pp. 49

¹⁹⁹ Rawls, 'Justice as Fairness: Political not Metaphysical', pp. 230

Twenty years after completing *A Theory of Justice* we find that Rawls has found his conception of justice to contain fundamental, if not fatal, flaws. As he says in the introduction to *Political Liberalism*, ‘My first use of such ideas of a political conception of justice and of an overlapping consensus were misleading and led to objections I initially found puzzling ... I had underestimated the depth of the problem of making *Theory* consistent and had taken for granted a few missing pieces essential for a convincing statement of political liberalism’²⁰⁰. One missing piece is the distinction between political and comprehensive conceptions of justice. This is crucial to the later Rawls and forms one of the main problems to be found in the earlier work. ‘In *Theory* a moral doctrine of justice general in scope is not distinguished from a strictly political conception of justice. Nothing is made of the contrast between comprehensive philosophical and moral doctrines and conceptions limited to the domain of the political’²⁰¹. A comprehensive conception is taken to be any system of thought where the remit includes ways of living beyond the purely public aspects of our lives. A Christian or Muslim may believe that they know the absolute truth, as it were, and that because of this their system of thought and practices should be universally imposed onto society. This would be what Rawls would call a comprehensive doctrine. By political doctrine, Rawls is referring to that aspect of public life that all reasonable people should be able to agree on, no matter what comprehensive doctrines they hold. For example, many democracies contain a multitude of religions and philosophical doctrines. However, there is general consensus that all people should be permitted to express their own views; we have the freedom of speech. That the people holding the variety of comprehensive doctrines can agree on this is due to their shared political conception of justice. They are able to do this because they share a political view regarding what is just for their society. The importance of this distinction to Rawls’ later work should not be underestimated. It marks a distinction to be made within the remits of philosophy itself. ‘Which moral judgements are true, all things considered, is not a matter for political liberalism’²⁰². And, furthermore, ‘the general problems of moral philosophy are not the concern of political liberalism ... political liberalism sees its form of political philosophy as having its own subject matter: how is a just and free society possible under conditions of deep doctrinal conflict with no prospect of resolution?’²⁰³. We are now able to see more clearly the mistakes Rawls finds in *A Theory of Justice*. ‘The serious problem I have in mind concerns the unrealistic idea of a well-ordered society as it appears in *Theory*. An essential feature of a well-ordered society associated with justice as fairness is that all its citizens endorse this conception on the basis of what I now call a comprehensive philosophical doctrine. They accept, as rooted in this doctrine, its two principles of justice ... Although the distinction between a

²⁰⁰ John Rawls, *Political Liberalism* (New York, Columbia University Press, 1996 paperback edition), introduction, pp. xxx

²⁰¹ Rawls, *Political Liberalism*, introduction, pp. xv

²⁰² Rawls, *Political Liberalism*, introduction, pp. xx

²⁰³ Rawls, *Political Liberalism*, introduction, pp. xxviii

political conception of justice and a comprehensive philosophical doctrine is not discussed in *Theory*, once the question is raised, it is clear, I think, that the text regards justice as fairness and utilitarianism as comprehensive, or partially comprehensive, doctrines²⁰⁴. The justice as fairness presented in *A Theory of Justice* is based on the assumption that all citizens of a given society would agree to it. Rawls no longer supports this view. Instead, we now find that the justice as fairness of the past is a comprehensive philosophical doctrine which is not necessarily any more valid than any other reasonable comprehensive philosophical doctrine available. As a result, we find Rawls retracting his claim that general agreement on justice as fairness is possible, and thus with it the Archimedean point. In its place we find that the goal of political philosophy is practical: to find a way to create a stable society despite the many reasonable views that people hold. '[Since the Reformation there has been in] people's conceptions of the good a transcendent element not admitting of compromise. This element forces either mortal conflict moderated only by circumstance and exhaustion, or equal liberty of conscience and freedom of thought'²⁰⁵. The greatest problem we are now faced with in political philosophy, the one which Rawls is now attempting to remedy, is trying to find accord on issues concerning all citizens in the face of irreconcilable beliefs and practices. Because the alternative to toleration is destruction, we are then faced with trying to find common ground upon which all might agree. In Rawls' words, 'How is it possible that deeply opposed though reasonable comprehensive doctrines may live together and all affirm the political conception of a constitutional regime? What is the structure and content of a political conception that can gain the support of such an overlapping consensus?'²⁰⁶.

²⁰⁴ Rawls, *Political Liberalism*, introduction, pp. xvi

²⁰⁵ Rawls, *Political Liberalism*, introduction, pp. xxvi

²⁰⁶ Rawls, *Political Liberalism*, introduction, pp. xviii

Within *The Law of Peoples* Rawls extends the idea of the original position to a global position, thereby dealing with the question of justice between societies. The first point to note is that the idea of international justice portrayed in *The Law of Peoples* follows on directly from *Political Liberalism*, and is to a large extent dependent on it. The justice that we find in Rawls' last book is concerned only with the possible justice between already just or 'well-ordered' societies²⁰⁷. 'It is important to see that the Law of Peoples is developed within political liberalism and is an extension of a liberal conception of justice for a domestic regime to a Society of Peoples'²⁰⁸. Rawls then proceeds using an almost identical methodology to that previously used at the domestic level. 'After the principles of justice have been adopted for domestic justice, the idea of the original position is used again at the next higher level. As before, the parties are representatives, but now they are representatives of peoples whose basic institutions satisfy the principles of justice selected at the first level'²⁰⁹. This may remind the reader of Kant's *Perpetual Peace* to some extent, and indeed it should, for Rawls is again consciously attempting to continue in the vein of Kant's work. This is done by once again subjecting the parties 'to a veil of ignorance: They do not know, for example, the size of the territory, or the population, or the relative strength of the people whose fundamental interests they represent'²¹⁰.

While it may at first seem that Rawls has opted for a cosmopolitan theory, we soon realise that this is not the case. In the 1993 paper that shares the same name as the 1999 book, Rawls appears to struggle somewhat with pitting the Law of Peoples against cosmopolitanism. To quote him directly: 'Wouldn't it be better to start with the world as a whole, with a global original position, so to speak, and discuss the question whether, and in what form, there should be states, or peoples, at all?'²¹¹. The answer he gives to this is somewhat muddled and incomplete. 'I think there is no clear answer to this question ... Since in working out justice as fairness I begin with domestic society, I shall continue from there as if what has been done so far is more or less sound ... A further reason for proceeding thus is that peoples as corporate bodies organized by their governments now exist in some form all over the world'²¹². I think I hardly need to point out how unsatisfactory an answer this is coming from an author who is loath to rely on first principles and facts for justification. In the 1999 book we find that Rawls has thought through his position in more detail and specifically

²⁰⁷ This idea of 'well-ordered' societies is extended to those which are not strictly liberal. Rawls also includes here hierarchical societies which nonetheless respect and support an extended range of human rights and the Law of Peoples. Those which do not show this respect are called 'outlaw states'.

²⁰⁸ John Rawls, *The Law of Peoples* (London, Harvard University Press, 1999), introduction, pp. 9

²⁰⁹ John Rawls, *The Law of Peoples* (1993 paper) from Samuel Freeman (ed.), *John Rawls: Collected Papers* (London, Harvard University Press, 1999), pp. 534

²¹⁰ Rawls, *The Law of Peoples* (1993 paper), pp. 538-9

²¹¹ Rawls, *The Law of Peoples* (1993 paper), pp. 536

²¹² *Ibid.*

responds to the criticisms of Charles Beitz and Thomas Pogge²¹³, who accuse Rawls' theory of containing internal inconsistencies at the international level. In responding to these critics Rawls clarifies further what the Law of Peoples means. Rawls' understanding is that 'the ultimate concern of a cosmopolitan view is the well-being of individuals and not the justice of societies. According to that view there is still a question concerning the need for further global distribution, even after each domestic society has achieved internally just institutions'²¹⁴. The difference between the Law of Peoples and cosmopolitanism, then, is this concern with the order in which states and people come in the use of the original position. A cosmopolitan view takes all individuals as the basic units and attempts to find a sense of global justice from this basis. Rawls' Law of Peoples takes just states as the basic units of international justice. Why does he do this? We soon find that the goal of the Law of Peoples is quite different from a cosmopolitan view. We gain a first hint as Rawls states that 'the crucial element in how a country fares is its political culture – its members' political and civic virtues'. But we gain far more of an insight as we read that 'the final political end of society is to become fully just and stable for the right reasons. Once that end is reached, the Law of Peoples prescribes no further target such as, for example, to raise the standard of living beyond what is necessary to sustain those institutions. Nor is there any justifiable reason for any society's asking for more than is necessary to sustain just institutions, or for further reduction of material inequalities among societies'. We find here that Rawls has made what seems like a curious distinction. Whereas we might have expected to find that he would again recommend an extension of the idea of justice as fairness to a global level, we can see that Rawls actually stops at the creation of a reasonably liberal society. Rawls is now unconcerned with the inequalities between societies. Why this should be the case seems odd, however, as Rawls initially chose to restrict himself to closed domestic societies when discussing justice for the reasons of simplicity and hypothetical clarity in *A Theory of Justice*. In *The Law of Peoples* he continues with this methodology of taking the domestic society's justice as the primary case for discussion, placed logically prior to the discussion of international justice with little more justification than: This has appeared to have worked so far, so why not continue? It is a major assumptional flaw running through the entire thread of Rawls' work and the validity of pure assumption is far from dropped in the later Rawls. Despite this, we can come to Rawls' defence regarding his refusal to deal with economic inequalities on the international level. As noted above, *The Law of Peoples* follows as a direct extension of the theoretical shift shown in *Political Liberalism* and thus incorporates the refusal of the later Rawls to defend justice as fairness. As in *Political Liberalism*, Rawls' concern is now the creation of stable, democratic societies. Bearing this in mind, we now find it easy to grasp the idea of the 'duty of assistance' in the Law of Peoples. The duty of assistance is strongly linked to the aim of liberal societies. As Rawls says, 'The long-term goal of (relatively) well-ordered

²¹³ Thomas Pogge's Egalitarian Principle is here being referred to, as laid out in Thomas Pogge, 'An Egalitarian Law of Peoples' in PAPA, 23:3 (1994). See the 1999 book pp. 115-20 for more details.

²¹⁴ Rawls, *The Law of Peoples* (1999 book), pp. 119-20

societies should be to bring burdened societies, like outlaw states, into the Society of well-ordered Peoples. Well-ordered peoples have a *duty* to assist burdened societies'²¹⁵. Rawls then immediately repeats his belief that this should not include economic redistribution at the international level. 'The levels of wealth and welfare among societies may vary, and presumably do so; but adjusting those levels is not the object of the duty of assistance. Only burdened societies need help'²¹⁶.

We now need to quickly deal with Rawls' understanding of human rights before we have an adequate overview of *The Law of Peoples*. These rights are not the standard set of rights that a constitutional democratic regime has, but entail what Rawls calls a 'special class of urgent rights'²¹⁷ which in effect means a more limited set of rights than found in the United Nations Declaration of Human Rights. These rights have a special role in international justice as they limit the traditional abilities of states. As a result of human rights, 'war is no longer an admissible means of government policy and is justified only in self-defence, or in grave cases of intervention to protect human rights. And second, a government's internal autonomy is now limited'²¹⁸. Human rights are seemingly based on the assumption that liberalism is intrinsically correct. The foundations are, as so often with Rawls, quite simply not satisfactorily dealt with, with him preferring to rely on the justifications made in his previous theories. Despite this, Rawls holds human rights to be universally valid, even if the population in question does not itself agree with them: 'they are intrinsic to the Law of Peoples and have a political (moral) effect whether or not they are supported locally'²¹⁹. The justification for this universal moral code raises a great many questions. 'Comprehensive doctrines, religious or nonreligious, might base the idea of human rights on a theological, philosophical, or moral conception of the nature of the human person. That path the Law of Peoples does not follow. What I call human rights are, as I have said, a proper subset of the rights possessed by citizens in a liberal constitutional democratic regime, or of the rights of the members of a decent hierarchical society. As we have worked out the Law of Peoples for liberal and decent peoples, these peoples simply do not tolerate outlaw states. This refusal to tolerate those states is a consequence of liberalism and decency'²²⁰. Human rights are a subset of liberal rights but are valid for peoples who may not be liberal, even if those peoples do not agree with human rights. How would Rawls answer the charge of simple cultural imperialism, I wonder? According to his account of human rights, I expect the answer would perhaps be rather lacking. But maybe human rights cannot answer this charge at all. It is interesting to note at this stage that Rawls acknowledges the idea of nurture playing a large role in our political views, as shown when he states, 'I shall also assume that, if we grow up under a

²¹⁵ Rawls, *The Law of Peoples* (1999 book), pp. 106

²¹⁶ *Ibid.*

²¹⁷ Rawls, *The Law of Peoples* (1999 book), pp. 79

²¹⁸ *Ibid.*

²¹⁹ Rawls, *The Law of Peoples* (1999 book), pp. 80

²²⁰ *Ibid.*

framework of reasonable and just political and social institutions, we shall affirm those institutions when we in our turn come of age ... to say that human nature is good is to say that citizens who grow up under reasonable and just institutions ... will affirm those institutions and act to make sure their social world continues'²²¹. So humans take much of their political views from the society in which they are raised. Are these beliefs then taken by Rawls to be only right for those people? Or does he propose that non-liberal values are also valid for those who do not believe in them? Human rights are meant to be a subset of liberal values. But these rights are universally valid, independently of the beliefs of the people in question. How can this be possible? I think Rawls is attempting to use human rights as a basic minimum, beyond which we are forced to say 'no'. He is here setting the limits of toleration at the international and domestic level. He is prepared to tolerate non-liberal societies, but only with the proviso that they accept the basic minimum set by human rights. Perhaps this is what Rawls means when he says that human rights 'set a limit to the pluralism among peoples'²²².

Before moving on to whether Rawls answers his critics sufficiently well in his later work, it is necessary to make a final clarification. This is regarding Rawls' understanding of 'public reason', a term he often uses. To quote Rawls directly again, 'The idea of public reason specifies at the deepest level the basic moral and political values that are to determine a constitutional democratic government's relation to its citizens and their relation to one another. In short, it concerns how the political relation is to be understood ... as the reason of free and equal citizens, it is the reason of the public; its subject is the public good concerning questions of fundamental political justice ... and its nature and content are public, being expressed in public reasoning by a family of reasonable conceptions of political justice reasonably thought to satisfy the criterion of reciprocity'²²³. Rawls is here trying to capture in a single term that part of our lives which is communal in nature. The aspect of the life of individuals which deals with what is 'right' for the society one lives in. Rawls states that this public reason is shown when politicians attempt to justify their policies and decisions according to concepts of justice and right, as explained to the public. Citizens can also show this reason by acting as if they were legislators themselves. In this way, they participate in the democratic process selflessly, hopefully acting on behalf of their community as a whole.

²²¹ Rawls, *The Law of Peoples* (1999 book), pp. 7

²²² Rawls, *The Law of Peoples* (1999 book), pp. 80

²²³ Rawls, *The Law of Peoples* (1999 book), pp. 132-3

Analysis and Critique: Does Rawls Adequately Respond to his Critics?

Now that we have gained a reasonable understanding of Rawls' later thought, I will attempt to assess whether Rawls responds adequately well to the many criticisms outlined in previous chapters. I will organise this into broad topics, and seek to keep to the question to the best of my ability. If I make sweeping generalisations when discussing theories, and especially their theoretical traditions, I take this as a necessity of analysing such general questions.

As is so often the case with political and moral philosophy, half of the battle is won if we ask the right question. I believe this is often taken to be one of the 'classic' questions of political philosophy, and certainly has a long tradition. Within the question posed are many other sub-questions which help us clarify what exactly is being asked. Implicit in the question above is the question of to what degree membership of our society can be taken to be voluntary. State of nature theorists from previous centuries argued that our membership of society is voluntary, based upon a hypothetical position in which a lack of society is envisaged. The importance of this starting point was always that the subsequent conclusions were based on the idea of a society fundamentally composed of individuals, individuals who subsequently participate voluntarily in society. This voluntary participation was taken to be the basis of finding 'freedom' within an inescapable political context. The individual comes first and society second. The opposing view takes society as organic and natural, something which we inevitably join at birth and are never able to leave. Largely because of this fact, the accusation was that the concept of voluntary participation was farcical. Theorists of this persuasion were far more likely to attribute the beliefs an individual has as stemming largely from the society in which one was raised, and less as a result of personal reflection and choice. The acceptance of society at the most basic, inescapable level of theoretical discussion was often taken to mean that society and the individuals which compose it are inextricably bound, forming an aspect of each other's being. In some theories society was then taken to have an independent will and identity.

Rawls' position on this question is a difficult one. This is due in large part to his reliance on assumption at the most basic level of his theories. We can say that Rawls does not rely on construction in order to propose that our participation in society is voluntary. However, he is also strongly opposed to the idea of society being organic due to his assumption that this creates an 'organic whole with a life of its own distinct from and superior to that of all its members'²²⁵. Why this must be the case is obscure.

In *A Theory of Justice* the early Rawls relies on pure assumption in closing societies while dealing with justice. In *Political Liberalism* and *The Law of Peoples* the later Rawls simply assumes that his previous methodology was sound. The early Rawls does use constructivism, but constricts himself to only investigating what might be considered the best form of justice. The later Rawls also uses constructivism, but then only at the international level, choosing to entirely abstain from discussing what the correct form of justice might be at the domestic level. To conclude, therefore,

²²⁴ Raised by Charles Taylor when discussing Hegel in this thesis, pp. 25-30

Rawls never satisfactorily addresses this question, and his contribution to this topic must be considered absolutely minimal. If we really want to pin him to some kind of position in this regard, we are forced to guess.

²²⁵ J. Rawls, *Theory of Justice*, pp. 264

Again, a point stemming from the question of whether man is essentially a political animal. A more pertinent question is perhaps whether Rawls is concerned with finding freedom at all? The answer to this is a firm 'yes'. Furthermore, Rawls makes a distinction that is relevant to all deliberations within political philosophy, that of nominative and effective freedom. One could convincingly say that the establishment of a real freedom is one of the early Rawls' primary concerns, as this forms the background to his attempt to create a minimum level of primary goods for all members of society. As we have noted previously, this is designed to allow all individuals a meaningful freedom. The primacy of freedom for Rawls is also shown by his willingness to abstain from judgement regarding what a good life might be. This is as much the case in the later Rawls as the earlier. That each individual should be allowed to pursue whatever form of good they perceive to be valid for themselves is in itself an important form of freedom. Rawls strongly believes in the enshrinement of rights in constitutional democratic societies, reinforced by a substantial doctrine of universal human rights designed to extend to societies which may not be strictly democratic. The only rights Rawls ever discusses are political in nature. I believe we can therefore assume that, while Rawls does not explicitly address the question of whether a society is necessary before freedom can be attained, we take can it as an implicit background to all of Rawls' discussions.

²²⁶ Also raised by Taylor.

Are Individuals Without a Past or Narrative Simply Impossible?

The criticism originates in the early Rawls' use of a heavily stripped down version of an individual in the original position. MacIntyre questions this methodology at its most fundamental level, arguing that taking an individual to be without a history is absolutely impossible and false. Therefore, the use of such individuals at the theoretical level leaves us with a warped view of humanity, and thus a warped view of society. As a direct result of this, we make conclusions about what is right and just for a society based on subjective belief, a belief that entails the most essential being or self of a person as basically independent of their community. This belief is questionable, and the fact that it is questionable throws all subsequent conclusions into serious doubt. We can say that the opposing view, that all individuals are essentially gregarious and other-regarding is no less valid than the early Rawls' view. A related question, regarding to what degree our gregariousness and selfishness is based on nature or nurture is virtually unsolvable. And without an answer to this question the claim that all individuals are at their most elementary level selfish cannot be proven. As a result of this, we find that all of the theory contained in *A Theory of Justice* is founded upon an enormous assumption.

The later Rawls quite clearly acknowledges this. In fact, what we can take to be Rawls' final words, to be found right at the end of *The Law of Peoples*, are concerned with restating the rejection of his earlier claims²²⁷. He steps back from the belief that his earlier theory is able to draw final conclusions about the correct form of justice for society. Rawls clearly and unequivocally accepts that other theories of justice may be equally as valid as his justice as fairness. He can therefore be taken to finally reject the belief that all individuals are primarily selfish. The later Rawls allows that individuals may be both egoistic and other-regarding.

²²⁷ Rawls, *The Law of Peoples* (1999 book), pp. 179-80

This issue concerns the gap between finding something to be correct in a purely hypothetical situation and why people should thus be bound to it in real life. The criticism is specifically directed against justice as fairness because the creation of actual duty from Rawls' theoretical doctrine is seen to be lacking. We find that this is a subject which the early Rawls does not satisfactorily address. Because the preceding methodology was taken to be correct, this was not raised. In the final two works this question is negated by the later Rawls' rejection of some of his earlier methodology. In conclusion, therefore, we can say that the early Rawls either found it unnecessary to answer this objection or was unable to. The later Rawls did not make such claims regarding the correct basis of societal justice.

²²⁸ A criticism made by Michael Walzer in chapter two of this thesis, pp. 37-43

The answer to this question again needs to be split between the early and later Rawls. The answer regarding the Rawls of *A Theory of Justice* must inevitably revolve around the validity of the 'thought experiment' as a tool for finding justice for society. The individuals who inhabit Rawls' fictitious world are quite clearly alien to us. They are not just primarily but purely self-regarding, they do not know their position in society, do not know their particular preferences, do not know their familial and personal ties. Because the individuals included in the original position are not in any sense real we are forced to reject the direct force of the argument stemming from the position. This is why I have previously claimed that the most the original position can ever mean to us is a form of advice, nothing more. The difficulty comes when we ask ourselves how we are ever supposed to find a sense of justice for society. When we pose this problem, the attractiveness of using an unknowing self becomes great. Attempting to imagine that I could be any individual anywhere in society at any point in time does force me to take the situation of others into account. It forces empathy upon me. What would I choose if I might wake up tomorrow to find that I had become someone else? Well, for example, I would certainly not want to be homeless. Therefore, it would seem fair to work towards removing the problem of homelessness from our society. Rawls' thought experiment does provide us with an appealing method by which we can make our thoughts public-regarding. Ultimately, however, we must reject Rawls' version of the original position as its inhabitants' characteristics are arbitrarily chosen. In stating that all individuals therein are self-regarding, other-ignorant and do not know their position within society, yet know which society they are in and therefore which society they are to find justice for, Rawls shows that his entire theory is predicated by his prejudices. These come through in his work in the form of the numerous assumptions he continually makes and, unfortunately, weaken the project he set out to originally complete to the point of destruction. In answer to the question posed above, we are to say that Rawls is a partial existentialist, or shows strong existentialist traits, but is highly selective of the characteristics that are and are not valid. In doing so, he allows his prejudices to come through into his work, incorporating them into theories he claims are based on a universal process of reasoning. Upon close investigation we find that this is not the case.

The later Rawls, again, accepts the flaws apparent in his earlier work and seeks to distance himself from them. He no longer believes that justice as fairness might be acceptable to all within society and therefore seeks to find a way of choosing a communal sense of justice in the face of this. Justice as fairness is relegated to the same level as any other reasonable philosophical or theoretical position and the tack is changed to creating a permanent state of stability within

²²⁹ From Alasdair MacIntyre, pp. 31-6, and Michael J. Sandel, pp. 44-52, this thesis.

liberalism. As such, the charge of existentialism is far less potent with regards to the later Rawls. However, the reach of his theoretical relevancy is very much narrowed.

The belief in abstaining from judging what the good life should be is a result of Rawls' rejection of utilitarianism's lack of regard for our individuality. Rawls claims that, because it is impossible to know what another individual really thinks and wants, it is impossible to make claims about what might be the correct kind of life for all people. The fact of pluralism and the cognitive inaccessibility of others combine to make claims about our *telos* quite improper. This is a point to which Rawls remains faithful, despite the shifts in thinking on other topics. He allows that all individuals should be allowed complete freedom in choosing their own good lives so long as this freedom does not infringe on the freedom of others, following directly in the vein of classical liberal thought on this particular topic.

Rawls' view on this subject is criticised as being based on a false assumption about what fundamental aspects of human characteristics are valid when discussing justice. It is also criticised as not acknowledging the extent to which our personalities, our 'selves', are formed by the community in which we are raised. As a result, Rawls ignores Hegel's notion of *Sittlichkeit*, thereby ignoring the value inherent in upholding the culture and customs any particular society holds dear. Is Rawls here overly liberal? It is possible to see Rawls' position as exceeding the limits that most people would probably find acceptable. Complete freedom in choosing what the good life for the individual is, and then having the chance to fulfil it, can cause difficulties. The freedom to be offensive, for example, is a problematic issue. What if someone decides that their idea of the good life involves running around the city naked all day long? Completely abstaining from judging what a good life should and should not constitute would, in theory, have to allow this. But perhaps the real crux of the question here is the right of society to enforce decisions of what a good life may *not* involve. I believe it is precisely this possibility that Rawls is concerned with restricting, following from his rejection of the dangerous oppression by the masses that utilitarianism allows. Because we cannot know what the good for another person might be, we cannot have the right to restrict that person's choices about their own life. Thus, for Rawls, we do indeed have just about as pure a form of liberalism as is possible. No lifestyle can or should be restricted, so long as it does not infringe on the freedom of others. The individual is seen as primary. The possibility of a society having a common identity with a value independent of that of its members is discarded. Private morality is a subject which political philosophy has no right to discuss. I believe the critics have a point when stating that Rawls over-simplifies his case for liberalism, making freedom with regards to the good life an absolute. It ignores the fact that there are values inherent in society that are important, that we are at our most basic level both selfish and social beings, and that people can be very heavily affected by the behaviour of others even if that behaviour does not exactly

²³⁰ From Alasdair MacIntyre, this thesis, pp. 31-6

restrict the freedom of others in a strict sense. There is a sense of *Sittlichkeit* which must be recognised and incorporated into the laws of a community.

This argument against Rawls basically extols the danger of absolute subjectivity taking hold if no standards or minimums are set with regards to what a good life might entail. MacIntyre, for example, proposes the typically Aristotelian answer that having goals in life must necessitate having some general conception of what those goals might be. However, in defence of Rawls, I believe MacIntyre and Aristotle's mistake is made when assuming that the individual person cannot be relied upon to choose what their own good should be. I think Rawls' answer would be that MacIntyre's criticism is based on a misunderstanding of his theory, and that the refusal to judge what a good life might be is based on the fact of pluralism. Following Kant, Rawls proposes that, in a universe without any essential meaning, we are forced to construct our own *telos*. For Rawls, different people having different goods is not necessarily a problem because each good is validated by the person in question. It is enough for a good to be valid for an individual personally, even though this may be quite despicable to others. This perhaps encompasses a far wider conception of what human happiness or fulfilment can be. The early Rawls wished to guarantee the positive freedom which would allow all individuals to pursue their own conceptions of the good life and this, in itself, was the satisfaction of society's purpose. The danger of deciding what a good life may or may not be independently of the particular person in question is that it can logically and legitimately lead to the repression of people's life goals. In conclusion, I suggest that the particular life goal or *telos* that each individual person chooses for themselves is a matter which no other person is able to legitimately decide for them. It is, as Rawls argues, impossible to know precisely what will satisfy and fulfil any other individual. However, within society there are shared beliefs, customs and a sense of common culture which must also be acknowledged. It is assimilated by all individuals who are raised within that particular community and it affects all of us. Even in reacting against this given system of beliefs and customs, we can and never do detach ourselves from that system. The most that is possible is relative degrees of independence and objectivity. Absolutes are impossible. Therefore, while the ends that individuals choose for themselves are matters for themselves, the means by which they attain these ends is a matter in which others have a say. After all, one of the most basic elements of our communality is the need for cooperation. Complete freedom for me can quite conceivably offend others, even if I do not restrict their freedom to pursue their own ends. To return to our example, therefore, if I feel the need to run around naked all day long, society may perhaps legitimately tell me that it can only be in certain places or at certain times.

How Voluntary Are Our Communal Acts?

This idea comes from such thinkers as Rousseau, supposing that participation in society's activities brings about a form of aggregated freedom. I believe that traditional liberalism struggles with the idea of communal acts being compatible with the idea of society being an association of tacitly concurring individuals. Based on some form of state of nature theory, traditional constructivist or contractarian theories claim that each person has in some way chosen to join society so as to ensure their own rationally self-interested desires are satisfied. This sits very badly with situations where the interests of the individual and society conflict, especially when the individual is forced to do something against their will. If we take traditional theories of liberal democracy, then it is supposed that the only legitimate form of war is defensive in nature. But when a liberal democracy goes to war in an offensive way, such as with the recent US led invasion of Iraq, traditional liberal theory cannot justify the duty one is called upon to do. When we turn to Rawls we again become stuck because of Rawls' failure to state the basis he takes society to have. He clearly rejects the idea of society being organic, but then never considers an alternative. Perhaps all we can do is note how oddly the idea of self-interested, rational individuals who participate in society so as to achieve their own ends sits with sending people to die in the name of the society from which they came. This again highlights the wide gap between the early Rawls' theoretical position and the reality as we find it. The later Rawls repeats the idea of legitimate war being in defence of the community and adds the possibility of intervening so as to protect individuals against severe infringements of their human rights. Unfortunately, however, the idea of duty to one's community is not discussed.

The rights of the early Rawls are predicated on a belief regarding the proper aim of society: to allow individuals to follow their conceptions of the good life. In this context, rights are required to provide the protection of the freedom of the individual to follow their self-chosen goals. The right to Rawls' social primary goods provide the positive freedom necessary to give all people the chance to find fulfilment. These rights are essentially based on the belief that liberalism provides the best form of societal organisation, a fundamental premise that Rawls never abandons. However, the later Rawls spends a great deal more time explicitly discussing rights both within a closed society and at the international level. Finding exactly what Rawls takes to be the basis of these rights is rather difficult. I believe that he takes two levels of rights to be relevant to society: human and, more specifically, political rights. Human rights are given as the minimum, as the yardstick by which to judge any particular society. If the society conforms to human rights then it is at the very least 'decent'. This does not mean that the society is democratic or even particularly liberal. Therefore, there is another set of political rights contained within a typical liberal democracy that contain the more traditional rights we associate with Western societies. With regards to the basis of the rights in question, we can see that Rawls takes two very different positions. The first, regarding human rights, is necessarily universal. The second, however, contains elements of cultural or subjective validity, as shown by the fact that a society may remain just without adhering to the full set of liberal rights that a liberal democracy would enshrine. As we noted when discussing *The Law of Peoples*, Rawls does not satisfactorily deal with the foundation of the universalistic human right. In conclusion, therefore, the early Rawls' rights are a result of his aim to provide all individuals within society with the ability to satisfy their own self-determined *telos*. The later Rawls rejects this aim, as he allows the possible validity of forms of justice that will not allow all individuals within society the positive freedom to follow their own *telos*. Instead, he proposes both culturally relative rights and universal rights, with the foundation of the latter being unfortunately very poorly explained. Overall, we can conclude that the influence he left behind him does not help a great deal in discovering which basis human rights truly rest upon.

²³¹ Particularly criticised by Michael Walzer, pp. 33-38, this thesis.

If we remember, the early Rawls claimed that this was because benevolence and love 'seek to further the good of beloved individuals that is already given'²³³. The view is preceded by the cognitive inaccessibility of others, discussed above. Sandel states that Rawls takes the self to be independent of the beliefs and characteristics that they have, a separation he takes to be false. Sandel instead proposes that we are, to a large extent, at the most fundamental level at least partly constituted by the assimilation of aspects of our social context. He argues that we are not entirely inaccessible to one another, and that friendship is not, as Rawls argues, necessarily dependent on an egoistical premise. I believe that neither thinker is completely correct on this particular topic. Rawls is almost certainly correct in saying that we do not have any form of cognitive access to any other person. I can never, ever know exactly what another person is really thinking. However, this does not necessarily mean that love and benevolence must be second-order notions. I believe that Rawls here makes the assumption that in order to love someone we must want to affect their idea of the good in such a way as to be intrusive. He either assumes this is the case or simply accepts that all people are actually selfish in the real world as well as his hypothetical situation, meaning that benevolence as a purely selfless action is impossible. I ask the question, however, of why love must have access to others to be valid? Is a love that seeks to change the person in question not actually a poorer form of love? I would suggest that love and benevolence do not need to be reflexive to be valid. Love can be other-regarding without having actual access to the other person. It can stem from the self, and must not necessarily seek to further the good of beloved individuals that is already given. The love may have another person as the object while stemming solely from the self. We can add to this the fact that most people are not purely self-interested but are normally both self and other-regarding. It is only in extreme cases that we will find one at the total expense of the other. The early Rawls takes a strange step in moving from not knowing what another person is ever thinking to making the value judgement that love is less valid and important than justice. The later Rawls rejects the conclusions of his earlier self, saying that he falsely assumed justice as fairness would be universally accepted throughout society. As a result, I think we must also take him to have dropped this position regarding the lesser importance of love and benevolence later in life.

²³² Discussed by Sandel, chapter two of this thesis, pp. 44-52

²³³ Rawls, *Theory of Justice, original edition*, pp. 191

I do not believe that Rawls ever questions his methodology and therefore never addresses this criticism. His aim in *A Theory of Justice* was to improve the mistakes of utilitarianism by reviving an altered form of the social contract. In doing so, he never needed to leave the boundaries of pure theory. Both the problems he saw as needing rectification and his proposed solutions are built on entirely theoretical foundations. The later Rawls shows an amalgamation of theoretical and practical reasoning in his thinking. The idea of finding a solution to the problem of an unstable liberal democracy is based on a practical problem, and one of his justifications for taking existing societies to be the basis for justice is that they already exist. Human rights, on the other hand, show no sign of practical reasoning when their origins are briefly and unsatisfactorily discussed. We are able to say that the later Rawls is far less theoretical in general, as shown by his rejection of the possibility of justice as fairness being universally acceptable. He in fact states himself that this was based upon a false assumption of his earlier thinking. In conclusion, therefore, I believe the later Rawls does believe that hypothetical systems of justice are valid, but adopts a position of thinking that no hypothetical system can ever be held to be absolutely true. As a result, we have no way of knowing for sure which system might be more valid than others and are forced to allow all a place in society.

Having investigated Rawls' opinion on this subject, what are we then able to make of the criticism that theoretical systems of justice are not valid? I believe we can ascertain their necessity by attempting to imagine rejecting them. If we, as some conservatives do, refuse to condone anything other than practical considerations when discussing society we leave ourselves only with real-world situations. However, as we have seen above, we are not simply beings without a background but are perennially situated. The result of this is that when we are confronted with a problem we do not simply approach it as a purely neutral machine but relate it back to our system of beliefs and our knowledge. We are not empty voids but beings which cannot escape having *both* belief and rationality. In politics, more than any other kind of activity, our actions are guided by theoretical foundations out of necessity. Even the distrust of theoretically guided action is predicated by a *belief* about the correct form of action. The political individual who does not believe in any action guided by theory is essentially only left with a form of unguided reaction.

²³⁴ This is in response to the criticisms raised largely by Robert Nozick, this thesis, pp. 53-62

The distinction between the early and later Rawls is again essential here, and the difference between the two hardly needs to be explained again. The early Rawls assumes his methodology is sound, while the later rejects universalisability. In answering this question, I would say that justice as fairness suffers from the non-acknowledgement of the contextual nature of our lives as humans. A theory such as justice as fairness entirely ignores the background and history of a society. Pure time-slice theories immediately remove the possibility of retrospective justice. However, having said this, Nozick's theory suffers from the non-acknowledgement of addressing the situation as one finds it, as demonstrated in chapter three. The over-reliance on historical aspects of justice makes his theory rather ridiculous. Stating that justice is impossible because tracing just ownership is impossible leads him to assume that simply holding a thing creates a right of entitlement to it. Perhaps this is the case, but then also stating that an unjust act is committed when someone attempts to take my undeserved property from me does not make good sense.

What are we able to conclude in this case? It seems the only situation we are left with is to seek to incorporate both the background of a community and the individuals in it while not ignoring their particular background. One suggestion might be the alteration of Rawls' original position to not include falsely altered individuals whose characteristics were chosen by the theorist but real people as we find them. The idea of a valid basis for universal theory will be pursued in chapter five.

²³⁵ Also from Nozick.

Rawls argues that we need to guarantee primary social goods so as to ensure that each person's conception of the good life is achievable. This is something which is inimical to justice as fairness. In effect, we need a minimum of goods so as to secure an effective freedom that will bring fulfilment within everyone's reach. This view is again based on assumption. The best example to be found is in *Political Liberalism*: 'we suppose that all citizens have a rational plan of life that requires for its fulfillment roughly the same kind of primary goods ... This assumption is of great importance for it enormously simplifies the problem of finding a workable index of primary goods. Without restrictive assumptions of this kind, the index problem is known to be insoluble'²³⁶. We need to stop for a second to consider what is contained in this short extract. There has been an assumption made at the absolute foundation of Rawls' liberalism. This assumption is necessary because without it it is quite simply impossible to come up with a universal list of primary goods. Let me make a fundamental objection to this kind of methodology here: if the creation of a list of goods is known to be insoluble in the first place, why make an assumption so as to create a list? Why not first accept that a final list is impossible and build upon that? We can see here that Rawls makes the assumption that a universal list of primary goods is necessary and because he assumes that list is necessary he makes another assumption to satisfy the first. This is typical of Rawls' work. His entire theoretical system is interlaced with this kind of methodology, this kind of 'reflective equilibrium'. If, as I do, one is to reject this methodology as a basic principle, Rawls' entire system of philosophical reasoning is weakened to the point to rejection.

In conclusion, I believe the need to guarantee the list of primary social goods Rawls chooses is necessarily tied to justice as fairness. With his rejection of the universal validity of this theory, the foundation of his chosen social goods is taken with it. Instead of being able to say that primary goods are a necessary prerequisite to a normative notion such as 'dignity', Rawls is only able to claim that his primary goods are suitable for Western-style liberal democracies²³⁷.

²³⁶ Rawls, *Political Liberalism*, footnote 8, pp. 180-1

²³⁷ This cannot be taken to mean that I reject the necessity of a list of primary goods, quite the opposite is true. My point is that they must be based on physical needs and therefore culture resistant.

This incorporates the questions of why other members of society deserve what they do, and why society has the right to claim a portion of my wealth. The early Rawls would base our obligation to society and its right to demand goods from us beyond our primary social goods on the original position. The reasoning would be that because all would choose this it can be taken as a fair guide for all of society. All would be happy to both give and receive along the lines of Rawls' justice as fairness and the need for effective freedom. As Rawls can be seen as having inherited much of the contractarian tradition, I believe he also has to inherit some of its inherent weaknesses and criticisms. The particular criticism I have in mind is that made of Locke by Hume when he points out that if all of our obligations are based on the original position, this still leaves us without an obligation to the original position²³⁹. This is an assumption made by Locke which can be related back to our discussion of Rawls. Rawls' position is one based on a theoretical position, upon which our obligation to others is to stand. However, the question of why we have an obligation to either believe in or follow the original position at all remains unanswered. As many have pointed out, it may simply be the case that some people either disagree with the original position, do not care about others and so disregard it, or find that using it produces entirely different results from the minimax situation that Rawls tells us is inevitable.

I believe Rawls makes a good choice in rejecting his earlier theory. He narrows and strengthens his position by admitting that all people will probably not all share his view, thus attempting to incorporate this difficulty into his reasoning. He steps back from the universalistic position which causes so many difficulties and involves so many twists of hypothetical logic. As such, I believe he is actually able to contribute more to political philosophy because his later position is far more tenable than that produced in *A Theory of Justice*. The fact that he later attempts to base his theory on practicalities rather than assumptions is something to be applauded, and the practical end of his philosophy is also something to be emulated. The aim of stability is a real and quite obviously meaningful end and something which must be acknowledged, albeit on a much grander scale than Rawls held.

²³⁸ A criticism made by Hayek, chapter three of this thesis, pp. 63-69

²³⁹ David Hume, *Of The Original Contract*, ed. Ernest Barker (Oxford University Press, Oxford, 1946), pp. 209-236

Why Confine Theories of Justice to Single Communities?

Rawls' assessment of this question is consistently and surprisingly lacking. It is based on assumption in *A Theory of Justice*, an assumption which is unfortunately not altered when Rawls develops his theories. Rawls' justification for restricting justice to one society only is based on little more than that it is simpler that way. He stated that his aim was to first find what justice for one community might consist of, and then deal with international justice thereafter. As I have argued in chapters three and four, however, Rawls' decision to restrict justice to single communities is based on prejudice. Rawls often does not follow the logic of his own arguments through, as when he selects which qualities to allow those in the original position to have so as to produce the kind of results he had pre-chosen. Again, I am here explicitly rejecting reflective equilibrium as a valid methodology of political and moral philosophy. We should stick to Aristotle's method of beginning with what we can see as being the case - things we can all agree on - and attempting to find conclusions founded purely on that basis.

The later Rawls can be seen as following on from the early Rawls with regards to this particular topic. Rawls' decision to deal with the internal justice of single communities before international justice is one that he never abandons. I contend that dealing with internal justice in this way is inherently false as based on an assumption. International justice must take primacy over the justice of single communities because communities are relatively arbitrary constructions based largely on violent histories and chance.

Chapter Five:

A Constructive Critique

Despite the early Rawls' theory having been described as the most important work of moral and political philosophy in the twentieth century, it remains fundamentally inadequate in quite critical ways. The most striking case of this is Rawls' reliance on intuitionism, negating his own specified aim of finding an Archimedean point from which to assess justice within society. I now postulate that this theory in fact has a basis which is false, thus weakening his theory to breaking point. Rawls' theory has changed all moral and political philosophy; we all now write in his wake, but many aspects of the theory must be radically altered, if not rejected.

It is at the base of the theory that the early Rawls shows the greatest sign of strain. As we investigate why we are to use the theory in the first place, as opposed to any other, we are met with a barrier of assumption. It is assumed that we will use his theory because we share his basic beliefs. It is assumed that those in the original position cannot know each other and are entirely disinterested individuals. It is assumed that the method of finding a 'reflective equilibrium' is quite valid. I believe these assumptions, while having been highlighted and questioned by several theorists, have not been adequately attacked. The implications of making these assumptions have not been adequately demonstrated. In short, the holes in Rawls' theory have not been properly addressed and filled. Let me at this stage simply state that the roots of a liberal theory such as Rawls' must be strong enough to support what is built on top of them. Otherwise, again, we are forced to reject the theory as a whole or radically improve it.

This, of course, is precisely what Rawls himself does. After recognising, to his credit, the errors of his earlier thinking, Rawls rejects the idea of justice as fairness as being based on impossible foundations. He realises that final agreement on any theory will be impossible: there are always going to be conflicting theories and beliefs. As a direct result of this, he reconsiders the proper aims that political and moral philosophy should set itself. Within domestic society, the aim should be purely practical in nature. To minimise conflict and thus create a more stable society we must institutionalise tolerance and aim towards value-free goals. Unfortunately, however, the later Rawls continues to rely heavily on assumption in the international sphere. He maintains the position of his former self, choosing to deal with international justice only when the subject of domestic justice has been settled. Domestic justice is dealt with in an artificially closed political unit, thereby reducing the power of his conclusions regarding both domestic and international politics.

I would like to make quite clear at the outset what methodology I believe to be proper for moral and political philosophy, plus what remit is acceptable. I follow the Aristotelian belief of proceeding from first principles which are knowable. We must begin with the facts and work our way upwards, building upon firm and unquestionable foundations. 'Reflective equilibrium' is thus entirely improper, as it begins with both the beginning and end of the investigation, and simply attempts to jigsaw the connecting steps together. This is on a par with fixing a game in sport. The idea of the exercise should be to begin with the factors, the ingredients, having no set idea of the results one knows one wants. If a game of sport has the results chosen before the game has even begun, then we call that cheating. Reflective equilibrium is no better. One of the fundamentals of moral and political philosophy should be that one must begin with what we can know and proceed using clear and logical steps towards whichever conclusion one is led to so as to reduce the effects of one's own beliefs and prejudices.

This holds true as a general observation regarding moral and political philosophy; that one must use knowledge as the basis of theory. Any point which cannot be supported by observable fact must be immediately acknowledged as such, and the conclusions drawn therefrom continually seen as subjective, thus weakening them. To create theories which are solid, we must continually bear in mind that we are animals of context. Much of what we are, think and believe is the result of assimilation. We must continually remind ourselves that the fastest evolving creature we know is human thought itself. Human rights, for example, are now taken as universal and absolute truths, but when discussing these as universals I would suggest that we forever remind ourselves that a human right to an ancient Roman or Athenian would be an inconceivable abstraction and quite foreign. With this in mind, we must reject any claims to 'self-evidence', as seen in Locke's theories, the American Constitution, or the current belief in Human Rights. If a belief in something is self-evident, then why do all people not automatically agree with it?

The objection could be raised, and rightly so, that there is actually no such thing as absolute knowledge. We never know that something is independently true because we can never get to a point of independence from ourselves. I would therefore like to suggest basing the limits of knowledge on Popper's idea of observation. We can only take something as being 'true' as long as it is not disproven. As soon as we see even one exception in what the 'truth' is taken to be, we have no choice but to reject and revise our understanding. Although this originally stems from a philosophy of science, there is no reason to assume that this is any less valid with regards to any other form of philosophical investigation. The result of this is that we can never take anything as being absolute, only valid so long

as no exception is found. This must be taken as a fundamental quality and qualification of my use of such terms as 'knowledge' and 'truth'.

With this clarification having been made, we now ask ourselves, 'What Can We Know?'. Or, perhaps a somewhat easier question to answer, 'What Can We Not Know?', thereby stating which considerations are unacceptable for a thorough investigation into philosophical truths. The first worth mentioning, by way of example, is religion, as a clearer example of unsupported belief is hard to find. Let us take the belief that we should have our action guided by what is laid out in a book because if we do not we will spend eternity in hell. Besides the unattractiveness of living according to a moral code not because of free choice but from fear, we can begin to unravel the logic behind this using the distinction between knowledge and belief. The question to ask ourselves is 'What Can We Know?', the answer being in this case: nothing. Can we know if there is an afterlife? Maybe there is, maybe not, but there is absolutely no way we can know this. All we can know is that death is the cessation of life as we know it. Therefore, as Kierkegaard admits, we are left only with the 'leap of faith' into pure belief. We must be careful to remain within the confines of what is knowable. We are able to understand a great deal of what exists around us, but it is surely us that is understanding it, rather than it being shaped in such a way as to make itself understandable to us. It seems that we have adapted in such a way as to have become able to comprehend many things in nature. However, the things that happen around us (that are not a result of human intervention) do not do so in any way *for* us. The fact that something happens in our favour does not mean that it was intended to do so; merely that it happened to do so. Determining something that is independent of human action to be good is to add a human factor to something which is, in itself, neutral. It appears, for example, that luck is the assignment of something entirely human to phenomenon that are by their very nature unhuman. And I see luck as being similar to the idea of god in this respect because reality as we find it does not in any way exist for us, we can reasonably prove that it existed long before the human race and will continue to exist long after the human race is extinct. Two conclusions follow from this: that god as I understand the traditional concept to be - something which has human characteristics - will quite clearly be false; and that, if there is a god, it will be entirely unrelated to human kind because it will be unhuman. It will therefore not be possible for man to 'reach' god, in the sense that we would be able to relate anything at all about ourselves to it. It would be entirely removed from us and thus we would be quite irrelevant to it. Herein lies the essential point of the entire discussion so far: that human existence can only ever be, and thus should only ever be, related to, thought of, and understood in terms of human existence as we know it. Further to this, as noted above, thinking in such terms cannot take an afterlife into account. Our political considerations should be solely concerned with human affairs, and solely concerned with what we can

know to be the case. Without knowledge, we are forced to suspend judgement. Religion, as an example of belief based on assumption, cannot be allowed to gain predominance over other forms of belief within society.

To now bring this discussion back to political philosophy, we can ask what we can identify as knowledge and belief and, therefore, what we can use as the basis of a moral theory. The first point is that we are contextual animals. We are, at any point of reasoning, only the latest thought in the evolution of thinking. The second point is simply an extension of the first; that we are all animals of a certain kind, we are all people. None of us share the exact same biology, and yet we can all interbreed. We are all of the same species of animal. We not only believe that we are human but can know it as it is based on observable phenomena. We can thus take this as the most fundamental point of reference as we proceed.



I would now like to turn to another fundamental point of my argument, this being whether our gregariousness is important enough to be factored in as one of our fundamental considerations when constructing a theory. This is again of the highest importance for a moral and political theory because, if we are social by nature, this has essential implications regarding the degree to which our society is one which is a composition of individuals, or is actually one which is a society which simply values individuality more highly than others.

Let me sidetrack for a moment so as to make something absolutely clear. Our social natures cannot be denied, and therefore must be accounted for along every step of the philosophical process. To illustrate this, let us take a step back from this argument. As mentioned, we are contextual animals. I am sitting here, writing these words. You are sitting wherever you are sitting, reading and understanding this text. Why is this? We are complete strangers, have never met each other, and probably never will. How is it that I can communicate my ideas to you? Of course, it is quite simply because we share the same language. Language is a thing so entirely natural to us that we often forget its true nature. Where does language come from? I suppose what I am truly wishing to make clear is that language is a purely socially constructed phenomenon. No matter which society a human being lives in, be it the most advanced or the most primitive, one of our distinguishing features is our creation and ongoing use of language. Can we imagine a human being without some form of language? It is virtually impossible. Without society, there would be no language. Without society, I would not be able to sit here and write my thoughts. You would not be able to follow my arguments. The two of us, as strangers, would not be able to communicate at all. But language, to us, is natural. Therefore, if society is *a priori* to language, and language is natural, we are forced to conclude that society must be the natural state in which humans live. As a further extension of this, we find that an independent view of human life from 'outside society', our Archimedean point, is an impossible aim. All that we think and are take place, by necessity, within the context and framework of the society in which we find ourselves.

Our contextual natures have substantial implications for any and all theories. As mentioned, they must be seen as the product of a development with a history. Accordingly, the early Rawls' theory must be placed within its proper limits. It must be seen not as a universalisable theory, but specific to time and place. As we have seen, Rawls admits this in responding to his critics and retracts the claims he made in *A Theory of Justice* to having created a universally applicable theory. He quite rightly restricts the applicability of his theory to Western-style liberal democracies, but thereby removes much of the potency that initially accompanied the original work. I agree with Rawls' own admission

that his views must be seen to be severely restricted and that we must therefore look elsewhere for a more universalisable societal ethic. Rawls' theory can only be accepted as what it essentially is - advice - as all contractarian theories inherently are. Rawls needs to be placed within the political, within the subjective, context of Western societies, and not taken as a final answer to the question of a universal justice by which to evaluate all societies. However, having taken this into consideration, we are able to conditionally accept contractarianism, admitting that this is what we, as Western thinkers, believe to be correct for our societies. Within these constraints, we can and should fight for what we believe to be right, as long as this fighting is kept within reasonable limits. However, are we actually able to postulate what these limits might be?

I would like to begin with the repetition of a postulation that is one of the oldest we know of, namely that in choosing which quality to take as essential for human beings when assessing justice we must look to what distinguishes us from other species. Following in the tradition in which I write, I take one of these to be the ability to use our rationality, a trait that all people share. In theory, if I were to create the perfect theory and explain it to every person on the planet, I might be able to convince everyone that my opinion was correct through the use of logic. However, is this supposition as straightforward as it seems to be? Let us take an aside into the validity of pure rationality as a guide to determining justice.

The problem with rationality lies with conditionality, as Hume argued. Rationality alone does not provide the impulses for action; it is conditional and does not form the basis from which our morally relevant actions stem. The actions of the Nazis, for example, can be said to be quite rational if one takes their goals and beliefs into account. The goals and beliefs themselves are what would be argued to be evil, and it becomes very difficult to argue otherwise, but what is it about them that made them so morally abhorrent? A belief can be quite irrational without being morally abhorrent: much of religious belief is now acknowledged to be irrational, and the beliefs are not seen as evil. Rationality works upon the basis that pre-exists it, and it is therefore conditional upon the beliefs that are previously held. Hume argued, against reason, that the passions are the pre-existing qualities that make a social action good, and rationality is based upon these. The problem with the passions lies with attempting to determine which passions are good and which bad. For all people experience a range of passions, not all of them directed towards social benefit. If one is to take the passions to be the basis of morality, then if one only determines those which are beneficial to all people to be the good ones, is one not judging those passions by some other criterion? Hume takes it simply to be a feature of human nature that people have passions that are directed towards social welfare, but why should he restrict this view to those only? For, if we were to fully acknowledge the implications of passions being the basis of morality, we should surely allow all passions equal validity if no other criterion were used in the judging. If this is the case, however, something similar to amorality is the result whereby no moral position is any more valid than another. And surely this is the most abhorrent moral conclusion we can arrive at - to suspend judgement entirely.

Let me take another example, that of monogamy. The first and easiest thing we can do is remove the idea that this is a natural trait of human beings, as in other societies at other times there was nothing 'bad' or 'wrong' with a man, the leader of a group, for example, having several wives. It is therefore relatively easy to dismiss the notion of nature

restricting us to monogamy. What is the validity of this non-natural moral belief then to be? The most common belief in Western societies is in monogamy. People *do* see it as wrong to have more than one partner, and therefore forbid themselves from this kind of behaviour, despite the fact that they will often be tempted. As I sit here and write I admit that, following the logic of my own argument, in which I also believe, my belief in monogamy is purely contextual. I realise that my belief in monogamy is not natural, meaning it must have been assimilated in some way. I did not arrive at this belief alone, shown by the fact that this belief has been held since childhood, and the ability of children to reflect is minimal. This must therefore mean that the source of my belief is largely external. However, I am also a deeply reflective person who continually tests beliefs against reason. I question what I believe and why I believe it. A number of beliefs which I inherited have been rejected. I think, thus far, we can already draw a simple conclusion. Is rationality the basis of all morality, as Kant might argue? I believe this cannot be the case. When I look at the belief in monogamy in myself, I do not universalise; quite the opposite in fact. I do not judge this belief from the point of view of a universally rational moral law, asking whether I think this rule should be the case for all people. I know that the belief in monogamy is not shared by all people in all cultures past and present. I also know that their lack of belief in monogamy was quite right for them at the time. I can weigh their belief against mine, and perhaps argue against it, but I cannot say that their actions are wrong in an absolute sense. From empirical fact, I know that this is simply not the case. However, does this then mean that the view espoused by Hume must then be correct? Is rationality simply the slave of passion? Two possibilities appear valid, the first being the pursuit of ends in which I believe. This would be the case of the Nazis, whose goal is a given, and whose rationality then works upon this to find the best route towards the goal. However, an assumption was just made in my own argument, highlighting the possibility that beliefs are not simply given but are more complicated than this. It is the case that many of our beliefs are assimilated as we are growing up. Young children have an undeveloped rationality and inherit many of their beliefs from those around them. It is only after a certain age that human beings come to question what was previously taken for granted. Also, as we grow and learn, we come across competing beliefs, many of which will clash with our own. As we are challenged in our beliefs, we are then forced to not only say what we believe, but *why*. Returning to the example of monogamy, when one comes across other beliefs and realises that what one believes is not natural, justification must be found. When one finds a belief which conflicts with the one already held, one must choose. And, in doing so, we must submit our beliefs to reason in the form of self-reflection. Therefore, reason is judgemental, potentially rebellious, and serves to regulate beliefs. As such, we must take responsibility for all that we believe in, saying that the beliefs are willingly chosen and thus taking a role in reshaping one's own personality. Rationality should be seen as the guide and warden of our beliefs and passions.

What relevance does this have for justice? In investigating this topic, we find that a belief that happens to be held in a particular society, such as monogamy in the West or that cows are sacred in Hindu societies, fail tests of absolute validity. To use the words of Karl Popper, these beliefs fail to be 'falsifiable'. It is, in fact, impossible to show that any one belief is any more valid for human beings if it can be shown that other people have held quite different views at some time. Thus, to say that a liberal view of individualism is any more valid than a more communal view where society is seen as more important than the individual is to espouse nothing more than a belief. And, as shown in the discussion regarding belief and knowledge, taking belief as the basis of a universal morality is invalid. The exceptions to this rule will have to be based on steps based purely on observable fact, the most relevant of which is that we are all members of the same species. It is also relevant to state that the similarities between members of the human race are greater than the differences. It is clear that we are all members of the same species, and equally so. The differences which exist are never so great as to suggest another species of animal. We are then left with a basis which takes all people to be equal members of the human race.

What are the moral implications of such a view? It appears that we have found something which inextricably binds us together. It also seems sensible that a view based upon the universality of each individual must take that universality into consideration in every decision that it makes. If we are all equal members of the same, fundamental quality that makes us human, then each and every one of us must be treated as such first among all other considerations. Morality must take absolute equality between all people as its most primary building block, and this view must permeate throughout all others. Any and all moral decisions must take into account whether the action will benefit all people, no matter where they live and no matter what colour, age, or sex. This seems to be the most solid foundation that we can deduce, knowing now what we do about evolution, for example, and the fact that science and religion are very much incompatible. It seems far more sensible to attempt to rest a moral position on what is positively knowable, rather than attempt to guess at one from a position that can never be more than speculative.

The later Rawls hit upon a conundrum of the most fundamental importance for philosophical investigation. We, as thinkers, must rise above ourselves. The theories that we produce build upon the theories of others that have been passed down to us. We may produce a theory which is popular and convinces many, but we must all move away from claiming that we have discovered some kind of absolute truth. The very fact that there are always critics of any particular theory negates this. The fact that people have not always believed in the theory also negates this. Any and all theories will only be temporarily popular. Therefore, we must move away from theory and choose practical aims. When we look at the problems that face us today, we realise that the most pressing are problems which affect the human race as a whole. We are coming to a point in the history of mankind where the very survival of our species itself is in danger. The population has exploded, and continues to grow at an exponential rate. The ecosystem is being permanently changed through human activity and is being damaged to the extent that life may become unsustainable. The human race is now able to entirely destroy itself several times over due to the discovery of nuclear weaponry. These are the issues that are now of the greatest importance. As a result of humankind having come to be a threat to its own existence, the overarching goal of all philosophy should be the long-term survival and prosperity of our own species. This is a goal that all should be able to agree on. What about this position is unreasonable?

The view outlined above provides insight into the problem of moral subjectivity. If the condition of equal validity as a member of the human race is constantly placed at the centre of decisions, we are able to come the closest we can to moral objectivity. What is seen to be good can quite simply be related to the benefit to humanity as a whole, meaning the human race in its wider sense: all those people who now live and are likely to live in the future. When we act so as to benefit others, we are improving the whole of which we know we are a part. Membership of the human race, being the basis of a value system, becomes a driving force in life and a guide to action. What values can therefore be taken as exceptions to subjectivity? It seems quite clear that peace, secondly toleration and a stable relationship between humans and the environment more than qualify as qualities of universalism. These three values cannot be weakened by criticisms of subjectivity because they are external values which will benefit all people, setting rules by which damage to ourselves will be limited. The moral values we hold will always be in conflict with those of some others at some point; this is unavoidable as part of the evolution of thought. To attempt to impose my views on someone else is to postulate a form of ownership over them. Therefore, we are able to set the remit within which this conflict will take place so as to place limits on the damage people do to each other as they fight for their beliefs, thereby protecting both

each individual and the human race as a whole. This, according to my aforementioned understanding, is an aim we might be able to describe as 'good'.

The political units in which we find ourselves cannot be said to be absolutes. The background of each is largely a history of violence and chance. The borders we take to be holy do *not* exist in an absolute sense; they are purely human constructions. Our membership of the human race, however, can be taken to be a matter of fact. Global justice as based on universal humanity must therefore be accepted as a primary value, meaning that it overrides domestic justice at all times. Domestic or communal justice, seen as a necessarily subjective value, should be seen as a second-order value of justice. To attempt to apply *my* sense of communal justice to the world is to attempt to say that I have ownership over other individuals. Attempting to impose my beliefs onto others is wrong; the most I can ever do without being unjust is to seek to convince.

The particular form of justice that any particular community in question finds appropriate for itself must be placed within the remit of global justice, meaning that it cannot infringe on the twin values of peace and toleration while preserving the planet for future generations. This is as valid within political units as it is between them. No distinction should be made with reference to these principles. The specific form of justice the community chooses for itself is a matter of autonomy for the society, not to be dictated by any other. So long as domestic justice remains within the limits of global justice, such that it does not institutionalise intolerance or commit violence against those with whose care it is charged, it can be judged valid for that particular group at that particular time.

This is the most we can say about universal and domestic justice: We *are* able to make conclusions in the face of moral subjectivity, but we must restrict ourselves to practicalities. We *must* distinguish between the universal, which must contain no value-statements, and the rest, which we can and should still continue to discuss in normative terms. However, in discussing what we take to be right, we must forever remember that the limits of our conclusions stop at *advice*. The most I am able to do with my beliefs and theoretical conclusions is attempt to convince others of their validity. Any endeavour to impose my conclusions onto others is unjust. Any endeavour to injure another member of the human race is wrong.

Conclusion

There are several things which I hope the reader will take away from this thesis. The first is that I believe contemporary political philosophy gravely misinterprets Rawls. Discussions are too concentrated on the theories contained in *A Theory of Justice*. However, as we have seen from chapters two and three, there are criticisms levelled at his thinking which I believe prove fatal. One of the most damaging is that Rawls repeats current liberal views without sufficient justification. If we look more deeply into Rawls' views we find that at critical points of his construction the foundations are missing. Therefore, we also come to realise that the early Rawls cannot answer the charge of cultural subjectivity. He fails in his aim of finding a universal theory.

It is essential to all discussions of Rawls that this fact be taken into account. Rawls rejects the universal claims of his earlier theory and thus rejects its precepts. He states that the justice as fairness of his earlier self *was* biased on culturally subjective grounds and admits that it is, in fact, only to be applicable to Western societies. Not only that, but justice as fairness, within our Western societies, is not to be taken as any more valid than any other rationally cohesive philosophy. We realise, then, that while his goal of securing effective political autonomy within society does not change, his way of doing so is radically different. The consequence is that Rawls' most famous theory, the one which is taken as synonymous with Rawls, must not be taken as his most fundamental position. What I have come to term the position of the 'later Rawls' must be taken as being the most developed position of the thinker. Therefore, I believe that any teaching of Rawls in our universities, for example, is not complete unless this shift is included.

I also believe that the shift in Rawls' thinking signifies something of a turning point in the tradition in which he writes. Rawls was the beacon of contractarian liberalism, but himself came to realise its flaws. I believe that the Enlightenment project of creating a 'rational' society must be seriously reviewed and placed within its proper context. If we investigate rationalism we find that it is not the exclusive or even the primary quality of human beings. People are formed by belief in a way which rationalism cannot begin to touch. If we investigate the nature of 'truth' with regards to political philosophy with an eye to history, we come to realise that there is and will never be any 'truth' to any normative theories. The only goals that have any hope of being universal must be practical in nature. Both contractarianism and the notion of rational individualism as the basis of society are positions which I believe, in their current state, are untenable. They do have a value, but it is a value within a context. The value of contractarian theories and the results they produce are contextual to us, to our background and history. These versions of liberalism are peculiar to the European-American tradition. To say that 'societies are based on a contract' can no longer be taken at

face value. When this view is espoused, we must try to hear something along the lines of 'we believe the basis of *our* societies is a contract'. As a clear consequence, we can see that the imposition of our contextual views onto another society must be seen as a form of cultural domination.

After making these claims about the nature of both Western liberalism and theory in general, I have then tried to step back from the abyss of absolute relativism. Absolute relativism is something I view as containing more potential danger than cultural domination as it would allow inaction in the face of atrocity. I therefore suggest two things. The first is that the goals of political philosophy should be as practical in nature as possible. This means beginning with observable phenomena, the closest we can get to 'fact', as the proper basis of our theories, and putting cultural or historical biases within context. One of the greatest conclusions reached on this view is that countries are not and cannot be seen as closed units, either politically or morally. Another is that the long-term survival of the human race, taken as including all people alive now and who will live in the future, is a factor which must enter into all of our moral considerations. This, I believe, can be taken as the most completely practical goal anyone could agree to as it is necessarily universal and avoids cultural influence. As a direct result of this goal, I believe that universal toleration and non-violence are forced upon us. I take these values as *not* being susceptible to cultural relativism and context themselves but, in fact, encompassing these difficulties and offering a solution.

What I have therefore suggested is the validity of contextual theories, but within universal limits. We are able to say that political freedoms and individualism are important to us within our societies, and others are legitimately able to say that they understand this but quite simply do not agree. Other societies have histories that are foreign to us, and the values they hold dear do not have to be compatible with our beliefs. However, what both our societies and those of others must agree to are limits within which our disagreements will take place. Our disagreements are quite natural and a result of the unstoppable evolution of thought but as soon as we or they step over the line of toleration and non-violence we are making an attempt at domination. Our attempts to convince others of the error of their ways and the correctness of ours must also be placed within limits. The most we can ever hope to give is advice. The force of our arguments is not absolute if their background can be traced to our history and context. The best example of this is human rights, a doctrine which I believe currently contains elements of both validly universal values and invalidly cultural ones. That document has a history related to the victory of the democracies after World War II, but also contains elements of practical goals that can be related to the flourishing of the human race as a whole. The idea that the individual should be protected, for example, is something which can be placed within the practical aim of universal

non-violence. The idea of the universal right to holiday with pay is something which I would argue is culturally relative. It is surely something which is difficult to relate to the long-term survival of our species.

To conclude I would like to describe my basic position, which has evolved from the process of study involved in this thesis. We are not only rational, self-interested beings, but are a mixture of self-interestedness and altruism. Rationality cannot be taken as our fundamental quality; we are in fact a mixture of both belief and rationality. A person without either is not a person in any real sense. As a result, theories dealing only with people showing one of these qualities are not theories which can be related to the world as we find it. Political philosophy must acknowledge that the theories it produces are only the latest in the evolution of thought and are therefore not likely to be valid in an absolute sense. Despite this, however, I am suggesting that, while we are not able to produce normative theories that are universal, we are able to create very basic limits to our debates and disagreements which will limit the damage people do to each other and the planet on which we all must live. These limits are toleration, non-violence and the protection of the environment. These limits should entirely disregard national boundaries, as boundaries are the result of history and context. Countries, as closed political units with subsequently narrow interests, are not able to act in a way which will benefit *all* people. Governments must be seen as being both the most likely guarantors of toleration and non-violence and the most likely threats. Governments must be entrusted with the care of the people in their charge, but their activities and power must be placed with limits. As a result, therefore, governments must no longer be seen as the final arbiters of morality. With regards to personal freedoms, it seems clear that it is impossible to know exactly what another person thinks at any point in time and therefore we should not seek to impose an idea of what happiness or fulfilment for that person might entail. The best thing we can do is help to create the basis from which they have the chance to give their own lives meaning. There are, however, no guarantees that anyone will achieve this. Despite this, all people have a responsibility to their fellow man to see that they at least have the chance to attain whichever goals in life they choose for themselves. This necessitates the creation of positive freedom, entailing the creation of a situation whereby each and every person has power over their own destinies. Formal freedom, whereby someone might be called 'free' and yet not be able to afford food or proper medical care, should therefore be rejected as a practically meaningful form of life. Because of this, all people should be encouraged to respect their responsibility to see that poverty is removed throughout the world. Again, national boundaries are here rejected as morally meaningful. No society can be called 'just' or 'fair' until *all* people enjoy positive freedom. The implications of this view should be immediately obvious. It is quite clearly a cosmopolitan view which takes all individuals as the most basic units of moral consideration. It is a view which is attempting to both recognise and overcome the fact of moral and cultural subjectivity, and it is a view which would undoubtedly be unpopular with many thinkers and politicians

alike. But one should not apologise for what one believes, instead trying to convince others of the benefits of your position.

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