

AFTER RAWLS

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Introduction

John Rawls is the kind of philosopher whose presence in the syllabus of contemporary political philosophy does not need to be justified. He was recognized as a classic thinker within this field during his life time; his books and articles were translated and discussed at universities all over the world – going beyond philosophy departments and reaching disciplines of political science, jurisprudence, economics, and the social sciences. His thought has shaped not only academic debates but also wide civic deliberation about just and legitimate political orders.

John Rawls was born in Baltimore in 1921 (USA), and he died in 2002. He studied at Princeton University, where he defended his Ph.D. dissertation, and at Oxford University (UK). His academic career started at Cornell University and MIT, and by 1962 he was affiliated with the Harvard University. His most fundamental works are: *A Theory of Justice* (1971, revised edition 1999), where he presented his own conception of justice as fairness founded on the inescapable rights and liberties of individuals and an egalitarian model of social distribution; *Political Liberalism* (1993), where he presented his conception of a legitimate liberal democratic political order, rooted in the concept of reasonableness and stability for the right reasons; and *The Law of Peoples* (1999), where he extended his idea of a liberal just society to the union of peoples, proposing the conception of just international order. These three major pillars of his writings were supplemented with numerous articles and very rich correspondence with scholars from all over the world.

Any attempt to summarize the entire academic work of Rawls in a short introduction would inevitably be unsatisfactory. Instead, we begin by posing these general questions: Where should political philosophy go after Rawls? What further developments of his thought can be envisaged? How have his central ideas been received outside the USA? These questions lead us back to the beginning of Rawls's intellectual odyssey in the USA. We cannot

understand this odyssey without first appreciating the intellectual landscape it traverses, marked along the way by the various American “isms” – individualism, constitutionalism, federalism, multiculturalism and pluralism. Furthermore, the study of his conception of justice and legitimacy cannot be complete without considering the role of the American Constitution, especially the importance of the First Amendment and the character of the American Supreme Court, in shaping his thought. Finally, we cannot fully understand his concepts without grasping their grounding in contractarianism, Anglo-Saxon attitudes toward liberalism and utilitarianism, and incorporation of American pragmatism. It goes without saying, too, that any reading of Rawls must be supplemented by the voices of his critics, representing libertarian, communitarian, feminist, and critical race theory perspectives. In the final analysis, it is hard to understand Rawls if we do not reflect on contemporary assessments of deliberative democracy as crucial to the enterprise of political legitimation.

Rawls himself makes reading his texts difficult; his style and “architectonic” language, continual evolution of his views, and arcane references to current academic debates in the USA pose special challenges to persons who are just beginning to familiarize themselves with his complex arguments. To begin with a simple signpost: Rawls dedicated his entire academic life to examining social justice as a distinctive, multifaceted concept. He himself described his own philosophical genealogy as having descended from the social contractarian theories of I. Kant, J. Locke and J.J. Rousseau. Exploring their ideas, especially Kant’s idea of autonomy, he proposes a theory of justice as fairness, “enfranchising” every person with equal rights to basic liberties, admitting economic and social inequalities only if they are for the greatest benefit of the least advantaged and do not violate fair equality of opportunity.

With the passage of time, Rawls’s views evolved from grounding a metaphysical conception of justice to constructing a political conception of justice. Moral Kantian constructivism is replaced by political constructivism according to which the central contracting protagonist – the individual as moral agent – is replaced by the individual as citizen; appeal to universal rationality and morality gives way to philosophically interpreting the reasonableness and normative commitments of citizens inhabiting liberal democracies.

According to late Rawls, political justice should now be founded on publicly defensible reasons that find deeper support in an overlapping consensus among a plurality of reasonable, but to a large degree unshareable, comprehensive belief systems. According to Onora O'Neill:

Political Liberalism is less ambitious about the limits of justification than *A Theory of Justice*. Rawls now maintains that public reasoning can justify no more than *political* liberalism and takes no position on broader questions about the good for man.¹

Political justice in a democratic society should not reflect a *modus vivendi* type compromise, a second-best solution, among adherents of competing comprehensive doctrines, who would rather impose their own idea of the social good were they fully empowered to do so. On the contrary, political justice should be endorsed for its own sake by the adherents of various doctrines. Rawls's defense of political liberalism is therefore not "pragmatic" but principled, based on a normative idea of the citizen, understood as a free, equal, rational, and reasonable individual, and a normative idea of liberal democratic society, understood as a fair system of cooperation. Rawls's moral ideal of a reasonable citizen respects public reasoning and reciprocity for their own sake. Within international relationships, well-ordered societies (liberal ones and decent ones) should also relate to one another according to these ideals in consenting to a law of peoples.

Any reader who is not familiar with American political discourse must be wary of the difference between the European and the American uses of the term "liberal". In the European philosophical tradition, *liberal* means affirming individuals' liberties by diminishing the role of government (this meaning is close to the term "libertarian" as it has been used by Milton Friedman), while in a contemporary American discourse, the term *liberal* means both respect for individual liberty and the provision of a social safety net and equal opportunity to those who are socially disadvantaged. So construed, liberalism endorses welfare state policy, a wide spectrum of social rights (like Medicare), and affirmative recognition of,

¹ O. O'Neill, "Changing Constructions", in *Rawls's Political Liberalism*, ed. T. Brooks and M. C. Nussbaum (New York: Columbia University Press, 2015), p. 63.

and even preferential support for, women and oppressed minorities. In Rawlsian language, liberal equality presumes “fair equality of opportunity”. In popular culture, by contrast, “liberal” is simply a counterweight to “conservative”, which designates a privileging of so-called traditional values, such as heterosexual marriage, devotion to one’s country and one’s religious faith, respect for private property (including the right to keep and bear arms), advocacy for capital punishment, and protection of the private sphere against government interference.

Instead of defending any of these politically charged, ideological understandings of liberalism, Rawls endeavors to defend a notion of “political liberalism” that is, in fact, politically neutral with respect to the various comprehensive doctrines and conceptions of a good life that citizens affirm, at least within the context of liberal democracy. As opposed to traditional comprehensive doctrines of liberalism, which stress individualism, autonomy, secularism, and opposition towards (or, in the American context, support for) public goods, political liberalism is meant to be neutral among various competing comprehensive doctrines (including liberal doctrines). As Rawls uses the term, political liberalism designates values of public reason, overlapping consensus, reasonableness and reasonable pluralism. It captures the idea that legitimate (authoritative) political institutions and practices must be derived from a shared political culture.²

But the idea of political neutrality is not intended to suggest a kind of formal vacuity that ends with tolerance and civility. It also implies a substantive commitment to equality. Samuel Freeman summarizes the American popular understanding of liberalism and its specific meaning within the political philosophy of Rawls accordingly:

To be a liberal conception it is not enough to recognize basic liberties and assign them priority. A liberal conception of justice also recognizes a *social minimum*, a basic social entitlement to enabling resources, particularly income and wealth³.

² It was Charles Larmore who led Rawls to appreciate the supreme importance of political neutrality within the liberal tradition.

³ S. Freeman, ed., *The Cambridge Companion to Rawls* (Cambridge: Cambridge University Press, 2003), p. 9.

Rawls's philosophical output has inspired numerous publications, including two major Companions: *The Cambridge Companion to Rawls*, edited by Samuel Freeman (2003) and *Blackwell Companion to Rawls*, edited by Jon Mandle and David Reidy (2014). The first Companion is a comprehensive summary of the entire corpus of Rawls's work, starting with *A Theory of Justice* and concluding with *The Law of Peoples* and *Justice as Fairness: A Restatement* (2001). It is a very solid study of *Corpus Rawlsianum*, which carefully explains the evolution of Rawls's thought. The authors closely examine such Rawlsian themes as democratic equality, congruence of the good and justice, arguments with utilitarianism and libertarianism.

The Cambridge Companion also deals with one of Rawls's most controversial theses, namely, his claim that libertarian doctrine is not defensible as a fully reasonable interpretation of political liberalism. From Rawls's perspective "libertarianism is not reasonable because it has no place for ensuring each citizen the means to make effective use of his or her freedoms and opportunities".⁴ The logic behind this statement is determined by Rawls's conception of citizens as bound together in relations of political and economic reciprocity: citizens cannot properly be conceived in the way that libertarian doctrine conceives them, as absolute owners of themselves who create all their relationships through private contracts. Robert Nozick's libertarian idea, articulated in his *Anarchy, State, and Utopia*, that democracy is "ownership of the people, by the people, for the people", ignores that "the people" is a normative idea that implies patriotism, civic solidarity, and a willingness to assume burdens for the sake of one's fellow citizens, such as contributing to national defense and common welfare.⁵ The debate with libertarianism is not merely about the advantages of free market distributive justice vs. welfare state distributive justice. It is also very much about the understanding of deliberative democracy, its moral ideal of political culture, and its acceptance of reasonable, multicultural pluralism. *The Cambridge Companion* discusses these tropes in concluding chapters devoted to utilitarianism, communitarianism, and feminism.

⁴ Ibidem, p. 43.

⁵ R. Nozick, *Anarchy, State, Utopia* (New York: Basic Books, 1974), pp. 268-271.

The second Companion was issued by Blackwell ten years after Rawls's death, after publication of Rawls's *undergraduate thesis* (*A Brief Inquiry into the Meaning of Sin and Faith*) and his *Harvard Lectures in the History of Political Philosophy*. This Companion presents not only different content, but also different perspectives. As the editors put it, new publications and new archives generate a new perspective "often raising new questions, reviving debates thought to be settled, and suggesting new ways of understanding Rawls's work".⁶ The *Blackwell Companion* marks new direction: "this scholarship is likely to range beyond issues of justice".⁷ A new generation of Rawlsian scholars is much more open to engaging a broader range of contemporary academic philosophical trends around new themes. This new dialog is nicely captured in a section sub-titled "Conversations with Other Perspectives", which includes nine essays: "Rawls, Mill and Utilitarianism"; "Perfectionist Justice and Rawlsian Legitimacy"; "The Unwritten Theory of Justice: Rawlsian Liberalism versus Libertarianism"; "The Young Marx and the Middle-Aged Rawls"; "Challenges of Global and Local Misogyny"; "Critical Theory and Habermas"; "Rawls and Economics"; "Learning from the History of Political Philosophy"; "Rawls and the History of Moral Philosophy: the Cases of Smith and Kant".

Our collection of essays, *After Rawls*, contains two important strands of research. The first provides new interpretations of his basic concepts, continuing dialogues with other philosophers, and suggestions for expanding the framework of his political philosophy to solve some of the most urgent problems of contemporary world. The second strand of research examines the European – and in our context, specifically Polish – reception of Rawls's thought. In Poland, Rawls's philosophical thought is well known and widely discussed among academics, although because local secondary source literature is limited, the influence of Rawlsian thought on public democratic deliberation is rather modest.

One of the questions which needs to be posed concerns the very background of Rawls's philosophy: How much Anglo-Saxon individualism and social contractarian ethical reasoning resonates with

⁶ J. Mandle, and D. A. Reidy, ed., *A Companion to Rawls* (Chichester: Wiley Blackwell, 2014), p. 1.

⁷ *Ibidem*.

a Polish mentality that is rooted very much in patriotic devotion to of the common good as framed by Catholicism? On one side, the Enlightenment's social contract tradition, with its supreme estimation of equality, liberty, and justice among individuals, belongs to the core of Polish intellectual tradition. On the other side, however, a strong Catholic and national culture, forged in a crucible of rebellion against foreign tyranny spanning many centuries, is less congenial to individual-centered notions of justice, even ones such as Rawls's, that emphasize social dependency and reciprocity. The term "liberalism" generates very polarized emotions: for some people, it has very negative ideological connotations – like moral relativism and cosmopolitanism; whilst for others it is a natural way of expressing the values of civic rights and liberties; still others associate it with post-political and post-metaphysical ways of thinking, stressing moral neutrality in politics and post-modernist culture. This conjunction of historical and cultural facts energizes the various polarized reactions toward liberalism – from enthusiastic affirmation of individual freedom to fear of losing a distinctive and authoritative cultural identity.

Today in Poland (and generally in Eastern Europe), we can observe the encounter of two major traditions – the tradition of liberal democracy and local religious-national traditions. In former communist countries like Poland, initial enthusiasm for Western liberalism has given way to more sober consideration of what a distinctly local (Polish) liberalism might look like. The very foundations of Poland's constitutional order have been repeatedly revised and publicly debated on the basis of considerations such as these. Today, liberal democrats, communitarians, neo-republicans, liberal ironists, and religious activists are continuing the debate. Rawls's critique of political power in the name of justice, as well as his critique of capitalism and economic institutions, including the proposal of a "property-owning democracy", reflects the central concerns of contemporary political philosophy and responds to the very basic tensions within the Western model of liberal democracy. Rawls's model of a just and reasonable society has influenced thinking about how best to promote openness and inclusiveness in the public sphere. In this sense, his thought plays a paradigmatic role in contemporary discourse about legitimate constitutional order, constitutional identity, citizenship, political participation, the relationship

between public and the private, and many other aspects of political philosophy today.

The idea of society as a fair system of cooperation between persons conceived as free, equal, rational and reasonable citizens expresses the most vital core of Western liberal democracy as it enters the 21st century. This idea also affects Polish discourse about the fundamental principles of constitutionalism, the rule of law, political pluralism, social justice, and even the structure of the European Union. Rawls's philosophical project can be the point of reference for both those who read Rawls's books with enthusiasm and for those who analyze his thought critically. And, it can be a scheme of mediation for different, sometimes incommensurable, points of view.

This intuition inspired the organizers of the conference, "After Rawls", which took place at the Jesuit University Ignatianum in Cracow (Poland) in June 2014. The conference gathered the former students and friends of Rawls: Samuel Freeman, Paul Weithman, and Anthony Laden, as well as the scholars of Rawls from Poland, USA, Italy, and Belgium. The conference allowed participants to analyze various aspects of the Rawlsian project and displayed the diversity of Rawls scholarship. The presentations and discussions also circled around current political debates about the European Union, democratic proceduralism, political culture, and economic justice. New developments in Rawls scholarship and its reception in Europe are reflected in the very title of the book.

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Outline of the Volume

This volume begins with an essay by Anthony Laden, entitled "John Rawls and the Practice of Equality", in which its author proposes a new interpretation of Rawls's conception of justice. Instead of construing that conception in distributive terms, he suggests a relational understanding, articulated in terms of relations of domination and subordination. Along with this, the institutions of the basic structure, which play an important educative role, are accorded a mediating role with respect to citizens' conversations about justice. Meanwhile, Paul Weithman, in "The Original Position from Theory to Political Liberalism", reviews the meaning of the original position as a device of representation. He raises the question of whether it is the case that the original position is essential to Rawls's conception of justice, or that the hypothetical choice of the principles of justice is determined by the parties' nature as free and equal agents. Jon Mandle, in "Dewey and Rawls on Metaphysics", then introduces a comparative analysis of Rawls on justice as fairness and John Dewey's pragmatism, finding similarities between them in respect of both their anti-foundationalism and their search for an ordinary metaphysics of the "common man". On the other hand, Jakub Szczepański, in "Public Reason: Kant vs. Rawls", considers the historical background of Rawls's philosophy, presenting critical investigation into the genealogy of the Kantian idea of public reason. Justyna Miklaszewska, in "Human Dignity in Rawls and Kant", inquires into the problems associated with the philosophical definition of human dignity, concluding that this issue can be resolved philosophically, providing that we pass over the metaphysical basis of dignity and focus instead on its manifestations in the context of social and political freedom. Alessandro Ferrara, in "Expanding the Framework of Political Liberalism", proves that Rawls's ideas can be used creatively to solve various problems currently facing contemporary politics as it seeks to make sense of a highly complex and pluralistic world. In the essay "Persons, Public Reason and Democratic Constitutional State",

Anna Krzynomew-Arndt presents the relationships between an overlapping consensus and various comprehensive doctrines. She inquires into the problem of the overwhelming pluralism, referring to the critical analysis of Christopher Wolfe and Martin Rhonheimer and proposing an expansion of the Rawlsian model of liberal constitutional democracy. Dariusz Dańkowski SJ, in "Religious and Patriotic Values in Public Reasoning: The Case of Post-Communist Transformation in Poland", examines both the possibility of expressing the principles of Catholic Social Teaching in terms of political values, and the possibility of achieving a liberal democracy in Poland – a country with a strong Catholic and national culture. Another essay written from a Polish perspective is "Rawls and the Missing Concept of Solidarity", by Paula Szydłowska. She presents the tradition of the *Solidarność* trade union movement, and proposes some new developments regarding the liberal conception of justice. Piotr Andryszczak, in "Is It Possible to be a Political Liberal?", critically analyzes Rawls's conception of the person, as well as the idea of the priority of the right over the good, criticizing the very idea of public reason. David Ingram, in "Rawls and Habermas on Human Rights: Reconciling Political and Cosmopolitan Approaches beyond Legalism", proposes a reconciliation of the approaches of Rawls and Habermas, presuming that the basic human right is the right to subsistence, and that a subsidiary articulation of this right is a right to a sustainable environment. Philippe van Parijs's "Three Letters on The Law of Peoples and the European Union" presents his exchange of letters with Rawls, adding an updated preamble. Their philosophical debate focuses on topics related to global justice, including remarks about the European Union. "Should Liberal States Tolerate Non-Liberal States? Problems with Rawls's Idea of International Toleration", by Rafał Wonicki, analyzes the inconsistencies between Rawls's domestic theory and his conception of the law of peoples, arguing that the twofold standards pertaining to domestic toleration on the one hand and international toleration on the other should be maintained to encourage non-well-ordered societies to endorse the reasoning of the law of peoples. Finally, Rafał Prostack, in "The U.S. Supreme Court as an Exemplar of Rawlsian Public Reason: Some Comments on United States v. Windsor", analyzes the activities of the U.S. Supreme Court in terms of public reasoning, focusing on the problem of the neutrality and fairness of the American judicial system.

Notes on the Contributors

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Jon Mandle is Professor of Philosophy at the University at Albany (SUNY). He is the author of *What's Left of Liberalism?* (2000); *Global Justice* (2006), translated into Polish as *Globalna sprawiedliwość* (2009); *Rawls's A Theory of Justice: An Introduction* (2009), and the co-editor with David Reidy of *A Companion to Rawls* (2014) and *The Cambridge Rawls Lexicon* (2015).

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Philippe Van Parijs is Professor Emeritus at the Université Catholique de Louvain, Hoover Chair of Economic and Social Ethics and associate member of Nuffield College, Oxford. He previously taught at Harvard's Department of Philosophy. His recent books are *Just Democracy. The Rawls-Machiavelli Programme* (2011), *Linguistic Justice for Europe and for the World* (2011) and *Basic Income: A Radical Proposal for a Free Society and a Sane Economy* (with Y. Vanderborght), forthcoming.

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Paul Weithman is the Glynn Family Honors Collegiate Professor of Philosophy at the University of Notre Dame, where he co-directs the Honors Program and directs the Program in Philosophy, Politics and Economics. His books include *Why Political Liberalism? On John Rawls's Political Turn* (2010), which won the Spitz Prize as the best contribution to democratic theory in the year of its publication, and *Rawls, Political Liberalism and Reasonable Faith* (2016), which collects some of his previously published papers on Rawls.

Rafał Wonicki is Assistant Professor at the Department of Philosophy of Politics at the Institute of Philosophy of the University of Warsaw. He deals with issues in the contemporary philosophy of politics and the theory of law and the state. He is the author of *Spór o demokratyczne państwo prawa* [The Dispute about a Democratic and Constitutional State] (2007), and co-author of *Human and Citizens' Rights in a Globalized World* (2016).