

Going Off the Rawls

Libertarians have adopted the Left's favorite modern philosopher, but that doesn't make him right.

By David Gordon

WRITING IN THE *Times Literary Supplement*, the British philosopher Jonathan Wolff recently observed that while there might be a dispute about the second most important political philosopher of the 20th century, there could be no dispute about the most important: John Rawls. His student Samuel Freeman says that Rawls's work will be recognized "for centuries to come."

The basis of this acclaim is readily apparent. Rawls provided a comprehensive philosophical system that justified the main preoccupations of the center-left, which dominates academic life, and put classical liberals and conservatives at a disadvantage. Indeed, Rawls's doctrine of "public reason" would prevent conservatives from bringing many of their most distinctive concerns into public discourse at all. Nevertheless, since his death in 2002, a few libertarians have sought to appropriate Rawls for their own purposes.

Rawls's stellar reputation stems mainly from one book. When he published *A Theory of Justice* in 1971, he awoke, like Byron, to find himself famous. Before that, Rawls was well known in philosophy departments as one of the brightest people working in ethics, but he had written only a few articles. People in the field knew he had been composing a major treatise, and when it finally appeared, most reviewers were ecstatic. Stuart Hampshire, writing in the *New York Review of*

Books, called the book the most important work in moral philosophy since the end of World War II.

Rawls was born into a well-connected family; his father was one of the most prominent attorneys in Baltimore. He attended Princeton University, fought in the Pacific during World War II, and thereafter led the life of a quiet academic. For most of his career he taught at Harvard, where generations of graduate students regarded him with affection. He was modest and considerate of students. In one famous anecdote, he worried that the sun might be shining in the eyes of a student he was examining and asked whether he would like another seat. He prepared his lectures carefully, though according to one of his students Rawls was the most boring speaker he had ever heard.

To understand Rawls's theory, one first needs to grasp what he was reacting against. The dominant approach in pre-Rawls political philosophy was utilitarianism: how can we maximize the satisfaction of people's preferences? At first sight, utilitarianism seems plausible—what else should we do but try to achieve the most satisfaction possible for everyone?—but the theory has some odd consequences. Why, for example, is rape wrong? A utilitarian would have to answer that the pain to the victim outweighs the pleasure to the rapist. Surely, though, this is not why rape is wrong; the pleasure the rapist gets shouldn't be counted at all, and the whole thing

sounds ridiculous. (By the way, Judge Richard Posner, who might be called Jeremy Bentham *redivivus*, accepts just this view of rape in his *Sex and Reason*.)

As Rawls pointed out, there is a more general problem that throws utilitarianism into question. Some people's interests, or even lives, can be sacrificed if doing so will maximize total satisfaction. Suppose executing the Danish cartoonists will appease a Muslim mob, and that doing so increases total satisfaction. A utilitarian would have to endorse the execution. As Rawls says, "there is a sense in which classical utilitarianism fails to take seriously the distinction between persons."

This verdict was in one respect surprising. Utilitarianism in its origins was strongly connected with classical liberalism, a view that stresses individual freedom. Two of the greatest utilitarians, John Stuart Mill and Henry Sidgwick, were classical liberals, though not of the strictest observance. As the examples discussed above illustrate, though, utilitarianism can have anti-individualist implications. Rawls himself viewed his assault on utilitarianism as a defense of liberalism, not an attack on it. But he was decidedly a modern, rather than a classical, liberal. Indeed, Rawls became the official philosopher of the contemporary democratic welfare state.

He offers an ingenious substitute for utilitarianism. Instead of directly advancing a theory of his own, Rawls asks what we can do when faced with

the fact that people do not agree on a common conception of the good. He answers that even if people do not agree on the good, they can accept a fair procedure for settling what the principles of justice should be. This is key to Rawls's theory: whatever arises from a fair procedure is just.

But what is a fair procedure? Rawls again has an ingenious approach, his famous veil of ignorance. Suppose five children have to divide a cake among themselves. One child cuts the cake, but he does not know who will get the shares. He is likely to divide the cake into equal shares, an arrangement that the children, no doubt grudgingly, will admit to be fair. By denying the child information that would bias the result, a fair outcome can be achieved.

Rawls's veil of ignorance generalizes the point of this example. He asks that we imagine a situation, which he calls the original position, in which people do not know their own abilities, tastes, and conceptions of the good. Under this limit, individuals motivated by self-interest endeavor to arrive at principles of justice. People behind the veil of ignorance are self-interested but in crucial respects ignorant.

Rawls thinks that everyone, regardless of his plan of life or conception of the good, will want certain "primary goods." These include rights and liberties, powers and opportunities, income and wealth, and self-respect. Without these primary goods, no one can accomplish his goals, whatever they may be. Hence, individuals in the original position will agree that everyone should get at least a minimum amount of these primary goods. This is an inherently redistributionist idea, since the primary goods are not natural properties of human beings. If someone lacks these primary goods, they must be provided for him, if necessary at the expense of others.

Concretely, Rawls thinks that people will agree to two principles of justice. The first calls for the greatest liberty for each person, consistent with equal liberty for all. Surely, he suggests, even if you lack information about your actual goals, as the veil prescribes, you will want to be free to pursue whatever these goals turn out to be. Not only will people want liberty, Rawls thinks, they will give this principle priority over the other one, the principle of difference, which in part deals with distribution of economic goods. The two principles cannot be "traded off" against each other: economic equality, for example, cannot be achieved at the expense of liberty.

In this view, Rawls sounds like a classical liberal, and some philosophers, most famously the great Oxford legal thinker H.L.A. Hart, criticized Rawls for giving undue priority to liberty at the expense of other social goods. Rawls's liberty principle appeals to the so-called "Rawlsians," a group of young libertarians who want to combine the views of Rawls with those of Friedrich Hayek, but Rawls himself was no Hayekian.

Indeed, Rawls's greatest critic was a libertarian, his Harvard philosophy department colleague Robert Nozick, who raises a key objection to Rawls in his classic 1974 work *Anarchy, State, and Utopia*. Nozick notes that Rawls does not include property rights among the liberties protected by his first principle. To the contrary, Rawls starts off by assuming that the people in the original position have the task of distributing all the property in society. If one denies this, and, like Nozick, thinks that people start off with property rights, then there will be little or no scope for the difference principle to operate.

Rawls and Nozick were at one time on very good terms; Rawls thanks Nozick profusely in the preface to *TJ*, as the book is affectionately known in the

trade. Later, they became more distant: when Rawls's *Political Liberalism* appeared, Nozick in conversation was quite dismissive of its merits. In *Anarchy, State, and Utopia*, he had praised *A Theory of Justice* as a great work of philosophy, but he told me that he had polished off *Political Liberalism* in one lecture. Nozick, by the way, resented the frequent complaint that he did not respond to his critics. He wondered why people did not criticize Rawls for failing to respond, except very indirectly, to his arguments.

The most controversial part of Rawls's theory is the famous difference principle. (More exactly, the second part of this principle. The first part calls for equal opportunity and will not affect our discussion.) Rawls contends that people in the original position would start by wanting to distribute wealth and income equally. Why should some get more than others? Equality is the default position, but this is soon modified. People realize that we respond to incentives. If unequal incomes are allowed, this might turn out to be to the advantage of everyone. To insist on absolute equality, even if this left everyone worse off, would be cutting off one's nose to spite one's face.

To deal with this situation, Rawls proposes that all inequalities must be to the advantage of the least well off group. Rawls was not an extreme egalitarian, content that everyone should be miserable, as long as they were equally so. But we now arrive at the fundamental presupposition of Rawls's theory. Suppose that someone objects that the difference principle is unfair. "If I am talented and am able to earn more than most people, why should my income be limited to what turns out to be best for the worst off? Do I not have the right to benefit from my superior talents?" Rawls's theory does not rule out the competitive pursuit of excellence. But he believes

individuals cannot justifiably complain if they do not benefit fully from the fruits of their superior achievement.

Rawls argues that people do not deserve to reap the rewards of these talents. Tiger Woods earns millions of dollars because he is superlatively good at golf. Yet his abilities do not stem from any special virtue on his part. He was just lucky that, by some combination of heredity and environment, he ended up with superior skills. He is lucky in another respect: market demand for golf enables his talent to achieve vast returns. Because market demand for checkers players is much less, the late Marion Tinsley, whose skill at checkers was comparable to that of Woods in golf, did not earn comparable returns on his talent.

One might object that luck is not the full story. However talented he may be, Woods had to practice countless hours from his early youth to get where he is today. Does he not deserve to benefit from his hard work? Rawls has an answer that I suspect readers will find surprising. He thinks that if you have the personality trait of working hard, this too is a matter of luck. Even though Woods practiced strenuously, he does not deserve to benefit from this trait.

As Thomas Pogge has noted in his recent biography *John Rawls: His Life and Theory of Justice*, Rawls was especially sensitive to issues of luck because of a sad occurrence in his own life. Two of his brothers died in childhood because they had contracted fatal illnesses from him. Pogge calls the loss of the brothers the “most important events in Jack’s childhood.” In 1928, the 7-year-old Rawls contracted diphtheria. His brother Bobby, younger by 20 months, visited him in his room and was fatally infected. The next winter, Rawls contracted pneumonia. Another younger brother, Tommy, caught the illness from him and died.

Rawls’s extreme views about merit have exposed him to withering criticism, and Nozick was in the forefront here. First, if you don’t deserve your talents or personality traits, what is left? Rawls has evacuated persons of their attributes, leaving virtually nothing behind. Further, suppose Rawls is right that people do not deserve their superior abilities—that is, they do not acquire these talents by superior moral merit. It does not follow that they are not entitled to benefit from them. Why does the fact that you do not “deserve,” in Rawls’s sense, your superior talents imply that they ought to be transferred to society to be managed for the benefit of the least well off? Rawls, though ostensibly devoted to liberty, winds up with a system in which society controls virtually all the important human attributes.

Despite this collectivist principle, it is possible to interpret Rawls in a way that is quite compatible with classical liberalism. One might think that an unrestricted free market best promotes the interests of the least well off class. If so, the difference principle will forbid any egalitarian redistribution of wealth or income. Raymond Geuss, a disciple of Theodor Adorno stationed at Cambridge, has denounced Rawls for this reason. Can one not use the difference principle, he asks, to justify any degree of inequality? Rawls himself does not interpret his principle this way, but his theory does not rule it out. The Rawlsians interpret the difference principle in exactly this fashion. (Incidentally, one writer who thinks Rawls can be read in a way consistent with conservatism is the philosopher’s son, Alec Rawls, though he has so far not published much on this topic.)

The Nobel Prize-winning economist Friedrich von Hayek was for a time sympathetic to Rawls, though not because of the difference principle.

Rather, he liked Rawls’s emphasis on structural principles of justice. (Rawls does not seem to have reciprocated Hayek’s esteem: the Austrian is not cited in *TJ*.) In Rawls’s system, people in the original position do not assign shares of wealth to particular people: they set up general institutions for society. This fitted in with Hayek’s emphasis on the rule of law. When Hayek opposed “social justice,” what he had in mind was a system that gives orders to particular persons, ungoverned by general law. Hayek later said that he was surprised by the direction in which Rawls took his theory; but Rawlsians, such as Will Wilkinson of the Cato Institute, continue to use Rawls for libertarian ends.

The Rawlsians believe that Rawls’s notion of choice behind the veil of ignorance is a good starting point for political philosophy. They argue that libertarian principles would be chosen in the original position. But the convergence between Rawls and Hayek can be looked at from the other direction. Hayek, a great Austrian economist and one of the greatest classical liberals of the 20th century, was not all together opposed to the welfare state. Much to the distress of more thoroughgoing libertarians like Ludwig von Mises and Murray Rothbard, in *The Road to Serfdom* and *The Constitution of Liberty* Hayek defended small-scale welfare legislation.

There are other aspects to Rawls’s thought, however, that should give libertarians, and certainly conservatives, pause. Rawls never abandoned the principal tenets of his theory of justice, but in his 1993 work *Political Liberalism*, he changed course in one respect. He began emphasizing that in modern constitutional democracies like the United States, disagreements over fundamental values and issues such as abortion can threaten the stability of

society. Given the degrees of disharmony, what are we to do?

His answer recalls the original position of *TJ*. Individuals should, once more, put aside their own conceptions of the good. But this time, in deliberating on these divisive issues, people must rely only on “public reason.” This consists of principles that everyone, regardless of his conception of the good, will have cause to accept. By an odd coincidence, if public reason is used properly, we will arrive at exactly the same principles as those set forward in *TJ*. It is difficult not to wonder whether Rawls’s enterprise is merely an attempt to find arguments in support of the political opinions of professors of his social class.

An example will show how public reason works. If your religion forbids abortion, you cannot appeal to this fact in political discussions, since religious views do not form part of public reason. Later, Rawls modified this rigid view. His final position was that you could mention your private views as long as you also had an argument from public reason to support your stand. Rawls’s introduction to the 2005 paperback edition of *Political Liberalism* states, “Certainly Catholics may, in line with public reason, continue to argue against the right of abortion. That the Church’s nonpublic reason requires its members to follow its doctrine is perfectly consistent with their following public reason.”

Even with that concession, Rawls’s idea of public reason has little to recommend it. Rawls has simply defined a notion of social stability to suit his theory. He never shows that something bad will happen if a society is not “stable” in his sense. Why cannot a society like our own, with considerable religious and philosophical disagreement, continue to flourish without the crutch of public reason? Unless one defines a

society so that it must include common adherence to a political doctrine, it is not clear why social order demands agreement. Would not coercive efforts to enforce such a political orthodoxy on people with strong religious beliefs be likely to reduce social stability rather than promote it? This is the clear lesson of modern French history, from the Jacobins to the religious conflicts of the French Third Republic.

Rawls’s star is now in the ascendant, but philosophical fashions often change. In the 1920s, Ralph Barton Perry’s *General Theory of Value* created a sensation, but it is now largely forgotten. Will *A Theory of Justice* suffer a similar fate? Most philosophers today would say no, but I wouldn’t bet on it, despite the efforts of the Rawlsians. They have attracted considerable attention in libertarian circles in the past year, but so far they have not produced any substantial body of work. I suspect that this movement is little more than an attempt to gain libertarian mileage out of a popular political philosophy.

Ironically, the Rawlsian movement serves to illustrate the inherent vagueness of the difference principle, which can be taken either to allow or forbid massive inequalities. Unless some future Rawlsian can show that the system has definite practical implications, and, even more important, can reply to the objections that Nozick raised, Rawls seems destined to fall from his current heights of esteem. During the late 19th century, Herbert Spencer was regarded as one of the greatest philosophers, but in the 20th century Talcott Parsons could ask, “Who now reads Herbert Spencer?” Perhaps one day a similar question will be asked about John Rawls. ■

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Afghanistan

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working with regional powers to secure the limited but actual U.S. interests in Afghanistan and the rest of South and Central Asia—weakening the influence of radical Islam; damaging the infrastructure of terrorist groups; preventing unstable regimes and terrorist organizations from gaining access to weapons of mass destruction.

In that context, Washington should no longer depend on Pakistan—an unreliable client state and unstable regime with ties to radical Islamic groups—to serve as its strategic ally in the region. Instead, the U.S. should provide incentives to India, which is emerging as a leading economic and military partner, to counterbalance the power of Pakistan as part of an effort backed by Russia and Turkey to reduce the influence of radical Islam in Afghanistan and the rest of the region. Some remnants of the Taliban are expected to return to Afghanistan, but they should know that if they provide refuge to anti-American terrorists again, they face another rendezvous with those Daisy Cutters. At the same time, the U.S. should make the capture of Osama bin Laden and other al-Qaeda terrorists hiding in Pakistan a condition for any improvement in America’s relationship with Islamabad.

This set of policies may not sound as romantic as nation-building. But a U.S. president who has the gift of a first-rate intelligence and who claims not to be using the methods of Doublethink will suffer no dissonance if he decides to pursue them. ■

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Arts & Letters

FILM

[Elegy]

The Grotes of Roth

By Steve Sailer

PARADOXICALLY BUT PROFITABLY, Hollywood assumed that America's youth wanted to spend May and June, the two months of the year with the nicest weather, inside watching blockbuster movies. Now that the dog days of summer are here, the big movies are trickling to a halt, and art house films for adults are back.

You can't get much art housier than "Elegy," in which Sir Ben Kingsley portrays one of novelist Philip Roth's lesser alter egos, the lecherous literature professor David Kepesh.

F. Scott Fitzgerald famously asserted, "There are no second acts in American lives." This is often true for alcoholics, particularly the many American writers who resorted to the bottle to restore temporarily the visual world's luminous glow, that green light at the end of the dock that shone for them when they were young and in their lyrical primes.

In contrast, a social novelist such as Roth can potentially keep getting better as he becomes older and wiser. Roth hit the bestseller lists in 1969 with *Portnoy's Complaint*, the definitive denunciation of "Jewish guilt," which in Roth's book is the opposite of "white guilt"—it's the nagging sense that you aren't ethnocentric enough. After that early success,

Roth's career bogged down in experimental conceits.

Over the last decade and a half, from about the age of 60 onward, he's returned with a torrent of strong novels, allowing his fans to proclaim him America's greatest living writer. Perhaps, but there's little mystery to Roth's talent. You can imagine that if you were twice as smart and ten times as hard-working, you too could do what Roth does.

Filmmakers haven't had much success adapting his recent work. His 2000 novel *The Human Stain* offered an inherently interesting story inspired by the life of literary critic Anatole Broyard, an important advocate of Roth's early work, who had more or less passed from black to white. The ambitious film version's 1940s flashback scenes, with Wentworth Miller of "Prison Break" as the student ruthlessly shedding his black family, were moving. Unsurprisingly, however, Sir Anthony Hopkins, Hollywood's laziest actor, proved hopeless at seeming part-black.

"Elegy" is adapted from Roth's lesser 2001 book, *The Dying Animal*. The 62-year-old Professor Kepesh, who moonlights as an arts maven on New York's PBS channel, methodically seduces one of his students each semester: "They are helplessly drawn to celebrity, however inconsiderable mine may be." In long digressions, Kepesh—like Roth a child of the 1930s—salutes the 1960s sexual revolution when he shed his wife and small son for attachment-free affairs with co-eds. The divorce rate exploded in 1968, in part because the baby boom that had started in 1946 meant there was suddenly a huge crop of 18 to 22-year-old women competing for the attention of the small number of successful—and thus generally married—older men.

His life is perfect, Kepesh believes, except for being constantly upbraided about his marital irresponsibility by his resentful son—a striking supporting performance from the protean Peter Sarsgaard, who apparently looks too much like an old-fashioned leading man to get the big roles in today's movies that his talent deserves.

Then Kepesh has the misfortune to land a bland but beautiful 24-year-old (Penelope Cruz). To his horror, he finds that he can't forget her like all the others because she has such perfect breasts. It's refreshing, after all those Angelina Jolie movies, to see a film that admits that in real life a lovely woman does not have to be, say, a world-class assassin. She just has to be gorgeous, which the 34-year-old Cruz certainly is. On the other hand, her role is intentionally dull.

A tale of an aged lothario's comeuppance should always be good for a farcical laugh. Yet Roth, who has exhaustively worked every conceivable variation on his not exceptionally interesting life story, chose instead to make Kepesh whiny and maudlin.

Roth, always a high bandwidth writer, is at least interesting in *The Dying Animal*. "Elegy," though, is slow and self-pitying. The dialogue is sparse and uninspired, and there are no flashbacks to the Swinging Sixties to enliven matters. The filmmakers assume that the unappealing Kepesh's story is the stuff of high tragedy. They don't grasp that Kepesh is the antihero of his book. The bad guy famously gets all the good lines in *Paradise Lost*, but not in "Elegy," leaving Kingsley to mope about ponderously in the rain. ■

Rated R for sexuality, nudity, and language.