

BEHIND THE VEIL OF IGNORANCE

Illiberal Justice: John Rawls vs. the American Political Tradition, by David Lewis Schaefer.
University of Missouri Press, 384 pages, \$49.95 (cloth), \$24.95 (paper)

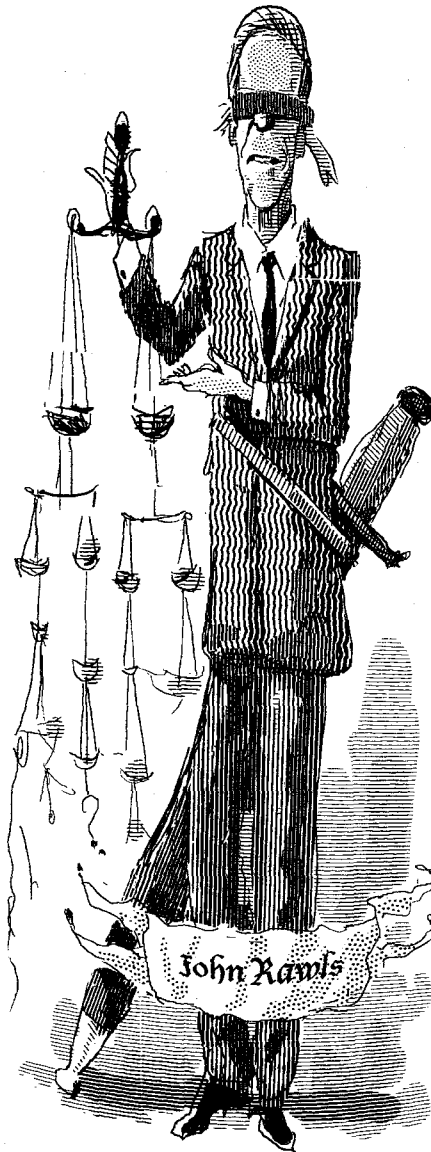
JOHN RAWLS, THE LATE HARVARD PROFESSOR who launched a thousand doctoral dissertations, still casts a giant shadow over academic philosophy. With the publication of *A Theory of Justice* in 1971, many liberal intellectuals felt that their ship had come in. After Rawls, political obligation and a progressive conception of social justice were seen as conjoined twins, incapable of separation without irreparable harm to at least one. The social contract itself now dictated a progressive—even socialist—democracy. Academic liberals had found their Archimedean, if not metaphysical, point.

When President Clinton presented Rawls with the National Humanities Medal in 1999 he noted, tellingly, that the author who gave liberty and justice a “new foundation of reason” also helped a generation of “learned Americans revive their faith in democracy itself.” At least since the 1960s, it has indeed been the learned whose faith in American liberal democracy has lagged, and it was only the learned to whom Rawls could appeal.

It is here that David Lewis Schaefer’s *Illiberal Justice* adds greatly to our grasp of the destructive influence of Rawls’s political theory on the understanding and practice of American republicanism. A political science professor at Holy Cross College, Schaefer skillfully and relentlessly dissects Rawls’s entire *œuvre*, though he concentrates overwhelmingly on *A Theory of Justice*. One after another, Rawls’s premises and conclusions are shown to be wildly implausible. The chief merit of Schaefer’s work is its concentration on the relationship of Rawls to the Western and American philosophical and political traditions.

Rawls was in one sense at home with the early modern philosophers—liberal and not so liberal—for whom nature is a cruel tyrant. But the natural tyranny that Rawls sought to abolish arose not from the contest of utility-maximizing individuals pursuing preservation, power, or glory at the expense of others’ lives and property. Rather, nature’s defect was its offensive moral arbitrariness. As individuals, we are unequally and arbitrarily blessed, or cursed, with different natural attributes,

e.g., strength, intelligence, beauty, which in turn are reflected in the social institutions we create, thereby reinforcing and perpetuating our unmerited inequalities. In choosing our moral principles and the political institutions that flow from them, Rawls and his students desperately want us to choose otherwise than we actually do. Rawlsians seek a conception of “justice as fairness” that would prevent nature’s arbitrariness from privileging some to the disadvantage of others. Starting from the premise of the choosing individual, Rawls developed a radical form of liberalism with a natural appeal to radical liberals, most of whom are denizens of the academy. His liberalism encompassed but moved beyond special pleading on behalf



of allegedly downtrodden minorities—racial, religious, sexual—to a more comprehensive pleading against almost all forms of socioeconomic inequality.

Thus a theory of justice begins with the positing of an “original position” rather than a state of nature. This position really amounts to a thought experiment wherein creatures that possess rationality and outwardly resemble human beings are imagined to have no knowledge of the facts that actual human beings would consider politically salient. In particular, these creatures have no knowledge of their personal characteristics, natural abilities, socioeconomic status, or of the good life. Behind this “veil of ignorance,” Rawls imagined these beings choosing moral and social principles according to which they would agree to live. These creatures—Rawls called them human beings—allegedly elicit an equal concern for the destiny of all, lest any one of them, when the veil is lifted, find himself possessed of attributes not to his relative advantage. Rawlsian creatures choose to maximize their own liberty only to the extent they do not undermine equal liberty for others. Furthermore, they choose to allow socioeconomic inequalities only on condition that everyone has equal opportunity and equal means to compete for positions conferring socioeconomic advantage; and only to the extent that such inequalities maximally benefit the worst off in society. Rawls called the latter stipulation the “difference principle.” Together, the principles of equal liberty and equal opportunity define the political institutions and practices that Rawls found acceptable—no discrimination, and an equal shot in life for all, no matter what. Even when nature arbitrarily bestowed “natural” gifts, these could be taken advantage of only to the extent that the difference principle allows.

BEING RISK AVERSE, RAWLSIAN CREATURES seek to maximize the minimum position of the “least advantaged” within society. Thus did Rawls borrow a concept from rational choice and game theory, albeit for the sake of a sweeping rejection of the utilitarianism usually at the heart of such theories. The principles chosen behind the veil of ignorance

reflect the exclusion of any utilitarian calculus of overall individual or social good. Yet actually Rawls simply chose different constraints on rational choice than mainstream theorists might. Individuals still choose according to utility—just not their own. For Rawls and his followers, the “right” takes precedence over the “good,” because the good is reduced to mere utility. The constraints that govern human conduct are horizontal, as they are for the early moderns, but Rawlsian right does not rest on a natural foundation; it is a series of constructs that arise only out of choices made in the original position. Rights are therefore neither instrumental nor natural. Instead, they are the conclusions of an abstract academic theory of human choice, allowing only those choices deemed desirable by sympathetic liberals. In an effort to bracket the problem of moral truth, Rawls claimed, particularly in his 1993 *Political Liberalism*, that “justice as fairness” did not need to rely on any comprehensive or metaphysical doctrines, but only on the “overlapping consensus” of various doctrines on questions of governance. To cash out this moral theory in the political realm, these overlapping liberal and socialist moral intuitions had to become *diktats* of the administrative state. Schaefer sees *Political Liberalism* as little more than “rhetorical repackaging” of the circular moral logic of *A Theory of Justice*. The only question for Rawls was who got to draw the circle.

SCHAEFER’S *ILLIBERAL JUSTICE* DEMONSTRATES the extent to which Rawls—and the analytic tradition in which he operated—was blind to the empirical, historical, and philosophical insights necessary to a meaningful consideration of justice. With Tocqueville, Schaefer vigorously defends the messy but free institutions of American self-government. He persuasively shows that dogmatic academic theories are no substitute for a deep-rooted attachment to natural rights principles and the prudential statesmanship that is sometimes needed to give them effect.

As Schaefer notes, 20th-century liberalism was in a bad way by the end of the 1960s. In so many respects triumphant, it seemed to lack a path forward because it had systematically undercut the ground on which liberal intellectuals might stand. Darwinism and pragmatism had been ruthless in their assault on the

idea of eternal verities in politics, or anywhere else. The Progressive intellectual and political movement that grew out of them dedicated itself to the growth of the administrative state, but its clamor for change seemed increasingly divorced from reliably liberal conceptions of individual rights or justice. Not coincidentally, the fact-value distinction was at the methodological heart of modern American social science from its birth at century’s turn; it mercilessly excluded the rational consideration of moral norms in a wide range of academic disciplines. Profound unhappiness with the American status quo, combined with deep moral and political skepticism, came to their logical conclusion in the 1960s with a variety of value-positing, often lawless, movements.

Thus did an otherwise obscure and obscure work of analytic political theory suddenly appear as the intellectuals’ lifeboat. Rawls at once provided a rational ground for liberalism and—in his calls for a radical distributive justice—made academic theory once again seem relevant. The Rawlsian legions could and did confidently argue for policies and judicial decisions that compensate the least advantaged and undermine traditional social institutions, such as the family, that confer “arbitrary” advantages.

As Schaefer argues, Rawls set us on the quixotic pursuit of a liberal utopia that threatens to undermine the more attainable goal of securing the equal natural rights of free citizens. Indeed, Rawls departed from Plato in believing that the rule of philosophers is not only desirable but also possible. Can we really expect individuals to view their natural abilities as a collective asset, and to consent obligingly, unendingly, to the subsidization of those who count blades of grass? Put another way, doesn’t Rawlsian liberalism eventually have to resort to an illiberal, undemocratic politics? It beggars the imagination to suggest that citizens even of Cambridge, Massachusetts might voluntarily sacrifice their interests and freedom in such a manner. This fact alone accounts for the courts being the institution of choice for so many Rawlsians who dabble in practical politics.

And indeed American lawyers and judges have proved more than willing to become the scolds and schoolmarms of our new age. Our jurists are very far from being the aristocratic brakes on democratic extremism that Tocqueville suggested they would be. It is the

courts, according to Rawls in *Political Liberalism*, that best exemplify a “public reason” that can settle political disputes on principled grounds. Schaefer suggests such a settlement promises to make politics more, not less, shrill and intolerant. For Rawls, the proper exercise of public reason points to support for *Roe v. Wade*, as well as to restrictions on the amount of speech some may engage in during election campaigns in order to enhance the relative position of others.

GIVEN THE SHEER VOLUME OF RAWLS scholarship, it should come as no surprise that much ground in this fine book has been traversed before, including by Schaefer himself in the insightful writings he has produced on Rawls over several decades. But never has the earth been tilled with such diligence. *Illiberal Justice* comes across as the author’s attempt to have the most comprehensive say on Rawls. This has its disadvantages. The book creates an effect similar to Rawls’s own work: the reader is impressed with the sense that it is rather larger than the subject matter demands. And Schaefer occasionally overreaches, as when he suggests Rawls’s war on arbitrariness was animated by the same fanatical spirit that motivates radical Islamists. Yet earlier he suggests, rather more plausibly, that Rawlsian liberalism leads to the kind of soft despotism that Tocqueville feared.

Quibbles aside, for the Rawls scholar—friend or foe—Schaefer’s book is a goldmine of insight. In the end, it conforms with Allan Bloom’s argument—and quip—that Rawls offered a first philosophy for the last man. On the most important matters, Rawls offered assertions, not arguments. What, after all, is justice? Is it fairness? Divorced by choice from the tradition of political philosophy, and mostly blind to the concrete benefits of American republicanism and a free market economy, Rawls and his many acolytes tend to see utility as the good of the Harvard professor who dwells behind a veil of ignorance that completely obscures the real world. But what can you expect of people who live so much of their lives in an academic world where mere cleverness is so valued, and so rewarded?

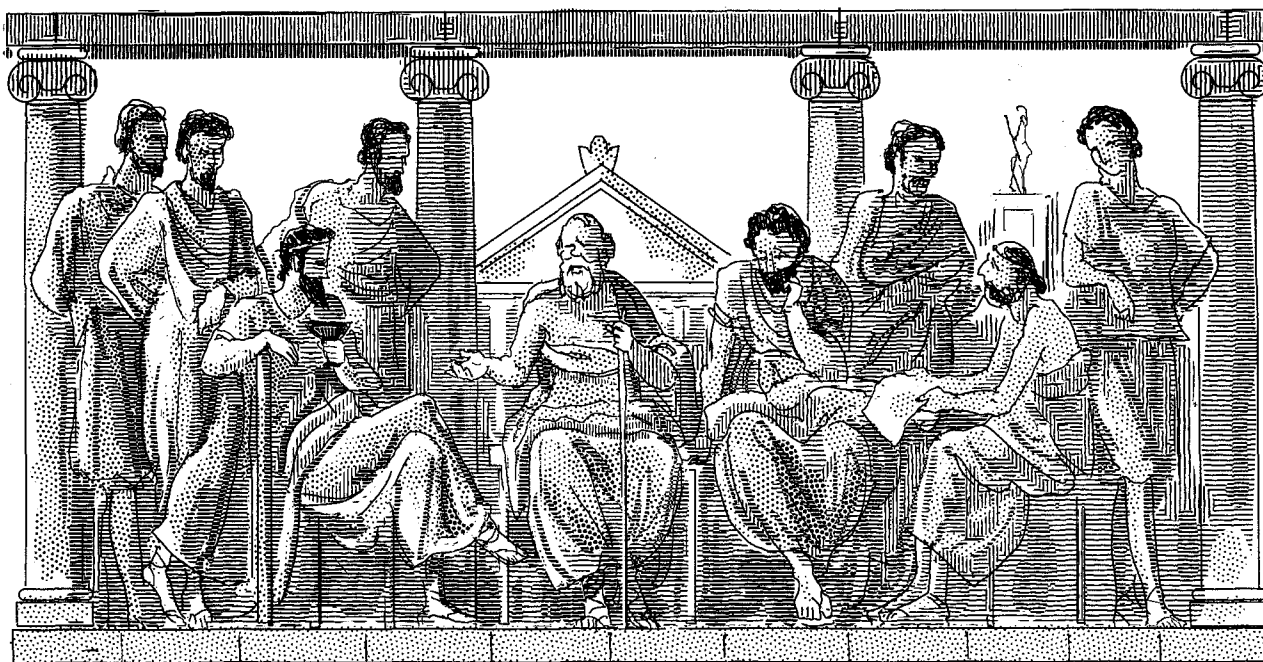
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Book Review by Christopher Nadon

BACK TO THE CAVE

Republic, by Plato, translated by Joe Sachs.
Focus, 358 pages, \$14.95 (paper)

The Republic, by Plato, translated by R.E. Allen.
Yale University Press, 400 pages, \$35



“PLATO’S MOTHER’S COUSIN WAS A tyrant.” So begins the Introduction by G.R.F. Ferrari that graces Tom Griffith’s conversational translation of Plato’s *Republic* (Cambridge University Press, 2000). Nothing quite so promising emerges from the introductions to these two new efforts, but the translations that follow prove to be more accurate and useful.

With talk of “noble lies” very much in the air today, it is worth looking at the passage from the *Republic* in which Socrates first considered their use. Here is how Joe Sachs, a tutor at St. John’s College in Annapolis, renders the lead-up to Socrates’ disclosure of the content of the lie:

“Then could we come up with some contrivance,” I said, “from among the lies that come along in case of need, the ones we were talking about just now, some one noble lie told to persuade at best even the rulers themselves, but if not, the rest of the city?”

“What sort of thing?” he said.

“Nothing new,” I said, “but something Phoenician that has come into currency in many places before now, since the poets assert it and have made people be-

lieve; but it hasn’t come into currency in our time and I don’t know if it could—it would take a lot of persuading.”

What follows is Socrates’ claim that the citizens of the city must come to believe that their education happened before their birth; that they and their “brother” citizens were born from the earth; and that the division of the city into guardians, auxiliaries, and craftsmen/farmers corresponds to the different metals mixed into each individual’s soul at birth.

The passage from Sachs shows signs of his debt to Allan Bloom’s 1968 translation, which he considers “by far the most accurate available.” The ostensible occasion for offering a new one is the recent updating by S.R. Slings of John Burnet’s 1903 Oxford University Press edition of the Greek text. Yet Sachs acknowledges that for all Slings’s minor emendations, nothing of substance has been added or taken away by the revision. Thus “the mere fact that [Bloom’s translation] has held the field since 1968 is reason enough to try to discover whether a worthy alternative to it can be provided.”

Unlike Bloom, Sachs adds summaries and outlines of the argument at the beginning of each of the *Republic*’s ten books. If such intrusions

tend to diminish the immediacy of the reader’s engagement with Plato, they also serve their stated purpose of helping to keep track of a long, complicated dialogue. Sachs’s footnotes are also a double-edged sword. For the most part they provide useful cross-references to passages in the *Republic* or other Platonic texts, but on occasion they strike a false note. When Thrasymachus complains of Socrates’ irony, Sachs correctly wants to prevent the reader from confusing the term with sarcasm, and provides this gloss: “The Greek word refers only to the gracious self-deprecating way of speaking that was a specialty of Socrates.” Irony can certainly be gracious. One side of an ironic statement is often meant to keep up polite appearances. Yet the other side always remains, carrying with it the distinction between those in the know and those out of it. The ironist certainly deprecates, but his self-deprecation is always a lie. Socrates is not humble and that’s important to know.

Sachs adds another reassuring footnote in much the same vein to a passage in Book VI where Socrates claims “a multitude is incapable of being philosophic”:

Notice that Socrates is not saying that most people are incapable of philosophy,