Part One

Property-Owning Democracy: Theoretical Foundations
Thinking about the sorts of politics that Rawls’s work might lead to or inspire presents us with something analogous to a trompe l’oeil. Not the trompe l’oeil of open windows painted on brick walls, but the optical puzzle of a picture that looks first like a vase, then like two profiles, and then a vase again, and indeed the painting is both a vase and the profile of two faces but – and here is the puzzling part for the viewer – they cannot be seen as both simultaneously. Looking at Rawls’s work from a philosophical perspective, he moved from philosophical questions of justice to political questions of stability and legitimacy. Thus his work became more political over the years and spoke more directly to the politics of constitutional democracies. But looking at his work from the point of view of politics, Rawls’s work become less political over the course of years because it became less about justice.

What do I mean by “less political” in this context? *A Theory of Justice* is a radical book that claimed (among other things) that strongly egalitarian social institutions are the proper and only conclusion to draw from thinking through our liberal commitments. Thus *A Theory of Justice* contained a deep indictment of contemporary schemes of distribution. In particular, welfare state capitalism was essentially unjust and should be replaced with property-owning democracy. But replacing welfare state capitalism with property-owning democracy would – certainly in the political world within which Rawls lived, the late twentieth-century United States – require something close to a revolution.

Rawls a revolutionary? Could one ever imagine the careful, gentle, and eminently sensible figure of John Rawls manning a barricade? The very strangeness of this image is part of the shifting ideas of politics that come in and out of focus as we read Rawls from two different perspectives. Rawls’s egalitarian vision would take nothing short of a revolution to bring about and yet Rawls was anything but a revolutionary.

In this chapter I trace out the shifting terms of the politics of egalitarianism. In particular I look at the reasons why Rawls refused to embrace the type of politics that would be necessary to bring about the type of justice he appeared to be advocating.
Rawls’s views on equality are radical, indeed utopian, and as such quite far ahead of prevailing public culture. Outlining the political implications of the difference principle in any detail would involve stepping out of the existing liberal order into a radical critical theory. This is to say it would involve taking a critical stand toward existing distributive schemes. The difference principle does not point to a more progressive tax system but rather to a rethinking of the basic structure of our property relations. This is radical. This sort of radicalism not only did not interest Rawls; it appears to undermine his main justificatory strategy, namely the argument that “justice as fairness” was simply a rendering of certain core ideas central to our existing liberal order.

Furthermore, in moving from his Archimedean stage to his political stage, Rawls moved from outlining a theory of justice to outlining how such a theory of justice could become widely accepted and stabilized under conditions of pluralism. The central idea in this move is to seek out principles of justice that have both a strong philosophic justification as well as a strong citizen endorsement, despite the fact that citizens might have very different religious and moral world-views. This is what Rawls calls political liberalism. It is political rather than metaphysical. We need not find agreement on questions of truth and or a full moral view in order to agree on principles to govern the basic structure of our political community. Legitimacy becomes tied to what can be publically justified under conditions of reasonable pluralism, and Rawls had to concede that many of the egalitarian principles he championed in *A Theory of Justice* could not be publically justified even though he still was convinced that they were just (Freeman, 2007).

Controversial principles concerning social justice moved into the background and more widely accepted views concerning rights and freedoms moved into the foreground. In particular, the difference principle, which is the jewel in the crown of Rawls’s egalitarianism and the foundational principle for the endorsement of property-owning democracy, was essentially just but could not be shown to be legitimate (Freeman, 2007). In what follows I trace out the move from justice to legitimacy and ask, “Is there a way back from legitimacy to justice?” In order to see why the difference principle causes problems from the point of view of legitimacy we need to begin at the beginning: with basic ideas of equality.

### What Is Equality?

Rawls’s discussion of equality is complex and multileveled, and, despite becoming less prominent in his later work, remained an enduring theme throughout his career. Very broadly, we can discern three interlocking spheres of equality at work in Rawls’s writings: fundamental equality, political equality, and social and economic equality. Fundamental equality involves some initial claim about the moral status of individuals, namely, that all persons are of equal worth (Barry, 2001). It is this sort of claim that is expressed in the Declaration of Independence, for example, with the words “We hold these truths to be self-evident, that all men are created equal.” There are three things to note about fundamental equality: it is notoriously difficult to “prove,” it is not self-evident what follows from such a claim, and it is the closest thing liberal democracy has to an axiom. All of Rawls’s work begins from the premise that we are free and equal in a
fundamental and essentially pre-political sense. There is no attempt – nor does Rawls think there is any need – to “prove” this as a universal truth. Nor does he claim it as a fact. It is simply the way we must begin if we are to think about what follows from our broadest liberal commitments.

Although it is not self-evident what follows from fundamental equality, political equality, sometimes called equality of democratic citizenship, is the most common next step (Arneson, 1993). Here we move from making a general claim about moral status to a claim about how institutions should treat individuals. Political equality then encompasses such things as equal basic liberties – for example, freedom of expression, religion, and association; equal right to vote and run for office; equality before the law and due process.

Finally, we come to social and economic equality or, more precisely, social and economic inequality. Few claim that in this sphere there is equality (as in the moral realm) or that there ought to be or could be full equality (as in the political realm). The debate is usually about how much inequality we ought to allow. For strong egalitarians like Rawls, the benchmark is equality, but the question is not how to achieve equality, but rather, how far ought we to let distribution fall away from the benchmark. While there is a great deal still to be said about fundamental equality (and we should never tire of reminding ourselves of its importance), and we have yet to get political equality quite right, there appears to be a broad consensus on these ideas within Western liberal democracies. Social and economic equality is the hard case and so the more interesting case.

In justice as fairness, Rawls’s favored conception of justice, political and social equality are embodied in his two principles of justice. The first principle runs as follows: “each person has the same indefeasible claim to a fully adequate scheme of equal basic liberties, which scheme is compatible with the same scheme of liberties for all” (Rawls, 2001, p. 42). The status and centrality of this principle to Rawls’s political philosophy never changed and it appears to have deep roots in American political culture. The first half of Rawls’s second principle also remained central to his conception of justice and also appears to have significant popular support: social and economic inequalities “are to be attached to offices and positions open to all under conditions of fair equality of opportunity” (2001, p. 42). It is the second half of the second principle, the difference principle, that has seen the most change and which appears to have the least support in public culture: social and economic inequalities “are to be to the greatest benefit of the least advantaged members of society” (Rawls, 2001, p. 43). This principle is the heart and soul of Rawls’s egalitarianism. But he pushed this egalitarianism into the background as his work become more political. Why this should be so is worth considering.

**From the Fact of Inequality to the Fact of Pluralism**

In *A Theory of Justice*, Rawls argues that questions of justice are really questions about the basic structure of society: that is, they are questions about how things like constitutions, markets, and private property determine and shape life chances. These institutions, however they are set up, necessarily favor certain starting places over
others.” This is a fact of social life, and for Rawls “[i]t is these inequalities, presumably inevitable in the basic structure of any society, to which the principles of social justice must in the first instance apply” (Rawls, 1971, p. 7). Social inequality is inevitable but it is also man-made. Inequality is the result of structures that are subject to our choices and control. There are an infinite number of ways to regulate a market. Thus, although inequality is inevitable, no particular pattern or configuration of inequality is necessary. We must decide which pattern or configuration is justifiable. This is the central problematic of *A Theory of Justice*. It leads Rawls to develop principles of justice that regulate the basic structure and hence determine life chances. These principles of justice are highly egalitarian and he never repudiates or significantly alters his commitment to them. But things do change.

One way to read that change is as a shift from a concern about the problems raised by the fact of inequality to a concern for the problems raised by the fact of pluralism. These two facts play vastly different roles in his theory. The fact of inequality asks for justification against a benchmark of equality; the fact of pluralism asks for accommodation against a benchmark of autonomy. The first fact must be viewed with suspicion, the second with approval. The fact of inequality demands that we think about and come up with principles of justice; the fact of pluralism demands that we think about and come up with ways of justifying and defending principles of justice in a world characterized by deep disagreement. Thus, one can understand the move from *A Theory of Justice* to *Political Liberalism* as a move from the question “What principles of justice follow from our general liberal commitments?” to the question “Why should we think citizens would accept these principles as legitimate?”

The problem of inequality in *A Theory of Justice* is posed as a philosophical problem to be worked out in the original position, while the problem of pluralism in *Political Liberalism* is posed as a political problem to be worked out among citizens. The difference here is not that Rawls moves from ideal theory to the nonideal world of messy politics. In both *A Theory of Justice* and *Political Liberalism* ideal theory is the medium; Rawls is working within the assumption of a well-ordered society. A well-ordered society is “a society effectively regulated by a public conception of justice” (Rawls, 2001, p. 5). The Rawlsian strategy is to think about moral and political problems in a context where everything pretty much works as it should and where everyone pretty much acts as she should. Once we get a handle on how things might work in a well-ordered society, we can begin to introduce the problems, uncertainties, and contingencies of the real world.

So *Political Liberalism* is not political in a pragmatic sense. It is political because it describes the citizen point of view and argues that citizens can endorse a political conception of justice without at the same time having to endorse a shared moral, religious, or deep philosophical perspective.

Although citizens are, of course, present in *A Theory of Justice*, the most important character is the chooser in the original position. She is asked to view the problem of inequality from an impartial perspective. This perspective requires that she know nothing about her particular place in society. Citizens, in contrast, know everything about themselves and in particular they are very aware of the way their fundamental moral and religious ideas diverge. Citizens, while not under the radical impartiality of
the veil of ignorance, are asked to adopt a stance of neutrality while arguing with each other.

Public reason eclipses the original position as the perspective from which citizens view questions of justice. Public reason in its earliest articulation (Rawls, 1993) was the reasoning and deliberation that would be necessary to work out the constitutional and legislative elaboration of the principles of justice chosen in the original position. In a well-ordered society, everyone would share a basic but very general conception of justice (for example, justice as fairness) and would argue from that conception. There would still be lots of room for difference of opinion but it would be about the application and elaboration of principles of justice and not about the principles themselves. But as Rawls became more interested in citizens and legislators working out the constitutional essentials necessary to any conception of justice, he became less insistent that justice as fairness was the only conception of justice that could fit the bill. Justice as fairness became one among many possible conceptions of justice that could serve the function of shared starting point for deliberation. Rawls began to use the phrase “justice as fairness or something like it” when appealing to a conception of justice. Not only did justice as fairness become just one possible conception of justice among a number of possible sets of liberal principles but questions of economic distribution and property rights fell completely outside of public reason (Rawls, 1993, p. 229; Freeman, 2007). Rawls came to accept that there was no shared starting principle from which we could argue about distribution and therefore distribution should not be addressed as a constitutional essential. This in turn has thrown social justice back into the political arena in a very interesting way. But we get ahead of ourselves. We need to take a closer look at the difference principle to see why it falls outside of public reason and back into a political sphere of contestation.

**The Difference Principle**

At the heart of Rawls’s egalitarianism is the intuition that institutions should be arranged in such a way as to improve the life chances of the worst off in society. Rawls is not alone in making concern for those at the bottom of the social and economic ladder the *sine qua non* of egalitarianism (Nagel, 1991; Arneson, 1993). This intuition is expressed in the difference principle and leads to the conclusion that if there is some scheme of unequal distribution that makes individuals at the bottom better off than they would be under an equal distribution, then the unequal scheme is preferable to the equal distribution. A great deal of ink has been spilt on the justification and defense of this principle and its connection to equality (e.g., Richardson and Weithman, 1999). At first sight it does not appear to be a principle of equality at all as it seems to give unequal moral weight to the least advantaged of society. Before I spill even more ink on this subject, I want to jump ahead and offer a hint at what is at stake; that is, I want to look briefly at what it might mean to implement this principle. Some people have implied that it wouldn’t mean much. On the left, this principle has sometimes been read as a disingenuous defense of capitalism and huge inequalities (DiQuattro, 1983). But if
Rawls himself is anything to go by, the difference principle is a far cry from the conservative adage that a rising tide lifts all boats.

It is not just that Rawls’s egalitarianism appears to be tacking quite hard against neoliberalism and a retrenchment of the welfare state. Rawls himself sees the institutional implication of the difference principle in much more radical terms. He has clearly and without equivocation stated that it is not just laissez-faire capitalism that is incompatible with his view of equality; welfare state capitalism also fails to pass muster. Rawls endorses what, following James Meade (1964), he calls property-owning democracy, while admitting that some form of democratic socialism might also be compatible with the difference principle. Few people have taken Rawls up on this topic, and, as noted by Krouse and McPherson (1988), many commentators have simply assumed that Rawls is advocating an egalitarian brand of welfare state capitalism. On this mistaken reading, the redistribution mandated by the difference principle would predominantly involve a redistribution of income to those identified as the least well off in society. At the end of each “period,” whatever that might be, we would look at how everyone was doing and reshuffle the outcome deck. This is not what Rawls had in mind.

Rawls is interested in “securing background justice over time” (Rawls, 2001, p. 135). To do this, the difference principle must be applied directly to the basic structure. A capitalist welfare system tolerates not just an uneven distribution of wealth but a world in which there are some without property altogether. By contrast, “background institutions of property-owning democracy work to disperse the ownership of wealth and capital. And thus to prevent a small part of society from controlling the economy” (Rawls, 2001, p. 39). Welfare capitalism redresses the inequalities produced by the basic structure; property-owning democracy offers a redesigned basic structure to ensure minimum or only justifiable inequalities in outcomes. While some income transfers will always be necessary within property-owning democracy, Rawls is interested in a system that has no need of large-scale income redistribution.

What would a property-owning democracy really entail? Rawls says very little on the subject. Very generally, it would mean establishing and maintaining “widespread ownership of productive property and limits to the concentration of property over time” (Krouse and McPherson, 1988, p. 99). This in turn would probably mean “some sort of once and for all redistribution of property holding, accompanied by institutional reforms . . . to keep the redistributed property from becoming reconcentrated” (Krouse and McPherson, 1988, p. 103). However one looks at it, property-owning democracy, with its insistence that property, understood both as human and real capital, be “put in the hands of citizens generally” (Rawls, 2001, p. 140), is a radical departure from property arrangements in contemporary America, or in other contemporary liberal democratic societies. The more Rawls said about it, the more he seemed to be inching toward the barricades. Perhaps he adopted the strategy of “the less said, the better.” But Rawls did say enough about property-owning democracy to conclude that any plausible interpretation of such a system would require something quite different than the existing property arrangements in contemporary America. But here is the puzzle. Rawls claims to be articulating beliefs that, although latent, are nevertheless constituent of our political culture. This in turn implies that existing property relations and the distribution of wealth are out of line with political culture. But are they? Can Rawls find the
deep cultural resources he needs to defend egalitarianism? He sometimes appears to go back and forth between two strategies. One is to insist that the difference principle is the consistent answer to the question of what follows from our deep commitments to fundamental equality (Rawls, 2001, p. 49). The other strategy is to admit that the difference principle is controversial and so not insist on its inclusion in a conception of justice (Rawls, 1993, p. 157). I take up the first strategy in the following section, before moving on to address the alternative strategy in the final section.

Ideals Latent in Public Political Culture

Why should we care more about the worst off than other groups in society? There is an original position answer to this question, of course. Briefly, it states that if you did not know where you would end up in society, you would be most concerned about what would happen if you ended up at the bottom. From this vantage point you would choose a distributive scheme that maximized the possibilities for the minimum stake (Cohen, 1989). From the point of view of the original position, then, we care about ourselves first and the least well off only to the extent that we might be one of them. This, however, is not the most important or persuasive argument in defense of the difference principle and Rawls himself admits that without appeal to substantive ideals in our political culture, the difference principle might appear “eccentric or bizarre” (Rawls, 1971, p. 75).

There are two arguments in particular that deserve our attention: the distinction between persons and the concept of moral arbitrariness. The “distinction between persons” argument brings us back to ideas of fundamental equality. In Rawls’s early career he was partly motivated by the fact that moral philosophy had been dominated by utilitarianism. Utilitarianism also begins from a strong idea of fundamental equality: no one shall count for more than one. For utilitarians, justice is realized when “major institutions are arranged so as to achieve the greatest net balance of satisfaction summed over all the individuals belonging to any given society” (Rawls, 1971, p. 22). The problem is that for utilitarians, “it does not matter, except indirectly, how this sum of satisfactions is distributed among individuals” (Rawls, 1971, p. 26). This would allow – in principle, anyway – the losses of some to be compensated for by the greater gains of others. Such trade-offs are incompatible with an alternative view of fundamental equality in which each individual is considered to have equal immeasurable worth, or dignity, rather than each individual being considered as numerically equal. The equal dignity of each individual prohibits a scheme in which some people’s losses are justified because they are a means to other people’s gains.7

So we cannot just make the pie bigger – especially if making the pie bigger involves sacrificing someone’s life chances for the greater good. We can only make the pie bigger if we can be assured that no one will be made worse off by it. Thomas Nagel points out that in contrast to utilitarianism, this Kantian concern for everybody “must contain a separate and equal concern for each person’s good” (Nagel, 1991, p. 66). From such a concern, “a ranking of urgency naturally emerges” (Nagel, 1991, p. 68). It is not that the worst off have more moral worth; it is that in looking at everybody as having equal moral worth we ought to be most concerned with those who fall farthest from an ideal
of well-being, whatever that might be. Thus, there is a certain intuitive affinity between an idea of equal dignity and a special concern for those at the bottom. However, it is not clear that this alone could produce the difference principle.

The second fundamental idea that underpins the difference principle is the intuition that people should not be disadvantaged or penalized by factors outside their control or factors that are otherwise arbitrary from a moral point of view. No one thinks that shoe size should significantly determine one’s life chances or social position. Race and gender are equally arbitrary from a moral point of view and so should not determine one’s life chances or social position. To these widely accepted examples of arbitrariness, Rawls adds talents and abilities. He claims that it is one of the fixed points of our considered judgments “that no one deserves his place in the distribution of native endowments, any more than one deserves one’s initial starting place in society” (Rawls, 1971, p. 104). A person does not deserve the talents she was born with any more than she can be said to deserve or have earned the size of her feet. Rawls goes further still and maintains that “even the willingness to make an effort” is dependent upon – or, at any rate, inextricable from – morally arbitrary factors like social circumstances and family (Rawls, 1971, p. 74).

According to Rawls we may – and indeed should – benefit from our talents, not because we deserve such benefit in any strong moral sense, but only because rewarding certain talents and abilities is good for everyone: “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” (Rawls, 1971, p. 101). The two important ideas here are, first, that a person should not be penalized or lose out in life because of circumstances beyond her control. Natural abilities constitute such a circumstance. Second, society is a joint venture from which we are all supposed to benefit. Each and every individual’s cooperation in this joint venture, including those with fewer talents than others, is premised on the deck not being stacked against them from the very beginning. Joshua Cohen (2002, p. D1) puts this nicely when he says: “Rawls’s large point is that we ought to reject the idea that our economic system is a race or talent contest, designed to reward the well-born, the swift, and the gifted. Instead, our economic life should be one part of a fair system of social cooperation, designed to ensure a reasonable life for all.” But what if the idea that our economic system is a race or a talent contest has a deep hold on us, or at least on many of us?

How Egalitarian Are We?

Here is the puzzle thus far: Rawls begins with ideas implicit in our political culture but ends with an egalitarian vision far removed from anything the political culture within which he lived seemed prepared to contemplate. In what follows I rely mostly on studies and data about how Americans feel about equality, and this arguably is different than European political culture. Perhaps the difference principle, and by extension property-owning democracy, has more purchase within European understandings of liberal democracy than in America. Be that as it may, the underlying point is still the same. Rawls’s egalitarianism relies on controversial claims about the basis of just distribution. The claims articulate ideas that are so latent as to be invisible to the naked eye, by which I
mean measurable in any social scientific sense, and indeed appear to conflict with other aspects of our political culture that are less latent. This is especially clear with regard to the moral arbitrariness argument. Rawls is right to point out that modern liberal democratic culture grew out of a rejection of the moral significance of natural facts:

The natural distribution [of talent] is neither just nor unjust; nor is it unjust that persons are born into society at some particular position. These are simply natural facts. What is just and unjust is the way that institutions deal with these facts. Aristocratic and caste societies are unjust because they make these contingencies the ascriptive basis for belonging to more or less enclosed and privileged social classes. The basic structure of these societies incorporates the arbitrariness found in nature. But there is no necessity for men to resign themselves to these contingencies. The social system is not an unchangeable order beyond human control but a pattern of human action. In justice as fairness men agree to share one another’s fate. In designing institutions they undertake to avail themselves of the accidents of nature and social circumstance only when doing so is for the common benefit. (Rawls, 1971, p. 102)

This strikes me as a very powerful idea and one that is, in many ways, deeply embedded in contemporary American public culture. But it competes with an equally strong and apparently contradictory principle of desert and personal responsibility (Scheffler, 1992). Even though we might admit that no one deserves the particular talent they are born with, it is still strongly felt that people deserve the rewards and benefits that they can get by exercising that talent, even if that means large inequalities. Some of the earliest empirical work addressing public opinion on income equality comes from Robert Lane’s 1962 interviews of 10 working-class and five white-collar American males. He concludes that his respondents view inequality as just: “Most of my subjects accepted the view that America opens up opportunity to all people, if not in equal proportions, then at least enough so that a person must assume responsibility for his own status.” He summarizes their opinions this way: “the upper classes deserve to be upper,” and “the lower classes deserve no better than they can get” (Lane, 1962, pp. 61, 69, 71). Ideas of desert are often strongly connected to ideas of personal responsibility. McCloskey and Zaller, for example, that public opinion research generally indicates that “although most Americans think that government should intervene positively to promote social and economic equality, they also believe that the primary responsibility for personal advancement ought to remain with the individual” (McCloskey and Zaller, 1984, p. 91). In her qualitative study of 28 working adults in New Haven, Jennifer Hochschild also concludes that her respondents “all want to believe that upward mobility is possible for those with drive, talent, and ambition. But they are dubious” (Hochschild, 1981, p. 143). Even scholars like Benjamin Page and Larry Jacobs, who argue that public opinion data show that Americans are very open to government policy redressing economic inequality, admit that the deep political culture is conservative. Americans “embrace the ‘American Dream’ – the idea that individuals should enjoy the opportunity to go as far as their work and skill will take them. Responsibility for an individual’s economic position and life conditions rests chiefly with him- or herself” (Page and Jacobs, 2009, pp. 2–3; see also Bartels, 2008, pp. 127–161).

So talent and desert appear firmly embedded in public culture even for those who are uncertain whether the American economic system can really deliver the goods.
Although some elements of Rawls’s egalitarianism are present, they conflict with a view of equality that Kymlicka has described this way:

in a society where no one is disadvantaged by their social circumstances, the people’s fate is in their own hands. Success (or failure) will be the result of our own choices and efforts. Hence whatever success we achieve is “earned,” rather than merely endowed on us. In a society that has equality of opportunity, unequal income is fair, because success is “merited,” it goes to those who “deserve” it. (Kymlicka, 2002, p. 58)

Rawls too, of course, thinks that people should be rewarded for hard work and talent; indeed, they have a legitimate expectation of such a reward. Under the difference principle unequal income is fair. However, the ultimate justification for the reward is not desert; rather, it is that a system that offers such a reward can be shown to be good for everyone and especially the least well off in society. Is this an important difference? I think it is. There is evidence to suggest that citizens in the USA today are willing to tolerate much higher levels of inequality as result of a natural lottery than one could possibly imagine in a Rawlsian well-ordered society. As Hochschild’s study shows, even those at the bottom who do not necessarily think that the system is very fair have a conception of social justice based on desert not constrained by a higher principle of egalitarianism (Hochschild, 1981, p. 111). The willingness to tolerate high levels of inequality can be tied back to notions of desert and a view of economic justice that sees it more as a fair race then as a cooperative joint venture.

Public culture goes as far as the first part of the second principle but not much farther. In *A Theory of Justice* Rawls insists that there is a glaring inconsistency here: “once we are troubled by the influence of either social contingencies or natural chance on the determination of distributive shares, we are bound, on reflection, to be bothered by the influence of the other. From a moral standpoint the two seem equally arbitrary” (Rawls, 1971, pp. 74–75). If we think race and gender should not count then we must also think that natural talent should not count from a moral point of view. Indeed, Rawls often talks about the difference principle as an integral part of a vision of fundamental equality that has reciprocity at its center: “It is nevertheless important to try to identify the idea of equality most appropriate to citizens viewed as free and equal, and as normally and fully cooperating members of society over a complete life. I believe that idea involves reciprocity at the deepest level and thus democratic equality properly understood requires something like the difference principle” (Rawls, 2001, p. 49).

Here Rawls is connecting the three levels of equality I mentioned at the outset: that we are all free and equal in a fundamental sense leads to the recognition of political equality, which in turn should lead to the difference principle and the economic institutions that could instantiate this principle. But the fit is not perfect and Rawls finally came to admit that reasonable people could and did come to very different conclusions.

As Rawls moved beyond *A Theory of Justice*, the difference principle began to take on an oddly double life. On the one hand, Rawls never wavered from the opinion that the difference principle (or something very much like it) is part of the most reasonable conception of justice (Rawls, 2001, p. 49). It retains a central place in the last and fullest articulation of justice as fairness. Thus until the end he held to the conviction that welfare state capitalism is in some fundamental way unjust. On the other hand, in
articulating a political conception of justice he realizes that principles of distribution cannot become constitutional essentials because, among other reasons, there is too much controversy surrounding them (Rawls, 1993, pp. 229–230). They simply do not flow smoothly and obviously from ideas latent in our public culture. Therefore a liberal conception of justice need only include “measures to insure that all citizens have sufficient material means to make effective use of . . . basic rights” (Rawls, 1993, p. 157). An adequate social minimum (Rawls, 1993, p. 230) replaces the difference principle. It is a very long way indeed from an adequate social minimum to property-owning democracy.

The difference principle lives on as Rawls’s favored interpretation of economic justice and indeed throughout Political Liberalism he uses it as the exemplar of economic justice even while no longer insisting that it is the only possible candidate for a fair principle. But in addition to demoting its status within the theory, there is a subtler fading away of the topic. Social justice is no longer front and center. His growing concern to find a view of justice compatible with pluralism, came to overshadow his deep commitment to egalitarianism. He thought that egalitarianism flowed from ideas latent in public culture but had to concede that an overlapping consensus on strongly egalitarian principles (difference principle or otherwise) did not seem a realistic possibility. So he kept the difference principle but did not insist on it (or anything like it). To insist on the difference principle would be to take a strongly political and critical stance at a time when Rawls was more interested in arguing why we already possess the grounds for an overlapping consensus on justice. Thus we have the odd picture that as Rawls’s theory became more political in one sense, that is, more about the citizen’s point of view, it had to become less political in another sense, that is, seen to advocate a normative agenda on social justice.

Outside of the Bounds of Public Reason

But now I want to try and see another story in this picture. I want the vase to recede and the faces to come to the surface. Public reason proceeds from shared principles to constitutional essentials. Its foundations are political not metaphysical in the sense that the shared principles are the object of an overlapping consensus of comprehensive views. Thus Rawls has no problem imagining convergent agreement on the first principle of justice: “each person has the same indefeasible claim to a fully adequate scheme of equal basic liberties, which scheme is compatible with the same scheme of liberties for all” (Rawls, 2001, p. 42). We do not need to inquire let alone fight out the best metaphysical justification of this principle. We can each endorse it for our own comprehensive reasons, from an embrace of Kant to religiously based universalism. If we start the arguments from the shared political principle then we bypass the irresolvable metaphysical questions and head straight for political principles that are widely acceptable. This is the idea behind public reason.

There has been much interesting debate about the feasibility of public reason as a restraint on public justification. This is not the place to pursue that line of thought, however. Instead I am interested in what happens outside the bounds of public reason. Not all political conversations are governed by public reason. Rawls is a little bit cagey
about where to draw the line. At first he insists that public reason should primarily concern and govern the deliberation and public justification of public officials (Rawls, 1993, p. 220). They are under especially stringent requirements to appeal to reasons that can be shown to be acceptable to all because their deliberation justifies coercive laws. But in a later discussion he adds that citizens too, when deliberating about important constitutional matters, should think “as if they were legislators” and seek reasons drawn from shared ideas of justice (Rawls, 2005, p. 444).

As was noted in the previous section, with regard to constitutional essentials, citizens and legislators may base arguments on general ideas of a social minimum but not on the difference principle. Or at least Rawls implies that the difference principle is not an appropriate principle to instantiate in a constitution because (a) there is too much uncertainty and disagreement about what would constitute its instantiation, and (b) the principle itself does not appear to enjoy the support of an overlapping consensus even though it follows from our other commitments (Rawls, 1993, p. 229). So the difference principle fades into the background— but it does not go away, and from this new perspective I am describing can be said to become truly political. There are two things to keep in mind here. First, the difference principle still describes the most just system of economic distribution. Second, there is a large and active world of politics outside the “political” world governed by public reason. Indeed, Rawls’s idea of the political strangely inverts what we might normally think of as the domain of politics.

Rawls (1993, p. 231) tells us that the institution that most closely resembles and embodies the ideals of public reason is the Supreme Court. The Supreme Court is political (in the sense of political liberalism) but does not engage in politics. This is to say, its arguments are based on shared political values and not controversial metaphysical views and it stands above the contestatory melee of partisan politics and advocacy (in a well-ordered society, anyway).

In contrast to the Supreme Court, Rawls identifies civil society and the background culture as the domain in which deliberation is released from the restrictions of public reason (Rawls, 2005, p. 444). Here we argue, advocate, justify from our many perspectives. And it is here that we can introduce novel, controversial, and radical ideas that are as yet not shared. Deliberation, justification, and arguments in this domain are not private but, he says, social. Thus it would appear that the proper place to discuss the difference principle and property-owning democracy is not the Supreme Court or the floor of the legislature but in civil society at large and within and through the social movements that emerge from civil society. From this view, then, Rawls’s ejection of the difference principle from public reason radicalizes it and pushes it into everyday politics, perhaps even onto the barricades.

Rawls’s acknowledgment that there is no overlapping consensus on social justice means that the social (and political) processes that might bring about such an overlapping consensus are still in play. Equality is a deeply embedded and abiding political value in liberal democratic culture. Rawls believed that if we thought through our commitment to equality it should lead us to something like the difference principle and therefore something closer to property-owning democracy. But we are not there yet, partly because we are also captured by another set of ideas that cross-cut egalitarianism.
Erik Olin Wright, in an issue of *Politics and Society* devoted entirely to egalitarian proposals for redesigning initial distribution rather than redistributing market outcomes, acknowledges that there is only weak interest in such egalitarian schemes among the public. He attributes this lack of interest to the presence of an alternative political ethos that has come to dominate the public sphere: “instead of a political ethos in which the basic well-being of all citizens was seen as part of a collective responsibility, the vision [has become] one in which each person took full ‘personal responsibility’ for their own well-being” (Wright, 2004, p. 4). The ethos of “personal responsibility” has roots within “ideas that are latent within our political culture” just as much as the ethos of collective responsibility.

With such dual loyalties within the public culture, we cannot (as judges and legislators) impose the difference principle and property-owning democracy even if, like Rawls, we are convinced that justice demands such a revamping of our distributive priorities. The ethos of “personal responsibility” cannot be dismissed as unreasonable the way, for example, opponents of civil rights could be judicially overruled and defeated in the court of public reason. In the end, then, Rawls’s refusal to make the difference principle a non-negotiable component of justice within political liberalism serves to politicize economic justice, not to take it off the agenda. It throws economic justice back into the political mix to be fought and argued over with passion and commitment. Although the development of Rawls’s ideas from *A Theory of Justice* to *Political Liberalism* points in the direction of a repoliticization of economic justice, activism was never on Rawls’s personal agenda. He was an egalitarian and he thought that, deep down, so were we all. Egalitarianism was the reasonable not the revolutionary conclusion to draw. But what may have seemed philosophically reasonable in 1971 is now unquestionably politically radical in the 2010s.

By placing questions of redistribution outside of public reason, Rawls invites egalitarians to develop political and public agendas in addition to philosophical ones. This move calls for a public debate about where our shared commitments to equality lead us with regard to economic justice. Rawls’s initial articulation of egalitarianism in the 1970s spawned an industry of creative political philosophy devoted to working through and working out many of the finer points of social and economic equality. In retrospect, it seems that this industry was premature. The philosophical debates within egalitarianism theory of the 1980s and 1990s have had little traction in the real world of politics. The problem has not been that, for the most part, they have been working within the philosophical bounds of a well-ordered society. The problem has been that the very premise of that well-ordered society – a shared public commitment to egalitarian principles of redistribution – has been absent. Rawls’s clear acknowledgment in his political phase that questions of social justice are very much unresolved in the public culture is an invitation to liberals to move from political philosophy to public discourse. The take-home message is that a Rawlsian commitment to egalitarianism points to the need to develop arguments that persuade the public and contribute to the direction in which public culture moves and develops. The political or public reason turn in Rawls calls for a whole new debate about egalitarianism that is more political, more engaged, and more critical of existing distributive schemes than the debates that have thus far characterized Rawlsian scholarship.
Notes

1. For a similar reading of Rawls, see Kymlicka (2002), and Krouse and McPherson (1988).

2. Even in the post-9/11 atmosphere of heightened concern for security, Americans still value civil liberties in poll after poll. Davis and Silver (2004), for example, examine whether Americans prefer security against terrorist attacks over the protection of civil liberties. Overwhelming majorities thought that when it came to taking such measures as investigating nonviolent protestors (92%), racial profiling (82%), conducting searches without a warrant (77%), or monitoring communications (66%), civil liberties should be preferred over protecting security.

3. In *The American Ethos*, McClosky and Zaller (1984) cite earlier work (Westie, 1965) showing that nearly all people (98%) agree that “everyone in America should have equal opportunities to get ahead” and “Children should have equal education opportunities.” See also Bartels (2008, p. 130) for public opinion data showing that Americans have deep commitments to equal opportunity.

4. Public opinion data indicating the weakness of support for the difference principle is often indirect since the difference principle itself is not usually the subject of inquiry. Feldman and Steenbergen (2001, p. 659), however, note that when it comes to helping the least advantaged members of society, Americans are motivated by humanitarian, not egalitarian, values: “If egalitarianism was the driving force behind public attitudes toward welfare, we would expect Americans to express greater support for redistributive policies since these most clearly contribute to equality. In fact, Americans overwhelmingly reject such policies, expressing support instead for policies that are much more tenuously associated with the goal of a more equal society (e.g. support for homeless shelters).” Page and Jacobs (2009) as well as Bartels (2008) also note that egalitarian values (which are clearly present in American public opinion) do not translate into, nor are they strongly connected to, support for principles or policies of egalitarian redistribution.

5. Thus Rawls in *Political Liberalism* asks: “How is it possible for there to exist over time a just and stable society of free and equal citizens, who remain profoundly divided by reasonable religious, philosophical, and moral doctrines?” (Rawls, 1993, p. 4).

6. It can be argued – and indeed a number of contributions to this volume do argue (Thomas, Chapter 5; Williamson, Chapter 14) – that a defense of property-owning democracy can be tied back to the first principle (for which there is deep cultural support) rather than the difference principle. This is no doubt true, but the first principle could also be compatible with many far less egalitarian schemes of distribution, it seems to me. Thus while it is possible to get to property-owning democracy by bypassing the difference principle, only the difference principle (or something like it) points to a radically different way to think about redistribution.

7. Thus Rawls writes: “The difference principle explicates the distinction between treating men as a means only and treating them also as ends in themselves. To regard persons as ends in themselves in the basic design of society is to agree to forgo those gains which do not contribute to their representative expectation. By contrast to regard persons as means is to be prepared to impose upon them lower prospects of life for the sake of higher expectations of others” (Rawls, 1971, p. 180).

8. Rather than aggregates, one is forced to make pairwise comparisons. Obviously this is not possible with every single individual in society, so, instead, one works with “representative individuals” of groups. “Representative individuals” is not a form of aggregation. How one decides on the description of representative individuals – that is, how one would decide what constitutes the least well off in society – is also widely debated. See Richardson and Weithman (1999).
9. Feldman and Steenbergen (2001) report that a 1992 survey of citizens in New York State shows that 81% of respondents agree that “Incomes cannot be made more equal since people’s abilities and talents are unequal.”

10. For example, the 1993 General Social Survey asked this question: “Some people think America should promote equal opportunity for all, that is, allowing everyone to compete for jobs and wealth on a fair and even basis. Other people think America should promote equal outcomes, that is, insuring that everyone has a decent standard of living and that there are only small differences in wealth and income between the top and bottom in society. Which do you favor: promoting equal opportunity or promoting equal outcomes?” Of the respondents, 84% answered “promote equal opportunity” (Davis, Smith, and Marsden, 2003).

References


