CONTEMPORARY POLITICAL PHILOSOPHY

AN ANTHOLOGY

THIRD EDITION

EDITED BY ROBERT E. GOODIN AND PHILIP PETTIT

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Contemporary Political Philosophy

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Third Edition

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Robert E. Goodin and Philip Pettit

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Preface

The essays contained in this collection represent what seem to us to be canonical texts in contemporary political philosophy. But they only represent the contemporary canon, they do not exhaust it. Although this collection is two or perhaps three times the size of most, we nevertheless found that we had space for only a sample of the very many more texts and topics that we would like to have included.

The collection is deliberately designed as a companion to our earlier *Companion to Contemporary Political Philosophy* (Oxford: Wiley-Blackwell, 1993; 2nd edition, 2012). We attempted to retain something of the same flavor in this collection, much the same scope of substantive concerns and much the same diversity of analytic styles. Inevitably, though, there is so much more surveyed in the *Companion*'s many chapters than can be reprinted here. Interested readers are referred back to the *Companion* not only to situate the texts in the present collection but also for further readings and whole other sets of concerns.

The *Companion* as a whole, and our own introduction to it, serves effectively as a preface to this collection. So we will not expound at length here upon our views as to the nature of the political philosophical enterprise. Let this one comment suffice. We have tried to select and organize the texts included here so as to show political philosophy as it truly is: as a set of ongoing conversations and disputations, arguments, and debates.

Robert E. Goodin
Philip Pettit

PART I

Doing Political Philosophy

1

Realism and Moralism in Political Theory

Bernard Williams

Two Models of Political Theory

I start with two rough models of political theory (or philosophy: the distinction is not important here) with respect to the relation of morality to political practice. One is an *enactment* model. The model is that political theory formulates principles, concepts, ideals, and values; and politics (so far as it does what the theory wants) seeks to express these in political action, through persuasion, the use of power, and so forth. This is not necessarily (although it is usually) a distinction between persons. Moreover, there is an intermediate activity which can be shared by both parties: this shapes particular conceptions of the principles and values in the light of the circumstances, and devises programmes that might express those conceptions.

The paradigm of a theory that implies the enactment model is Utilitarianism. Unless it takes its discredited Invisible Hand form (under which there is nothing for politics to do except to get out of the way and get other people out of the way), this also presents a very clear version of something always implicit in the enactment model, the panoptical view: the theory's perspective on society is that of surveying it to see how it may be made better.

Contrast this with a *structural* model. Here theory lays down moral conditions of co-existence under power, conditions in which power can be justly exercised. The paradigm of such a theory is Rawls's. In *A Theory of Justice* (*TJ*) itself, the theory also implied a certain amount about the ends of political action, because of implications of applying the Difference Principle: though, interestingly, even there it was presented less in terms of a programme, and more in terms of a required structure. In *Political Liberalism* (*PL*) and the writings that led up to it, this aspect is less prominent.[1] This is because Rawls wants to make a bigger gap than *TJ* allowed between two different conceptions: that of a society in which power is rightfully exercised (a well-ordered society), and that of a society that meets liberals' aspirations to social justice. (This distinction may imply various others: human/political/economic rights etc.)

Differences between these two models are of course important. But my concern here is with what they have in common, that they both represent the priority of the moral over the political. Under the enactment model, politics is (very roughly) the instrument of the moral; under the structural model, morality offers constraints (in *TJ*, very severe constraints) on what politics can

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rightfully do. In both cases, political theory is something like applied morality.

This is still true in Rawls's more recent work. He indeed says that "in *TJ* a moral doctrine of justice, general in scope, is not distinguished from a strictly political theory of justice" (*PL*, xv), and he sets out to articulate a political conception. But he also says, revealingly, "such a conception is, of course, a moral conception" (*PL*, 11); it is one that is worked out for a special subject, the basic structure of society. Its further marks are that it is independent of a comprehensive doctrine, and that it marshals ideas implicit in the public culture of a democratic society. The supposedly political conception, then, is still a moral conception, one that is applied to a certain subject matter under certain constraints of content.

Rawls holds that the stability of a democratic pluralistic society is, or should be, sustained by the moral psychology of citizens living within an overlapping consensus (*PL*, 141). There must be a question whether this is an appropriate or plausible answer: it is a matter of history, or political sociology, or some other empirical inquiry. But in any case, Rawls is not merely giving an answer to the question of stability in terms of citizens' morality; he is giving a moral answer. This comes out in his repeated claim (for example, *PL*, 147) that the conditions of pluralism under which liberalism is possible do not represent "a mere *modus vivendi*." Rather, the basis of co-existence, and the qualities elicited by these conditions, include the highest moral powers, above all a sense of fairness. Rawls contrasts "a mere *modus vivendi*" with the principled basis of his own pluralism, and he takes it to cover, not only a Hobbesian standoff of equal fear, but also equilibria based on perceptions of mutual advantage. That these options are grouped together implies a contrast between principle and interest, or morality and prudence, which signifies the continuation of a (Kantian) morality as the framework of the system.[2]

I shall call views that make the moral prior to the political, versions of "political moralism" (PM). PM does not immediately imply much about the style in which political actors should think, but in fact it does tend to have the consequence that they should think, not only in moral terms, but in the moral terms that belong to the political theory itself. It will be familiar how, in various ways, PM can seek to ground liberalism. I shall try to contrast with PM an approach which gives a greater autonomy to distinctively political thought. This can be called, in relation to a certain tradition, "political realism." Associated with this will be a quite different approach to liberalism. (This is related to what the late Judith Shklar called "the liberalism of fear," but I do not develop that aspect of it here.)[3]

The First Political Question

I identify the "first" political question in Hobbesian terms as the securing of order, protection, safety, trust, and the conditions of cooperation. It is "first" because solving it is the condition of solving, indeed posing, any others. It is not (unhappily) first in the sense that once solved, it never has to be solved again. This is particularly important because, a solution to the first question being required *all the time*, it is affected by historical circumstances; it is not a matter of arriving at a solution to the first question at the level of state-of-nature theory and then going on to the rest of the agenda. This is related to what might count as a "foundation" of liberalism.

It is a necessary condition of legitimacy (LEG) that the state solves the first question, but it does not follow that it is a sufficient condition. There are two different sorts of consideration here. Hobbes did, very roughly, think that the conditions for solving the first problem, at least in given historical circumstances, were so demanding that they were sufficient to determine the rest of the political arrangements. In this sense, he did think that the necessary condition of LEG was also the sufficient condition of it; someone who disagrees with this may merely be disagreeing with Hobbes on this point.

If one disagrees with Hobbes, and thinks that more than one set of political arrangements, even in given historical circumstances, may solve the first question, it does not strictly follow that the matter of which arrangements are selected makes a further contribution to the question of LEG, but it is entirely reasonable to think that this can make a contribution, and that some, but only some, of such arrangements are such that the state will be LEG.

Even Hobbes, of course, did not think that a LEG state could be identical with a reign of terror; the whole point was to save people from terror. It was essential to his construction, that is to say, that the state – the solution – should not become part of the problem. (Many, including Locke, have thought that Hobbes's own solution does not pass this test.) This is an important idea: it is part of what is involved in a state's meeting what I shall call the Basic Legitimation Demand (BLD).

The Basic Legitimation Demand

Meeting the BLD is what distinguishes a LEG from an ILLEG state. (I am not concerned with cases in which the society is so disordered that it is not clear whether there is a state.) Meeting the BLD can be equated with there being an "acceptable" solution to the first political question. I shall say some more about what counts as "acceptable."

It is important, first, to distinguish between the idea of a state's meeting the BLD, and its having further political virtues (e.g., its being a liberal state). I mean that these are two different *ideas*, and in fact I think there manifestly have been, and perhaps are, LEG non-liberal states. However, this does not exclude the possibility that there might be circumstances in which the only way to be LEG involved being liberal. This relates to the question of extra conditions on LEG, and, as I said, I shall come back to this.

I shall claim first that merely the idea of meeting the BLD implies a sense in which the state has to offer a justification of its power *to each subject*.

First, one or two definitions:

(a) For these purposes, the subject of a state is anyone who is in its power, whom by its own lights it can rightfully coerce under its laws and institutions. Of course this is not satisfactory for all purposes, since a state can claim too many people, but I shall not try to pursue this question. I doubt that there is any very general answer of principle to the question of what are the proper boundaries of a state.
(b) "What someone can fear" means what someone would reasonably be afraid of if it were likely to happen to him/her in the basic Hobbesian terms of coercion, pain, torture, humiliation, suffering, death. (The fear need not necessarily be of the operations of the state.)
(c) Call being disadvantaged with regard to what one can fear, being "radically disadvantaged."

Suppose a group of subjects of the state – within its borders, required to obey its officials, and so forth – who are radically disadvantaged relative to others. At the limit, they have virtually no protection at all, from the operations of either officials or other subjects. They are no better off than enemies of the state. There may be something that counts as a local legitimation of this. But is it LEG? Is the BLD satisfied?

Well, there is nothing to be said *to this group* to explain why they shouldn't revolt. We are supposing that they are not seen as a group of alien people captured within the boundaries of the state. (The citizens of ancient Sparta regarded the Helots openly as enemies, and in at least one period, the Spartan officials, on taking office, renewed a declaration of war against them. The frequent Helot "revolts" were thus simply attempts to fight back.) We suppose, contrary to this, that there is an attempt to incorporate the radically disadvantaged group as subjects. I propose that in these circumstances the BLD, to this extent, has not been met.

So we have:

(a) Mere incompetence to protect a radically disadvantaged group is an objection to the state.
(b) The mere circumstance of some subjects' being de facto in the power of others is no legitimation of their being radically disadvantaged. This implies that slavery is imperfectly legitimated relative to a claim of authority over the slaves: it is a form of internalized warfare, as in the case of the Helots.

It may be asked whether the BLD is itself a moral principle. If it is, it does not represent a morality which is prior to politics. It is a claim that is inherent in there being such a thing as politics: in particular, because it is inherent in there being first a political question. The situation of one lot of people terrorizing another lot of people is not per se a political situation: it is, rather, the situation which the existence of the political is in the first place supposed to alleviate (replace). If the power of one lot of people over another is to represent a solution to the first political question, and not itself be part of the problem, *something* has to be said to explain (to the less empowered, to concerned bystanders, to children being educated in this structure, etc.) what the difference is between the solution and the problem, and that cannot simply be an account of successful domination. It has to be something in the mode of justifying explanation or legitimation: hence the BLD.

The answer is all right as far as it goes, but more needs to be said about how a demand for justification arises, and how it may be met. One thing can be taken as an axiom, that might does not imply right, that power itself does not justify. That is to say, the power of coercion offered simply as the power of coercion cannot justify its own use. (Of course, the power to justify may itself be a power, but it is not merely *that* power.)

This principle does not itself determine when there is a need for justification (for instance, it does not imply that a Hobbesian state of nature violates rights). It does do something to determine, when there is a demand for justification, what will count as one. We cannot say that it is either a necessary or a sufficient condition of there being a (genuine) demand for justification, that someone demands one. It is not sufficient, because anyone who feels he has a grievance can raise a demand, and there is always some place for grievance. It is also not a necessary condition, because people can be drilled by coercive power itself into accepting its exercise. This, in itself, is an obvious truth, and it can be extended to the critique of less blatant cases. What may be called *the critical theory principle*, that the acceptance of a justification does not count if the acceptance itself is produced by the coercive power which is supposedly being justified, is a sound principle: the difficulty with it, of making good on claims of false consciousness and the like, lies in deciding what counts as having been "produced by" coercive power in the relevant sense.

However, one sufficient condition of there being a (genuine) demand for justification is this: A coerces B and claims that B would be wrong to fight back: resents it, forbids it, rallies others to oppose it as wrong, and so on. By doing this, A claims that his actions transcend the conditions of warfare, and this gives rise to a demand for justification of what A does. When A is the state, these claims constitute its claim of authority over B. So we have a sense in which the BLD itself requires a legitimation to be given to every subject.

There can be a pure case of internal warfare, of the kind invoked in the case of the Helots. There is no general answer to what are the boundaries of the state, and I suppose that there can in principle be a spongiform state. While there are no doubt reasons for stopping warfare, these are not the same reasons, or related to politics in the same way, as reasons given by a claim for authority. In terms of rights, the situation is this: first, anyone over whom the state claims authority has a right to treatment justified by the claim of LEG; second, there is no right to be a member of a state, if one is not a member – or, at any rate, no such right that follows from just this account; third, there is no claim of authority over enemies, including those in the situation of the Helots. In virtue of this last point, such people do not have a right of the kind mentioned in the first point. However, crimes against stateless persons are surely crimes, and Helot-like slavery surely violates rights, and this will require a more extended account in terms of the desirable extent of living under law (and hence of the political). However, the significant cases for the present problems are those in which the radically disadvantaged are said to be subjects and the state claims authority over them.

To Liberalism

However, this will not exclude many legitimations which will not be satisfactory from a liberal point of view. How do we get to liberalism?

Liberals will, first, raise the standards of what counts as being disadvantaged. This is because they raise their expectations of what a state can do; moreover they adopt, perhaps because they are in a position to adopt, more demanding standards of what counts as a threat to people's vital interests, a threat in terms of the first problem itself; they take more sophisticated steps to stop the solution becoming part of the problem. They recognize, for instance, rights of free speech; in the first instance, because it is important that citizens and others should know whether the BLD is being met.

Liberals will also add at least the following:

(a) Rationalizations of disadvantage in terms of race and gender are invalid. This is partly a question of how things are now, but it also reflects the fact that only some rationalizations are even intelligible. Those associated with racism, and the like, are all false or by everyone's standards irrelevant. It is also important that acceptance of them by the dominating party is readily explained, while their being accepted by the dominated is an easy case for the critical theory principle.

(b) Hierarchical structures which generate disadvantage are not self-legitimating. Once the question of their legitimacy is raised, it cannot be answered simply by their existence (this is a necessary proposition, a consequence of the axiom about justification: if the supposed legitimation is seen to be baseless, the situation is one of more coercive power). In our world, the question has been raised (this is an historical proposition).

We can say at this point that liberalism imposes more stringent conditions of LEG; that non-liberal states do not now in general meet the BLD. This can be seen in the light of the point just made, that when the "legitimations" of hierarchical states are perceived to be mythical, the situation approximates to one of unmediated coercion.

Summary of Considerations about the BLD

The claim is that we can get from the BLD a constraint of roughly equal acceptability (acceptability to each subject); and that the BLD does not represent morality prior to politics. But we get beyond this to any distinctively liberal interpretation only given further assumptions about what counts as legitimation. It will be seen that these further conditions contain rejections of some things that certainly have been accepted as legitimations in the past. Moreover, they refer to demands for legitimations where no such demands were made in the past.

So the general position can be summarized:

(a) We reject PM, which claims the priority of the moral over the political. This is to reject the *basic* relation of morality to politics as being that represented either by the enactment model or by the structural model. It does not deny that there can be local applications of moral ideas in politics, and these may take, on a limited scale, an enactment or a structural form.

(b) At the basic level, the answering of the "first" question does involve a principle, the BLD. The approach is distinguished from that of PM by the fact that this principle, which comes from a conception of what could count as answering a demand for justification of coercive power, if such a demand genuinely exists, is implicit in the very idea of a legitimate state, and so is inherent in any politics. The satisfaction of the BLD has not always or even usually, historically, taken a liberal form.

(c) Now and around here the BLD together with the historical conditions permit only a liberal solution: other forms of answer are unacceptable. In part, this is for the Enlightenment reason that other supposed legitimations are now seen to be false and in particular ideological. It is not, though it is often thought to be, because some liberal conception of the person, which delivers the morality of liberalism, is or ought to be seen to be correct.

(d) Inasmuch as liberalism has foundations, it has foundations in its capacity to answer the "first question" in what is now seen, granted these answers to the BLD, as an acceptable way. Insofar as things go well, the conceptions of what is to be feared, of what is an attack on the self, and of what is an unacceptable exercise of power, can themselves be extended. This may indeed be explained in terms of an ethically elaborated account of the person as having more sophisticated interests, which may involve, for instance, a notion of autonomy. This account might be, or approximate to, a liberal conception of the person. But this is not the foundation of the liberal state, because it is a product of those same forces that lead to a situation in which the BLD is satisfied only by a liberal state.

This picture will help to explain two things. First, one can invoke a liberal conception of the person in justifying features of the liberal state (they fit together), but one cannot go all the way down and start from the bottom.[4] Second, it sheds some light on the important fact that liberalism has a poor account, or in many cases no account, of the cognitive status of its own history. PM has no answer in its own terms to the question of why what it takes to be the true moral solution to the questions of politics, liberalism, should for the first time (roughly) become evident in European culture from the late seventeenth century onward, and why these truths have been concealed from other people. Moralistic liberalism cannot plausibly explain, adequately to its moral pretensions, why, when, and by whom it has been accepted and rejected. The explanations of the various historical steps that have led to the liberal state do not show very persuasively why or how they involved an increase in moral knowledge; but from here, with our conception of the person, the recognition of liberal rights indeed looks like a recognition.

The Nature and Point of the Concept of LEG

It may help to explain the idea of LEG that I am using if I relate it briefly to some ideas of Habermas, with whom I am partly, but only partly, in agreement. First, there is the basically sociological point, that the legitimations appropriate to a modern state are essentially connected with the nature of modernity as the social thought of the past century, particularly that of Weber, has helped us to understand it. This includes organizational features (pluralism, etc., and bureaucratic forms of control), individualism, and cognitive aspects of authority (*Entzauberung*). I have already referred to the last. To make my view even cruder than it is anyway, it could be expressed in the slogan LEG + Modernity = Liberalism, where the ambiguities of the last term serve to indicate a range of options which make political sense in the modern world: they are all compatible with the *Rechtstaat*, and they vary depending on how much emphasis is put on welfare rights and the like.

Second, my rejection of PM, though not in quite the same terms, is shared with Habermas; I, like him, reject the derivation of political LEG from the formal properties of the moral law, or from a Kantian account of the moral person (though he makes more of the concept of autonomy than I do, and I shall come to that, on the subject of representation). Equally, though I have not stressed the point here, I reject as he does what he calls an "ethical" derivation, that is to say, a civic republican conception of the polity based on neo-Aristotelian or similar considerations.[5]

Taking these two points together – the facticity of modern societies and the refusal of a mere moral normativity – I can agree with Habermas also in trying to situate these issues "Between facts and norms."[6] Moreover, this is not merely a verbal agreement: the project of taking seriously in political theory an understanding of what modern social formations are is very fundamental. However, we clearly have different ideas of how a space is to be found between facts and norms. Habermas uses discourse theory; in my case what does this work is the all-purpose concept of LEG (together with the associated idea of its specific historical determinations).

However, Habermas's conceptions of legitimacy carry stronger universalistic implications than does the notion of LEG that I am using. So let me say some more about this notion; in particular, to locate it between facts and norms.

If, very roughly speaking indeed, LEG + Modernity = Liberalism, this gives no ground for saying that all non-liberal states in the past were ILLEG, and it would be a silly thing to say. It may be asked, in fact, what the point, or content, is of wondering whether defunct political orders were LEG. Political moralism, particularly in its Kantian forms, has a universalistic tendency which encourages it to inform past societies about their failings. It is not that these judgements are, exactly, meaningless – one can imagine oneself as Kant at the court of King Arthur if one wants to – but they are useless and do not help one to understand anything. The notion of LEG, however, distinguished from the idea of what we would now find acceptable, can serve understanding. It is a human universal that some people coerce or try to coerce others, and nearly a universal that people live under an order in which some of the coercion is intelligible and acceptable, and it can be an illuminating question (one that is certainly evaluative, but not normative) to ask how far, and in what respects, a given society of the past is an example of the human capacity for intelligible order, or of the human tendency to unmediated coercion.

We can accept that the considerations that support LEG are scalar, and the binary cut LEG/ILLEG is artificial and needed only for certain purposes.[7] The idea is that a given historical structure can be (to an appropriate degree) an example of the human capacity to live under an intelligible order of authority. It makes sense (MS) to us *as such a structure*. It is vital that this means more than it MS. Situations of terror and tyranny MS: they are humanly entirely familiar, and what the tyrant is doing MS (or may do so), and what his subjects or victims do MS. The question is whether a structure MS as an example of authoritative order. This requires, on the lines already explained, that there is a legitimation offered which goes beyond the assertion of power; and we can recognize such a thing because in the light of the historical and cultural circumstances, and so forth, it MS to us as a legitimation.

"MS" is a category of historical understanding – which we can call, if we like, a hermeneutical category. There are many difficulties of interpretation associated with it, for example whether there are not some historical constellations of belief which altogether fail to MS. (We are probably wise to resist that conclusion: as R. G. Collingwood says, "we call them the Dark Ages, but all we mean is that we cannot see.") The point is that these are general problems in historical and more broadly social understanding.

One can say, as I have said, that "MS" is itself an evaluative concept; certainly, it is not simply "factual" or "descriptive." This is part of the general theory of interpretation, and I cannot address it here. What it certainly is not, is *normative*: we do not think, typically, that these considerations should guide our behaviour, and there is no point in saying that they ought to have guided the other people's behaviour, except in exceptional cases where there was a clash of legitimations, of which, in the light of the circumstances, one more MS (as it seems to us) than the other.

But when we get to our own case, the notion "MS" does become normative, because what (most) MS to us is a structure of authority which we think we should accept. We do not have to say that these previous societies were wrong about all these things, though we may indeed think, in the light of our *entzaubert* state, that some of what MS to them does not MS to us because we take it to be false, in a sense that represents a cognitive advance – a claim which carries its own responsibilities, in the form of a theory of error, something which PM in its current forms has spectacularly tended to lack.

In any case, there is no problem about the relation between the "external" and non-normative "MS" that we apply to others, and the "MS" we use about our own practices, which is normative: this is because of the hermeneutical principle, which is roughly that what they do MS if it would MS to us if we were them. In the light of this, it would be actually inconsistent to deny that when we apply "MS" to ourselves, we have a normative notion what MS. The same follows for LEG; what we acknowledge as LEG, here and now, is what, here and now, MS as a legitimation of power as authority; and discussions about whether it does MS will be engaged, first-order discussions using our political, moral, social, interpretive, and other concepts. Much of the time, in ordinary life, we do not discuss whether our concepts MS, though, of particular ones, we may. Mostly, the fact that we use these concepts is what shows us that they MS.

The Concept of the Political

I have not done much to define the concept of the "political" that I have been using. In particular, it may be unclear how it is related to a realist conception of political action. It will probably be clear that my view is in part a reaction to the intense moralism of much American political and indeed legal theory, which is predictably matched by the concentration of American political science on the coordination of private or group interests: a division of labour which is replicated institutionally, between the "politics" of Congress and the principled arguments of the Supreme Court (at least as the activities of the Supreme Court are primarily interpreted at the present time). That view of the practice of politics, and the moralistic view of political theory, are made for each other. They represent a Manichaean dualism of soul and body, high-mindedness and the pork barrel, and the existence of each helps to explain how anyone could have accepted the other.

I want a broader view of the content of politics, not confined to interests, together with a more realistic view of the powers, opportunities, and limitations of political actors, where all the considerations that bear on political action – both ideals and, for example, political survival – can come to one focus of decision (which is not to deny that in a modern state they often do not). The ethic that relates to this is what Weber called *Verantwortungsethik*, the ethic of responsibility.

Rather than trying to give a definition of the political, which would certainly be fruitless, let me end by giving two applications – ways in which thinking "politically" changes the emphasis as contrasted with what I have called PM. One relates to the conduct of political thought, and specifically political theory itself; the other to the way we should think about other societies.

PM naturally construes conflictual political thought in society in terms of rival elaborations of a moral text: this is explicit in the work of Ronald Dworkin. But this is not the nature of opposition between political opponents. Nor can the elaboration of one's own position take this form. (It is helpful to consider the idea of the "ideal" or "model" readers of a political text. PM typically takes them to be utopian magistrates or founding fathers, as Plato and Rousseau did, but this is not the most helpful model now.[8] They are better seen as, say, the audience of a pamphlet.)

We can, after all, reflect on our historical situation. We know that our and others' convictions have to a great degree been the product of previous historical conditions, and of an obscure mixture of beliefs (many incompatible with one another), passions, interests, and so forth. Moreover, the joint outcome of these things has often been that political schemes had perverse results. We can now see to some extent how these convictions came about, and why they worked if they did and didn't work when they didn't; and we would be merely naive if we took our convictions, and those of our opponents, as simply autonomous products of moral reason rather than as another product of historical conditions. Even in the very short term, a minority conception can become mainstream or vice versa, and there can be significant changes in what counts as a conceivable or credible option. This does not mean that we throw our political convictions away: we have no reason to end up with none, or with someone else's. Nor does it mean that we stare at our convictions with ironical amazement, as Rorty suggests. But we do treat them as political convictions which determine political positions, which means, for one thing, that we acknowledge that they have obscure causes and effects.

It also means that we take certain kinds of view of our allies and opponents. Even if we were utopian monarchs, we would have to take into account others' disagreement as a mere fact. As democrats, we have to do more than that. But remembering the points about the historical conditions, we should not think that what we have to do is simply to argue with those who disagree: treating them as *opponents* can, oddly enough, show more respect for them as political actors than treating them simply as arguers – whether as arguers who are simply mistaken, or as fellow seekers after truth. A very important reason for thinking in terms of the political is that a political decision – the conclusion of a political deliberation which brings all sorts of considerations, considerations of principle along with others, to one focus of decision – is that such a decision does not in itself announce that the other party was morally wrong or, indeed, wrong at all. What it immediately announces is that *they have lost*.

Reflection on history should also affect our view of those who agree with us, or seem to do so, or may come to do so. One important political activity is that of finding proposals and images that can reduce differences (just as, in other political situations, it may be necessary to play them up). What people actually want or value under the name of some given position may be indeterminate and various. It can make a big difference, what images we each have of what we take ourselves all to be pursuing.

All these are platitudes about politics, and that is just the point: liberal political theory should shape its account of itself more realistically to what is platitudinously politics.

The same general point, in a different form, applies to our attitude to certain other societies. To some extent, we may regard some contemporary non-liberal states as LEG. This is different from Rawls's point, that we can recognize as well-ordered some non-liberal (e.g., theocratic) societies with which we have certain kinds of principled differences which are limited in certain particular ways (e.g., that they accept the freedom of religion). The present point concerns what turns on regarding them as LEG or not. The idea of "LEG" is normative for us as applied to our own society; so it is also normative in relation to other societies which co-exist with ours and with which we can have or refuse to have various kinds of relations: they cannot be separated from us by the relativism of distance. So there can be practical consequences of applying or withholding "LEG" in the contemporary world. Since these consequences must be responsibly considered, they must be considered politically. An important aspect of thinking about this lies in political realist considerations about the stability of such states. For instance:

(a) With whom does the demand for justification arise? It will be a significant question, who does and who does not accept the current legitimation.
(b) If the current legitimation is fairly stable, the society will not anyway satisfy the other familiar conditions on revolt.
(c) The objections to traditional hierarchical setups are typically based in part on the mythical character of the legitimations. Faced with the criticism of these myths, increasing information from outside, and so on, non-liberal regimes may not be able to sustain themselves without coercion. They will then begin to encounter the basic legitimation problem.
(d) This will also apply to what come to be seen as targets of the *critical theory principle*, accepted social and institutional understandings which increasingly come to appear, now, as more subtle forms of coercion.

It will be seen that the more significant the factors (c) and (d) become, the more coercion may become overt, and the more this happens, the more reason there will be for concern at the level of the BLD. So nothing succeeds like success, with liberal critique as much as anything else. This is one sound application of a general truth (which is important to politics, but not only to politics), the truth discovered by Goethe's Faust: *Im Anfang war die Tat*, in the beginning was the deed.

Modernity and Political Representation

Faust's axiom – perhaps we can indeed call it Goethe's axiom – applies much more widely in these matters. It applies, for instance, to the question of how much, at what level, can be determined by social and political theory with regard to modern states: in particular, how far idealized conceptions of political relations should play a part. I should like to end with a particular application of that question, to the matter of political representation. This also raises, I think, a possible area of disagreement with Habermas.

It goes without saying that Habermas has offered very deeply and broadly elaborated work on the possibilities of the modern state and what might contribute to its legitimation. My few remarks or suggestions in no way seek to address most of the issues he has elaborated, nor am I competent to do so; the role of law, notably, in the understanding of the modern state is a central concern of his on which I have nothing special to offer. Much of this work, it seems to me, fits together with the kind of structure I have suggested. For instance, it seeks to show *in what ways* the conditions of modernity – the facticity of modern societies – demand or impose certain conditions on LEG. It shows how some kinds of legal order and not others, and some understandings of a legal order, MS to us. It therefore has a practical and progressive possibility. What I have said here does not directly have such consequences, except in the possible improvement of the way in which we, in particular lawyers, think about such questions. This is because mine is a very general sketch at a very high level of generality. But I salute thought that does yield such consequences, and I agree in this respect with a criticism that Habermas has made of Rawls, that Rawls identifies no *project* with regard to the establishment of a constitution – it appears only in the role of the non-violent preservation of basic liberties that are already there.

However, Habermas wants to show something else at the level of the most basic theory: that there is an internal relation between the rule of law, the *Rechtstaat*, and deliberative democracy.

Now certainly I agree – it is a manifest fact – that some kind of democracy, participatory politics at some level, is a feature of LEG for the modern world. One need look no further than the worldwide success of the demand for it. Any theory of modern LEG requires an account of democracy and political participation, and of course such an account may take its place in a programme of improvement. We *may* be able to say: the *point* of democratic political participation in relation to our conception of LEG is such-and-such, and developing our institutions and practices in such-and-such ways is what will further MS in terms of what in this area MS to us.

Now Habermas develops this part of his account at a very deep level, in relation to the discourse theory. It would not be to the present point for me to try to engage with the details of his argument. My question concerns the kind of argument that this yields; specifically, whether it does not situate itself a great deal nearer – too near indeed – to the moral rather than the facts. Habermas writes, "[I]t must be reasonable to expect [participants in the political process] to drop the role of the private subject. … The combination [of facticity and validity] requires a process of law-making in which the participatory citizens are *not* [his emphasis] allowed to take part simply in the role of actors oriented to success." [Editor's note: Williams gave no reference for this quotation, and I have been unable to trace it.] So the concept of modern law harbours the democratic ideal, and we derive, more or less, an ideal associated with Kant and Rousseau, while going beyond the merely moral formalism of Kant and – roughly speaking – the ethical and communitarian over-enthusiasm of Rousseau.

But what is this "are not allowed to"? It cannot be blankly normative. Suppose, one is bound to say, that they do? It may be replied: it will defeat the point. But what if it does? And how can we be sure, in the light of the possibility, what the point really is? It may be said, alternatively: it cannot work – in other words, the system will break down, and the political process will begin to lose significance in relation to other activities and the life world.

I want to say at this point two things: if that is so, then it will show itself, and we shall have a manifest social or political problem for which we shall have to mobilize ideas which already MS to the public and might move towards possible political action. Second, it will be only one of many conflicts about what the processes of political participation can be hoped to yield under conditions of modernity. There are needs that people have which seemingly can be met only by more directly participatory structures; but equally, there are objectives which are notoriously frustrated by these, and other aims which are at least in competition with them, and considerations which raise doubts about the extent to which any procedures can be really participatory anyway.

No transcendental or partly transcendental argument – one might say, more generally, theoretical argument – could serve to resolve these conflicts.

My own view is that the minimum requirements of participatory democracy as an essential part of modern LEG are delivered at a fairly straightforward and virtually instrumental level in terms of the harms and indefensibility of doing without it. What is delivered at that level can only speciously be represented in Kantian and Rousseauian terms as either expressions of autonomy or of *self*-government. To represent it as such may lead to cynicism: while it may be no more than utopian to make larger ambitions which might meet these descriptions – and "self-government" I doubt can be met at all: which is why Rousseau was right to impose impossible conditions on it.

Indeed we should explore what more radical and ambitious forms or participatory or deliberative democracy are possible, which is why I agree that the conditions of LEG in modern states present a progressive project. But how much more is actually possible seems to me a question that belongs to the level of fact, practice, and politics, not one that lies beyond these in the very conditions of legitimacy.

Notes

1 John Rawls, *A Theory of Justice* (Cambridge, MA: Harvard University Press, 1971); *Political Liberalism* (New York: Columbia University Press, 1993).

2 The very phrase "a mere *modus vivendi*" suggests a certain distance from the political; experience (including at the present time) suggests that those who enjoy such a thing are already lucky. There is also an interesting question, which I do not pursue here, about how we are supposed to think about the emergence of the conditions of pluralism. Rawls seems committed to thinking that they constitute not just one historical possibility amongst others (still less, the calamity suggested by communitarian nostalgia), but a providential opportunity for the exercise of the highest moral powers.

3 Judith Shklar, "The Liberalism of Fear," in *Liberalism and the Moral Life*, ed. Nancy Rosenblum (Cambridge, MA: Harvard University Press, 1989), 21–38, and Williams's essay under the same title here.

4 The same difficulty is making itself felt in reverse, when Michael Sandel (*Liberalism and the Limits of Justice* [Cambridge: Cambridge University Press, 1982]) rejects the liberal theory of the state because he rejects the liberal account of the person, but nevertheless finds it very hard to detach himself from many features of the liberal state.

5 One can reject the Rawlsian priority of the right without going all the way to this: compare Dworkin, who tries to rewrite proceduralism in terms of the good life.

6 Jürgen Habermas, *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy*, trans. William Rehg (Cambridge, MA: MIT Press, 1996).

7 In the contemporary case, related to (but not identical with) the question of recognition.

8 Dworkin is addressing a Supreme Court of the United States unencumbered with the historical circumstances that actually affect it.

2

What Do We Want from a Theory of Justice?

Amartya Sen

I begin from the general Rawlsian position that the interpretation of justice is linked with public reasoning. The focus has to be, in John Rawls's words, on "a public framework of thought" that provides "an account of agreement in judgment among reasonable agents."[1] Rawls outlines this demand in terms of avoiding what he calls "a personal slant":

> We do not look at the social order from our situation but take up a point of view that everyone can adopt on an equal footing. In this sense we look at society and our place in it objectively: we share a common standpoint along with others and do not make our judgments from a personal slant.[2]

The bearing of *public reasoning* on the theory of justice leads to two further inquiries: *What is the relevant public*? and *On what questions should the reasoning concentrate*? The former query concerns the range of points of view that should count in public reasoning (for example, whether they must all come from inside a given political state), while the latter relates to the subject matter of public reasoning, in particular what are the questions to be answered for a satisfactory theory of justice? The two issues, I will argue, are linked, and together they lead us to the foundational question: *What do we want from a theory of justice*?

I have begun by drawing on Rawls's lead on the basic connection between objectivity, public reasoning, and the theory of justice. However, I have to argue for a rather different way of pursuing that connection, departing not only from the substantive content of the Rawlsian theory of justice but also from Rawls's diagnosis of the very requirements of a theory of justice, including the subject matter of public reasoning and the reach and coverage of public participation.

The Transcendental versus the Comparative

I begin with the issue of the subject matter of a satisfactory theory of justice. In his analysis of "justice as fairness," Rawls takes the principal question to be: *What is a just society*? Indeed, in most theories of justice in contemporary political philosophy, that question is taken to be central. This leads to what can be called a

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"transcendental" approach to justice, focusing – as it does – on identifying perfectly just societal arrangements. In contrast, what can be called a "comparative" approach would concentrate instead on ranking alternative societal arrangements (whether some arrangement is "less just" or "more just" than another), rather than focusing exclusively – or at all – on the identification of a fully just society. The transcendental and comparative approaches are quite distinct, and as will be presently discussed, neither approach, in general, subsumes or entails the other.[3]

The transcendental approach to justice is not new (it can be traced at least to Thomas Hobbes), but recent contributions have done much to consolidate the reliance on this approach. In his investigation of "justice as fairness," Rawls explores in depth the nature of an entirely just society seen in the perspective of contractarian fairness. Rawls's investigation begins with identifying the demands of fairness through exploring an imagined "original position" in which the members of the society are ignorant of their respective individual characteristics including their own comprehensive preferences. The principles of justice that emerge in the original position are taken to be impartial because they are chosen by the persons involved under a "veil of ignorance," without knowledge of their individual identities in the society with specific vested interests and particular priorities.

Later on in this paper, I shall discuss some limitations of this understanding of the demands of fairness (and ask whether the points of view to be considered must all come from the population of a given state), but the immediate point to note in the context of understanding the transcendental approach is that the fairness exercise is aimed entirely at identifying appropriate principles for a fully just society and at isolating the institutional needs for the basic structure of such a society. The working of these institutions, in turn, leads to further societal decisions at later stages in the Rawlsian system, for example through appropriate legislation (in what Rawls calls "the legislative stage"). The sequence moves forward step by step on firmly specified lines, with elaborately characterized unfolding of completely just societal arrangements.

Despite the standing and widespread use of the transcendental approach, the intellectual interest in, and practical relevance of, comparative questions about justice are hard to deny. Investigation of different ways of advancing justice in a society (or in the world), or of reducing manifest injustices that may exist, demands comparative judgments about justice, for which the identification of fully just social arrangements is neither necessary nor sufficient. To illustrate the contrast involved, it may well turn out that in a comparative perspective, the introduction of social policies that abolish slavery, or eliminate widespread hunger, or remove rampant illiteracy, can be shown to yield an advancement of justice. But the implementation of such policies could still leave the societies involved far away from the transcendental requirements of a fully just society (since transcendence would have other demands regarding equal liberties, distributional equity, and so on).

The grand partition between the "just" and the "nonjust," which is what a theory of transcendental justice yields, would leave the society on the "nonjust" side even after the reform, despite what can be seen, in a comparative perspective, as a justice-enhancing change. Some nontranscendental articulation is clearly needed. To take another type of example, instituting a system of public health insurance in the United States that does not leave tens of millions of Americans without any guarantee of medical attention at all may be judged to be an advancement of justice, but such an institutional change would not turn the United States into a "just society" (since there would remain a hundred other transgressions still to remedy).

A transcendental approach cannot, on its own, address questions about advancing justice and compare alternative proposals for having a more just society, short of proposing a radical jump to a perfectly just world. Indeed, the answers that a transcendental approach to justice gives – or can give – are quite distinct and distant from the type of concerns that engage people in discussions on justice and injustice in the world, for example, iniquities of hunger, illiteracy, torture, arbitrary incarceration, or medical exclusion as particular social features that need remedying. The focus of these engagements tends to be on the ways and means of advancing justice – or reducing injustice – in the world by remedying these inequities, rather than on looking only for the simultaneous fulfilment of the entire cluster of perfectly just societal arrangements demanded by a particular transcendental theory.

Possible Defense of a Transcendental Approach

The argument so far has been, in an important sense, too easy. Surely transcendental answers cannot be all we want from a theory of justice. But there might well be – this is a matter to be investigated – some less obvious connection, some relationship between the transcendental and the comparative that could make the transcendental approach the right way of proceeding to comparative assessments. The formal remoteness of the transcendental approach from the invoking of the idea of justice in debates and discussions on practical affairs does not in itself indicate that the transcendental approach cannot be the right approach.

Thus, at least two further questions must be addressed, related to the possibility, respectively, of (1) the sufficiency, and (2) the necessity, of the transcendental approach for making comparative judgments about justice. First, can the answers to transcendental queries take us indirectly to comparative assessments of justice as well, in particular through comparisons of "distances" from transcendence at which particular sets of societal arrangements respectively stand? Second, can it be the case that the transcendental question ("What is a just society?") has to be answered first, as an essential requirement, for a cogent and well-founded theory of comparative justice, which would otherwise be foundationally disjunctive and frail? For an adequate critique of the transcendental approach to justice from the comparative perspective, we have to assess these possibilities critically.

Implicit beliefs in the sufficiency or the necessity (or both) of a transcendental approach for comparative assessment clearly have had a powerful role in the widespread belief that the transcendental approach is crucial for the entire theory of justice. Indeed, even in social choice theory, where the analytical framework is firmly relational and altogether grounded on pairwise comparisons, the investigations of justice in particular has been standardly elongated to move relentlessly from the basic comparative rankings to the identification of transcendental justice (often in the Rawlsian mold).[4] In arguing for a more robustly comparative approach to justice, with which this paper is concerned (and for which social choice theory can play, I would suggest, an important role), it would be necessary to examine whether comparative conclusions either *follow from*, or *need*, some transcendental identification.

Does Transcendental Specification Yield Comparative Rankings?

I begin with the issue of *sufficiency*. Does a transcendental approach produce, as a by-product, relational conclusions that are ready to be drawn out, so that transcendence may end up giving us a great deal more than its overt form articulates? In particular, is the specification of an entirely just society sufficient to give us rankings of departures from justness in terms of comparative "distances" from perfection, so that a transcendental identification might immediately entail comparative gradings as well?

The answer here is a firm no. The main difficulty lies in the fact that there are different features involved in identifying distance, related, among other distinctions, to (1) different fields of departure, (2) varying dimensionalities of transgressions within the same general field, and (3) diverse ways of weighing separate infractions. The identification of transcendence does not yield any means of addressing these problems to arrive at a relational ranking of departures from transcendence.

For example, in the context of the Rawlsian analysis of the just society, departures may occur in many different spaces. They can include the breaching of liberty, which, furthermore, can involve diverse violations of distinctive liberties (many of which figure in Rawls's capacious coverage of liberty and its priority). There can also be violations – again in possibly disparate forms – of the demands of equity in the distribution of primary goods (there can be many different departures from the demands of the Difference Principle which forms a part of Rawls's second principle). Similarly, diverse transgressions can occur in other transcendental theories of justice (for example, those that would replace the Rawlsian focus on "primary goods" in the Difference Principle by concentrating respectively on "capabilities" or "resources" or "opportunities," or some other way of formulating the allocational and distributional needs of transcendental justice).

There are also disparate ways of assessing the extent of each such discrepancy and of appraising the comparative remoteness of actual distributions from what the principles of full justice would demand. Further, we have to consider departures in procedural equity (such as infringements of fair equality of public opportunities or facilities), which figure within the domain of Rawlsian demands of justice (in the first part of second principle). To weigh these procedural departures *against* infelicities of emergent patterns of interpersonal distribution (for example, distributions of primary goods), which also figure in the Rawlsian system, would require distinct specification – possibly in axiomatic terms – of relative importance or significance (or "trade-offs" as they are sometimes called in the crude vocabulary of multidimensional assessment). But these extensions, helpful as they would be, lie well beyond the specific exercise of the identification of transcendence, and are indeed the basic ingredients of a "comparative" rather than a "transcendental" approach to justice. The characterization of spotless justice does not entail any delineation whatever of how diverse departures from spotlessness can be compared and ranked.

The absence of such comparative implications is not, of course, an embarrassment for a transcendental theory of justice, seen as a freestanding achievement. The relational silence is not, in any sense, an internal difficulty of a transcendental theory of justice. Indeed, some pure transcendentalists would be utterly opposed even to flirting with gradings and comparative assessments, and may quite plausibly shun relational conclusions altogether. They may point in particular to their understanding that a "right" social arrangement must not, in any way, be understood as a "best" social arrangement, which could open the door to what is sometimes seen as the intellectually mushy world of graded evaluations in the form of "better" or "worse" (linked with the relationally superlative "best"). The absoluteness of the transcendental "right" – against the relativities of the "better" and the "best" – may well have a powerfully reasoned standing of its own. But it does not help at all in *comparative assessments* of justice.

To be sure, members of any polity can contemplate how a gigantic and totally comprehensive reorganization may be brought about, moving us *at one go* to the ideal of a fully just society. A no-nonsense transcendental theory can serve, in this sense, as something like the "grand revolutionary's complete handbook." But that handbook would not be much invoked in the debates on justice in which we are constantly engaged, which focus on how to reduce the manifold injustices that characterize the world.[5]

Even if we think of transcendence not in the "gradingless" terms of "right" social arrangements, but in the graded terms of the "best" social arrangements, the identification of the best does not, in itself, tell us much about the full grading, such as how to compare two non-best alternatives. The identification of the best does not specify a unique ranking with respect to which the best stands at the pinnacle; indeed the same best may go with a great many different rankings with the same pinnacle. To consider an analogy, the fact that a person regards the *Mona Lisa* as the best picture in the world, does not reveal how she would rank a Gauguin against a Van Gogh. The search for transcendental justice is an engaging exercise in itself, but irrespective of whether we think of transcendence in terms of the gradeless "right" or in the framework of the graded "best," it does not tell us much about the comparative merits of many – indeed typically most – of the different societal arrangements.

Is a Transcendental Theory Necessary for Comparisons of Justice?

I now take up the second question, concerning the hypothesis that the identification of the best is necessary, even if not sufficient, to rank any two alternatives in terms of justice. In the usual sense of necessity, this would be a somewhat odd possibility. In the discipline of comparative judgments in any field, relative assessment of two alternatives tends in general to be a matter between them, without there being the necessity of beseeching the help of a third – "irrelevant" – alternative. Indeed, it is not at all obvious why in making the judgment that some social arrangement x is better than an alternative arrangement y, we have to invoke the identification that some quite different alternative z is the "best" or the "right" social arrangement. In arguing for a Picasso over a Dali we do not need to get steamed up about identifying the perfect picture in the world, which would beat the Picassos and the Dalis and all other paintings in the world.

It might, however, be thought that the analogy with aesthetics is problematic since a person might not even have any idea of a perfect picture, in a way that the idea of a perfectly just society has appeared to be identifiable, in transcendental theories of justice. I will argue later on that the existence of a best, or a transcendent, alternative is actually not guaranteed even in the field of justice, but I am ready to proceed, for the moment, on the presumption that such an identification can somehow be made. However, despite this tentative acceptance, the existence of an identifiably inviolate, or best, alternative does not indicate that it is necessary (or indeed useful) to refer to it in judging the relative merits of two other alternatives. For example, we may indeed be willing to accept, with great certainty, that Everest is the tallest mountain in the world, completely unbeatable in terms of stature by any other peak, but that understanding is neither needed, nor particularly helpful, in comparing the heights of, say, Kanchenjunga and Mont Blanc. There would be something very deeply odd in a general belief that a comparison of any two alternatives cannot be sensibly made without a prior identification of a supreme alternative.

Thus, the hypothesis of necessity in the standard sense would be hard to sustain. There is, however, a weaker form of the hypothesis of necessity, which merely asserts that if comparative assessments can be systematically made, then that discipline must also be able to identify the very best. The claim, in this case, would be not so much that two alternatives cannot be compared in terms of justice without first knowing what the best or the perfect alternative is, but that the comparative ranking of the different alternatives must *inter alia* also be able to identify the answer to the transcendental question regarding the perfectly just society. Or, to put it in another way, if the transcendental question cannot be answered, then nor can be the comparative. This understanding of necessity would not vindicate the need to go *via* the transcendental approach to comparative assessments, but it would at least give transcendental identification a necessary presence in the theory of justice. We have to examine this considerably weaker claim of "necessity" as well.

Comparatives Without Transcendence

Would a sequence of pairwise comparisons invariably lead us to the very best? That presumption has some appeal, since the superlative might indeed appear to be the natural end point of a robust comparative. But this conclusion would, in general, be a *non sequitur*. In fact, it is only with a "well-ordered" ranking (for example, a complete and transitive ordering over a finite set) that we can be sure that the set of pairwise comparisons must also identify a "best" alternative.

We must, therefore, ask: How complete should the assessment be, for it to be a systematic discipline? In the "totalist" approach that characterizes the standard theories of justice (including Rawls's), incompleteness tends to appear as a failure, or at least as a sign of the unfinished nature of the exercise. Indeed, the survival of incompleteness is sometimes seen as a defect of a theory of justice, which calls into question the positive assertions that such a theory makes. In fact, however, a theory of justice that makes systematic room for incompleteness allows one to arrive at possibly quite strong judgments (for example, about the injustice of continuing famines in a world of prosperity, or of persistently grotesque subjugation of women), without having to find highly differentiated assessment of every political and social arrangement in comparison with every other arrangement (for example, addressing such questions as: Is a top income tax rate of 45 percent more just or less just than a top rate of 46 percent?)

I have discussed elsewhere why a systematic and disciplined theory of normative evaluation, including assessment of social justice, need not take a "totalist" form.[6] Incompleteness may be of the lasting kind for several different reasons, including unbridgeable gaps in information, and judgmental unresolvability involving disparate considerations that cannot be entirely eliminated, even with full information. For example, it may be hard to resolve the overall balance of the comparative claims of equity considerations that lie behind Rawlsian lexicographic maximin, compared with, say, sum-ranking in a gross or equity-adjusted form.[7] And yet, despite such durable incompleteness, we may still be able to agree readily that there is a clear social injustice involved in the persistence of endemic hunger or exclusion from medical access, which calls for a well-specified remedying for the *advancement* of justice (or reduction of injustice), even after taking note of the costs involved. Similarly, we may acknowledge the possibility that liberties of different persons may, to some extent, conflict with each other (so that any fine-tuning of the demands of equal liberty may be hard to work out), and yet strongly agree that torturing accused people would be an unjust violation of liberty and that this injustice calls for an urgent rectification.

There is a further consideration that may work powerfully in the direction of making political room for incompleteness of judgments about social justice, even if it were the case that every person had a complete ordering over the possible social arrangements. Since a theory of justice invokes agreement between different parties (for example, in the "original position" in the Rawlsian framework), incompleteness can also arise from the possibility that different persons may continue to have some differences (consistently with agreeing on a lot of the comparative judgments). Even after vested interests and personal priorities have been somehow "taken out" of consideration through such devices as the "veil of ignorance," there may remain possibly conflicting views on social priorities, for example in weighing the claims of need over entitlement to the fruits of one's labor.

Conflicts of distributive principles that are hard to eradicate can be illustrated with an example, which I have discussed in another context. The example is concerned with the problem of deciding which of three children should get a flute about which they are quarrelling. Child *A* is the only one of the three who knows how to play the flute (the others do not deny this); child *B* is the only one without any toys of his own (the other two concede that they are much richer and well supplied with engaging amenities); child *C* has worked hard to make the flute all on his own (the others confirm this). Theorists of different persuasions – utilitarian or egalitarian or libertarian – may believe that a just resolution can be readily spotted here, though, alas, they would respectively see totally different resolutions as being exactly right. The main point to note in the present context is that the different resolutions all have serious arguments in support of them, and we may not be able to identify exactly one of the alternative arguments as being the only one (to invoke Thomas Scanlon's criterion) that "could be justified to others on grounds that they, if appropriately motivated, could not reasonably reject."[8]

Even when each of the parties involved has his or her own complete specification of justice, the "intersection" between the rankings – that is the *shared* beliefs of the different parties – can yield a partial ranking, if the judgments are not all congruent.[9] The acceptability of evaluative incompleteness is indeed a central subject in social choice in general, and it is relevant to theories of justice as well, even though Rawlsian and other theories assert (and it *is* an assertion rather than something that is established in any clear way) that a full agreement will definitely emerge in the "original position" and in other such formats.[10]

Indeed, for reasons both of incomplete individual evaluations and of incomplete congruence of individual assessments, incompleteness may be a hardy feature of judgments of social justice. This can be problematic for the identification of a perfectly just society, and make transcendental conclusions difficult to derive.[11] And yet, such incompleteness would not prevent making comparative judgments of justice in a great many cases, where there might be fair agreement on particular pairwise rankings, about how to enhance justice and reduce injustice. A partial ordering can be very useful without being able to lead to any transcendental identification of a fully just society.

The question "What is a just society?" is, therefore, not a good *starting point* for a useful theory of justice. To that has to be added the further conclusion that it may not be a plausible *end point* either. A systematic theory of comparative justice does not need, nor does it necessarily yield, an answer to the question "What is a just society?"

Institutional Barriers and Transcendental Silence

I turn now to a different – though not unrelated – feature of the transcendental approach to justice, in particular the extremely demanding institutional requirements of accomplishing pristine justice. The achievement of a fully just society would require a plethora of institutions, including the unfettered operations of a sovereign state. Some of these institutions are absent or defective in many countries in the world; nor can these countries readily establish them. Even without the possibility of setting up some of these institutions, it is, of course, possible to advance justice – or to reduce injustice – to a considerable extent, but while that is good enough for applying the comparative approach to justice, it does not yield the achievement of transcendental justice. If such spotless justice were the only focus of attention in a theory of justice, then the institutional preconditions would form a kind of "entry barrier," leading to an abstinence from applying justice theory to situations in which those exacting institutional demands are not only not currently met but cannot be met in the foreseeable future.

The institutional preconditions would be particularly hard to meet in dealing with, say, problems of global justice. The claim that we need a sovereign state to apply the principles of justice – a claim that was well articulated by Thomas Hobbes – is substantially connected with the elaborate institutional demands of a transcendental understanding of justice. Thomas Nagel's strongly argued dismissal of the relevance of "the idea of global justice" draws on his understanding that these extensive institutional demands cannot be met at the global level at this time. As he puts it, "It seems to me very difficult to resist Hobbes's claim about the relation between justice and sovereignty," and "if Hobbes is right, the idea of global justice without a world government is a chimera."[12] In the global context, Nagel concentrates, therefore, on clarifying other demands, distinguishable from the demands of justice, such as "minimal humanitarian morality" (which "governs our relations to all other persons"), and also to long-run strategies for radical change in institutional possibilities ("I believe the most likely path toward some version of global justice is through the creation of patently unjust and illegitimate global structures of power that are tolerable to the interests of the most powerful current nation-states").[13]

In the Rawlsian approach too, the application of a theory of justice requires an extensive cluster of institutions that determines the basic structure of a fully just society. Not surprisingly, Rawls actually abandons his own principles of justice when it comes to the assessment of how to go about thinking about global justice. In a later contribution, *The Law of Peoples*, Rawls invokes a "second original position," with a fair negotiation involving representatives of different polities – or different "peoples" as Rawls call them – who serve as parties under this second veil of ignorance.[14] However, Rawls does not try to