

Reading Rawls Rightly: *A Theory of Justice* at 50

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A half-century of Rawls interpreters have overemphasized economic equality in *A Theory of Justice*, slighting liberty—the central value of liberalism—in the process. From luck-egalitarian readings of Rawls to more recent claims that Rawls was a “reticent socialist,” these interpretations have obscured Rawls’s identity as a philosopher of freedom.¹ They have also obscured the perhaps surprising fact that Rawlsian liberties (basic *and* non-basic) restrain and even undermine that same economic equality. Such undermining occurs in three areas: first, in the lexical priority of the basic liberties; second, in the (underappreciated) role played by free and competitive markets in Rawls’s theory; and third, in the structure and functioning of Rawls’s preferred economic institutions, *viz.*, liberal socialism and property-owning democracy.

Rawls famously gives special protection to basic liberties in his theory by assigning lexical (i.e., lexicographic) priority to the principle of equal basic liberty over fair equality of opportunity and the difference principle. The priority of liberty, so understood, means that basic liberties such as freedom of speech, liberty of conscience, and the right to vote can only be limited for the sake of the basic liberties themselves, whether individually or as a mutually consistent system, *not* for the sake of socioeconomic equality or values beyond justice as fairness (e.g.,

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1. See, for example, Will Kymlicka, *Contemporary Political Philosophy: An Introduction* (Oxford: Oxford University Press, 2002), 60–75; and William A. Edmundson, *John Rawls: Reticent Socialist* (Cambridge: Cambridge University Press, 2017).

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utility, perfection).² The tension between basic liberty and economic equality is thus built into the very foundations of Rawls's theory.

We might be tempted to think that, despite this apparent tension, the values these principles protect are so unrelated to each other that no real conflict arises, but this would be a major mistake. For example, consider hate speech, understood as a species of group libel: speech (oral or written) that argues for the mental, physical, and/or ethical inferiority of members of particular historically oppressed groups (e.g., black people, women, Jewish people, and LGBT people). Suppose that a statute is proposed to punish hate speech (maybe only with fines) *on the grounds that* its spread would severely hinder implementation of fair equality of opportunity: the dissemination of racially and sexually bigoted doctrines in a citizenry—especially among employers and college-admissions committees—would hamper the matching of people and their aptitudes with suitable offices and positions in the basic structure of society. Such worries over hate speech's contribution to socioeconomic inequality can be found throughout the philosophical and legal literatures and in case law, especially the landmark group-libel case *Beauharnais v. Illinois*.³ Due to its motivation, this statute would contravene the priority of liberty: free speech cannot be limited solely for the sake of social mobility.⁴ Respect for the basic liberties can therefore undercut economic equality in a tangible way; the tension between them is not merely theoretical.

Less well-known than the priority of liberty—even among Rawls scholars—is the vital role played in justice as fairness by free and competitive markets, especially for labor. Rawls reveals a remarkably robust commitment to removing official barriers to entry in labor markets, be they in the form of restrictive professional licensing, minimum-wage laws, etc.⁵ For those accustomed to thinking of

2. For a full explication and defense of the priority of liberty, see Robert S. Taylor, *Reconstructing Rawls: The Kantian Foundations of Justice as Fairness* (University Park, PA: Pennsylvania State University Press, 2011), Chapters 3 and 4.

3. The Supreme Court case *Beauharnais v. Illinois* (343 U.S. 250 [1952]) upheld an Illinois group-defamation statute that criminalized the exhibition or publication of pictures or writings that portrayed “depravity, criminality, unchastity, or lack of virtue of a class of citizens of any race, color, creed or religion.” Writing for the Court, Felix Frankfurter argued that “a man's job and his educational opportunities and the dignity accorded him may depend as much on the reputation of the racial and religious group to which he willy-nilly belongs, as on his own merits.”

4. Robert S. Taylor, “Hate Speech, the Priority of Liberty, and the Temptations of Nonideal Theory,” *Ethical Theory and Moral Practice* 15 (June 2012): 353–68.

5. See John Rawls, *Justice as Fairness: A Restatement*, ed. Erin Kelly (Cambridge, MA: Harvard University Press, 2001), 67n35; and John Rawls, *A Theory of Justice*, rev. ed. (Cambridge, MA: Harvard University Press, 1999), 245.

Rawls as an economic interventionist, these free-market passages can be disorienting, even disconcerting, but they follow quite readily, in fact, from his other theoretical commitments. Fair equality of opportunity includes *formal* equality of opportunity (careers open to talents), and the latter is underwritten by a pair of *non*-basic liberties: freedom of movement and free choice of occupation.⁶ Barriers to entry in labor markets, whether erected by private or public agents, prevent full realization of these liberties and of the associated labor-market opportunities. For Rawls, free and competitive labor markets, guaranteed by freedom of movement and free choice of occupation, are the *sine qua non* of careers open to talents.

Again, however, Rawlsian liberties undermine economic equality here, in this case income equality.⁷ Rawls himself points out this implication in a passage somewhat reminiscent of Hayek:

A further and more significant advantage of a market system is that . . . it is consistent with equal liberties and fair equality of opportunity. Citizens have a free choice of careers and occupations. There is no reason at all for the forced and central direction of labor. Indeed, *in the absence of some differences in earnings as these arise in a competitive scheme, it is hard to see how, under ordinary circumstances anyway, certain aspects of a command society inconsistent with liberty can be avoided.*⁸

In order for labor markets to clear, wages need to be free-floating; thus, free and open competition for offices and positions in the basic structure will inevitably lead to “differences in earnings,” i.e., income inequality. Such inequality is the price to be paid for the realization of essential non-basic liberties, and Rawls deems it a price worth paying.

6. John Rawls, “Kantian Constructivism in Moral Theory,” in *Collected Papers*, ed. Samuel Freeman (Cambridge, MA: Harvard University Press, 1999), 303–58, here 313.

7. Fair equality of opportunity is lexically prior to the difference principle; consequently, if these Rawlsian (non-basic) liberties are preconditions for attaining it, their full realization is a requirement of justice—even if it results in income inequalities that would otherwise be inconsistent with the difference principle. On this point, see Rawls, *A Theory of Justice*, 73, 77, 264–6; and Taylor, *Reconstructing Rawls*, Chapter 5.

8. Rawls, *A Theory of Justice*, 240–1; emphasis added. In a similar passage, Hayek remarks that “once the rewards the individual can expect are no longer an appropriate indication of how to direct their efforts to where they are most needed, because these rewards correspond not to the value which their services have for their fellows, but to the moral merit or desert the persons are deemed to have earned, they lose the guiding function they have in the market order and would have to be replaced by the commands of the directing authority.” See Friedrich Hayek, *Law, Legislation, and Liberty, Volume 2: The Mirage of Social Justice* (Chicago: University of Chicago Press, 1976), 82.

Rawls's willingness to trade off economic equality for liberty persists in his more detailed discussions of economic institutions. He rejects outright the central planning, command economy, and displacement of markets characteristic of *state* socialism for the reasons surveyed immediately above: they are not only grossly inefficient but also (and more importantly) inconsistent with both basic and non-basic liberties, a conclusion supported by copious hard evidence from a sanguinary twentieth century.⁹ By contrast, both *liberal* socialism and property-owning democracy (described in more detail below) are consistent with justice as fairness, at least in their ideal forms; the choice between them "depends upon the traditions, institutions, and social forces of each country, and its particular historical circumstances."¹⁰ Some scholars have argued that Rawls's openness to liberal socialism was a mistake, while others have suggested that justice as fairness is consistent not only with property-owning democracy but also with the less-redistributive welfare-state capitalism and even *laissez-faire* capitalism, the last two being economic systems that Rawls explicitly rejected.¹¹ As we shall see, however, non-basic liberties undercut economic equality even within Rawls's two preferred economic institutions; we do not need to explore less-redistributive systems to show this, though that would undoubtedly make the tradeoff of economic equality for liberty more apparent.

Liberal socialism requires public ownership of all non-labor factors of production (i.e., land and capital) via workers' cooperatives. It entails universal worker self-management, whether direct or indirect (by their election of supervisors), and is therefore anti-statist, emphasizing labor's right to control land, capital, and the production process itself, at the level of the firm.¹² Cooperatives "carry on their activities

9. Rawls, *A Theory of Justice*, 240–2, 248–9; and Rawls, *Justice as Fairness*, 138.

10. Rawls, *Justice as Fairness*, 138; and Rawls, *A Theory of Justice*, 242.

11. For arguments that Rawls should have rejected liberal socialism, see Robert S. Taylor, "Illiberal Socialism," *Social Theory and Practice* 40 (July 2014): 433–60, and Alan Thomas, *Republic of Equals: Predistribution and Property-Owning Democracy* (Oxford: Oxford University Press, 2017), Chapters 8 and 9. For the argument that Rawls should have been open to welfare-state capitalism, see Jeppe von Platz, "Democratic Equality and the Justification of Welfare-State Capitalism," *Ethics* 131 (October 2020): 4–33. Lastly, for arguments that Rawls should have endorsed something like *laissez-faire* capitalism, see Daniel Shapiro, "Why Rawlsian Liberals Should Support Free-Market Capitalism," *Journal of Political Philosophy* 3 (March 1995): 58–85, and John Tomasi, *Free Market Fairness* (Princeton: Princeton University Press, 2012).

12. As he says in "Fairness to Goodness," "we are to view the principles of justice as constraints that . . . may be realized either by associational socialism or property-owning democracy," where the former is earlier defined as an "economy [in which] the workers in the firm control its capital and means of production," Rawls, *Collected Papers*, 267–85, here 272, 277). Also see Rawls, *A Theory of Justice*, 248; and Rawls, *Justice as Fairness*, 138.

within a system of free and workably competitive markets,” particularly labor markets: the non-basic liberties of freedom of movement and free choice of occupation that are essential for fair equality of opportunity can only be realized when workers are free to join and leave cooperatives in different locations and different industries.¹³ Hence, cooperatives competing to attract worker-owners will be forced to pay market rates for labor, rates that will vary widely by worker ability and industry, leading to those “differences in earnings as these arise in a competitive scheme” (i.e., wage inequality) that Rawls spoke of earlier.

This is not the only path, however, by which the serpent of economic inequality enters the liberal-socialist garden. The main feature of such socialism is the *free association of workers*: they may not only join and leave cooperatives individually but also found new cooperatives as a group and determine the workplace rules of all cooperatives, consistent with the socialist imperative that workers share in profits according to a mutually agreed schedule. Every cooperative is therefore a self-constituting, self-regulating *demos* in competition with others via labor, land, capital, product, and service markets. Due to varying entrepreneurial skills, alertness to new opportunities, diligence in pursuing them, success in designing workplace rules, and luck above all else, cooperatives will enjoy wildly different profit margins and longevity. So, their worker-owners will find their income determined not just by unequal wages but by unequal profits as well, with the latter being unequal because of both the varying success of cooperatives and the varying success of worker-owners in negotiating their *share* of said profits with compatriots. For these reasons, many Marxists reject a liberal-socialist regime, viewing it as replete with both capitalist exploitation (of poor firms by rich ones) and socialist exploitation (of untalented workers by talented ones).¹⁴ Rawls, however, is not a Marxist but a liberal who clearly believes that the three non-basic liberties that underwrite liberal socialism—namely, freedom of movement, free choice of occupation, and the free association of workers—are requirements of justice and therefore more important than the economic inequalities they engender.¹⁵

What is true of liberal socialism is even more true of property-owning democracy, which entails the universal *private* ownership of land and capital (physical,

13. Rawls, *Justice as Fairness*, 138.

14. See, for an example of such a Marxist, John Roemer, *Egalitarian Perspectives: Essays in Philosophical Economics* (Cambridge: Cambridge University Press, 1996), Chapter 1, especially 33–34.

15. Rawls does, however, thoroughly respond to Marx’s critique of liberalism: see Rawls, *Justice as Fairness*, 176–79.

financial, and human) in order to “put all citizens in a position to manage their own affairs.”¹⁶ It offers us a petit-bourgeois rather than social-democratic vision of economic democratization, one achieved via inheritance taxation, “capitalist” demogrants, etc. Demogrants might come in the form of small-business awards, seed money for playing the stock market or buying an annuity to subsidize a low-paying but rewarding career (e.g., topiary gardening), educational vouchers, etc. Notice that property-owning democracy permits but does not require labor self-management: workers are free to pool their demogrants, for instance, and practice voluntary syndicalism, owning and managing their own workplaces with or without the support of elected supervisors.¹⁷ They may also pick traditional, hierarchical capitalist employment relations, whether as employers or as employees. Under property-owning democracy, citizens are empowered through both competitive markets (for products, services, and production factors, especially labor) and demogrants to select any kind of workplace environment they prefer, whether by creating them, joining them, or leaving them.

Thus, in this regime, the free associationalism of liberal socialism is radically extended and transformed. Workers are no longer frog-marched into Fourierism but are instead permitted, if they wish, to engage in “capitalist acts between consenting adults,” as Nozick quips—but capitalist acts resourced by a redistributive state.¹⁸ Or, rather, a *predistributive* state that avoids the concentration of wealth and capital “not by redistribution of income to those with less at the end of each period, so to speak, but instead by ensuring widespread ownership of productive assets and human capital (that is, education and trained skills) at the beginning of each period. . . .”¹⁹ Although predistribution removes rigid class structures from the economy, it also clears another path along which economic inequality can enter: by placing “all citizens in a position to manage their own affairs” and compete on fair terms, it ensures that their unequal talent, industry, and luck will translate into unequal rank and income. The three non-basic liberties discussed earlier—but with the third radically extended to facilitate more associational diversity and robust competition—guarantee that property-owning democracy will generate even more socioeconomic inequality than liberal socialism.

As I noted at the start of this essay, the thesis I have advanced here—namely, that Rawlsian liberties (basic and non-basic) restrain and even undermine economic

16. *Ibid.*, 139–40, 160–61.

17. *Ibid.*, 178.

18. Robert Nozick, *Anarchy, State, and Utopia* (New York: Basic Books, 1974), 163.

19. Rawls, *Justice as Fairness*, 139–40; and Thomas, *Republic of Equals*, 165–77.

equality—will come as a big surprise to many students of Rawls, owing to the interpretive obscurity in which it has languished. A few scholars, to be sure, have noticed this aspect of Rawls’s liberal egalitarianism, but they have generally responded by suggesting that the liberal bit be expurgated: if liberty undercuts economic equality, then so much the worse for liberty.²⁰ Such egalitarianism-*sans*-liberalism manages to be both politically radical and canonically conservative: Marx (in)famously reminds us in his *Critique of the Gotha Program* that liberal socialism’s pledge that every worker-owner will receive not just their wages but their portion of profits is “an unequal right for unequal labor. . . . *It is, therefore, a right of inequality, in its content, like every right.*”²¹ The twentieth century served as an unedifying testing ground for such rightless egalitarianism, and lest we think its body count a mere historical contingency, consider the assessment of Walter Scheidel in his magisterial text *The Great Leveler*:

Over the course of about sixty years, from 1917 into the late 1970s . . . communist revolutionary regimes successfully forced down inequality through expropriation, redistribution, collectivization, and price-setting. The actual amount of violence expended in the implementation of these measures varied hugely between cases, with Russia, China, and Cambodia on one end of the spectrum and Cuba and Nicaragua on the other. Yet it would go too far to consider violence merely incidental to forcible leveling: even though it would in principle have been possible for Lenin, Stalin, and Mao to achieve their goals with more limited loss of life, sweeping expropriations crucially depended on the application of at least some violence and a credible threat of escalation.²²

However limiting it may feel at times, perhaps egalitarians would be wise to retain their liberalism. Bourgeois liberties may not thrill the heart, but they might stay the hand of an egalitarian judgment gone epically awry.

20. For a recent example see Samuel Arnold, “Putting Liberty in its Place: Rawlsian Liberalism without the Liberalism,” *European Journal of Philosophy* 26 (March 2018): 213–37.

21. Robert C. Tucker, *The Marx-Engels Reader* (New York: W. W. Norton & Company, 1978), 525–41, here 530.

22. Walter Scheidel, *The Great Leveler: Violence and the History of Inequality from the Stone Age to the Twenty-First Century* (Princeton: Princeton University Press, 2017), 231.

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