IN THE
SHADOW
OF
JUSTICE

POSTWAR LIBERALISM *and the*
REMAKING *of* POLITICAL PHILOSOPHY

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For my mother

In memory of my father

And for Jamie

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POLITICAL PHILOSOPHY IN the English-speaking world today is largely concerned with a set of liberal ideas about justice, equality, and the obligations of individual citizens in capitalist welfare states. For the most part, it is also associated with a certain view of the tasks of political philosophy—how it works and what it aims to do. At other times and in other places in the history of political thought, political philosophy has served to legitimize political change by appealing to history or utopia, or to particular groups or actors as the motors of reform or revolution. Now, liberal political philosophers pass ethical judgments on the world by appealing to general moral principles designed to help us make sense of what justice requires of our politics and institutions. This dominant idea of political philosophy rests on a faith that the political world would be better off if it could be reformed in accordance with those principles. Its advocates conceive of themselves as engaged in a common intellectual project with a shared conceptual vocabulary. They hope that we can be guided by their philosophical vision of what social life could be like if institutions were more just and more equal.

In the middle of the twentieth century, it was less certain what political philosophy was and what it could do. There was no settled view of the moral principles at its core or of the terms of philosophical debate. Nor was there a consistent understanding of what kind of politics it envisioned, or what was required to implement that vision in the world. Sometime between then and the early twenty-first century, the very idea of political philosophy was transformed. A collection of ideas cohered into a doctrine known as "liberal egalitarianism." Theories of egalitarian distributive justice became the dominant way of thinking about institutions. Even where they were challenged, they were taken as a referent.

This book is a history of the transformation of liberal political philosophy that took place in the second half of the twentieth century. It is about how one theory, born of the postwar era, became the dominant mode of theorizing in a

different age, and continued to shape political philosophy in the Anglophone world in new historical circumstances, long after the moment of its birth had passed. In 1971, the American liberal analytical philosopher John Rawls published *A Theory of Justice*. There he laid out the apparatus of justice theory that became the dominant conceptual framework for subsequent theorizing about politics among philosophers and many political theorists in the United States, Britain, and elsewhere. His account of a just society required its reorganization into a "property-owning democracy" where inequalities were heavily circumscribed and everyone had a stake.

The impact of Rawls's theory on the landscape and language of political philosophy was immense. Only a decade after the publication of *A Theory of Justice*, one bibliography listed 2,512 books and articles engaging with Rawls's thought.[1] For his followers, Rawls became a patron saint, the visionary behind an egalitarian dream of distributive justice. Among his critics, he was known as a neo-Kantian individualist who adapted the toolkit of rational choice and decision theory and viewed individuals as at once self-interested economic agents and autonomous moral persons. They saw him as providing a philosophical rationalization of a liberal welfare state or, worse, a defense of the conservative status quo that implicitly framed America as a land of liberty and civic freedom. Yet in his wake, political philosophy was remade. Philosophical liberalism became synonymous with Rawls, and political philosophy synonymous with a kind of liberalism born of postwar America. Even many who opposed it were shaped by it. By the late twentieth century, Anglophone political theorists operated in the shadow of justice theory.

When the story of this transformation is told, particularly by political philosophers themselves, it is usually presented as one of philosophical success. They give a narrative of philosophy's midcentury death and its revival with the publication of Rawls's *Theory*. On this reading, the Second World War had left philosophers unable to think about justice or utopia. Political theory was declared to be dead.[2] That all changed with Rawls: his book provided robust foundations for the revival of normative theory and the reinvention of political thought. For political philosophers, and often for historians of political thought, 1971 marked the date of the major philosophical event of late twentieth-century liberalism.[3] It has, however, become hard to ignore that this date coincides with seismic events of the postwar order. For many historians, the 1970s mark the collapse of the social liberalism that surged to dominance after the war, enabled by the concrete political and economic successes of capitalist welfare states. In these years, those states faced profound fiscal and

legitimacy crises. The rise of neoliberalism, as well as rights-based forms of individualism, overturned ideas about the public interest and fractured ideas of the common good.[4] Against the backdrop of this broader transformation of social liberalism, the publication of Rawls's theory—the great philosophical defense of the welfare state—came on the eve of its crisis. It hailed from a bygone era, the last gasp of a dying welfarist ideology.[5]

This book gives a different view. The story of philosophy's death and revival is a tale of philosophical success. But it is also a ghost story, in which Rawls's theory lived on as a spectral presence long after the conditions it described were gone. The late twentieth-century transformation of liberal philosophy begins with Rawls, but it does not begin in 1971. Rawls's liberalism came from a different America. It was never straightforwardly a defense of the welfare state. It was also forged in an era when liberalism was full of contradictions. Even at its postwar peak, American liberalism remained limited and exclusionary.[6] It also contained already many of the ideas that would characterize the transformation of political order that took place in the 1970s.[7]

Rawls's theory had its origins in a forgotten world of ethics and in a set of ideological battles that his own shadow has long hidden from view—in part thanks to the move of philosophy, which he led by example, to "a higher level of abstraction."[8] When the intellectual architecture of contemporary liberal philosophy was first built, Rawls drew on decades of political and economic debates about liberalism—only some of which were concerned with the welfare state. The theory we now call liberal egalitarianism reflected a particular constellation of postwar liberalism and its afterlives. Yet the construction of that theory was not the work of one man alone. The sociological conditions that enabled its rise were set in the postwar years and in the 1960s, in part due to the impact of the Vietnam War on a younger generation of moral and political philosophers who worked in the Cold War university. In the 1970s and 1980s, it became the theory that mediated the relationship of political philosophers to politics.

Understanding this remaking of political philosophy involves returning to its historical origins, exploring which political events and ideas shaped philosophical debate, and determining how and when they did so. In the second half of the twentieth century, the relationship of philosophers to politics changed, thanks to the dominance of this distinctive approach to political philosophy—the liberal philosophy of "public affairs"—and the distinctive theory that became dominant within it, liberal egalitarianism. This book is about that change and its consolidation, and about the politics of that approach and that theory. It

describes what that politics was and what it foreclosed, and how it became submerged in the period of philosophical reinvention and interpretation that followed the publication of Rawls's book. The resurgent faith that philosophy could improve the world and the philosophical vision of what justice is and what social life could be were products of a specific historical moment and its constraints. What follows is the history of how that faith and vision emerged from a less familiar world, and how their rise has shaped our own.

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This book begins in the midcentury United States, a period following the Depression and Second World War when debates over the nature of liberalism took a particular form. In the 1930s, many liberals had found common ground with labor and with progressives in support of state planning for welfarist ends, even as they fought over the extent of reform.[9] By the end of the Second World War, trust in government was at a high.[10] Yet totalitarianism abroad also made the state an object of suspicion.[11] In the postwar years, liberals who were skeptical of the expansion of the administrative state and the New Deal order saw the task for liberalism as securing the values of freedom and equality without the state intervention and political control that decades of state expansion had made a new norm. A range of political and economic theories that provided alternatives to state planning and intervention flourished: theories of political pluralism and civil society, constitutional theories that offered legal constraints on the state, Keynesian ideas that sought a stable rather than a planned economy, and visions of a limited state to secure only capital rights, which invoked the language of anti-statism to do so. After the New Deal and the Second World War, ideas of community, law, associational life, consensus, civil society, and morality were increasingly deployed in a turn away from the strong central state or in the name of a chastened or accommodationist liberalism.[12]

When Rawls first began to build his political philosophy in the 1940s and 1950s, it was these ideas he encountered. While few midcentury analytical philosophers were trying to construct theories of politics and society on a grand scale, many social scientists were analyzing social "systems" and developing general theories.[13] Rawls shared their grander ambitions. He sought to justify a liberalism that preserved the ethical life of individuals and associations and to provide a theory that judged the morality of relations and social institutions at a general level. As a young man, he was initially drawn to a Protestant communitarian ethics of persons and a focus on moral worth and character.[14]

Soon he adapted from anti-statist, pluralist, and early neoliberal ideas, as well as with Wittgenstein and forms of conventionalism. His youthful skepticism of the state and group interest put his political orientation outside the mainstream liberal consensus. Yet at the height of Cold War anticommunism, Rawls moved left. He turned to theorize equality and institutions, finding inspiration in British debates about equality and social justice on the right wing of the Labour Party and also in American discourses of poverty.[15] Gradually, Rawls assembled his theory of a just society out of the social democratic liberalism of the postwar moment.

The theory Rawls built transformed the conceptual vocabulary of political philosophy to an unprecedented degree. When Rawls began to construct this theory, postwar philosophers were using novel ideas of hypothetical choice, rules, practices, and principles, and Rawls was no exception. He used these ideas to develop a new language for liberalism and to forge the conceptual apparatus for his institutional theory of justice. His theory included new methods for ethical decision-making, like his famous "original position." It also included novel concepts like the idea of the moral person or "the basic structure," an abstraction designed to capture the concrete realities of individuals and the state after the war. Rawls invented an entire language, and by the end of the twentieth century countless books were dedicated to the elaboration of its terms: "the veil of ignorance," "reflective equilibrium," "overlapping consensus," "the difference principle," "ideal and non-ideal theory," and "liberal egalitarianism" itself.

Subsequent generations of political philosophers would contest Rawls's methods and concepts, but for many they would later take on the appearance of common sense. Yet they relied on a particular set of assumptions about the nature of social and political life in postwar America. For Rawls's theory was born in the 1940s and 1950s—a product of the Second World War, not the Great Society, as is often assumed. Many of his ideas lasted a lifetime but were first formed in the early postwar years. It is conventional to see Rawls's work as characterized by a turn in his later life.[16] But ideas that feature centrally in *A Theory of Justice* and then in *Political Liberalism* (1993) had earlier roots, such as the idea of property-owning democracy, as well as his account of democratic deliberation, stability, and overlapping consensus. *A Theory of Justice* was in many respects a snapshot of Rawls's ideas at the time of publication. Later, he would look back to ideas he had left behind.

At the end of the 1950s, Rawls had most of his theory in place. Yet he delayed the publication of his mature theory of justice for over a decade, during which

time he did not update his core assumptions. In the interim years, the postwar social and political theories that the young Rawls had read or drawn from were overthrown. The system-building ambitions of social scientists were criticized. First the New Left, civil rights, and radical protests of the 1960s and then the material crises of the 1970s called into question theories of growth and modernization, consensus, and pluralism.[17] Rawls's theory survived this turbulence unscathed. That meant that a particular variety of postwar liberalism was preserved in philosophical amber for the duration of the 1960s. Moreover, during this decade, a different set of conditions that made for the enthusiastic reception of Rawls's book also developed.

During the 1960s, in debates about civil disobedience, obligation, war, and responsibility, a new generation of socially liberal philosophers began to explore ethical problems raised by contemporary political predicaments. The agenda and preoccupations of modern Anglo-American liberal philosophy were forged in the moral crisis of that decade. Thanks to conscription, the war in Vietnam intruded into the universities. Philosophy and politics became synchronous: liberal philosophers began to engage directly with political events, and the pace and drama of those events helped set the agenda and nature of philosophical debate.[18] These years were a turning point in the larger transformation of political philosophy. A circle of liberal legal, moral, and political philosophers around Rawls began to meet. It included T. M. Scanlon, Thomas Nagel, Ronald Dworkin, Robert Nozick, and Michael Walzer. Along with others, they initiated the philosophical study of "public affairs" and the ascent of "applied ethics." They were concerned as much with moral agency as with the justice of institutions. With the rise of ideas of rights and judicial power associated with the Warren Court, political philosophers came to engage more with constitutional law and rights-claims. In response to the civil rights movement and antiwar protests to their left, they developed new theories of civil disobedience and responsibility. They also turned their attention from the moral limits of the state to the moral limits of political action and war. Walzer's just war theory, as well as Rawls's account of civil disobedience, which has dominated liberal philosophy ever since, emerged here. It was also these debates that provided the sociological and intellectual conditions for the subsequent debates about Rawls's theory, as well as the transformation of philosophy in its wake.

When *A Theory of Justice* was published in 1971, it was at a moment of disorder.[19] Many were looking for the kind of stability that Rawls had searched for in the aftermath of the war two decades earlier. Rawls's readers saw his advocacy of social democracy and racial liberalism as fitting the needs of a

new era. Amid the crises of the 1970s, liberal political philosophers developed a particular interpretation of Rawls's theory as distributional and institutional in focus. Its key political assumptions were entrenched, and its categories naturalized. Over the course of the decade, the theory became a doctrine. Liberal egalitarianism was born.

Rawls's institutional justice theory became a framework for subsequent philosophical debate about politics. "Political philosophers," Robert Nozick wrote in 1974, "now must either work within Rawls's theory, or explain why not."[20] It provided a philosophical system in an age when system-building was on the way out. As was the case with his German counterpart Jürgen Habermas, Rawls's universalist and normative aspirations outlasted the challenges of poststructuralism and post-Marxist critical theories (though since he never engaged explicitly with those traditions, he had far fewer challenges to endure than Habermas; and unlike Habermas, when Rawls engaged with the socialist left, it was from a starting point outside it).[21] In the decade after his theory was published, Rawls's colleagues, students, and followers objected to its discrete parts, but many came to accept the "Rawlsian" framework as a whole. For large numbers of his readers, the theory signified and re-presented civil rights and Great Society liberalism. As a work of theory, it became a vehicle for the overcoming of old intellectual divisions. Economics was made ethical, and analytical philosophy was made political. Political philosophers adapted tools from across the social sciences to deal with distributive challenges. Soon, some tried to update the theory for a different political moment. Political philosophers like Charles Beitz and Brian Barry tried to stretch the framework of justice theory across space and time, to accommodate the world and the future in the different climate of 1970s internationalism. In these efforts, global justice theory and intergenerational justice theory were born.

These debates altered the relationship of political philosophy to politics. In the 1950s, Rawls had begun to build a theory by abstracting from his postwar realities. In the 1960s, moral and political philosophers responded rapidly and deliberately to political events. They also looked to develop general ethical principles that could apply to any situation. This involved their own institution-building: many journals, institutes, and associations of political philosophy, political theory, and applied ethics were founded in the Vietnam years. After Rawls's theory became available, his followers looked to his theory first, and then applied it to different political circumstances, adjusting it as they saw fit. They also looked to preformulated general principles. As liberal egalitarianism was constructed, the relationship of philosophy to politics was

inverted. Political philosophers explored new political problems, including population growth, environmental crisis, international inequality, and the rise of the New Right. But often they brought Rawls's theory with them and used his abstractions as guides. That theory now mediated the encounters of political philosophers with politics. It had its own logic, which helped determine what ethical and political problems would count as sufficiently puzzling to warrant philosophical concern. That logic also had a political dimension, which in turn helped to shape philosophy's political preoccupations.

For Rawls's liberalism came with the theory. At certain moments, liberal philosophers invoked his philosophical ideas to attack political and ideological alternatives. Over the course of the 1970s, they defended liberal egalitarianism against libertarianism to its right and forms of anticolonialism and socialism to its left. Many also tried to accommodate these ideas within Rawls's framework without destabilizing it. With the advance of a vibrant academic left, some drew from Marxism. Others looked to human rights discourses or neoliberal social and economic theories to deploy ideas of markets, rights, and humanity in their theories of justice and equality. They did so in ways that ultimately reinforced the logic of liberal egalitarianism or of the new political philosophy more broadly. By the 1980s, liberal egalitarianism had become the dominant theory within Anglo-American political philosophy. Liberal political philosophers were now deeply engaged with applied ethics, distributive justice theory, constitutional law, and welfare economics.

Yet even as this new liberal paradigm triumphed, there were persistent disagreements among philosophers, and aspects of the new political philosophy came apart. In certain respects, philosophers changed with the times. Dworkin, G. A. Cohen, and others sought to meet the New Right on its terms and in ways that led to departures from Rawls's ideas. As the institutions of the welfare state were hollowed out by neoliberal policies, a kind of disembedding of the Rawlsian project seemed under way. But these ideas also signaled a different form of abstraction, one that was less institutional, yet potentially more politically radical. Nonetheless, Rawls's theory continued to grip the philosophical imagination. Few political philosophers tried to overhaul liberal egalitarianism to grapple with the concrete changes of the state and capitalism in an era of increasing privatization and financialization.[22] Older categories remained in place. Moreover, the overreach of the distributive framework prompted a backlash. A number of influential critics, such as Bernard Williams, Judith Shklar, Michael Sandel, and Charles Taylor, challenged liberal philosophy by appeal to psychology and community. They often, however,

returned to the ideas that had been left out or left behind at midcentury. These critics thus provided a mirror image of the political ideas they criticized. The capaciousness of liberal philosophy squeezed out possibilities for radical critique. Rawls's theory spawned a discipline. It also shaped the ideas of those many political theorists and philosophers who became conscripted to liberal philosophy, whether they liked it or not.[23] They continued to live in the shadow of justice theory.

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At one level, this is the story of the triumph of a small group of influential, affluent, white, mostly male, analytical political philosophers who worked at a handful of elite institutions in the United States and Britain, especially Harvard, Princeton, and Oxford. It is a story that includes few women, except at the margins, and fewer people of color. Not all its protagonists are British or American, but they all worked in Britain or the United States. With the help of economists, lawyers, and political theorists, they constructed a universalizing liberal theory that took on a life of its own. They began from where they were. They focused almost entirely on North American and Western European welfare states, except in their imagination of the global. They were Anglophone in their philosophical orientation (though when it came to the history of philosophy, they read an anglicized Kant and Hegel as much as Hume and Smith). Yet they wanted their political philosophy to have a broader reach. They tried to expand their theories across space to encompass wider communities, nations, the international realm, and ultimately the planet. They also moved across time, drawing on the past to reimagine the future and to make political philosophy as universal and unconstrained as possible. At stake at every stage of their efforts was the question of what kind of liberalism their theories entailed, and what forms of politics it legitimated. Their debates about the principles of justice and the institutions they judged also had implications for another set of concerns that operated at a deeper level: about the nature of personhood and the individual, about what people were like, and what institutions should do to help them to cope with the uncertainties of modern life. In their institutional theories, much else was at stake: the nature of agency, desert, merit, responsibility, and the relevance of these to politics; the relationship of luck to morality; the place of the future and the past in political thinking; and the question of what kinds of choices people can make and what kind of control they can take over their lives.

The history told here is, at least in part, about the success of these ideas. In the last decades of the twentieth century, the political philosophers who are the main protagonists of this book became globally influential. They founded a field of inquiry with a vast academic reach and accessed political power through the economists, lawyers, and policy experts who read them—and more indirectly, through the thousands of elite students they taught. Over time their ideas became more technical and difficult for outsiders to grasp. In the early years of the Cold War university, when certain disciplinary boundaries were porous or unformed, political philosophers debated with a range of theorists within and beyond departments of philosophy.[24] By the last quarter of the century, they debated more among themselves. And there were more of them—mostly in philosophy departments, but also in departments of political science and law schools. They increasingly distinguished themselves from other kinds of philosophers and from political theorists.[25] Political theory as a subfield of political science had its own identity and distinct traditions, which included conservative followers of Leo Strauss, critical theorists, historians of political thought, and New Left and post-Marxist theorists of democracy and, later, agonism, who followed Hannah Arendt and Sheldon Wolin.[26] Yet after its rise, many political theorists came to define themselves against Rawlsianism. This was sometimes a disciplinary distinction, or a local institutional one, about where individuals worked or in what discipline they trained. But the moniker of "political philosopher" also became a signal of sympathy for Rawlsian ideas or the philosophy of public affairs, wherever they might be found.

This book is about the construction of modern liberal political philosophy, but it is also about its relationship to politics. To many critics, that relationship is best described as an ever-widening chasm.[27] Political philosophers seemed to grow increasingly detached from politics, even if they moved closer to policy. Perhaps this was the price paid for high-level philosophy, or an inevitable outcome of the path dependence of expertise typical across the human sciences as much as the hard sciences, which has made the inaccessibility of scholarly debate unavoidable. But expertise does not exist in a political vacuum. At the end of the Cold War, when liberalism was without rival and commentators declared that history had ended, the liberal egalitarian tools for finding technical solutions to distributional problems seemed to complement the centrist technocratic liberalism that had become dominant.[28] The universalizing vision of liberal philosophers was far more egalitarian than this technocratic counterpart and in practice had little in common with it. But it seemed similarly optimistic about the possibilities of rising above politics.

At another level, politics proved to be inescapable. Political philosophers were frequently confronted by political constraints, which operated in a variety of ways. Liberal egalitarianism had a paradox at its heart. On the one hand, Rawls's theory provided a distinctive and fairly fixed vision of justice and social liberalism. On the other, it implied a capacious and flexible view of philosophy and a great confidence in its capacities. But the combination of a fixed political vision and a flexible view of philosophy was hard to sustain. At times, the latter threatened the former: could philosophers expand their theories in every direction and still retain their core political commitment to a liberal egalitarianism? They insisted they could. But that was not always clear in practice. In the 1980s, for instance, philosophers borrowed ideas of markets, choice, and responsibility from the New Right in the service of egalitarianism, in ways that risked undermining their commitments to community and reciprocity. Amid debates in the 1970s about global redistribution in the context of decolonization, some insisted that it was possible to commit to ideas of both humanity and justice despite these having rival implications in current public debates. When faced with the abandonment of socialist ideas of common ownership for equality on the British left, in the 1950s and again in the early 1980s, philosophers insisted that arguments for equality and socialism were conceptually coherent and compatible, avoiding the fact that in each conjuncture this coherence did not translate simply into political compatibility. As certain arguments recurred or were redeployed in different contexts, they took on new meaning. With the political center of gravity moving to the right, some philosophers moved with it. And as the center shifted, so did the valence of liberal ideas. Overall, liberal egalitarianism looked increasingly like a philosophy of the liberal left, especially at a time of growing inequality. A theory that began by borrowing from the anti-statist right moved left and was reinvented as the philosophical legacy of New Deal liberalism. It became the liberal egalitarianism that continues to grip the philosophical imagination.

There have been other times when the fixed political vision of these theories threatened the flexibility of philosophy. After Rawls's theory—itself tied to a postwar liberal vision—became a new baseline, ideas that were incompatible with it were set aside or taken out of philosophical discourse altogether. Liberal philosophers dispensed with older arguments—about the nature of the state, political control, collective action, corporate personality, or appeals to history. Their conceptual choices often had political implications. The choice of certain theories or the prioritizing of certain values or arguments could

mean giving up on others. This was the case regardless of the political motivations of particular individuals, who sometimes became trapped in conceptual structures of their own collective making. Removing certain kinds of perspectives and arguments from view had unintended consequences, which limited the ideological flexibility of political philosophy. For instance, putting coercive claims outside of deliberative procedures could entail putting aside labor politics. Rejecting the normative relevance of certain historical processes and structures at times involved portraying as irrelevant those actors and forces that brought about the modern world, whether social movements, states, empires, or capitalism. Moreover, many political disagreements were explained, legitimated, or suppressed by such philosophical choices. Just as often, rival political visions or arguments were not rejected outright, but domesticated and accommodated within the liberal egalitarian paradigm—often in a way that diffused their force. As subsequent generations built on the arguments of their forebears, a philosophical paradigm took on a political shape that original theorists could not have foreseen.

The fixed politics constrained the reach of liberal theories in other ways too. Rawls may have intended his theory to be dynamic, but in practice it was haunted by the ghosts of postwar liberalism. Assumptions about the nature of politics that were formed in midcentury liberal debates were built into this theory and remained largely uncontested, even as the world changed. Past ideas mediated the relationship of theory and practice and exerted a destabilizing pull on the present. Sometimes philosophers directly addressed this difficulty—for instance, when theorists of global justice tried to update Rawls's theory for a new era of international interdependence. At other times, the dominance of Rawls's concepts made it hard for philosophers to respond adequately to new developments. It was not always clear what updating Rawls might entail. For instance, the broad contours of both his view of the state and his account of those for whom his principles of justice worked continued to be accepted even as the state and the constituencies and composition of democratic politics were transformed. Rawls's account of justification itself encouraged philosophers who followed him to constantly update their arguments, but the main conceptual building blocks of his theory, like the idea of the basic structure, remained in place. Many also continued to uphold a premise of Rawls's theory that was drawn from a postwar idea: that deep down, social life rested on the possibility of consensus and ethical agreement. This vision idealized a moment from the midcentury American past when liberalism was triumphant against the right and left. Liberal philosophers never gave

up on this consensual vision of politics. It was what enabled their confidence in philosophy.

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This book is about the politics of political philosophy and the political implications of conceptual choices. It explores how philosophers responded to political events, how they became constrained by their prior theoretical choices, and how those choices had wide-ranging effects on the history of twentieth-century thought. Its focus is on how the political orientation of liberal political philosophy took shape, what paths political philosophers did and did not take, and how the questions asked by philosophers and the answers they gave came to structure the tasks, priorities, and boundaries of political philosophy.[29]

Chapter 1 begins with the young Rawls and the ideas that first motivated him. It explains how over the 1940s and 1950s these ideas shaped his theory of justice. Chapters 2 and 3 explain the broader transformation that took place in liberal political philosophy during the civil rights movement and the Vietnam War, first in debates about obligation and civil disobedience that began in the late 1950s and spanned the following decade, and then in debates about war and responsibility between 1965 and the early 1970s. Chapter 4 charts the initial reception of *A Theory of Justice* and the construction of liberal egalitarianism during the 1970s.

Chapter 4 is also a hinge in this book. The early chapters show the conditions for the creation of the body of work that came to be known as liberal egalitarianism, as well as the origins of applied ethics and the philosophy of public affairs. The remainder of the book explores the extension and contestation of that new body of theory, and what happened to political philosophy after the arrival of the new egalitarians. Chapters 5 and 6 show how liberal political philosophers extended these ideas in debates about famine, basic needs, the New International Economic Order, overpopulation, and environmental survival. These chapters explore the roots of international and intergenerational theories of justice, as well as influential alternative responses to new predicaments, like Derek Parfit's population ethics. Chapter 7 charts the response of liberal egalitarians to challenges from their right and left. It traces the development of analytical Marxism and luck-egalitarianism and shows how ideas of the New Right permeated liberal philosophy in the 1980s. Chapter 8 explores some of the most influential critiques of the new philosophy of public affairs and how these critiques shaped liberal political thought at the end of the Cold War. It

shows how much political theory, including many critics of liberal egalitarianism, continued to operate in the shadow of justice.

Chapters 1, 4, and 7 describe how Rawls's theory of justice and modern distributive justice theory took shape. During the debates explored here, political philosophers encountered theories of the welfare state and neoliberal ideas in ways that prepared them for, but also made them susceptible to, the neoliberalism of the 1980s. Chapters 2 and 3 show the development of the broader approach to liberal philosophy among the philosophers of public affairs. The crucial formative event for the institutional construction of political philosophy was not the legitimacy crisis of the 1970s. It was the Vietnam War and the social movements of the 1960s. When it came to Rawls's theory itself, however, what mattered was the Second World War and the political world created and foreclosed in its aftermath. The focus of this book is on how that political world shaped political philosophy in Britain and the United States, and more locally at Oxford, Harvard, and Princeton, the institutions in which these ideas circulated. It was at these universities that the practice and enterprise of mod-ern Anglo-American liberal political philosophy was consolidated.[30]

Overall, this book is more focused on philosophical responses to politics than on the place of Rawls and liberal egalitarianism within the longer history of political thought. As such, the book's aim is less to understand Rawls's reading of Kant or Hegel or Hume or Sidgwick, or to explicate his engagement with particular philosophical texts or traditions and challenge or confirm his place in a particular canon, or even to reconstruct Rawls's intellectual biography and his conceptual, philosophical, and theological motivations.[31] It tries instead to make sense of the political work Rawls's theory and these acts of intellectual engagement were doing, both for him and for those who read him, and what their consequences were. It also begins from the assumption that Rawls and his contemporaries inhabited a discursive "problem-space" that is at some distance from our own, even if our own emerged from it. The problems they posed and believed were worth posing, and the stakes of the questions they asked, were distinctive and not always wholly familiar.[32] To join political philosophy to its politics requires a form of intellectual history that pays close attention to the political world that philosophers inhabited and that looks to reconstruct their immediate ideological context. For Rawls, that context was the aftermath of the largest war and most significant expansion of state control in history, a period when few thought it possible or desirable to return to older forms of liberalism. It is here that this story begins.

IN THE SHADOW OF JUSTICE

1

The Making of Justice

WHEN JOHN RAWLS published *A Theory of Justice* in 1971, it made him the most famous political philosopher in the English-speaking world. Enormously detailed and painstakingly executed, it was, Rawls wrote, "a long book, not only in pages."[1] Across six hundred pages and three parts, he worked out his vision of a just and "well-ordered society" regulated by the conception of justice he called "justice as fairness."

The book was understood as a revival of the liberal social contract tradition, in part because of its most famous and evocative idea, the "original position." There, "persons" meet behind a "veil of ignorance" that blinds them to their social characteristics—the things they have acquired because of social contingency and natural accident. Once behind the veil, they agree how a just society would be structured without letting these contingent facts get in the way of their choices. Rawls said they would choose two principles of justice as a set of standards for judging the justice of a society. The first was a principle of liberty, which affirmed citizens' basic rights and liberties. The second was a principle of equality. It included the "difference principle," which arranged social and economic inequalities so that they worked to the benefit of the least-advantaged members of society and stipulated that offices and positions must be open to all under conditions of "fair equality of opportunity." Society was conceived as a "cooperative venture for mutual advantage." One benefited more from being in it than outside it. The principles were there to make sure the advantages of membership were divided up in a fair and just way. They ensured that the things people had were not theirs because of luck, and that rewards for the efforts of individuals did not get in the way of social stability.

The second of five sons, two of whom died in childhood of diseases they contracted from him, Rawls knew a thing or two about luck.[2] He spent a

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lifetime working away relentlessly at a single theory that made him the most celebrated political philosopher of his generation, so he knew something about effort and reward too. After *A Theory of Justice* was published, Rawls's ideas would be pulled in different philosophical and political directions. But he began to work on them long before, in a moment just after the Second World War when the contours of liberalism were being reconfigured.

It is often said that in the dry, dusty scene of midcentury analytical ethics, philosophers cared more about whether to cross the lawn of an Oxford college than politics. Yet when a young Rawls returned home from three years of service in the Pacific Theater to begin his graduate studies at Princeton in the spring of 1946, politics was inescapable.[3] Rawls soon set about constructing a "social philosophy" to make sense of the era of total war and the world it created. Over the course of the 1940s and 1950s, the young Rawls would search widely across the human sciences for the conceptual tools to do so. A philosopher by training and by temperament, Rawls was also an intellectual magpie. Writing in the mid-1950s, he conceived of his aims as threefold. First, social philosophy, like sociology, economics, history, political theory, and jurisprudence, aimed to provide a "conception of society and the human person involving acceptance of certain general facts as true about society." Second, like the rest of philosophy, it described a system of evaluative principles, in this case ethical ones. Third, it offered a vision, a "total picture of man and society," Rawls wrote, borrowing from Joseph Schumpeter, that tied the whole together and made it "come alive for us."[4] Rawls's search for these three pillars began within the ideological context of postwar liberalism.

By the time Rawls elaborated his mature system, it was so complex and introduced so many novel concepts that it was hard to see its original motivations. He began his philosophical career at a moment in the late 1940s when liberals were increasingly concerned with a defense of the freedom of individuals and a critique of the institution that, paradoxically, would be submerged in Rawls's mature theory: the administrative state. In the aftermath of the New Deal and the Second World War, Rawls initially took on a barebones liberalism that tried to limit state intervention and planning. At the level of both argument and metaphor, he borrowed from various strands of anti-statist and pluralist liberalism. During the decade after 1945, Rawls's conception of society and the person initially owed more to Wittgenstein, Hume, Tocqueville, and Hegel than to Kant, and it was concerned with the limitation of concentrations of power accumulated in the administrative state as much as with redistribution. His attempt to find procedures for ethical evaluation sprang from a set

of worries—about how to limit the effects of prejudice and ideology and yet preserve the sanctity of individual judgments—that were common among midcentury moral and political philosophers. *A Theory of Justice* must thus be understood as a book of the postwar, not as a response to the years of the Great Society. Its preoccupations originate in these earlier years.

Rawls's first efforts generated a number of lasting ideas. His explorations of how to set up a society in ways that made state intervention unnecessary led him, at the turn of the 1950s, to the notion of a "property-owning democracy" that later underpinned his ideal vision of society. A number of the ideas associated with the writings of the later Rawls began here too: his concern with consensus and deliberation and his quasi-Hegelian emphasis, which many later saw as underpinning his turn from Kant to Hegel.[5] But in the first instance, Rawls left many of these early concerns behind. Over the next years, he developed the contours of his mature theory. He moved left in line with the debates about equality and social justice that preoccupied the revisionist wing of the British Labour Party, whose thought Rawls encountered during a year at Oxford in 1952. It was social democratic Britain as much as Cold War America that provided the political theories and orientation that shaped Rawls's own, and that showed him the political work his ideas could do. In these years, as he broadened his political vision and expanded his toolkit to include not only welfare economics and ethics but sociology and moral psychology, Rawls developed the conceptual framework and terms of art that would become so influential: the original position, the basic structure, and his principles of justice. He was searching for the right forms of philosophical abstraction to give shape to the vision of person and society that he found in liberal ideas and institutions. By the end of the 1950s, the architecture of his theory was in place.

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The liberalism of postwar America had a dual character. In the aftermath of the Depression, there had been widespread acceptance of the need for state control and intervention in social and economic life. The warfare state forged by the Second World War made many citizens see government as more legitimate than ever.[6] After the war, a corporate liberalism—characterized by an openness to the state, opposition to radical labor, and a commitment to a corporative economy and "noncoercive" solutions—thrived at the highest levels of politics.[7] Yet this liberalism also marked a retreat from the acceptance of planning and state intervention in the economy that characterized the First

New Deal. The Keynesian consensus that underpinned the "growthmanship" of the 1950s circumscribed the role of the state to the task of stabilization, a move that to many marked the "end of reform."[8]

This retreat from state-planned redistribution was in part a function of the rise of anti-totalitarianism and the redefinition of liberalism in opposition to the "totalitarian threat."[9] Fears about the collapse of liberal society into militarism proliferated, with worries that America was becoming what Harold Lasswell called a "garrison state."[10] These fears were invoked not only by those who worried about totalitarianism but by opponents and critics of the New Deal as well. Anti-statists described government's role as limited to that of an "umpire," or guardian of the "free enterprise system." Business leaders claimed society was standing on the edge of a fateful line between capitalist freedom and statist slavery.[11] "Critical liberals" rejected the politics of planning and sought to check the power of the administrative state's expert agencies with legal oversight and to roll back New Deal reforms.[12] Having for a time accommodated the labor politics unleashed by a decade of depression, reform, and war, many liberals were increasingly wary of labor radicalism.[13] After the war emergency subsided, they deployed ideals of liberty, law, and the Constitution, as well as the Bill of Rights, or "constitution of rights," against mass politics and executive power.[14] When Friedrich Hayek published *The Road to Serfdom* in 1944 to widespread acclaim, it tapped into this persistent and "powerful strain of Jeffersonian anti-statism."[15]

Among certain liberal thinkers in this moment, there was a growing effort to develop moral theories to judge the limits of state institutions.[16] This marked a departure from the interwar years and the triumph of Progressivist theories. Then, many legal realists, sociologists, economists, and theorists of public administration who supported the New Deal state and economic planning had appealed to social and economic "facts" instead of moral rules and principles, separating value from fact, and ethics from science. Logical positivism and its offspring emotivism had rendered the study of substantive ethical questions nonsensical.[17] But since then, critics of the administrative state had challenged "relativistic," pragmatist, and "value-free" strains of American democratic theory for enabling totalitarianism.[18] In the early 1940s, with anti-totalitarianism at fever pitch and even John Dewey attacked as a "threat to democracy," many lawyers, philosophers, and political scientists claimed democratic morality as a bulwark against totalitarianism.[19] Natural law theory underwent a revival.[20] A wariness of concentrated political and economic power—of the state, of corporations, of labor unions—returned

to certain quarters of liberalism, which now elevated the individual and associational life. Some argued that a new constitutionalist order had to be built, by restoring what the Harvard liberal theorist Carl Friedrich called "faith" in the "rationality of the common man."[21] The philosopher and former colonial official Walter Stace, who was Rawls's adviser at Princeton, called for a moral defense of democracy from totalitarianism's attack on the "belief in the individual's infinite value."[22] Anti-totalitarian democracy required a new kind of "objective ethics"—a universal but non-absolutist moral theory.

Rawls grew up on these ideas. He was born in 1921 in Baltimore to an affluent Episcopalian family. As an undergraduate at Princeton in the early 1940s, he was already concerned with ethics in non-state communities and with individuals as the source of value. At first, this took a theological form. Rawls developed a vision of community in which morality was not defined by the state or the pursuit of a highest good, but located in interpersonal human relations.[23] Salvation was not earned through work and action, but through the proper "recognition" of human persons "as persons"—as members of a universal moral community.[24] Against the social contract tradition, with its "egotism" and view of society as the result of "bargaining" between atomized individuals, and against Pelagian moralities based on merit, which rewarded individual actions, Rawls took "persons" as the basic unit of his ethics.[25] He carved a space between collectivist theories, which gave little space to individuals, and individualist ones, which abstracted individuals from their social contexts.[26] Rawls's theological interests were dulled by the war, though his philosophy retained traces of theodicy and in many respects took the form of a secularized liberal Protestantism.[27] When he began his doctoral work on the GI Bill, he embarked on a project that shared much with those who saw in totalitarianism a crisis for social science and its capacity to explain social developments: Rawls sought to construct a system of objective standards for judgment that would stand without a God, or a state, to ground it.

Rawls entered the Cold War university at a time when "Western Civilization" courses were reinventing liberalism as an anticommunist and anti-totalitarian "fighting faith."[28] Social scientists had grand ambitions, both intellectual and to serve the interests of the state. The behavioral, cybernetic, and systems sciences were flourishing, while the tools of modernization and rational choice theories were taken up across disciplines.[29] Sharing these system-building ambitions, Rawls benefited from the "golden age" expansion of research universities.[30] He was able to capitalize on the "tool-trading" of the "depoliticized" postwar human sciences without being constrained by the

practical demands that faced policy and defense intellectuals.[31] Rawls began a lifelong search for a general theory to evaluate political institutions. In the dissertation he completed at Princeton in 1949, he put in place a framework that he retained, in outline, for decades.

At the core of social life in democracies, Rawls suggested, there was a "consensus."[32] The aim of philosophy was to find a "reliable method" to appeal to that consensus, a "heuristic device" to yield justifiable principles for judgment that would allow room for change. "In the face of numerous ideological warfares, waged by means of institutionally-supported propaganda machines," Rawls wrote, "men are likely to doubt not only the efficacy of reasonable principles, but their existence." This had happened to many philosophers, who now either thought ethical principles were impossible to find or accepted their imposition by "authoritarian" means. Rawls was hostile to these positions, which he saw as common to "intuitionism" and utilitarianism.[33] He set himself a task: to find open and noncoercive procedures that specified under what conditions the reform of common-sense judgments could be justified.[34] He examined the justification of ethical beliefs, the norms of decision and action, by exploring what principles were "implicit" in "intuitive judgments."[35] To do so, he rejected appeals to "certainty," "by fiat and proclamation," and to "exalted entities" like "the State, or the Party, or the Tradition, or the Church, or any one of a number of agencies."[36] He argued that "rational discussion" was fundamental to discouraging those "social elements which, in democratic countries, we have tried to get rid of: the authoritarian, the arbitrary and the irrational." It was through discussion that social consensus could be revealed.[37]

In democracies, Rawls argued, "the law," not the state, was the primary source of authority. He gave a radically minimalist, eliminativist account of the state as "the collection of men—senators, administrators, judges, police etc.— carrying out certain tasks according to laws under a constitution of sorts."[38] The men and the laws were the state; the state was simply "their legal mask in a court of law."[39] Laws were conceived as the rules that "public discussions" had shown to be "right and reasonable," and that "citizens, as a group of intelligent men," had "voluntarily consented to" as binding. Rational discussion, Rawls wrote, was the "essential precondition of reasonable law." This process of reasoning was crucial to democratic practice, but also to theory: it could provide a foundation for ethical principles, locating authority "only in the collective sense of right of free and intelligent men and women."[40]

Rawls thus proposed as his heuristic device a "discussion" between "reasonable men"—imagined as "average, rational, and right-thinking and fair men,

irrespective of wealth, social stratification, nationality, race, creed or religion," with average emotional and intellectual intelligence and sufficient knowledge and education, defined by a capacity to judge evidence in a court of law.[41] He borrowed the idea of the reasonable man from tort law cases involving negligence, where the standard of a reasonable man who could have "foreseen the risk" functioned as a "criterion" for establishing responsibility.[42] He borrowed the idea of the average man—who, just as the scientist was an expert in science, was expert in "moral matters"—from democratic theory.[43] Democratic men, not technocratic or scientific experts, were judges of morals. Rawls implicitly took Dewey's side in his famous debate with Walter Lippmann about the role of citizens and experts in democracies.[44] Yet science was not "*the* model of rational inquiry," and Rawls thought Dewey went too far in making it so.[45] Rawls also injected an Enlightenment idea into the criterion of reasonableness, by including a "capacity for understanding suffering." In the "free and uncoerced opinion" of those men, cleansed of the influences of propaganda, interest, and ideologies—of what Rawls called "the race soul," "the dialectics of history," and "the distant revelation"—an ethical consensus could be located.[46]

Though Rawls left much unsaid, about certain things he left no doubt. He conceived this exercise in reasoning as his contribution to the project of shoring up democratic thought against authoritarian threats. Philosophy and the Constitution were invoked against alternative ideologies and interests. The resonances of this move were not only anti-totalitarian. The law, the Supreme Court, and the "court" of interest-free public opinion were part of a rejection of a vision of politics as state control and as collective bargaining between labor and capital.[47] By the mid-1940s, the ideas of consensus and the common man were invoked by liberals against the threat of the "authoritarian personality," but they were also part of a defense of a "rationalist" alternative to class politics.[48] Rawls likewise wanted to avoid interests and ideology and to find an appropriate definition of the "we," without "falling into the error of relying on a limited or biased group morality."[49] It was not easy for citizens to step outside their prejudices—the "public" prejudices "against the Negro in the South (and elsewhere), on the West Coast against the Oriental." But these prejudices did not "accord with the democratic ideal" expressed in the Constitution; that was why such beliefs were called "prejudices."[50]

Rawls's racial liberalism was twinned with a worry about appeals to class and group interests. He was committed to the idea that the right "device" could help get beyond both.[51] Rawls also thought such a device could get beyond something more universal: the partiality of persons. His vision of ethical and

social life was associational, and he saw actions in the family and the "fellow-ship of close associations" as necessarily and appropriately motivated by love and "direct, free and spontaneous" affections. That partiality had to be socially constrained by "rational" procedures. Rawls did not want ethical judgments at a social or political level determined by love, prejudice, interest, or ideology.[52]

When it came to explaining why, he was just getting started. These concerns with persons and procedures were quasi-Kantian, but Rawls did not yet invoke Kant. Over the next decade, he ranged widely in his exploration of potential procedures. Economics, political science, psychoanalysis—Rawls experimented with ideas drawn from each but faulted all for lacking an objective standard for common judgment. He would also develop the vision of person and society that was here embryonic—one that was hostile to authoritarianism, coercion, and social control, and saw society as ethical, associational, and underpinned by a consensus that could be accessed through rational discussion.

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In the postwar years, a new generation of philosophers developed a view of morality as something that existed in the world that could be studied using rules of induction and observation. They devised an approach to ethics that focused on the "natural" facts of ordinary human relations—above all, the "facts" of moral psychology—and took as its cornerstone Ludwig Wittgenstein's later work, particularly the posthumously published *Philosophical Investigations* (1953).[53] Under Wittgenstein's influence and that of J. L. Austin's ordinary language analysis, the study of ethical terms was replaced by the study of their meanings understood through use—the study of what words do and how they are embedded in practical life. This enabled a different kind of ethical inquiry: the study of action and institutions. Wittgenstein's shadow loomed large over analytical philosophy, particularly at Cornell and Oxford, where Rawls studied in 1947 and 1952, respectively, before returning to Cornell to teach in 1953.[54] Rawls became immersed in Wittgensteinian ideas, initially through his teacher at Princeton, Norman Malcolm. He joined a transatlantic community of ethical theorists, which included Richard Brandt, Roderick Firth, William Frankena, Stephen Toulmin, and Kurt Baier, in their search for a naturalistic, objective foundation for ethics that took Wittgenstein as inspiration.[55]

Wittgenstein meant many things to many people. Rawls's Wittgenstein initially came mediated through Malcolm and Max Black, whose

ideas—particularly their defense of the value of inductive reasoning as a way of explaining ethical facts—shaped how Rawls developed and justified his method in his dissertation.[56] Next, Rawls read the philosophical psychology and grammatical analysis of the likes of Malcolm, Elizabeth Anscombe, and Philippa Foot, who saw in Wittgenstein's naturalistic understanding of the person crucial insights into the conventions of human life.[57] Rawls already thought that morality was interpersonal, existing in the recognition of other persons as persons in communities. Soon he used Wittgenstein to explain that morality was social, defined by its use—there in the world to be discovered, not chosen.[58] Having a morality was like having a sense of humor. It was part of what it meant to be human, part of a "form of life." The phrase was Wittgenstein's, but Rawls recognized that it was a "Hegelian notion."[59] He used it to describe morality as a natural phenomenon, continuous with other aspects of life—with "natural feelings" like pity, sympathy, compassion, and the "fellow-feelings." It developed in childhood through the love that flourishes and the guilt that is experienced in the family, in friendships, and then in larger associations—a process of development Rawls studied via Freud, Lévi-Strauss, and Melanie Klein and his preferred accounts, Rousseau's *Émile* and Jean Piaget.[60] Moral principles had to be understood in terms of the moral feelings, like shame, remorse, or guilt, which were responses to breaches in natural interpersonal relations of recognition and "part of the way we show our recognition of persons as persons."[61] To fail to differentiate between persons and things was thus a failure of morality. A person who failed to do so would be, to use a phrase of Wittgenstein's, a "person who pitied only dolls."[62]

This was a vision of ethical life built from the bottom up, where morality was universal, natural, and constitutive of personhood, yet was developed and earned in communities.[63] Rawls's youthful communitarian vision of ethical life persisted. He used Wittgenstein to think about how philosophy might understand it. Wittgenstein suggested that philosophical problems could not be resolved through a process of penetrating or getting behind phenomena. The search to uncover hidden truth was mistaken. "What we want to know lies already in sight," Rawls wrote, glossing Wittgenstein.[64] In the "Wittgenstein Lexicon," which Rawls constructed to grapple with these ideas, he wrote that "philosophy is an attempt to bring these things which we know in view."[65] Social philosophy, he later said, "can be viewed as self-analysis, an examination of one's own moral opinions."[66] Rawls's major departure was to say that additional devices—models of discussions and procedures for self-inquiry—were required to help us see what was already there and how we might change it.

What did Rawls think was already there? His portrayal of interpersonal, natural morality was universal, but his vision of society was historically specific, adapted from the pluralist theories that accompanied the midcentury attacks on concentrated state power. Political pluralism, along with its industrial variant, collective bargaining, was meant to "institutionalize" industrial conflict.[67] In the postwar years, it provided a depoliticized vision in which interests and institutions replaced passions, ideologies, and solidarity, and voluntary associations and "civil society" supplanted and devalued class-based political action.[68] Enthusiasm for Rousseau among Anglo-American pluralists was abandoned for the warnings about the perils of excessive centralization and federal bureaucracy contained in Alexis de Tocqueville's long-ignored *Democracy in America* (1835–1840), reprinted in 1945.[69] With its appreciation of American localism, it became the lynchpin of newer theories of the "civic culture" and of those that celebrated associational life as the barrier against the administrative state at home and the totalitarian state abroad.[70]

These ideas were hard to miss. Rawls encountered a range of critiques of concentrated power in a seminar on American democratic thought in 1949–1950 taught by the Princeton political scientist Alpheus Mason. There Rawls read Tocqueville, Jefferson, and nineteenth-century critics of capitalism like Brooks Adams and Richard T. Ely, both of whom Rawls saw as sketching complex dynamics between the capitalist class, the administrative state, and centralized bureaucracy. He largely agreed with the sociologist Robert Lynd's diagnosis, in the context of anticommunist repression, of the threat to academic freedom posed by "big business" and its "scapegoating" of African Americans, Jews, and organized labor. The social gospel critiques of the capitalist had concerned Rawls since his undergraduate days.[71] Now he also read constitutionalists like Edward Corwin and explored how the courts, particularly judicial review, functioned to protect rights from the executive and legislature.[72]

Rawls was especially taken with Tocqueville, both his idea of the New England townships as "great schools of democracy" and his suggestion that associations might play a role, like law, in restricting the state and distributing power. Tocqueville's analysis seemed acute to Rawls, particularly his argument—Rawls thought it sounded Marxist—that "the constellation of social conditions binds the capitalist as well as the worker." Tocqueville was afraid that industrial capitalism would eliminate social bonds and create a new aristocracy. That aristocracy, Rawls wrote, could only then be checked by a "'welfare state' to use a phrase with its present coin." Yet that welfare state was

itself a "gigantic engine of encroachment on all areas of life."[73] In the face of it, associations should provide order and stability. They served as bulwarks against tyranny and instruments of power against the government and the "manufacturing class." Without them, the individual would be "left helpless before the State, and against other concentrations of power." "The totalitarian state," Rawls wrote, "is the state of the 'unassociated man.'"[74]

Rawls borrowed from these ideas in a pair of lectures probably delivered in 1951, where he developed for the first time his own substantial social and political vision.[75] He rejected theories that compared society to an organism or a mechanism. "Society," Rawls declared, "is like a game," conducted according to man-made, agreed-upon rules that allowed players to have reasonable expectations and make reasonable decisions. It was a game of multiple players acting in their own interests. "The motor of society," Rawls wrote, "lies in many small groups." Self-interest meant looking out for your association. Government was a regulatory authority, a system of rules that stabilized associational life. The game was not centrally directed. If it were, society would be more like "an army" than a game. But it did need an "umpire" to enforce the rules and secure the "general conditions of social order." Laws and government were there to ensure the game did not break down.[76]

Individual persons were the primary unit of Rawls's ethical theory, but his social vision looked to the "social units" that connected them: "colleges, counties, cities, churches, corporations, trade unions."[77] What mattered most was the family, church, and firm. These Rawls would describe in naturalized terms. He did not use the legal language of personality, deployed to describe the artificial groups of union, corporation, and state and associated with the partisan politics Rawls tried to diffuse.[78] The family was the primary association and, conceived as the household, the basic economic unit. In this, Rawls followed contemporary social theory and policy, which institutionalized the family in a variety of ways, from the suburban home to the family wage.[79] He saw families and small associations as sites of ethical development and meaning. They had a structural role, enabling stability and preventing the centralization of power.[80] Rawls framed this stabilizing function in terms of the game: the morality of players, those "motors" of society, were irrelevant to the smooth functioning of the game. While relations within families would be altruistic, it was "safe" to assume that relations between "teams"—between households, firms, and associations—would be the opposite.[81] Stability relied not on altruism but on associations playing the game, which meant, by definition, acting in their own interest.

Game analogies were widespread in postwar thought. Rawls later listed prominent examples: Wittgenstein, Karl Popper's politics, the psychology of Piaget, the legal thought of the Oxford philosopher H.L.A. Hart, and game theory.[82] The idea of the game, Clifford Geertz observed retrospectively, seemed "to explain a great deal about a great many aspects of modern life."[83] When Rawls first described society as a game in 1950–1951, he was at Princeton, the home of game theory, and he cited John von Neumann and Oskar Morgenstern's already influential *Theory of Games and Economic Behavior* (1944).[84] But it was less their account of rational behavior than the tradition of analogizing games with institutions Rawls had in mind. Rawls was studying economics with William Baumol and had previously taken a class with Jacob Viner.[85] In these years, political problems on both sides of the Atlantic were parceled off to economists. Much of Rawls's political education came from following debates in the new welfare economics, theories of utility, consumer behavior, and general equilibrium, and from his encounter with the utilitarian tradition of "institutional design" (in which Rawls placed Hume, Adam Smith, and Bentham).[86] It was in the game analogy that Rawls found the "most important proposition of social philosophy . . . that it is not necessary to have central direction to achieve a rational social order."[87] The rules of the game can be structured so the players achieve social ends simply by taking part; the "ideal entrepreneur," he later wrote, can do good while playing the "capitalist game of maximizing profits."[88] Rawls here adapted from visions of commercial society characterized by virtues of fellowship and sympathy, where interpersonal relations were shaped from the bottom up by rules and conventions, not a strong sovereign authority. Adding a Humean twist to his Wittgensteinian account of natural sociability, Rawls welcomed this society in which rules were man-made but created out of customary institutions like promises, contracts, and agreements.[89] He would write in 1959 that "the conception of justice I set out is perhaps closer to Hume's view than any other."[90]

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There was one use of the game analogy that stood out: the description of business as a competitive game offered by the Chicago economist and teacher of the libertarian right Frank Knight. A staunch defender of the price system as a tool for freedom, Knight was also a critic of the ethical consequences of capitalism for moral character.[91] Despite Knight's view that any search for an absolute standard in ethics was a "fetish" of scientific method, Rawls took great interest in

his social philosophy.[92] The task Knight defined as the key problem of political life—"to find the right proportions between individualism and socialism"—Rawls underlined in his copy of Knight's *The Ethics of Competition* (1935) in three different pens.[93] Like Rawls, Knight saw a politics of "discussion" as democracy's bulwark against bureaucratic overreach. In the tense climate of McCarthyism, Knight's anti-authoritarianism was attractive.[94] Yet it was in a critical essay of Knight's on the moral limits of markets, which Rawls annotated heavily, that he seemed to find a persuasive understanding of society. Knight described business as having the characteristic ingredients of a game—luck, skill, effort. In the business game, income accrues to owners of productive capacities (where ownership itself is based on inheritance, luck, and effort). Effort mattered morally, but Knight thought it ought not to be elevated to the status of a moral principle. Inheritance was a matter of luck. Yet luck tended to be rewarded. Rewards tracked marginal productivity, which was influenced by luck all the way down—the luck of natural talent, inheritance, and circumstance. That luck accumulated through success, while the participation of the losers in the game was reduced to "mechanical drudgery." Inequality of winnings led to an inequality of starting places and stakes in the game. The game of business was not, therefore, a good game: it did not cultivate the ideal of good sportsmanship or the other aspects of character necessary to the improvement of society.[95]

Rawls applied Knight's model of the good game to his vision of society. A good game, Rawls wrote, involves a certain amount of unpredictability, luck, and chance. For it to be worthwhile, it cannot depend on "pure luck" but requires effort and skill.[96] Players need to be able to win if they play by the rules: every game must have the feature that "we *think* we have control over our fate." One of the tricky things about games is that success accumulates: if someone wins all the time, the outcome can be foreseen, and "other players lose the zest for playing." For a game to be worth playing, inequalities need to be broken down. The outcome "can only be unforeseeable, and effort can only be efficacious, if the players enter the game with roughly equal resources," both material and spiritual. What is needed "is some kind of control over the game," to redistribute "some of the rewards of winning."[97]

But how much control? Opposition to concentrated power here translated into a minimalist politics. Rawls departed from his early eliminativist image of the state as a mere collection of individuals, which denied the possibility of a group agent. Now he framed government as capable of enacting change, but highly limited. Governments, Rawls argued, should enforce only the kinds of rules that everyone knows they want: rules of the highway that maintain

the direction of traffic, rules for public health and safety, and rules for defining crimes, contracts, weights and measures, as well as rules to solve basic disagreements and answer to "certain general conditions of social order regardless where we are going." "We don't need agreement all down the line from theology to tastes in tea," Rawls wrote, crossing out his earlier, even more minimalist example, "the day of the week." Rules set the basic terms for common life, but left people alone. People want "settled rules," enforced by "local governments," about "how we shall drive on the highways," but they "all want to go in different directions." Governments cannot tell them where to go, Rawls insisted. To do so would be to "tyrannize" over them.[98] It is perhaps not surprising that Hayek could write twenty years later that he had "no basic quarrel" with Rawls.[99]

At the turn of the 1950s, they had a lot in common. Indeed, in a political landscape where many attacked planning but nonetheless accepted the need for substantial government intervention in the economy, the constraints that Rawls placed on the scope of legitimate state action and the metaphors he deployed put him in the company of those who used the language and rhetoric of radical anti-statism. His use of the image of the highway was telling: borrowed from Walter Lippmann's *The Good Society* (1937), it was commonly used among early ordo- and neoliberals, including Hayek and Lionel Robbins, to differentiate the liberal from the planned state.[100] They envisaged the state and the rule of law as responsible only for establishing and enforcing the right kind of economic life, and they likewise used the metaphor of the game.[101] Moreover, Rawls's examples of appropriate government policies for concerns that did not have their interests represented in the "normal run" of the competitive game, like "future generations" and the "conservation of resources," also included the classical liberal tropes of national defense and lighthouses.[102] The functions of government, the umpire of the game, hung on a single idea—the common rules on which people could agree. Rules of government interference changed over time, as beliefs changed: Rawls's example of a new sort of government action was fiscal policy to limit the "hazard" of unemployment and maintain the "fullest employment possible" insofar as it was consistent with the free price system.[103] This was a nod to the Keynesian consensus and the commitment to maximum, not full, employment in the Employment Act of 1946, which won out over alternative visions of state economic planning and the robust Keynesianism of the Full Employment Bill of 1945.[104]

Rawls was less Keynesian than the consensus. He wanted changes to be slow and rule-bound. Worried about the discretionary powers of administrative agencies, he looked for stable rules to limit discretion and "avoid

arbitrariness" by providing a "steady background" against which choices could be made.[105] He argued that an ideal legislator ought not to take rules on or off the books unless doing so affects "the general system of rules enforced by government" in that "there is a reasonable expectation that any person, taken at random, would be benefitted by it when the system is thought of as being held to over the long pull." "Redistributive changes" could be worked out within this general framework, but government ought not to be a "purposeful factor in their occurrence."[106] Rawls described his vision not as one of a "laissez-faire" society, but a "prenez-garde" one. He agreed with many of his contemporaries that it remained impossible to return to the laissez-faire ideals that a half century of state-building and war had eclipsed. Yet the functions of government were still to be constrained by the idea that we should "take care" and watch out for those who might want to define our purposes, values, and ends, both in times of "peace" and in times of "emergency."[107]

Here Rawls invoked a wartime anti-totalitarianism in service of a peacetime anti-statism: the attempt to define the ends of citizens, he wrote, may mean "the use of assassins, informers, gas-chambers." The United States had managed to escape this fate thanks to its "political maturity" and its lack of a "dynamic political creed," like fascism or communism, geared to a single aim.[108] Nonetheless, "we should beware" of centralized power. The proper function of government should be limited to the enforcement of basic rules that allow people to live together, leaving persons and associations to pursue their own ends.[109]

This entailed a series of demands typical of postwar liberalism: government had to allow consumer sovereignty, the "entrepreneurial control of resources," a constitutional Bill of Rights, and equality of opportunity. But "political processes could not be relied upon . . . to run the economy."[110] Elsewhere, in an early 1950s essay concerned with the "civil and economic rights" of individuals and their violation by associations, particularly religious and economic associations, Rawls wrote that the state's role was not to intervene in such groups, but to allow people to disassociate from them. Where an entrepreneur hires only individuals of his own religion, Rawls saw this as permissible, so long as the state "affords sanctuary."[111] Yet the state would have to intervene sometimes—to halt the buildup of economic and political power, or to stop the game stalling. Otherwise society might become, in Rawls's metaphor, more like an army—this time a private army of economic actors.[112] Pluralism must protect against the garrison state, but it also ought to prevent private associations from becoming militias.

It was in his discussion of state power that Rawls introduced for the first time an idea that he would later use to designate the ideal regime for his just society. For the young Rawls, the challenge was to sustain non-interference while ensuring the stability of the game over time—to balance "freedom" and "order."[113] Stability requires guaranteeing that people have enough of an equal start that they want to play. To do that, the prenez-garde state, Rawls wrote, would aim at a "property-owning democracy":

> Government should follow a program designed *both* to protect the necessary rewards of playing, as well as to guarantee, if not an equal start, for this is impossible, at least that sort of situation in which most persons we want to play will *think* that they have an equal enough start to keep the game moving. More definitely, this means assuring a fairly wide distribution of property; we want a property owning democracy where everybody has a stake. But on the other hand we must allow numerous and substantial rewards above the average to draw forth the efforts of the players. This obviously is difficult to do: it requires the most difficult sort of balancing . . . and it requires a constant policing, not only in the shape of enforcing those rules of the game which specify the game, but in the shape of keeping things even.[114]

This puzzle came to preoccupy Rawls: the "difficult sort of balancing"—how to achieve the "necessary wide distribution of resources and power and prevent the concentration of resources and power while still rewarding success so as not to stall the game."[115] The players of the game should begin with a roughly equal start. Rawls thought people had different abilities and were willing to take different risks. Inequalities that resulted from these differences need not be eliminated, provided that the general system of rules functioned to keep things "even" enough for the game to carry on. The challenge was how to balance the need to reward effort against the risk that winners would accumulate too much and dissolve what Rawls, following Knight, called the "luck element of the game."[116]

This was the first time Rawls described the solution to this puzzle as a "property-owning democracy"—a vision of an "open" society where capital is widely dispersed and the rules and stability over time are secured without government interference. He did not yet use it as a term of art, and provided no source: the later source he cited, the economist James Meade's *Liberty, Equality, and Efficiency* (1964), would not be published for over a decade (though Rawls was already aware of Meade's work and was reading similar sources). If it had a specific provenance, it was likely drawn from the republican tradition and its commitment to property dispersion, and in particular from Tocqueville

(especially his view of inheritance laws as a means of securing a wide distribution of property) and Jefferson (whose denouncement of the "concentration of property . . . and the uncertainty of tenure" and belief that a "wise and fair distribution of land" was necessary to good government Rawls noted with approval).[117] In these thinkers, Rawls found both a defense of inheritance laws rather than active redistribution and a set of recognizable anxieties about the demands of labor and the power of the state.[118] Rawls did not want a politics of income and pay disputes, but one of property. He insisted that keeping the game going required wide distribution of powers and resources, as well as "considerable social mobility between classes; of seeing to it that one holds position in society based on one's efforts and skill. It involves, I think, the sort of thing Jefferson had in mind when he spoke of an aristocracy of talent."[119] Rawls did not yet speak of "natural talents" as "arbitrary."

This linking of decentralization with rewards for effort and entrepreneurial incentives within a free price system implied that private ownership was the bedrock of an open society. What was crucial was less redistribution or limiting inequality, and more the dispersal of power away from centers and toward peripheries. Rawls's account of what it took to stabilize the game had an ambiguity that persisted in his later work: what mattered was that the players *think* they have an equal enough start. Was it their experience of the game that mattered—that the players think they have an equal enough start, not that they do—or did the extent of equality matter from another point of view? As Rawls explored what the protection of stability and moral community in an "open society" required, he carried on exploring this question. His concern with how much and what kind of redistribution would be necessary became central. Soon Rawls would focus on the extent to which upholding this vision required the elimination of the effects of contingency and luck by the rules of the political game themselves.

Rawls would leave behind this barebones liberalism, with its anti-interventionist commitment to small government. He swapped the analogy of society and the price system for different examples of endurance over time, such as constitutions. Though he never dropped the metaphor of the game, he supplemented it.[120] The game's regulatory rules and players did not capture the complex ways in which rules shaped character, nor the fact that persons pursued their own ends not as rational egoists or strategists but because of their deep partiality and love for their families and associations. Rawls wanted to protect that partiality. But that partiality was what made impartial rules and institutions necessary. In notes from 1952–1953, Rawls gave these ideas a Wittgensteinian inflection. He described how the rules of society existed to protect forms of life:

What we can do is to make our society a free society in which various forms of life are tolerated by the state and in which mutual toleration between forms of life is encouraged. It is true—trivially so—that men, to live together, must agree on something; but they must not agree on fundamentals, or things they think in some religious sense most important, if by this one means the *one* proper form of life for a reasonable man to adopt. All they need agree upon . . . is in taking common action, via the state and other general rule mechanisms, to foster the necessary and fostering conditions for any form of life at all. . . . One avoids the forced choice, the either/ or, of this or that form of life here and now, on this spot at this time, for everybody, by making a society which allows these differences to develop within a commonly accepted general structure.[121]

Here was a vision of an institutional structure to secure the existence of the associations in which persons could be treated as the equal persons Rawls thought they were, if only we could see them clearly. It was a model built on the potentiality of consensus and agreement, on rules, uncovered and specified through procedures, designed to dull the force of class and group conflict, ideology, prejudice, and passion. This was a long way from the egalitarian theory for which Rawls would be known, yet its contours were coming into view.

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Rawls's mature theory of justice was born over the course of the decade that followed his trip to Oxford in 1952–1953. Cold War liberalism was deepening its hold on intellectual life, and McCarthyism was stifling debate.[122] As such, it was unsurprising that, like American liberals in the aftermath of the last world war, Rawls found a number of the resources for his theory not in the United States but in Britain.[123] Oxford was an exciting place to be a philosopher. J. L. Austin held his famous "Saturday Mornings" group on language and lectured on "Words and Deeds." Anscombe gave lectures on Wittgenstein's *Philosophical Investigations*, published the same year. P. F. Strawson presented the material that became his *Individuals*, and H.L.A. Hart lectured on *The Concept of Law*.[124] The linguistic analysis of Richard Hare, Gilbert Ryle, and Geoffrey Warnock reigned. Yet Isaiah Berlin and G.D.H. Cole taught utopian socialism, and Berlin, Hart, and Stuart Hampshire ran a seminar on political philosophy, which Rawls took, where they read Rousseau, Kant, and Keynes.[125] Thanks to ties between philosophers and the British Labour Party, Oxford was not only the crucible of language philosophy but also aflame with debates about inequality.

In Britain, where the aftermath of war saw the establishment of major institutions of welfare provision—the National Health Service, universal education, and national insurance—the debate about state planning, investment, and public ownership loomed large. For the Labour Party and its fellow-travelers, the question was what the relative success of these institutions meant not only for the future of welfare provision and social services, but for the left.[126] When Rawls arrived in Oxford, Labour had lost an election. The revisionist right wing of the party, under the direction of Anthony Crosland and Hugh Gaitskell, was leading a "modernizing" push to drop the commitment to nationalization and public ownership—Clause IV of the Labour Party's constitution—and foreground a moral concern for "social equality" and "social justice."[127] Arthur Lewis's Fabian Society study, *Principles of Economic Planning* (1949), which had recently been published, rejected the importance of public ownership and advocated redistributive policies by progressive taxation in a market economy. James Meade's *Planning and the Price Mechanism* (1948) envisaged the role of the state as securing the preconditions by which the market could efficiently allocate and fairly distribute resources and achieve the Keynesian objectives of full employment, stability, and equity.[128]

Over the course of the subsequent decade, many would become gripped by a transatlantic debate about sociological changes in modern capitalism. Social theorists in the 1940s had tied critiques of concentrated power to deeper transformations in the nature of capitalism and the state. Pessimistic accounts of long-term decline proliferated, from Karl Polanyi to Joseph Schumpeter. In his bestseller *The Managerial Revolution* (1941), James Burnham adapted an argument made a decade earlier by Adolf Berle and Gardiner Means, and separately by Keynes, to popularize the idea that the historical transition between proprietor and corporate capitalism had generated a new form of economic life: ownership of corporations was now divided from their control and management, and excessive power lay in the hands of a new managerial class (rather than property owners).[129] In mid-1950s America, as the pessimistic mood lifted and the concern with stability gave way to a hunger for growth, social liberals drew on this analysis to make sense of the new age of affluence.[130]

Amid the relative political calm, many claimed that transformative ideas were exhausted. The ideology of the "end of ideology" arrived.[131] For some this was a cause for concern and pessimism. They worried about what David Riesman called the new "social character," the cultural consequences of the consumer republic.[132] The political theorist Judith Shklar observed a "cultural fatalism" that led to "not only a decline of social optimism and radicalism but also the passing of political philosophy."[133] For the political theorist Sheldon

Wolin, "the political" was submerged beneath the economic and the social. Traditional political problems were confronted, but only in the study of "non-political groupings," like "trade unions, corporations, bureaucracies and neighborhood gangs."[134] Managerialism meant that both politics and political theory itself were waning. Others were more optimistic. Daniel Bell saw in the logic of managerialism the seeds of a "post-industrial society" beyond capitalism—a mixed economy in which the distinction between private and public ownership no longer mattered. If it was management and control rather than ownership that was tied to power, then a concern with public ownership was irrelevant.

This analysis was used to justify the anti-Marxist focus of Cold War social thought: capitalism had eradicated the need for socialism, or would eventually provide for it from within, without the need for class struggle. Soon, a new wave of social democratic liberalism came to occupy the space cleared by this analysis.[135] This was particularly true in Britain, where, earlier than in the United States, these arguments justified prioritizing equality and social democracy above socialism. Labour thinkers, from liberals like Crosland to Richard Crossman and the Bevanite left, read Burnham closely, particularly his argument that state ownership and central planning entrenched privilege and empowered the managerial elite.[136] Many feared managerialism was damaging both nationalized industries and corporations. American interpreters used Burnham to bolster an anti-totalitarian anti-statism, but in Britain, Crosland wrote, no one any longer believed Hayek's "slippery slope" argument that interference in the market led to totalitarianism.[137] Instead, British Labour thinkers borrowed these ideas to justify pluralism and decentralization and to redefine socialism's aim as equality, not common ownership. Crosland argued that "the rights of property, private initiative, competition and the profit motive" were no longer dominant.[138] There was no need for the state to seize property to secure socialism. "Post-capitalism" was on its way. In fact, its theorists thought it was already here, if only they could see it clearly.

These ideas extended deep into Oxford, where the lines between the Labour Party and academic liberals were porous. Hart and Berlin had close ties to the revisionist and Fabian wing of Labour, whose MPs were frequent visitors to Oxford high table. Hart had been an undergraduate with Gaitskell and during the war lived with Douglas Jay, who had authored an influential attack on state ownership that defended an egalitarian idea of social justice.[139] As Labour thinkers swapped public ownership for a new priority of limiting inequality, philosophers followed. The call for a reinvigorated "distributive justice" merged with the effort to inject ethics into economics. In 1950, Crosland's

close friend Ian Little's critique of welfare economics attempted to reverse the split of ethics and economics advocated by Lionel Robbins in his defense of a value-free "economic science" twenty years earlier, joining economic theory with a liberal socialism that prioritized justice and equality over efficiency and class-based redistribution.[140] In 1952, a new edition of R. H. Tawney's *Equality* was published, renewing attacks on the idea of equality of opportunity. Philosophers like Ayer, Iris Murdoch, Hart, Berlin, and Richard Wollheim debated the relative value of equal rights to property and liberty and the place of equality of outcome and opportunity in managerial societies.[141]

In response, the philosophical wing of the British New Left was born. A young Alasdair MacIntyre combined critiques of analytical ethics with Marxism. Charles Taylor, who studied with Berlin and Anscombe, became an editor of *Universities and Left Review*, one of the predecessors of *New Left Review*.[142] For this first New Left, the "managerial revolution" was not shepherding socialism into existence. Its "power elite" were the shock troops of corporate capitalism.[143] When Taylor returned from studying in Paris in 1957, enthused after reading the French edition of Marx's *Economic and Philosophical Manuscripts*, he helped ignite the philosophical rediscovery of the early Marx among the New Left.[144] Many joined studies of alienation to critiques of the bureaucracy that the Fabian vision of equality required for its implementation. On this view, the affluent society led not to socialism but to alienation.[145] For Taylor, the dream of a "reform of capitalism 'from within'" was an illusion. What was needed was "common ownership (*not* state monopoly)."[146] Revisionism put procedural stability above worker democracy. It was an elite project to secure the workings of private enterprise.[147]

When Rawls encountered these debates about equality and ownership, he had seen some of the arguments before. But it was their interpolation in the hands of the British Left that mattered for his trajectory. Though Rawls arrived in Oxford before these debates peaked, they nonetheless helped him see what political work his ideas might do. The revisionists' teleological optimism about the tendencies of post-industrial society complemented Rawls's optimism, particularly his earlier claim that a "core" consensus existed within democracies. In Britain, this optimism was not combined with sociology, as in its American iteration, but with ethics and economics. Rawls's familiarity with both, as well as his emphasis on decentralized ownership, oriented him toward the theorists who defended equality over common ownership. As he explored their ideas, he encountered socialism too. After he left Oxford to return to Cornell in 1953, he kept abreast of the British debates—about equality and

opportunity, effort and reward, and moral psychology—and these helped him rethink his earlier support of simple equality of opportunity and consumer sovereignty. He took notes on essays by Murdoch and others on equality of opportunity as they appeared, and he kept up his personal connections with Oxford philosophers, many of which lasted his life. During the year Hart spent at Harvard in 1956, he visited Rawls at Cornell. That was also the year Crosland's *The Future of Socialism* was published, which Hart had sent to him in the United States.[148] Rawls cited it when teaching equality thereafter—alongside Tocqueville and others whose thought he encountered at Oxford, including Tawney, Wollheim, Berlin, John Plamenatz, and D. D. Raphael, as well as post-Keynesian economists like Joan Robinson.[149]

While this debate about equality and the Labour Party thrived, Rawls began his work on justice at Oxford, proceeding first by ordinary language analysis. A page of notes began: "Justice. Rules for a Game. Game of Society. Social Justice."[150] Rawls now defined the "problems of justice" that would determine the trajectory of philosophy: "what is the relationship of justice and fairness"; "extent of justice: what sort of actions does it apply to"; "ranking principles of justice." He extended his interest in games and his device for judgment to social institutions, setting up a "discussion" or "reasoning game" to explore the "maxims of justice" necessary to help people choose what Berlin called a "pattern" or form of life—or, as Knight had written, a "kind of life."[151] These would create the kind of habits needed to standardize choice and (continuing his critique of intuitionism) protect people from the "tyranny" of having too much. The point of analyzing justice was to find the best maxims of organization, distribution, and freedom in situations where persons make claims on a certain "stock of goods."[152]

Surveying notions of justice, Rawls wrote that justice could be understood in terms of taxes, wages, social structures, forms of penal justice, the distributions of political office, and the structure of society itself. Maxims of justice could help decide what kind of social organization was just: was it just to organize society like a "joint stock company," or a corporation, where everyone has a stake? Maxims would also guide decisions between forms of freedom (he listed freedom of consumer sovereignty, choice, occupation and work, leisure, freedom from want), forms of equality (of income, opportunity, or stake in society), and different economic goods (economic progress, efficient allocation, full employment, and price stability). They would also discriminate between values that determined distributions. The fairness of wages, for instance, could either be calculated according to labor time, in accordance

with effort, need, or equality, or defined by the value of the marginal product of labor. Taxes in open societies could be tied to income, fixed or flat. Each of these choices was supported by different reasons: that man "ought to have the fruit of his labor"; that a man's worth "depends on his intention and effort"; that "distribution, or payment, should be in accord with needs and wants"; or that the "rule of equality" was primary.[153]

These reasons reflected the contours of the postwar British debate about the distribution of goods in welfarist or social democratic societies.[154] The claim that rewards should be proportional to an individual's or collective's productive contributions was common both to Ricardian and socialist labor theories of value and to neoclassical versions of marginal productivity theory, which saw contribution as a measure of desert but calculated income in terms of marginal product. Defenses of state welfare provision relied on a different ethic—that of meeting needs and wants. Universal social insurance schemes, designed to meet needs in market societies, provided income, services, and non-means- or contribution-tested "social assistance" to those excluded from the workforce. In postwar Britain, many debated whether welfare provision should aim at the "relief of poverty or the maintenance of a national minimum" or also at equality and, in T. H. Marshall's framing, the reinforcement of social citizenship and altruism.[155] Rawls's rule of equality corresponded to the position associated with Labour revisionists, who went beyond meeting needs and wants but also rejected the labor theory of value and common ownership. Instead, they focused on the size of income to be distributed, not its sources. What they debated was equality of opportunity.[156] Only a "pure form of laissez-faire society," Isaiah Berlin wrote, would permit all inequalities that arose from equality of opportunity.[157] Revisionists like Crosland, Jay, and Michael Young took up Tawney's condemnation of equality of opportunity. But they also tried to rehabilitate the idea by conceiving it as including not just equal access to play the game but the fair starting places of players too.[158]

What these theorists discussed less was what criteria should determine starting places or limit inequalities, particularly those arising from returns for talent and effort. In the early 1950s, Rawls began to formulate answers to this "balancing" problem. His early efforts were not always clear. He wrote on a scrap of paper during his time at Oxford that "to provide every man with such an opportunity that if he has but the initiative to take he may acquire such a stake in society as to make him conservative is the prime objective of radical politics."[159] Equality of opportunity, Rawls implied, was the aim of a radical politics. Opportunity twinned with initiative allowed for the acquisition of property,

which was the basis for a property-owning democracy. Yet too much property tended to conservatism. Rawls's task was to pinpoint how much was enough.

Already in his youthful theological writings, Rawls had indicated his skepticism that persons could earn the favor of God or "merit" election; he had emphasized that the performance of righteous acts was less important to Christian ethics than adopting ethical attitudes.[160] He did not yet fully theorize how this level of judgment about the irrelevance of merit coexisted with considerations about desert in social and economic life. But he now paid close attention to how rewards for efforts and talents could be distributed at a social and economic level. He tacked between Knight and the Labour revisionists. Knight had rejected socialist arguments that tied desert to labor, as well as the marginal theory of productivity, on grounds that contribution as measured by market prices was a matter of luck over which individuals had little control. He saw an inconsistency in the position of socialists who objected to inheritance of wealth while defending unequal reward based on differential productive capacity. One was a product of social circumstance, the other of natural talent, but both were caused ultimately by luck and contingency.[161] Inheritance of wealth was no more arbitrary than inheritance of talent. Crosland also rejected "vague" criteria of "worth" on the grounds that it seemed "unjust and unwise to reward or penalize people . . . for inherited characteristics." He retained the idea of the "rent of ability"—the "additional reward which exceptional ability can in practice command from the community"—which raised the "question of incentives" and the importance of balancing equality with "the supply of ability (and also of effort, risk-taking, and so on)" and "economic growth."[162] Rawls noted approvingly Knight's claim that "productive contribution can have little or no ethical significance from the standpoint of absolute ethics," or as an "ethical measure of desert." He likewise made clear his aversion to theories that tied distribution to the "moral worth" and merit of recipients, though he agreed that talent and effort could be rewarded.[163] Gradually, Rawls formulated a theory that could account for these ideas.

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In 1957, Rawls presented the first version of the theory he now named "Justice as Fairness" at the American Philosophical Association annual meeting. His solution to the balancing problem was his two principles of justice. The liberty principle stated that each person "has an equal right to the most extensive liberty compatible with a like liberty for all." The equality principle stated that

inequalities were "arbitrary" unless "they will work out for everyone's advantage and unless the offices to which they attach, or from which they may be gained, are open to all." Together they expressed "justice as a complex of three ideas: liberty, equality, and reward for contributions to the common advantage."[164] The next year, Rawls clarified this last idea as "reward for services contributing to the common good."[165] Inequalities, he argued, had to work for the social advantage. They were only permissible if "*every* party" gained from them. It was "reasonable" to "acknowledge equality as an initial principle," but this should not be regarded as "final": "for if there are inequalities which satisfy the second principle, the immediate gain which equality would allow can be considered as intelligently invested in view of its future return. If, as is quite likely, these inequalities work as incentives to draw out better efforts, the members of this society may look upon them as concessions to human nature."[166] Talents were rewarded not because they were valuable, but only if everyone in a society gained from them. If inequalities were "won in return for a contribution to the common advantage," then there was no reason for complaint.[167]

This account of distributive justice soon defined a new tradition of liberal philosophy. With these principles, Rawls brought philosophical order to the ideas of the Labour revisionists. Redistribution and inequality had become far more central to Rawls's thought, and his earlier concerns with moral worth and reward found new form. Yet Rawls would continue to develop his ideas, arguing that the equivalence between "social contingencies" and "natural chance" required going beyond equality of opportunity.[168] Natural talents and the contributions or deservingness of players could not determine the starting places of players in the game of society. If society were to be just, it would have to treat inequalities of wealth and income the same way as inequalities produced by rewards for differentials in talent, ability, and the capacity for effort. Rawls would make openness to all a condition on the justification of inequality of reward. When Michael Young's long-awaited critique of meritocracy was published in 1958, Rawls agreed not only with Young's claim that public ownership mattered less than equal chances in the social game, but also with his argument that "meritocracy" or a system of "natural liberty" where natural talents themselves determined life chances simply amounted to "an equal chance to leave the less fortunate behind."[169] Rawls later argued that if "formal equality of opportunity" existed without other measures to keep the game even, success would accumulate too much. "Fair equality of opportunity," where "free market arrangements" were set within an institutional framework to regulate the "overall trends of economic events" and "preserve" social

conditions, was better at "eliminating the influence of social contingencies." But it still permitted abilities and talents to affect the distribution of wealth and income and would be imperfect "so long as the institution of the family exists."[170] Already, Rawls was clear that equality of opportunity alone was not enough. A just society required further limits to inequality.

By the late 1950s, a number of developments combined to motivate a conceptual change in this account. Rawls began to provide a new interpretation of the "ambiguous" phrases "everyone's advantage" and "equally open to all." He looked to those in the "lowest positions," whom equality of opportunity alone could not benefit. In this, Rawls's focus was in line with a growing emphasis among Anglophone social scientists on "the poor."[171] On the British left, poverty became central. It was necessary, the theorist of the welfare state Richard Titmuss argued, to extend "the welfare state to the poor."[172] In the United States, where the civil rights movement was transforming the landscape of American politics and would soon shape liberal ideas of equality and justice, the liberal response was initially to develop a social scientific discourse about poverty. Worries among American pluralists about middle-class alienation and the cultural and psychological consequences of affluence gave way to claims that poverty persisted in its midst.[173] Optimism about the erosion of class boundaries in post-industrial society was replaced by concerns about "status anxiety" and self-respect.[174] Research into psychological deprivation, delinquency, and "lower-class culture" that focused on poor communities—African Americans and other racial minorities in particular—characterized poverty through the lens of culture and family.[175] Rawls came to emphasize the poor too, though not in the terms of the "culture of poverty" thesis. In lectures in 1959 and then in 1962, he argued that equality of opportunity had to be joined to the difference principle, which arranged inequalities so that they worked to the benefit of the "least-advantaged" members of society.[176] He came again to evoke Tocqueville: social conditions bound together the lowest with the highest via those in between (later Rawls formalized this in what he called "the chain-connectedness" of expectations).[177]

This focus on the "lowest positions" followed from Rawls's preoccupation with moral psychology. In the mid-1950s, his earlier concern with concentrated power, stability, moral worth, and character took a psychological turn as he used Wittgensteinian philosophical psychology to explore morality. After 1958, he taught a class on the "moral feelings," first as a visitor at Harvard and then at MIT (which he would leave for his permanent professorship at Harvard in 1962). This reflected his interest in the eighteenth-century moral

philosophers—Hume, Smith, and increasingly Rousseau—who explored the nature and foundations of human reasoning, sociability, and ethical life in ways that many Anglophone twentieth-century philosophers and economists had ceased to do (with the exception of figures like Keynes, Knight, and Gunnar Myrdal, to whom Rawls was drawn).[178] Rawls used the ideas of these earlier thinkers to develop his own account of moral development, particularly the development of the natural attitudes of love and sympathy, into the "sense of justice" he thought was required for persons to live in an equal and just society.[179]

Out of this account came Rawls's concern with the "special psychologies." These were dispositions that Rawls thought interfered with a proper analysis of the concept of justice, and that an "open" society should mitigate: envy, shame, and humiliation, and the anxieties caused by risk and uncertainty. Rawls tried to describe what mechanisms and how much equality would be necessary to prevent or mute the psychological harms these dispositions caused. For a society to be stable, for the game to carry on, it had to make psychological sense for the players to play. Properly arranged open societies could deal with envy, which was caused by social failures. The failure of equality of opportunity allowed

> the upper classes an unfair advantage in the essential matter of education, and the existence of various restrictive barriers to advance; the existence of various forms of monopoly and economic exploitation, the fruits of which are passed down and perpetuated by inheritance and invested in a class ownership of capital and land, and the like; and a failure to maintain certain forms of a social minimum which are needed to set a floor to the standard of life and to provide insurance against hardship falling on the least fortunate.[180]

Those who occupy the "lower positions," Rawls thought, will inevitably experience envy, which was produced by displays of "good fortune." For society to be stable, the effects of envy had to be constrained.[181] Like many Cold War liberals, Rawls thought some anxiety and uncertainty were the costs of an open society.[182] But he wanted anxiety to be borne proportionally to "voluntary" risk-taking. Those who took risks should be those in high places—"politicians" and "entrepreneurs" in capitalist regimes, "managers" in socialist ones.[183] What now mattered to Rawls was that whatever inequalities existed should be psychologically acceptable to those in the lower positions, who were most liable to suffer from the special psychologies. An open society

would sufficiently reduce both the absolute and relative differences between people so as to eliminate the unacceptable effects of envy and the liability to humiliation. Institutions needed to manage both the sources of humiliation—disparities between talents and achievements—and the shame people feel at their failures to make good on "natural gifts" (or the shame of having no natural gifts to begin with).[184]

Rawls explored what social mechanisms would reduce the risks facing those in the lowest positions, and what could make envy tolerable enough that inequalities would be justifiable to them. He thought raising the social minimum or reducing the general level of competitive rewards might do the trick. Dulling the threat posed by the special psychologies might require redistribution, but it could take other forms. A good moral education—in the family and in smaller associations—would limit the predisposition to "neurotic anxiety" in conditions of uncertainty.[185] Just as Rawls had suggested that it was important that the players of the game think they have equal starting places, he now also implied that "displays" of fortune were a large part of the problem. The cloaking of visible inequality, even ignorance of relative status, might do additional work in justifying inequality. The experience of relative inequality was enhanced and constituted by the frustration of expectations, which were raised in an open society.[186] When Rawls shifted his argument that inequalities were justified if they benefited every party, he settled on the claim that they were justified if they improved the "expectations" of the "least advantaged."[187]

These ideas placed Rawls at the end of a generation of thinkers who were preoccupied with uncertainty and the task of "counteracting" its effects through different conventions, habits, and techniques.[188] He saw potential solutions everywhere. Limiting inequality was not the only mechanism to keep the game worth playing. He noted other "systems of control" that could stabilize it. Hierarchies, forms of bargaining between interest groups and price systems, and what the political scientist Robert Dahl called "polyarchy," all provided alternative routes to stability. So did John Kenneth Galbraith's theory of countervailing powers and the critique of oligopoly that gave a role to government in preventing the formation of power blocs and securing decentralized decision-making in the industrial sector.[189] Organization theorists claimed to provide accounts of how to reach stability through organizational equilibrium. Psychoanalytic ideas claimed to help maintain "the stability and effects of the moral system." As anthropology provided ways of thinking about the conflicts of values across cultures, it could help smooth over the conflicts that arise when differences of value are recognized.[190] In the end, however, none of these, in Rawls's view,

could secure a "just" stability. Only a set of common rules to which all, including the least advantaged, could agree could do that.

By the close of the 1950s, Rawls thought these rules required much more in the way of government intervention than the maintenance of lighthouses and the enforcement of the rules of the road. The powers of the state in Rawls's vision were still restricted, but he moved closer to a defense of active redistributive government. The policies of an open society he listed were those of the welfare state: competitive efficiency, full employment, an appropriate rate of growth, a decent social minimum, and redistribution of income and wealth. He now provided a neo-Keynesian account of the role of government and its instruments of economic management.[191] Rawls's idea of a property-owning democracy acquired a new ideological valence, adapted from the British center left, as he grafted their commitment to equality onto his early barebones liberalism.[192]

Rawls also began to explore the question of whether the theory he was developing could fit different political regimes. Later he would argue that justice could be achieved in both capitalist and socialist systems. At one level, the choice seemed unimportant to Rawls. He was more concerned with stability and the fate of democratic publics in an age of expanding states than the choice between capitalism and socialism, particularly compared to those who pointedly abandoned common ownership or argued explicitly that ownership was no longer definitive of power.[193] If the optimistic sociologists of post-industrial society were to be believed, the line between these two systems was disintegrating anyway. Indeed, Rawls was increasingly optimistic that a just stability might be achievable with minor reforms. The threat of the expansionary administrative state that preoccupied his early thought had been dulled by the promise of the affluent society and the concern over its extension to the poor. "It may be," Rawls wrote in 1959, that "in a country like the United States at mid-century, in which the reforms of the thirties have set going changes which bring the social system much more in conformity with the requirements of a just social system than it was before, social justice is not the most pressing issue."[194] Despite the influence on his ideas of liberal socialist theories of equality, Rawls still had a quasi-Hegelian or Wittgensteinian commitment to what was already there.[195] And what was already there was not socialism but a liberal society moving, he thought, toward justice.

As to whether these institutions are better seen in a liberal capitalist framework or under a liberal socialist regime, this question turns on many

historical and psychological and other questions (e.g. economic efficiency). Since we are a liberal (relatively) capitalist society rational conservationism suggests that we try to work these institutions in a capitalist framework. We always have to begin from where we are and prima facie our obligation is to attempt to reduce the discrepancy between actual and just institutions in a rational way.[196]

With his principles consolidated, Rawls's theory itself, and the vision of society on which it relied, was starting to exert its own force. Its logic now placed a greater hold on the political positions he was willing to defend.

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For Rawls, political philosophy could not be satisfied with a "conception of society and the human person," nor with "a system of evaluative principles." He also wanted to provide the vision, the "total picture of man and society," that tied it all together. In the 1950s, at the same time that Rawls read widely in debates about equality, justice, and ownership, he rendered a variety of disparate ideas philosophically coherent by building them into the architecture of his theory. He now extended his framework for ethical evaluation beyond the realm of individual conduct and particular distributions to the law and institutions of state and society. As Rawls developed the apparatus to house his principles of justice, he began the remaking of political philosophy.

It was a slow process. Rawls's first challenge was to designate the subject matter of his theory in philosophical terms. He got there by a circuitous route. In the early 1950s, Rawls had engaged with utilitarian ethics and economics. He looked to the debates in ethical reasoning that preoccupied postwar philosophers: the nature of rule-following and the logical status of rules in the context of the moral justification for actions. What kind of reasons could individuals appeal to in explaining their actions? Traditionally, utilitarians saw actions as justified by their utility or consequences. Deontologists argued that right acts should conform to moral rules. When asked when it was permissible to break rules, utilitarians had an easy answer: when the consequences justified it. But what if everyone broke the rules? Classical utilitarianism found it hard to respond. Some tried to rescue a form of utilitarianism by distinguishing between "act" and "rule" utilitarianism.[197] Rule-utilitarians did not decide on a case-by-case basis whether promises were worth keeping. Instead, they justified promises by appeal to the rule that promises are to be kept—the practice of promising.

In Rawls's contribution to these debates, he introduced a fundamental piece of his theory. In "Two Concepts of Rules" (1955), which explored how different kinds of ethical reasoning related to social forms, Rawls followed a distinction made by Toulmin between the justification of "specific actions" by appeals to "socially recognized" rules and the justification of "the practices which the acceptance of the rules involves by appeal to consequences, fecundity, social welfare etc."[198] When it came to giving reasons for a particular act, one appealed only to the general rule, the practice, under which it falls—not to general principles. In a chapter entitled "Reasoning about the Justice of Social Practices," Toulmin drew from Wittgenstein: "Within the framework of a scientific theory, one can ask of most things, 'Is *this* really straight?,' but the *criterion* of straightness cannot be questioned: within the framework of a particular moral code, one can ask of most individual actions, 'Is *this* really right?,' but the *standards* of rightness cannot be questioned." There was a difference between questioning the rightness of a particular action and questioning the "justice of a practice *as a practice*."[199]

Rawls initially criticized this argument but changed his mind. Rules should not be conceived as "summaries of past decisions arrived at by the *direct* application of the utilitarian principle to particular cases."[200] As he put it in a remark reminiscent of Wittgenstein: "arguing as if one regarded rules in this way is a mistake one makes while doing philosophy."[201] There was an alternative "practice view" of rules, in which rules defined a practice just as the rules of games constituted the game.[202] Acting under a practice meant giving up appeals to general principles. A game might be justified on utilitarian grounds, but the players of the game played by the rules. Rawls made a distinction, common to J. L. Austin, Stanley Cavell, John Searle, and Anscombe, who distinguished between "brute facts" recording sense experiences and "institutional" facts that required a set of rules to be understood.[203] Rules were "constitutive" of actions. The rules of an institution defined a class of actions that presupposed the acceptance of the existence of these rules.

Each institution had its own principles, norms of reasoning, and "universes of discourse."[204] Individual agents needed to be understood against the background of practices in which they took part. For Wittgenstein, practices and forms of life referred to implicit modes of conduct. No decision procedures were necessary to reach agreement or make judgments: we already have agreement; where we do not, we have ways of getting on with things. The ethical philosophers who drew from him were concerned, however, with the question of what the "correct" procedures for judgment were, and the constraints

imposed on them by facts about the world.[205] A proceduralist interpretation of Wittgensteinian ideas was taken up by a number of philosophers, including H.L.A. Hart. Rawls wanted to find procedures for judging practices that were more settled, less indeterminate, and far larger than ball games. He put these ideas to work when he listed examples of practices: "games and rituals, trials and parliaments, markets and systems of property."[206] He was interested in institutional forms that required justification and evaluation—what his sociological contemporaries called social "systems" or "institutional equilibriums."[207]

Rawls was especially concerned with the practice he came in the late 1950s to call the "basic structure"—the practice to contain all practices, the boundary of a society. Rawls squeezed many postwar ideas about society and the state into this concept. The basic structure included the rules of the game; it was made up of the social institutions that determined the starting place of players and their chance of winning. It also carved out the domain of politics as the ground rules of society, not the plural associations within it. It was not the centralized state as conceived in state theories that described states as agents or as legal persons acting as a corporate entity through its representatives.[208] The basic structure was a practice, not an agent, and practices did not act. The conception of the state as a practice precluded a view of the state as an active interventionist agent. This was no coincidence: Rawls was building a vision of the state and society to fit his wariness of intervention.

The idea of the basic structure encompassed the minimalist view of the state Rawls put forward in his dissertation, but he now tempered that view to more closely resemble the complex of laws, courts, agencies, and services, both public and private, that made up the American administrative state.[209] Yet Rawls was not much interested in studying what the state was. In the aftermath of a war in which states had caused so much destruction perhaps that seemed obvious. But Rawls's thought was also shaped by a constitutionalist anxiety about expansionary administrative and executive power, which had trained the institutional imagination of American postwar political scientists in a different direction from their European counterparts, with their long tradition of state theory: they looked away from the state in efforts to study behavior, policy, and "process" that "demystified" the state in the name of the "stability of the democratic system."[210] The functionalist view common to pluralist political science had disaggregated state institutions and detached them from the passions, conflicts, and class analysis of depression and war. Rawls went an extra step: he repackaged these disaggregated parts and put them beyond the

main frame of his theory. The basic structure was a practice to be regulated, justified, and evaluated as a whole. The depoliticizing assumptions of anti-interventionist pluralism were baked in. The conception of the state both as a site of administrative conflict and as a distinctive institutional agent remained attenuated in Rawls's vision. It was not interrogated as a quasi-autonomous realm of agency, power, and interests.[211]

Like many of his pluralist contemporaries, Rawls was more interested in nonstate associations—in his case, the family. Indeed, he once described his ethics as "familistic." Yet Rawls downgraded his pluralism when he adopted the idea of the basic structure, which seemed to collapse the state into the public institutions of civil society.[212] For a time, Rawls's distinction between the basic structure and other practices was fluid: he experimented with including in it forms of custom and etiquette and relations within the family and smaller associations.[213] This fluidity would be seized on by later critics.[214] But by the close of the 1950s, Rawls had made the basic structure the primary subject of justice and the practice to which his two principles applied.[215] Unlike other practices, he saw the basic structure as a nonvoluntary cooperative venture. Both justice and fairness were applications of "reciprocity"—the concept that modeled the relations of recognition between persons—but where the concept of fairness applied to "voluntary" practices, only justice applied to the nonvoluntary realm.[216] Rawls thus included the family, the labor market, and religion in the sphere of the voluntary, defined by a capacity for exit. As in many liberal theories of civil society, associational life was rendered largely private. Yet neither the basic structure nor the private were ontologically distinctive. The basic structure now became the scene in which all social, ethical, and political life took place. It supplemented the game analogy, and the use of constitutive rules made it cohere. The rules were no longer just regulatory but expressed in individual acts and decisions. The power of the state flowed through the relations it constituted. The shape of the rules was fundamental to the ethos of society.[217]

The basic structure was a development and extension of the idea of society as a game. Rawls had experimented with other metaphors that indicated a self-regulating capacity and limited the need for political intervention, particularly ideas of equilibriums and systems. In this vision, the agential dimensions of the state and other social institutions were attenuated. When Rawls did explore the functioning of institutions, he focused more on the juridical and legislative institutions than the executive or bureaucracy he wanted to constrain. Yet at the same time, the invention of the basic structure gave his theory its institutional casing. Until now, Rawls's vision of society had flowed

from the bottom up, from convention and community. The basic structure made it a political theory and set the institutional character of philosophical debate among Rawls's followers for decades. It also allowed one way of reconciling the ambiguity of perspective that cut across his thought, from the puzzle of how to understand the general irrelevance of desert alongside rewards for effort to the worry about situating the interpersonal experience of inequality alongside its general character. The principles of justice regulated general institutions, not particular acts. Rawls's theory would now primarily be read as an institutional one.

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What were the philosophical mechanisms by which the society that Rawls envisaged could be judged? Over the course of the 1950s, Rawls extended his "reliable method" to create the conditions for agreement and judgment of the basic structure. He described how Hume had imagined reaching agreement by judging actions from a general standpoint, "a point of view, which, if we take it up, our judgments will be the same."[218] For Hume, this had been the standpoint of a representative person, the impartial spectator. Rawls's contemporaries adapted this idea to produce a "moral point of view" from which to construct an objective ethics.[219] Roderick Firth provided an ideal observer—a God-like perspective through which to solve ethical disagreement.[220] Others, including Rawls, tried to formulate a moral point of view, "a standpoint from which we all say one thing," to find standards of social justice.[221] Economists experimented with similar hypothetical procedures: in an essay on risk-taking, John Harsanyi provided a procedure for grounding principles (in his case using a group choice situation to justify utilitarian principles).[222] Rawls soon departed from ideal observer theories, with their single decision-maker and religious overtones. While observer theories required one perfect individual, Rawls sought agreement among imperfect ones. While they assumed perfect knowledge, Rawls restricted knowledge. In this, he also departed from general equilibrium theory, with its assumption of perfect knowledge of prices.

Rawls wanted to connect these ethical procedures to his moral psychology and conception of natural persons. He argued that people had a natural "disposition" to act justly and to recognize others. This disposition was "blocked," or it "broke down," in certain societies: in "a corporate society," or in a society grounded in "slavery and aristocracy," where "justice as reciprocity does not arise." Other kinds of social circumstances "release the disposition" for equality.

"Industrialization and the modern temper has produced social circumstances releasing this disposition and blocking various inhibitors of it," he wrote, hence the modern "demand for justice" made within "socialism and allied ideas and movements."[223] Rawls thought that a decision procedure could simulate the blocking of these inhibitors and thus simulate the conditions of equality that were potential in all moral relations. He searched for "the conditions of considered judgments" to "set the stage" for the natural reactions, of sympathy and compassion—the reaction of recognizing "persons as persons." These

> remove anything that may distort it or inhibit it. They allow free and full play for the natural reactions of recognition; and in this way, the explanation for the agreement which follows may lie. A failure to agree, at least in the *clear* and *concrete* cases, would mean that something were *missing* in this reaction.[224]

The point was to model what persons would be like if their relations were unmediated.

This was part of the aim of the hypothetical device that came to be associated with Rawls's description of the theory of justice as part of "the theory of rational choice."[225] Into the 1960s, Rawls took on new tools for modeling that perspective, yet the point remained the same: to find a way of imagining what it was like to be ethical and equal. He sought to find a point of view from which agreement could be conjured. Then ethical life could be understood as Rawls thought it actually was, if only we could see it clearly. This was the core idea behind his "analytic construction" and its most famous interpretation, the original position, with its veil of ignorance. Behind the veil, people were blinded to their talents and their starting places in the game of society, which were products of luck and fortune and not themselves deserved. It was from that point of view that the principles of justice to apply to the basic structure of society could be agreed upon and the game of society could be judged to be under control, stable, and worth playing, with its successes fairly divided.

What was striking about Rawls's original position was how many of his concerns it incorporated. The choosing "parties" were representatives, chosen from different parts of society, but with their knowledge of their place in society denied to them. The parties had general facts available to them: facts about the "circumstances of justice" that made the coordination of distribution necessary, that included facts about psychology, pluralism, diversity, and the fact of "moderate scarcity." They were not "everyday life" persons, but their choices were still "constrained by having a morality."[226] In seeking a distribution, they

advanced their own ends.[227] They were not rational egoists.[228] The tendencies that obstructed the natural moral feelings and attitudes were removed so the parties would not be "anxious or insecure," liable to humiliation, shame, envy, or the special psychologies that made people turn inwards. Since in a properly just society these psychologies would not be a problem, their removal from the analytic construction was justifiable. Rawls's reasoning here was deliberately circular. In a just society, moral education in the family and smaller associations would allow for the development in each person of a sense of justice that led them to support the principles of justice. The "aberrant propensities" of childish passions like envy would be cleansed.[229] Envy would be diminished both by just institutions and by cloaking differences in fortune and preventing the consequences of their visibility. In the choice situation, these could thus be cloaked behind the veil of ignorance.

Rawls eventually described the choosing parties, not as persons, but through their position in society: "continuing persons," or "genetic lines," best understood as "heads of associations or group or firms." With a nod to the Jeffersonian tradition in which white male property owners were the primary agents of democratic society (where property often included women and slaves), Rawls would settle on "heads of households."[230] This was meant to ensure that the parties chose the principles with an eye to the future—to their descendants, at least two generations along. Rawls's analytical construction thus entrenched the family as both the vehicle for the moral claims of the future and the primary site of meaning, education, and development. The partial and associative nature of society and Rawls's attachment to the family were simulated all the way down and built into his theory at multiple levels. "He was a firm believer in paternal supremacy," Judith Shklar would write of Rousseau. It was "the one form of inequality that he did not even recognize as such, because he did not think that it created any of the emotional miseries that every other sort of inequality brought with it."[231] The same would soon be said of the increasingly Rousseauvian Rawls by his feminist critics.[232]

Rawls still aimed at the "rational choice" he had tried to secure by appeal to the "free and uncoerced opinion" of "average men." He was committed to the idea that the criterion for judgment should be set by a plurality of common men—a democratic "discussion" modeled on a court or jury rather than an expert administrator. But as he developed *A Theory of Justice*, Rawls gave up on the "discussion" emphasis. He looked instead to a collective decision, or what he came to call the contract. The contract began as the localist, democratic core of Rawls's theory: it did not model a founding moment but simulated the democratic discussion and formalized Tocqueville's town hall meeting.

There was no multitude; Rawls's aversion to the idea of atomistic individuals contracting to set up society had not gone away. Yet it did model agreement and his quasi-deliberative procedure. It also therefore modeled his commitment to justice as an alternative to intuitionism and utilitarianism.

In his vision of society as a game, Rawls had experimented with the early utilitarian tradition of political economy insofar as it extended the commitment to commercial society with a minimally interventionist state. Yet he worried a great deal about a different, statist species of utilitarianism. Later, Rawls's critique of utilitarianism would be summarized by one pithy phrase: that utilitarianism did not take seriously the "distinction between persons."[233] By aggregating and maximizing, and by ignoring distributive questions, utility principles failed to protect society's losers and minorities and threatened what Rawls came to call the "inviolability" of persons, violating the rights of individuals. But initially Rawls was also saying something more. Utilitarianism failed to take seriously what morality was like—that it rested on the recognition of persons and their community. It was a "technocratic," "administrative" theory that was excessively "individualist."[234] When utilitarianism took persons in the aggregate, it individualized them and eliminated the plurality of their relations. Members of a society were not isolated "persons who stand as claimants on an administrative or benevolent largesse," but participants in a mutually advantageous cooperative venture. It was, Rawls wrote, a "fundamental mistake to apply the principles of higher order executive decision to justice." By treating citizens as "separate lines for the assignments of benefits," utilitarianism ignored both Rawls's idea of a consensual moral community and its political correlate: democratic participation through discussion.[235] Alongside other arguments for why his two principles of justice were superior to those of utility, the contract helped express Rawls's opposition to this species of "individualist" utilitarianism—the maximizing, aggregating tradition of government that decided on social policy by summing the well-being of a given population and that was associated with the bureaucratic executive governance of the midcentury state. Rawls's ethics was reciprocal and interpersonal. Utilitarian politics neglected the interpersonal.[236] Rawls's contract was an extension of his discussion model; utilitarianism, in this vision, was the extension of executive power and the administrative state.

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Rawls would discard some of these ideas as he struggled to make his theory coherent and to meet the objections of early readers. He carried on working

at the theory throughout the 1960s. By 1964, he had completed a first full draft of the book he published seven years later.[237] In subsequent years, he gave his lifelong commitment to moral persons and procedures a Kantian form. He instated an interpersonal account of justification he called "reflective equilibrium." This final test, by which individuals decide whether they would accept the principles of justice as chosen in the original position, consisted in reflecting and revising our "considered judgments" about particular cases, the principles and rules that govern them, and other considerations that bear on our acceptance of these judgments.[238] He refined his account of merit and desert, his equality of opportunity principle, the account of background conditions for justice, and the priority ordering of the principles. He transformed his earlier moral psychology into an account of the right and the good, the ends of justice, and the primary social goods and social bases of self-respect that addressed the questions of envy and the special psychologies via a different route.[239]

Yet at the end of the 1950s, the foundations of his theory of justice were set. The basic structure, the original position, the principles of justice, and the challenge to utilitarianism and intuitionism were in place. These ideas reflected Rawls's efforts to build a new kind of theory out of the resources of postwar philosophy and the politics of postwar liberalism. Liberal anxiety about centralized power found philosophical expression. So did a distributional and institutional theory of equality. Rawls wanted the least fortunate to be compensated, but he was anxious that the midcentury expansion of the administrative state not eliminate the pluralist life he held dear. By the time Rawls had developed the ideas that made his theory "come alive," his view of the role of government went beyond the control of traffic. Despite the persistence of poverty amid affluence, he shared the optimism of the theorists of post-industrial society. He thought it possible to provide objective standards for judgment and to imagine publics as more than a mere aggregation of individuals. Taking up a general point of view gave Rawls what he believed was already known—an idealized vision of social and ethical life, inseparable from a pluralism in which the firm, the church, and the family were naturalized associations, at the core of which consensus could be revealed by the right philosophical devices.

In the coming years, Rawls would train a generation of moral and political philosophers at Harvard, many of whom went on to teach philosophy elsewhere.[240] Encouraged by a novel public discourse of justice and a growing number of philosophical publications on social and distributive justice theory, Rawls argued in his lectures to these students that the study of justice would

revive political philosophy.[241] He also imparted to them his faith that the deepest structures of society were changing for the better. The right kind of structure could protect the human form of life and its associational flourishing. The practices of a constitutional democracy could correct for the effects of luck, contingency, and fortune, without excessive intervention. His two principles could show not only how to understand the fairness of particular distributions but how to judge the justice of a system of rules and procedures: the rules of a social game that, if set up correctly, would allow for fair equality of opportunity, the wide dispersal of capital, and a collective political life in which citizens participated as equals and politics could not be bought.

As Rawls carried on building his theory, a different kind of politics would start to intrude. His consensual vision of ethics and society, set into the foundations of his theory, had been enabled by the postwar ideology of political consensus.[242] For Rawls, that consensus with its few "practical distractions," had made it the perfect time to do "abstract" philosophy and dig down to fundamentals.[243] Such philosophy could seem "of little practical importance" in periods of calm, he admitted. But, Rawls suggested, that view "would dissolve quickly enough, should this consensus, or apparent consensus, break down."[244] If there ever had been a consensus, it was shattering as Rawls wrote.

2

Obligations

THE CIVIL RIGHTS and antiwar movements of the 1960s made sit-ins, mass protests, and civil disobedience campaigns daily news.[1] The dissent that came to the universities, particularly after the escalation of the war in Vietnam, politicized a generation of philosophers.[2] By the mid-1960s, they had formed a circle around Rawls. In the period of postwar calm, Rawls had tried to abstract from politics, to find fundamental concepts to capture institutional realities. Now a growing number of moral, legal, and political philosophers looked for a philosophy of "public affairs" that could be relevant to the politics of the draft, the campus, and the war.[3] They asked whether the framework that provided an objective basis for ethics to judge the justice of institutions could also be used to guide the political action and moral decisions of individuals. Could a theory designed to preserve stability, born in the shadow of one war, be used to legitimize dissent and constrain the next?

On one level, Rawls continued to envisage the contribution of philosophy to politics as guiding long-term institutional reform. But he also joined a growing number of other philosophers who sought a theoretical framework to guide action in the short term. At the height of the antiwar movement, a group began to meet monthly in New York and Cambridge, Massachusetts, to work through what philosophy might say about the ethical problems that the civil rights movement and Vietnam War raised. They called themselves the Society for Ethical and Legal Philosophy (SELF). Early participants included, among others, Rawls, Michael Walzer, Robert Nozick, Thomas Nagel, T. M. Scanlon, Owen Fiss, Ronald Dworkin, Marshall Cohen, Frank Michelman, Judith Jarvis Thomson, Gerald Dworkin, and Charles Fried.[4]

SELF's members developed the intellectual and ideological frameworks that structured political philosophy during the era of its remaking. In early

meetings, they read drafts of Rawls's work on justice and Walzer's essays on obligation. They responded to political events by formulating philosophical solutions to problems of war, action, and moral responsibility. They asked what the defense of individual liberties and rights justified, and what actions individuals could take against the state or in its name. In their answers, an account of agency emerged that matched Rawls's vision of institutions. These philosophers also played powerful roles in establishing institutional spaces for this newly politicized philosophy. By May 1969, the Society for Philosophy and Public Affairs, a division of the American Philosophical Association, had been formed. Two years later, Cohen, Nagel, and Scanlon founded the journal *Philosophy and Public Affairs* (*PPA*), which became the discipline's gatekeeper. By the end of the decade, their debates had forged the conceptual priorities of a new approach to political philosophy. They had also created the conditions for the reception and dissemination of Rawls's theory and the subsequent construction of liberal egalitarianism.

As philosophers, they were drawn to the most puzzling problems. Like Rawls, they were skeptical of intuitionism and looked to solve such problems by appeal to evaluative frameworks and principles. But which political dilemmas counted as puzzling? In the early 1960s, Rawls wrote that the injustices of Jim Crow were not a topic for philosophical discussion. The morality of Jim Crow was clear-cut in its brutal injustice. Desegregation generated no philosophical problems, only "implementation" ones, about how best to secure justice.[5] The circle around Rawls was more concerned with what Isaiah Berlin declared the "most fundamental of all political questions"—the problem of political obligation, and its mirror, disobedience.[6] Ethical philosophers concerned with finding a moral basis for the rules of society now looked for a moral basis for breaking them. At the start of the decade, legal philosophers and political theorists developed rival theories of obligation using the tools of linguistic analysis. As the New Left and the antiwar movement grew in strength, a number of theorists, notably Walzer, explored a range of approaches to the problem of obligation, engaging with debates about citizenship, dissent, and the draft. Some of these approaches were permissive of dissent and leaned toward radical critiques of the state. Yet the social upheavals of the latter years of the decade made liberals more concerned with preserving and stabilizing the legislative victories of the early civil rights movement and the Great Society programs of 1964–1965. By the decade's end, Rawls, Dworkin, and others had settled on a philosophical solution to the problem of civil disobedience that carved a distinctive path through the rapidly changing political landscape

in which radicalized protest movements and increasing black militancy faced state repression justified by appeals to law and order.[7]

Civil disobedience was the "public affair" that became a template for philosophical treatments of political action and the obligations of citizens. In debates about its definition and justification, these philosophers reconfigured the liberal attitude toward the state, as well as the relationship of philosophy to law. After the Second World War, the legitimacy of the state had been at a high.[8] Despite the rise of civil rights protests and other forms of dissent over the subsequent decade, the repressive apparatus of the Cold War national security state had forged and maintained the loyalty of citizens.[9] Few liberals questioned political obligations to the state, and most defended a species of constitutional democracy that prioritized stability and consensus even as they questioned state overreach.[10] But as the "myth of full citizenship" was challenged by the black freedom movement and its legislative successes, liberal ambivalence about the state changed in character.[11] The state emerged as the guarantor of a more inclusive citizenship. In this era of the Warren Court and the Great Society, social and racial liberals saw the American state as full of renewed promise and defended it against localist proponents of states' rights and segregation.[12] They viewed an activist judiciary responsible for civil rights landmarks as the architect of a "rights revolution" and a defender of a court-based constitutionalism.[13] The uses of constitutional law as a conservative force to protect business were forgotten as the history of the New Deal was rewritten as a victory of social and constitutional liberalism.[14] In this context, liberal philosophers still tended to defend stability. Many repurposed the anti-interventionist metaphor of society as a game in defense of a constitutional stability in which the state was guarantor of liberty and equality, and citizenship entailed playing by the rules. Yet they looked for new ways to hold the state to account for its other failings. For the state that secured civil rights remained the warfare state.[15] Rawls's theory of justice had been one philosophical strategy for judging that state's moral limits. Civil disobedience was another, and philosophers of justice soon became theorists of disobedience too.

The debates about disobedience were also one vehicle through which philosophers moved to the terrain of constitutional law. In the 1950s, "process" theorists of law who rejected legal realism, sociological jurisprudence, and judicial activism had reframed the Supreme Court as a "forum of principle" in which neutral principles and fair processes guided decision-making and law was separated from politics.[16] The generation of lawyers raised with the Warren Court were more optimistic about the Court and wanted to endow

its principles with normative force in order to restrict future judicial decision-making and maintain the role of the judiciary as an instrument of liberal change.[17] Such ideas provided a structure of judicial decision-making that paralleled the philosophical appeal to a system of principles. This primed lawyers to see an opportunity in Rawls, whose own concern with limiting state power set the terms for the broader philosophical engagement with constitutional law.[18] The philosophical and legal search for principles became intertwined.

This had various consequences for political philosophy. In the years that followed, the concerns of the Supreme Court increasingly determined what counted as a political problem worthy of philosophical focus. More subtly, ideas that were amenable to constitutional theory took priority over other forms of political thought. By the end of the 1960s, liberal theorists of obligation and political action appealed less to ideas of citizenship and society than to moral and constitutional principles. Liberal philosophers conceived the relation of state to society in individualist terms and appealed not to constitutive rules but to a quasi-constitutional morality or set of rights beyond them. As Rawls published his theory in article form throughout the 1960s, philosophers began to use it to address these problems. Their debates in turn shaped Rawls's thought as he completed *A Theory of Justice*. In light of the growing civil libertarianism of American liberalism, he reconceived his ideas about stability and order in constitutional democracies and the relationship of moral persons and the rules of the game. Individual persons had long been the currency of his theory. Now individuals became central in their capacity as agents.

Yet though Rawls introduced ideas about political action into his theory, he circumscribed its definition and role, in part because of his commitment to the postwar vision of consensus. Rawls disconnected ideas of agency from those of redistribution. This not only was true of his account of civil disobedience but also signaled the emergence of a broader philosophical division of labor. Liberal philosophers developed a particular interpretation of the protests against the postwar liberal order that rendered dissent compatible with stability. This interpretation, particularly of the civil rights movement, had lasting effects on liberal philosophical understandings of social change.[19] Meanwhile, many philosophers came to accept the principled vision at the heart of Rawls's theory, even as they took for granted the broader apparatus of moral psychology and decision procedures born of the search for objective ethical foundations. Rawls's principles of liberty and equality began to stand alone. Generalized and elevated, they applied to actions as much as institutions. But what would count as a legitimate form of action was constrained from the start. The faith

among philosophers that their theories might improve the world grew. At the same time, they limited political philosophy's horizon of political possibility.

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In the early 1960s, the sit-ins against segregation in the South and later the New Left campus protests made the legitimacy of civil disobedience a national controversy. The meaning of civil rights, obligations, the law, and the courts were in dispute.[20] Philosophers were relatively slow to turn to the problem of the obligations of democratic citizens. When they did, they drew from a particular set of debates in law, philosophy, and political science that took place in the previous decade. These debates were facilitated by funding from the Rockefeller Foundation and flourished in new organizations like the American Society for Political and Legal Philosophy, which counted Carl Friedrich, Lon Fuller, Richard Brandt, and Rawls among its early presidents.[21] Analytical ethical theory had then taken a normative turn, as ethical philosophers looked to questions of rights and distributive justice and used philosophical tools in new political circumstances.[22] Rawls had taken the cue for his idea of practices, which underpinned his vision of the basic structure, from debates about rules, promise-keeping, excuses, and how to justify breaking promises "if everyone did it."[23] Now these became an entry point for discussion of obligation and the question of whether disobedience to law could be justified.[24] The most common philosophical answer was that it rarely was. With the civil rights protests gaining national attention, most philosophical accounts of obligation still did not legitimate much dissent.

The most influential conception of legal obligation of this moment was not introduced by an American jurist but by the Oxford professor of jurisprudence H.L.A. Hart. Hart had spent a year at Harvard's philosophy department and law school in 1955. When he gave the Oliver Wendell Holmes lecture that year, he defended the separation of law and morals, provoking a furious reply from Lon Fuller. The ensuing debate entrenched battle lines between natural law theories, which collapsed the distinction between law and morality, and positivism, which kept them apart.[25] Hart was dubbed the inheritor of Hans Kelsen's pure theory of law. He was also trying to carve out a jurisprudence that challenged the legal realist focus on a judiciary with wide discretionary powers, the resolution of disputes, and the economic functions of law. He tried to remove law from the domain of administration and give morality its due, even as he maintained its separateness from law.[26] In a series of articles

and in *The Concept of Law* (1961), Hart drew from linguistic philosophy to develop a social liberalism of rules, practices, and fairness. Where natural lawyers reduced illegality to immorality, Hart explored how legal arrangements entailed various rights and obligations.[27]

Hart distinguished between special rights, created through promises and contracts, and general rights, which flow from the obligations of reciprocity that exist between citizens.[28] Neither the threat of coercion nor habits of obedience were enough to create a legal obligation; that obligation depended on the rules and practices of a given group.[29] The obligation to obey the rules of society, Hart suggested, arose from individuals' voluntary acceptance of the benefits of that society. Those who accept the benefits have a duty to do their part, as a matter of "fair play." After Hart introduced this account of obligation in 1958, many recognized that it complemented the vision of society as a game or practice. As one philosopher reflected, it provided a view of consent through "participation," an alternative to consent given through "contract."[30] Obligation here was based on the fairness of the rules and was owed to fellow players in the game. If the rules are fair, and if all play the game and obey the law, each has a duty not to take advantage of the compliance of others by free-riding.[31]

This was a view that prioritized stability, though its liberal proponents like Hart insisted that it need not imply a conservative acceptance of consensus. Navigating the demands of stability and consensus and the claims of individuals against the majority and the state was a liberal preoccupation. For Hart this manifested in his debate with Patrick Devlin about whether the law should enforce an existing moral consensus. Provoked by the 1958 Wolfendon Report on the criminalization of homosexuality in Britain, Hart defended a realm of "private morality" into which the law should not intrude.[32] In the United States, the right to privacy was fast becoming a civil libertarian rallying cry.[33] But the challenge to majoritarian stability came from other quarters. The practice view limited the possibilities for justifying individual disobedience of law.[34] It was difficult to discriminate between particular unjust laws: if society was a game, breaking the rules meant you stopped playing the game. Hart's conceptual tools may have been novel and his orientation liberal, but the priority of stability that those tools supported was of a piece with the contemporary delimiting of the space of justifiable disobedience. The choice seemed to be between general resistance and complete obedience. When the question was posed this way, the answer tended toward obedience. The metaphor of the game was invoked in defense of stability.[35]

The political case for civil disobedience, however, was becoming harder for liberals to ignore. The campaigns of anti-nuclear protesters and the movement for decolonization led some to contemplate the legitimacy of protest, but it was the civil rights sit-ins that sparked the search for a system for evaluating the morality of obedience.[36] At a panel titled "Political Obligation and Civil Disobedience" at the 1961 meeting of the American Philosophical Association, the philosopher Hugo Bedau insisted that the appeal to individual conscience could not justify disobedience.[37] Franz Neumann had recently argued that there could be no science of conscience, no "universally valid statement" dictating when acts of conscience were justified.[38] But Bedau saw such a philosophical treatment of obligation as necessary. Conscience alone was too permissive a justification.

Rawls rose to the challenge. At a "Law and Philosophy" symposium in New York in 1963 organized by Sidney Hook and attended by ethical theorists, lawyers, and theologians, including William Frankena, Kai Nielsen, John Courtney Murray, Herbert Wechsler, and Wolfgang Friedmann, Rawls showed how his own, and Hart's, account of fair play could be the basis of a theory of obligation.[39] He framed the moral obligation to obey the law as a special case of the general duty of fair play.[40] Unlike our duties not to commit certain kinds of criminal offenses—duties that arise independently of our participation in social institutions, like the duty not to harm other persons—legal obligations arose from our acts. In a fair practice, those who accepted the benefits of the practice have to do their part when their turn comes. Obligations were interpersonal, owed to participants in the scheme. They had their origin in Rawls's account of morality and the recognition of persons, and in what persons owed to one another.[41] Such duties applied to all persons, and to all participants who received benefits, in many different kinds of practices and associations. They took the form of legal obligation in the context of the basic structure of society, where they arose also because of participation.

Here Rawls adapted Hart to his own constitutive notion of practices, in defense of constitutional stability. The fair rules were not merely formal but encompassed the ethos they constituted: they were the institutions of society in its broadest sense, in spirit as much as letter. Crucially, for the duty of fair play to apply, it was assumed that the social system, embodied in its constitution, was just. Given the justice of institutions, Rawls thought that if policies and laws were supported by the majority and were roughly in accordance with the constitution underlying those institutions, then citizens were obliged to obey them. That was true even if individual laws were unjust. Participants

did not have to believe the laws were right. Their conscience might tell them otherwise. But the stability of the system depended on their accepting them.[42] Majority decisions had to be abided by, not because they were majority decisions but because the underlying system was just and participants benefited from it. Rawls stressed his opposition to utilitarianism. Even if more good would come from disobedience, adherence to a just constitution trumped concerns with utility: we could not excuse "ourselves from a duty of fair play by an appeal to utility."[43] Once part of a fair practice and receiving the benefits of our cooperation in it, we had to play by its rules.

In his preparatory notes for this essay, Rawls—still trying to draw out the implication of his conception of rules and practices—was more concerned with income taxes, voting, penal law, and religious toleration than civil disobedience.[44] The duty of fair play, he had written earlier, was "analogous" to Locke's "tacit consent."[45] As such, there were cases when citizens, finding themselves part of a minority who were being deliberately disadvantaged, would no longer be obligated by the duty of fair play. In such cases, that minority might be in a situation where civil disobedience was the appropriate course of action. This had obvious resonances: it showed how Rawls's framework could accommodate the civil rights protests. Some philosophers, like the legal philosopher Richard Wasserstrom, who was later a member of the Civil Rights Division of the Department of Justice, had done so explicitly by framing the immorality of segregation as an injustice sufficient to justify disobeying the law, and the racial discrimination in the South as a "denial of human rights."[46] Rawls's argument had a different emphasis. Blacks were not receiving the benefits of participating in a practice as whites did, and so, like other minority groups disadvantaged by laws (religious groups were another example), they were released from duties of fair play and the obligation to obey unjust laws. This was Rawls's attempt to preserve his view of society as a cooperative practice, a system of reciprocity with a core of consensus embedded within it, while also recognizing the injustices faced by African Americans.[47]

The civil rights movement did not feature centrally in Rawls's account of obligation here. Though he elsewhere described racial injustices as severe enough to render philosophy useless, he did not mention them directly within the discussion of obligation.[48] Later commentators would point out that Rawls's description of a society that still encompassed Jim Crow as a potential, if not actual, system of reciprocity betrayed a faith that American institutions in principle approximated justice, and that it was possible to separate American values from its system of racial injustice.[49] The problem for Rawls was not

the underlying system or its morality, but the unjust distribution of benefits and burdens. Rawls did not say so, but one implication of this view was to conceive of the United States as a just system of practices, with an anomalous and exceptional injustice in the distribution of its benefits. His argument suggested this injustice was not in itself sufficient to threaten fundamental constitutional stability. The problem was not white supremacy but an unjust system of "racial separation."[50] Like many other liberals, Rawls probably assumed that this was in the process of being rectified. This presumed trajectory of incremental reform, inclusion, and integration was of a piece with his broader belief that society could tend toward justice if the right social rules facilitated the natural tendencies of moral persons. But Rawls did not explore what actions were legitimate to hasten this reform. This was remarked on by contemporaries: to the other symposium attendees, his account posited a remarkably high threshold for legitimate protest.[51] Displeased at their response, Rawls went back to the drawing board.

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Rawls remained committed to the reciprocity view of society. But it was under attack. In the first half of the 1960s, the revolt against corporate liberalism and managerial conformity inspired a degree of convergence between social liberals, the labor left, and the New Left, as many challenged the liberal consensus vision and defended the new age of protests against it.[52] The Marxist New Left invoked Gramsci to argue that the appearance of consensus was a function of ruling-class hegemony within civil society.[53] Some appealed to "the autonomy of individual conscience" or the "conscience of men" in communities as weapons in the battle for authenticity against mass industrial society, consumerism, bureaucratic rationalization, and the "soft totalitarianism" of the American state.[54] On the centennial of his death, Thoreau's vision of conscience as the final court of appeal was regularly invoked.[55]

During the Berkeley Free Speech Movement (FSM) of 1964–1965, the critique of liberalism from the point of view of a defense of participatory democracy was given theoretical support by the political theorists later known as the Berkeley School—Sheldon Wolin, Norman Jacobson, Michael Rogin, John Schaar, and Hanna Fenichel Pitkin. They defended the space of the "political" against the encroachment of technocratic bureaucracy and its ideological embodiment in "behavioralist," "value-free" political science.[56] At a conference on "law enforcement and racial cultural tensions" in 1964,

Jacobson described civil disobedience as justified by the "quality of participation within the civil polity." Where the opportunities for "self-government" fall short, where citizens cannot assemble in a "political *space*" within which their speech can be heard, they must seek it. Civil disobedience was a way for citizens to "educate" each other about their obligations.[57] Jacobson and others rejected both consensus theory and the liberal view of obligation and consent found in the Cold War revival of Lockean contract theories. In the wake of the Free Speech Movement, their resistance to the naturalization of these ideas as liberal common sense became part of a broader effort to reorient political education in the universities, and the politics of political science.[58]

In "Obligation and Consent" (1965–1966), Pitkin used the tools of linguistic philosophy to show that these contract and consent theories failed to make sense of political practice. She argued that, in fact, few people give the actual consent necessary to ground obedience to law. Faced with this, consent theorists inadvertently severed obligation from consent: they acknowledged that only some citizens give their consent in a modern state, but nonetheless saw them as owing obedience anyway on grounds that they benefited from the "tutelage" of government.[59] Consent theory collapsed into a theory of "hypothetical consent," where the legitimacy of government derived not from actual consent but from being the kind of government that people would consent to.[60] This fell short as an account of obligation. It envisioned individuals as isolated units and saw promises and obligations as self-assumed. Invoking earlier philosophical debates, Pitkin argued that particular promises presupposed the social practice of promising. Individuals had to be understood as already social, as acting within institutions and rules. If someone wants to be the exception to the rule of keeping a promise and asks why he is obliged to promise, he is told that this is how promises work; this is what it means to keep a promise. He can refuse to keep a promise, but that would mean he is refusing an obligation. This also held in situations of political obligation.[61] The person who wants to be the exception to the rule *can* disobey, but "in the absence of excuses or justifications you violate an obligation when you do so." If an authority is genuine, if a government is legitimate, then we are obliged to obey because that is what it means for genuine authority to exist.

Pitkin thought philosophy could go no further than this. The attempt to find principles that were the source of the obligation to obey was "a symptom of philosophical disorder." There could be no principle that guides in every case: adapting Wittgenstein, Pitkin wrote, "there are a hundred reasons; there is no reason. There is no absolute, deductive answer to the question 'why does any

promise ever oblige?' beyond calling attention to the meaning of the words."[62] Yet she insisted this did not entail a defense of the status quo. Here she used Rawls's account of practices to reverse the conservative tendencies of the practice view. She read him as suggesting that obligations could be challenged at the level of excusing ourselves from obligations in a particular case (by reference to conflicting obligations, for instance) and at the level of the institution itself (the practice of promising). Pitkin added another level: "Sometimes we may refuse to obey neither because our particular case is exceptional, nor because we question such obligation categorically, but because the one who is claiming authority over us does not in fact have [it]." Yet there was no easy way to decide whether resisting authority was right. We all have to act, and "no theory or God or Party can get us off the hook."[63] This was not merely a matter of conscience: "We may resist a government that has become tyrannical not as a special, personal exception, and not because we are against government, but because *this* government no longer deserves obedience."[64] Pitkin's analysis suggested a view of obligation where general authority might be questioned more easily than particular laws. The normative implications of the practice view were reversed. In a choice of obedience or revolution, the latter might well be justifiable. But philosophy could not tell you when.

At the midpoint of the decade, defenders of dissent looked ready to give up on philosophy and embrace an all-or-nothing view of obligation that saw the waning authority of the capitalist state as sufficient justification for law-breaking protest. This was anathema to liberals. Rawls's search for evaluative moral frameworks was directed against such skepticism about philosophy. Yet Rawls had not yet brought the apparatus of his theory of justice to bear in full on political events. This would change rapidly. After the passage of the Civil Rights Act of 1964 and Voting Rights Act of 1965, and as the effects of the Vietnam War were felt in the universities, liberals looked to the conceptual challenges and opportunities raised by war.

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The escalation of war brought new controversy around the draft.[65] In December 1966, Rawls led a faculty motion at Harvard to condemn as unjust the "2-S" deferments that allowed students to avoid military service. A month earlier, Rawls and Walzer had called on the faculty to reject the "inequitable" deferments. Their motion was denied and tabled on grounds it was "an 'abstract' matter."[66] Rawls persisted. The following month he secured a debate on a

resolution that the university make known to any "public or private" agencies the faculty's opposition to both student and teacher deferments. That resolution was signed by many of Harvard's most prominent philosophers and political theorists, including Stanley Cavell, Roderick Firth, Carl Friedrich, Stanley Hoffmann, Harvey Mansfield, Hilary Putnam, Judith Shklar, and Morton White, and the economists supporting it included Samuel Bowles, Stephen Marglin, and Lester Thurow.[67] The resolution bore Rawls's fingerprints.

"Conscription," Rawls declared on behalf of the group, was a "drastic interference with the basic liberties of a free society," only justifiable by demands of national security. Where it was necessary, its burdens had to be distributed fairly. Under the deferments system, the "hardships and risks" of war were disproportionately shouldered by "the poor, the less intelligent and the less well educated."[68] Instead of the "inequities" of the deferments system that privileged the affluent, Rawls advocated the equal subjection to universal conscription. This provided an alternative to deferments and to a lottery system, which would cause African American men a "double injustice"—in the draft and in the "background sociological conditions."[69] Rawls objected to the recommendation that the military be used to resolve the "problem" of black unemployment found in the infamous 1965 Moynihan Report. (Given Rawls's view of the family as a site of potentially unmediated morality, his optimism about integration, and his attempt to go beyond the cultural and pathological focus of the ascendant "culture of poverty" discourse, he may well have objected to the report, which described the "tangle of pathologies" of the black family as a threat to racial and economic equality, on other grounds too.)[70] He insisted that the benefits and burdens of participating in a practice should not track the privileges bred by social contingency and natural fortune, which "disproportionately" affected the "poor and racially discriminated against."[71] They should be divided up in a fair and just way.

The protest against deferments was an objection to the inequity and unfairness of the draft's implementation. Rawls defended his racial liberalism and tried to show how his principles of justice could judge the distribution of burdens and benefits shaped by particular policies, as much as the institutional framework of the basic structure. But as conscientious objection and draft refusal spread from the Catholic left to students and their liberal professors, those concerned with student protests looked beyond distributive concerns to the legitimacy of civil disobedience, this time in the context of conscription. Conscription had once been a crucial part of a Progressive vision of citizenship, but in the interwar years it had become a civil libertarian rallying cry for

anti-statists.[72] Now, antidraft sentiment united liberals, left and right. In 1966, with national deferments policy under review, the National Conference on the Draft brought together those on the socialist and anti-nuclear left with Barry Goldwater supporters, including the economist Milton Friedman, to generate proposals for a volunteer army.[73] When the National Student Association declared its opposition to the draft, the battle became national.

For many, the question was a legal one. The "conscientious objector" (CO) had long been a protected category, but it only applied to those who rejected war in all its forms on religious grounds. In *United States v. Seeger* (1965), the clause that required belief in a "Supreme Being" had been deleted, thus expanding the definition to include views derived from a "sincere and meaningful belief" that occupied the same place as God. That still excluded most who objected to the Vietnam War—both those who appealed to religious doctrines that were not pacifist but who distinguished between different types of war (Catholics who appealed to just war theory), and those who claimed their secular consciences should be recognized as equal to their religious peers.[74] The definition of CO continued to be contested throughout the war, both in the courts and by the National Advisory Commission on Selective Service. The latter debated the expansion of the CO definition to apply to the "selective conscientious objector" (SCO)—objectors who did not oppose all wars, but only specific wars. That extension was rejected in the commission's report, *In Pursuit of Equity: Who Serves When Not All Serve?* (1967), but the American Civil Liberties Union (ACLU) continued the campaign to expand the category.[75] The redefinition of "conscience" in secular terms became a call to arms, even for many who were not explicitly antiwar.[76]

In this context, a civil libertarian approach to civil disobedience blossomed. It focused on conscience and attempted to accommodate civil rights protesters and conscientious objectors in a single framework. In 1961, Bedau had written that "anyone commits an act of civil disobedience if and only if he acts illegally, publicly, nonviolently, and conscientiously with the intent to frustrate (one of) the laws, policies or decisions of his government."[77] His definition was taken up by lawyers and ethical philosophers who rallied to help the ACLU draft public statements. In 1965 at Michigan, Carl Cohen and Arnold Kaufman, the New Left philosopher and intellectual founder of the "teach-in," penned an ACLU working paper on civil disobedience that emphasized conscientiousness and publicity.[78] Bedau insisted that a civilly disobedient act should only be taken where "legal devices" for "redress of grievances" do not exist or have been exhausted.[79] Rawls, revising his earlier account, presented the

same definition at the American Political Science Association meeting of 1966. Martin Luther King Jr.'s 1963 "Letter from Birmingham Jail" began to be widely invoked as making a similar claim.[80]

This condition of last resort was widely accepted among liberals, but the question of the aim of disobedience was more vexed. Did civil disobedience have to shore up the constitutional order, and was it a way of testing the constitutionality of a law by breaking it? To answer these questions, many drew from a tradition that canonized Socrates, Thoreau, Gandhi, and King, according to which civil disobedience was an expression of fidelity to law.[81] This was an interpretive feat: it involved squeezing these figures into ill-fitting liberal categories and reducing civil disobedience to a highly individuated act of belief.[82] Legitimate challenges to legal order were tightly restricted either to questions of valid law and unconstitutionality or to what the appeal to conscience or higher law could justify within those bounds.

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Amid these debates over law and conscience, Michael Walzer introduced an approach to obligation that sought to straddle the legal and philosophical debates and the New Left critique of the state. By the later 1960s, Walzer was involved with the SELF group that formed around Rawls. It was there, he recalled, that he got his "philosophical education."[83] The rest of that education had been distinctive. As an undergraduate at Brandeis, Walzer met Irving Howe and Lewis Coser, the founders of the magazine *Dissent*, and quickly became a contributor and later editor. He arrived at Harvard as a graduate student in 1957, having spent a year at Cambridge alongside the early New Left circle around *Universities and Left Review*. Political theory at Harvard was then closely tied to comparative politics and combined the history of ideas and institutions with a practical focus: many of Harvard's theorists worked as government advisers, constitution drafters, or Democratic Party activists.[84] Walzer followed in this tradition. Like Shklar, briefly his teacher and for many years his colleague, he developed psycho-social explanations of political action that shared much with the "Harvard School" style use of history and psychology to make normative arguments, which itself reflected the broader postwar emphasis on psychological argument and behavior.[85]

Walzer's writings were also inflected with ideas drawn from his teachers, who included Samuel Beer, Louis Hartz, and Barrington Moore Jr., and from the democratic socialist tradition. He wrote regularly about social movements,

like the Freedom Rides into the segregated South in 1961, and he was involved in the Cambridge New Left Club and local antiwar politics.[86] As the decade wore on, he positioned himself as a voice from the old left speaking to the new and was critical of the latter's supposed individualism, lack of discipline, and failure to build a mass movement.[87] But though Walzer's political views were explicit, they were also hard to pin down. His work was initially characterized by a pluralism, by an attention to psychic experience that crossed non-Marxian ideas of alienation with liberal categories of anxiety, and by a confidence in participatory politics. After 1967, Zionism shaped his ideas about group life in stark ways. Walzer remained a strong advocate of group commitment and sometimes romanticized the intellectual and political discipline it required.

Walzer's account of obligation, which he developed in a series of essays for *Dissent* and in classes at Harvard between 1966 and 1970, was a hinge in the debates on the subject. He did not look to ideas of fair play, conscience, or contract to explain obligation, but to consent. The modern state, he wrote, was the "triumphant solution to the problem of governing a society of strangers." Within its "impersonal administration, its equality before the law, its due process," citizens were "nameless aliens" for whom self-government was more fiction than reality. The most plausible way of explaining obedience was through tacit consent, but that generated problems: did mere residence in a territory generate obligations to obey? Walzer thought liberals got around these complications by assuming that the absence of express dissent could stand in for express consent. By seeing commitment and consent wherever there was silence and wherever there was not revolution, the significance of citizen actions that fell between these poles was denied.[88] It forced a choice between complete obedience and revolution or, if those failed, emigration. For Walzer, recent attempts to save consent theory, however, had failed.[89] They equated citizens who have not given consent with children yet to gain maturity. New contract theories like Rawls's, and the theories of hypothetical consent Pitkin identified, avoided this difficulty by tying obligation to the receipt of state benefits. But they only explained "negative duties," not active obligations. To prioritize democracy, Walzer reversed the causality. The justice of a government does not mean that we have consented. It is our consent that makes the government just.[90]

Consent theory was Walzer's way of allocating agency, his alternative to what C. Wright Mills called the "outdated 'labor metaphysic'" of working-class politics.[91] It prioritized a version of the common man, the democratic citizen—citizens with their personal histories, made up by "trains of consents,"

going about their "everyday" lives. Consents, here, were "commitments to other people," or "to principles or parties or political institutions that arouse expectations in other people."[92] Obligations were owed to fellow citizens and to the small groups that made up social life. Thus, for the pluralist citizen, "citizenship is one of his obligations," Walzer wrote, "but only one." The receipt of benefits from a distant state could not create an obligation to fight, and die, for that state. At a conference on political obligation in 1967, he argued that since modern citizens who do not give full consent to the state were alienated, akin to "resident aliens," they were not obliged to serve.[93]

Even as liberal theorists looked to the constitution, state, and courts to protect civil rights, the renewed association of the state with its war-making capacities invigorated democratic critiques of state power. Walzer was no exception. Pluralism was one language for these critiques, and Walzer's pluralism had distinctive consequences for his account of obligation.[94] Rawls's pluralism had focused on family, church, and firm. With the decline of union strength and the status of industrial pluralism under legal pressure in the courts, Walzer's primary associations remained the sect, the union, and the social movement.[95] In Rawls's rendering of interpersonal, pluralist life, there was a smooth transition between associative duties and the obligation to obey the law. The community was folded into the system of practices, and the state into civil society. For Walzer, there was no smooth transition between the small moral community and the state, but a clash; what Rawls blurred together, Walzer prized apart. Interpersonal obligations did not translate into obligations to play by the rules. Even if the state existed to protect citizens (as Walzer thought the welfare state did), their obligations to it were less strong than the ties to their fellow citizens, friends, and comrades. They were bound to the state only by the benefits they passively receive. Not only were these bonds far weaker than the bonds of active commitment that tie citizens to each other, but the latter did not flow into the former. Walzer's citizens did not fully admit the "political sovereignty or moral supremacy of the larger society of which they are members."[96]

A number of radical implications followed from this, particularly about conscription and the modern state. Walzer rejected the view of conscription as a necessary burden of citizenship. In a society where consent was express, universal conscription would be democratic. But if citizens were alienated, "conscription, except in cases of social emergency, is nothing more than impressment."[97] The idea of a moral obligation to fight as a citizen no longer held. Older democratic ideals might work in a small democratic and

militarized state. But they could not work in the United States: the obligation to serve could not be glossed by an appeal to community. Looking back in 1971, Hugo Bedau took this argument further. He suggested that the idea of the obligation to serve was itself a product of the mass military and the imposition of draft laws. Is it not more likely, he asked, "that the presence of the draft in our midst explains the talk about our obligation to serve, rather than being explained by that alleged obligation? Is it not that the permanent military establishment in this nation encourages moralistic belief in our obligation to military service, rather than that our sense of obligation causes us to create our permanent military establishment?"[98]

The warfare state had transformed the nature of obligation. These Tocquevillian and Weberian worries about the expansion of the state and bureaucratic power now joined a New Left discourse about the crisis of authority afflicting both state and constitutional legitimacy. Alongside the antiwar and civil rights movements' embrace of radical anticolonial critiques of neocolonialism and militarism, worries about the decline of authority and the corruption of society would be used to justify forms of resistance that went far further than draft refusal.[99] The "political environment" of the "technocratic age," wrote the political theorist Wilson Carey McWilliams, had much in common with a "tyrannical situation" of old, though the present tyranny lay not "in the corrupt will of a tyrant" but in "the environment of life."[100] In this situation, civil disobedience had to be twinned with what Kaufman called "confrontation" and other "disorderly surrogates" as part of a political strategy of "radical pressure."[101]

These arguments pointed toward a broad account of justifiable dissent that criticized the delimiting tendencies of civil libertarian discourse. Walzer criticized the appeal to individual conscience on pluralist grounds. Conscience was never individual and always shared—"a form of moral knowledge that we share not with God, but with other men." The debates about civil disobedience, Walzer argued, needed to move beyond "monologue to fraternal discussion." Disobedience was best understood in terms of society's different spheres, as the "acting out of a partial claim against the state."[102] Debates about extending the CO category were too legalistic. Legal protection was demanded for those who opposed war, or conscription, because "they believe war itself or this particular war to be immoral." What mattered was not only whether the war was just but whether the citizen had actively chosen it and given actual consent. When a "democratic state goes to war," Walzer wrote, it should be those "who have taken no part in the decision to go to war" who

warrant "special consideration." The right to refuse the draft in all wars should be less well protected than the right to refuse service in particular wars—which should apply to both citizens refusing the draft and to soldiers, not only to consistent religious pacifists.[103]

Walzer departed from the liberal view that saw the agents in accounts of dissent and obligation as the conscientious individual and the state. His pluralism pointed to disobedience within corporations too, in particular to the sit-down strike.[104] Just as the understanding of civil liberties and the "expressive freedoms" did not in these years include the right to strike, the conceptual linking of civil disobedience with workers' movements was also rare.[105] But some looked to the tactics of those movements. The philosopher Virginia Held called for alternatives to civil disobedience, which she saw as a highly individual form of action that, even when collective, did not derive its force from its collective nature. Held followed New Left critiques of corporate liberalism in analogizing the state and corporation. The unaccountability of corporate management was like the unaccountable officialdom of the expanded modern state. As such, the withdrawal of labor was the appropriate form of action in both spheres—a "citizen strike" could work like a strike.[106] Such ideas were increasingly common in the wake of the global 1968 protests. As many on the New Left abandoned the traditional vision of the working class, they theorized political resistance beyond the factory strike: in autonomist and anticolonial theories of the social factory and social wage, Black Power ideas of the underclass or "lumpen proletariat," radical feminist accounts of women as a sex class, and defenses of global strikes based on withdrawing domestic labor and boycotting smiles.[107] Of these, the idea of the citizen strike was one vision that liberal philosophers might support.

Walzer took a different route. Instead of expanding the terrain of the strike, he used the strike to carve out a social realm where the state's prerogative to define and punish civil disobedience was limited. Where a corporation was nondemocratic, "revolution" in that corporation—a strike—may be justified and could fall under the banner of "civility," "so long as the revolution is not aimed at the state itself."[108] "If democratic states choose to shelter corporate autocrats," Walzer wrote in 1969, "then they must learn to shelter corporate rebels." The state was required to get out of the way: Walzer invoked the voluntarist pluralist tradition of industrial democracy, in which the affairs of unions and businesses were not the concern of government.[109] Interference in the form of police repression was not justifiable, as Walzer implied it was in cases when the state itself is the target. Since corporate authority tends to have no

democratic legitimacy, police may not be entitled to act against "men who violate the laws of the state solely in order to challenge the authority of the corporation." The violation of property laws is not an act of revolution against the state, even if it is an act against the corporation. Such resistance is at once revolution in the corporation and civil disobedience in the state.

Despite his premise that an undemocratic state cannot command obedience, a tacit acceptance of the welfare state ran through Walzer's writing. The state placed a "limit on group action." Though pluralist commitments justified taking some obligations more seriously than others, bonds of membership within small groups could not justify total disobedience to a liberal state.[110] So long as that state allowed citizens to honor their commitments and recognized their positive obligations, it remained legitimate.[111] The state was the guarantor of civil rights: in his account of African Americans as an oppressed minority with "no obligation at all within the political system," Walzer blamed "popular" rather than state oppression.[112] Alienation and the "dangers of administrative tyranny" were not sufficient to justify resistance. He conceded that "residence" in a democratic state generated the duty to obey the law.[113] Fair play arguments required citizens to accept unjust laws, on grounds that if the system of cooperation continued to provide benefits, there remained a duty to obey. Just as Rawls's nonbenefiting minority was released from their obligations, so Walzer's obligations varied in intensity and were mitigated by nonparticipation. The difference turned on what counted as participation: was playing the game enough to constitute participation in democratic decision-making? If the answer was no, Walzer's "ethics of the oppressed" and his account of obligation pointed in a radical direction.[114]

Walzer backed away from these implications. After the disorders in Newark, Detroit, and elsewhere in the summer of 1967 and the assassinations of Martin Luther King Jr. and Robert Kennedy the following year, the sense that the nation was being swept by riots precipitated a backlash against the attempt to accommodate a spectrum of dissent. In the face of growing civil rights and antiwar militancy, debate about dissent took a conservative turn. Civil disobedience was condemned as the "destroyer of democracy."[115] Following the campus protests at Columbia, Harvard, and elsewhere in 1968–1969, Walzer insisted that his justification of revolution in undemocratic corporations did not apply to students aiming at democracy in his own corporation, the university, because universities were insufficiently authoritarian.[116] His pluralism was shot through with implicit conditions like these—about what constituted not only the right kind of sect or union but the right kind of corporation to

revolt against. Though he stuck to his pluralism in theory, he backed away from some of its practical consequences—particularly when he criticized the New Left (for a lack of tactics) and the radical and black nationalist groups of the later civil rights movement (for the wrong ones).[117] The moment when political theorists tried to justify a broad range of dissent did not last long.[118] As the democratic, pluralist, and New Left visions of dissent came under attack from the right, liberal philosophers introduced their own account of civil disobedience.

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In 1969, a different liberal view of civil disobedience was consolidated. Walzer and Rawls had been circulating their accounts for some time, at conferences and SELF meetings. Meanwhile, the SELF legal philosophers, including Dworkin, Fiss, Marshall Cohen, and Michelman, began to look to justice theory to replace natural law as a ground of rights, liberties, and principles. Building from legal process theory, they argued that moral principles could guide decision-making (whether judicial or otherwise) and provide an objective basis for the rules of constitutional law—a set of principles outside (but to be interpreted by) the courts in a morality that existed within the constitution but had sources beyond it in interpersonal, communal relations. They began to put Rawls's theory to work to answer the persistent problem of the relationship of law and morality, legality and justice.[119] In so doing, they translated political problems into legal ones and crystallized legal perspectives within philosophy.

With the failure of arguments from conscience, many philosophers already critical of intuitionism came to think that "an idea of 'justice'" might "be adopted to address political problems."[120] This happened first in the debate over civil disobedience. Rawls, Dworkin, and Cohen published essays in quick succession. Rawls's appeared in an anthology edited by Bedau that helped establish the canon of civil disobedience, the boundaries of legitimate protest, and the interpretation of the civil rights movement that philosophers would uphold. Philosophers who cited King used this volume to do so.[121] The problem of conscription and the choice between obedience and revolution receded. Faced with new radical movements and an increasingly punitive conservative reaction, legal and political philosophers instead debated the proper definition and punishment of civil disobedience, and whether there was a right to civil disobedience that could, as Hannah Arendt suggested, be legally protected.[122]

The defense of civil disobedience had long involved strategically defining it against other forms of protest. Some had defined civil disobedience narrowly, excluding (and thus encouraging broad support for) the civil rights movement—on grounds that protests against laws later held unconstitutional did not count as civil disobedience.[123] For the ACLU, adopting this exclusion meant that civil rights campaigners in the South, but not other civil disobedients, were entitled to their assistance. In the mid-1960s, civil rights protesters had often defined civil disobedience in such a way as to maximize support, using the language of stability and consensus as part of a strategy for building a multiracial coalition of campaigners for African American civil rights, liberals, and labor unions. In a 1966 pamphlet, the veteran campaigner Bayard Rustin had insisted, in a passage Rawls underlined in his notes, that civil disobedience could be a duty of citizenship—a way of "revealing inconsistencies in a society" and correcting them, of balancing the separate powers where they get out of kilter, and of "improving the state and creating a new and different consensus."[124] For others, "responsible law-breaking" was a "beneficial," if rarely used, mechanism.[125] It was a way of testing unjust laws, and it could be domesticated, stabilized, and incorporated into a democratic framework.[126] Increasingly, however, liberal and conservative commentators defined civil disobedience so as to narrow the scope of legitimate dissent. They selectively deployed King's writings to frame civil disobedience as expressing the "highest respect for the law," and valorized certain texts for their attitude to punishment—particularly the idea that civil disobedience involved "sacrifice" and the willingness to "suffer" punishment.[127] Rawls's fair play argument and account of justice was also adapted to underline the importance of punishment and "the willingness to pay the penalty."[128]

The debate over civil disobedience went in a conservative direction. With Nixon's law-and-order campaign, which extended and made explicit the punitive anticrime agenda of the Kennedy and Johnson administrations, the philosophical emphasis on punishment and stability took on a different valence.[129] The metaphor of the game made stability paramount and was soon invoked both to argue for a straightforward justification of an obligation to play by the rules and to support the claim that justifiable disobedience should be punished. In turn, the rejection of "paying the penalty" arguments became a signature of the left. Kai Nielsen, who with Sidney Morgenbesser headed the active New York branch of the Society for Philosophy and Public Affairs that wrote letters to editors on topics such as Vietnam and the trial of New York Black Panthers, rejected the idea that built into the definition of civil disobedience was a willingness to suffer punishment. It was legitimate to follow civil

disobedience with "legal evasion" as part of a longer-term strategy for political change.[130] Howard Zinn similarly rejected the use of the game analogy: the idea that protesters should be "good sports" and submit to arrest, accepting jail as an accession to "the rules of the game," demeaned the "moral seriousness" of the protest.[131] Angela Davis and a number of other Black Power thinkers went further, arguing that the oppression of African Americans meant the American state lacked the authority to punish.[132]

By the end of the decade, both civil libertarians and conservatives were delimiting the justifiable scope of civil disobedience. This repressive view, associated with the new neoconservatives like Sidney Hook and the jurists Abe Fortas and Erwin Griswold, saw in civil disobedience a threat to stability and framed the acceptance of the constitutional system as fundamental to citizenship.[133] They constrained legitimate civil disobedience by the distinction between justifiable direct forms of disobedience (where civil disobedients broke the law they oppose) and illegitimate indirect disobedience (when they broke a law in order to protest another law or policy). Fortas sought to restrict civil disobedience simply to the moral right to test the validity of a law believed to be unconstitutional. It was justified if statutes were challenged as unconstitutional, but not if they were challenged, by an appeal to morality, as "evil"—a definition that included the initial civil rights protest but excluded much else. At the same time, the ACLU changed its definition of civil disobedience to narrow its remit, wavering in its commitment to provide assistance to civil disobedients and adding new guidelines for the acceptance of punishment.[134] It distinguished between the "legitimate" protests of the middle civil rights protests and the early antiwar movement, and the disorders that followed. The significant institutional power of the ACLU helped spread this view.[135] A 1965 draft of an ACLU local branch statement by Kaufman and Cohen had outlined an account of civil disobedience that included a declaration of a right to resistance.[136] By the end of the decade, the ACLU defined civil disobedience as either the violation of unjust but constitutional law or the violation of a "valid law" to call attention to "some evil" elsewhere.[137] In 1968, the organization changed its policy. It would provide assistance for those who challenged laws the ACLU "regards as invalid," meaning that lawyers could decide case by case.[138] It also explicitly isolated civil disobedience from other protests. "Open rebellion and riots are not examples of civil disobedience," an ACLU press release insisted. This was unsurprising, but a specific reason was given: "They are not peaceful attempts to persuade the public to change unjust laws nor are they efforts to stimulate court tests of the constitutionality of certain

laws."[139] Civil disobedience was a form of court- and constitution-focused rule-breaking designed to "build a wall around the disobedient to tell him from the insurgent." Amid the war in Vietnam and the characterizations by Black Power theorists of the situation of African Americans as one of "internal colonialism", the use of the language of insurgency was not accidental.[140]

For moral and political philosophers writing in this context, the justification of civil disobedience had to be more finely delineated than the theories of obligation proposed earlier in the decade. The fair play view provided a justification for disobedience when the state's failure to deliver benefits was plain, but it had left open the scope of legitimate dissent. As protests multiplied and diversified, it had little precision for differentiating the actions that lay between obedience and revolution. To accommodate the antiwar as well as the early civil rights protests and rescue both from the association with later militancy, philosophers departed from the fair play model of rule-breaking to experiment with a fuller set of principles and carve out a middle ground.

In 1969, Dworkin took aim at the punitive legal commentary in "On Not Prosecuting Civil Disobedience," published in the antiwar and pro–New Left *New York Review of Books*. That year Dworkin replaced Hart as the Chair of Jurisprudence at Oxford. He was on course to become the most influential legal philosopher of his generation and the foremost defender of the judiciary. He sought to overturn legal realism and positivism by putting moral principles, rights, and an idea of democratic community into law and by showing that legal rights and obligations required an understanding not just of social institutions and practices but of moral facts and principles. In his "The Model of Rules" (1967), he argued that the application of a rule depended on "principles or policies lying beyond the rule," and he distinguished between rules (like those of a game) and principles (beyond the rules, which had priority).[141] Two years later, he targeted the legal realist claim that a moral right to dissent did not have a corresponding legal right (so punishment of civil disobedience was to be expected). Dworkin responded to that claim by opposing the prosecution of civil disobedience, on grounds that it ignored a crucial point of legal interpretation—about who gets to interpret law where a law is invalid because it is unconstitutional and where its validity may be doubtful.

Dworkin argued that when the Constitution was not what the Supreme Court claimed, the judgment of citizens, the response of the community, mattered more than the discretion of judges or prosecutors. Citizens should challenge what they perceived to be misinterpretations of law, on moral grounds by appeal to principles. Their "allegiance" was to the law, "not to any particular person's view of what the law is" or any particular interpretation

by a particular court or prosecutor. Dworkin defended a kind of constitutional community where individuals could act on their own discretion, in accordance with moral principles, to defend their own rights against the bad decisions of the Court in the judgment of law. "If the issue is one touching fundamental personal or political rights, and it is arguable that the Supreme Court has made a mistake, a man is within his social rights in refusing to accept that decision as conclusive."[142] The constitution and courts could be in violation of principles of political morality. To persuade the courts that legislation is unconstitutional, civil disobedients should appeal not to an idea of legitimate government or to the rules of the game, but to morality—not a free-floating natural law, but one that issued from the practices of a community. If a significant number of people disobeyed a law on moral grounds and suggested that law was "uncertain," that law would be considered constitutionally doubtful, if not invalid. That disobedience would then be rooted in "agreement" among the community.

Constitutionality here derived from the morality of the community, but that did not mean that any majority argument that amounted to a "strong" one was constitutional. What mattered was the connection between law and fundamental moral rights. "The language of rights now dominates political debate," Dworkin wrote the following year. Citizens had "rights against the government" that the government had to take seriously. Rights had their most "natural use when a political society is divided, and appeals to cooperation or a common goal are pointless." He was clear that divisions in America were deep and "bitter." But it was up to the "ground rules"—the "laws and legal institutions" within which issues of social, economic, and foreign policy were contested—to express deep moral consensus and to state the "the majority's view of the common good." The role of rights within that was to represent "the majority's promise to the minorities that their dignity and equality will be respected."[143] Thus, rights against the state needed to be recognized. When laws rested on a moral right to be free from injuries, there were strong reasons to prosecute those who broke laws. Segregation laws rested on the assault on the moral rights of African Americans not to be segregated; segregationists reluctant to desegregate thus had no grounds for disobedience, even if it issued from the community's morality, because the law they disobeyed invaded the rights of others.[144] Not all laws rested on such rights. The draft was one example. Draft refusers did not invade the rights of others, so though they may not be entirely released from the obligation to obey the law, they may nonetheless not have an obligation to accept punishment. Their act of dissent was a way of expressing their judgment, as citizens, that a law is doubtful.

Marshall Cohen, the SELF philosopher and later founder of *Philosophy and Public Affairs*, agreed with Dworkin that there was no "fair play" obligation to accept punishment. Legal realists claimed that "the disobedient's actions are justified by his willingness to pay the penalty that the law prescribes." Against the condemnation of "indirect" disobedience, Cohen saw the war— government policies as much as unjust laws—as a legitimate focus for civil disobedience. "It must not be supposed," Cohen wrote, "that whenever the government violates the principles of political morality it does so by enacting a positively wicked law that the dissenters can protest 'directly.'" He saw the willingness to pay the penalty as fundamental to civil disobedience, regardless of the courts' decision to prosecute or not. Cohen argued that the willingness to face suffering was for the protester a "useful way of reinforcing the effects of his protest and appeal." It "helps to establish the disobedient's seriousness and his fidelity to law in the eyes of the majority." Like Dworkin, Cohen saw the majority and their morality as what mattered. Yet it was a particular hypothetical version of their morality—a kind of principled, collective conscience. Civil disobedience was "an appeal to the public to alter certain laws or policies that the minority takes to be incompatible with the fundamental principles of morality, principles that it believes the majority accepts." It was not a merely conscientious personal act. Here Cohen adapted the definition of civil disobedience to fit Rawls's theory, with its account of moral principles that flowed from the consensus at the core of a society's moral community, to judge the rules of the game.[145]

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In 1969, Rawls published the account of civil disobedience he had been working on for years. He followed Bedau in his definition of civil disobedience as an illegal, nonviolent, conscientious, and public act. He also described it in terms of the democratic community: civil disobedience was "a political action which addresses the sense of justice of the majority." It urged "reconsideration of the measures protested" and warned that "the conditions of social cooperation are not being honored." The injustice of laws alone was not enough to justify disobedience, nor was the validity of law enough to require absolute compliance. For civil disobedience to be legitimate, it had to be "justified by moral principles which define a conception of civil society and the public good"—by the conception of justice that underpinned society. Accepting a democratic constitution meant accepting a degree of majority rule, being compelled to

follow some unjust laws, and carrying a certain "burden of suffering from defects of one another's sense of justice." But only within limits: if the injustice was too great, and if the suffering weighed "too heavily" and was too unevenly distributed, disobedience could be justified.[146]

From the point of view of dissent, this view was limiting. This was not an appeal to a morality that existed outside of society, but to that which issued from it. The appeal to conscience, again, was not enough. If conscience was sovereign, the cooperative scheme of society would be "unstable." "We must pay a price," Rawls wrote, "in order to establish that we believe our actions have a moral basis in the convictions of the community."[147] Rawls underlined his commitment to public morals and his aversion to discretionary judgment. Justifiable civil disobedience was an "appeal to the moral basis of public life," to "the common principles of justice which men can require one another to follow and not to the aspirations of love which they cannot." It remained "disobedience to law within the limits of fidelity to law," an exceptional form of action justifiable only in the event of a "serious breakdown," where there was not only a "grave injustice" but "a refusal more or less deliberate to correct it." Civil disobedience had to be seen as restorative of the thing that really mattered—the stability of the basic structure. It was a "stabilizing device in a constitutional regime, tending to make it more firmly just."[148]

Rawls had shifted his account of obligation from a fair play one and created an independent duty to stability that was part of the "natural duties."[149] He maintained the distinction between fair play obligations acquired voluntarily and duties. But he also argued for a "natural duty not to oppose the establishment of just and efficient institutions . . . and to uphold and comply with them." As Rawls moved from an argument for obligation based on the principle of fairness to the natural duty of justice, the duty to uphold institutions was not tied to membership or consent but applied to all moral persons. Instead of participation in a practice, the characteristics of persons did the conceptual work. What mattered was individual citizens—their capacity to be moral, their values, and their sense of justice—and the stability of the institutions they inhabited.

By characterizing civil disobedience as resting on the appeal to the moral basis of society, Rawls made these characteristics crucial. The appeal was not to the plural associative groups that made up social life, but to the sense of justice of the majority—of individual moral persons with their moral psychologies, taken collectively. The "final court of appeal" was "the electorate as a whole."[150] This "body" was not an agent but one that was imaginatively

represented in appeals to, and by acceptance of, the constitution. This collective sense of justice decided whether punishment was forthcoming or whether laws could be changed. Crucially, it was embodied in constitutional principles. Thus, the actions of those in the sit-in movement, Rawls wrote, were not "revolutionary" acts but an appeal "in our federal system to the higher legal bodies which the system provides."

> Their aim was to have the higher agencies correct the local ordinances thought to be at variance with the [Constitution] or other higher laws—at any rate as these would be interpreted by the Supreme Court. They were not upheld by the Court, but they did eventually gain their end in Congress by Title II of the Civil Rights Act of 1964 which does provide for equal service in places of public accommodation. Thus, because our Constitution is just, much CD [civil disobedience] can be interpreted, not as appeal to the S of J [sense of justice] of the majority as an extra-legal conception, but as an appeal to the Constitution itself—or to the ideals which it expresses [and] which it is believed would dictate repeal and reform of existing lower (or local) statutes. CD can be viewed as appealling [*sic*] to law against itself.[151]

Civil disobedience was a public violation of a law in a manner that affirmed respect for the law. The manner was key: civil disobedience had to be "nonviolent" because violence would make the disobedient act a threat, not an appeal.[152] Given the basis of Rawls's morality in the recognition of persons, violence was more destructive in relations between persons than things, but Rawls's constraint that disobedience be nonthreatening meant he claimed that violence to private property was not permissible either. Any coercion interfered with the appeal. Rawls pushed this to an extreme: coercive disobedience, he wrote, constituted an act of "quasi-force or terrorism."[153]

Persuasive speech was the standard of legitimacy and a civic commitment to stability a priority. Rawls's concern for speech—from his early discussion of games and procedures to the conception of public reason of his late work—was bound to a particular "romantic" understanding of the civil rights movement.[154] For Rawls, the aim of the black freedom struggle was the reconfirmation and extension of the American creed. Its method was a nonviolent appeal to what Gunnar Myrdal called the "American conscience," exemplified in the Freedom Rides, sit-ins, and campaigns that culminated in the Civil Rights and Voting Acts.[155] Rawls's racial liberalism was a deep commitment that put segregation beyond the frame of philosophical discussion. But for desegregation to be solely an "implementation" problem suggested the optimistic view that

Brown v. Board of Education had indicated a confirmation of democratically held American values.[156] This was a view belied by the white backlash against integration of the late 1960s and 1970s.[157] Moreover, the civil rights movement fit Rawls's description of justifiable dissent only insofar as it was an appeal to white America to overturn unjust laws in the name of the fairness and justice of the Constitution—a movement for incremental inclusion in a basic structure that was nearly just in its constitutional essentials. It was part of Rawls's story of liberalism, framed as a movement to make a nearly just America more so. It did not threaten the stability of the US Constitution or the basic structure of society, nor did it question the integrity of its principles. Participants in the civil rights movement merely demanded a chance to be included in a game that was nearly fair. This vision ignored many facets of the movement: the challenges it posed to American society and its self-understanding; the longevity of its struggle and its ties with black radicalism and black nationalism; and the self-conceptions of activists as linked to anticolonial movements, responsive to international pressures, and aiming at more than redress for denial of access to institutions on the basis of ascriptive characteristics.[158] To sustain this interpretation, King's own explorations of political strategies that went beyond persuasion were ignored. His argument in "Letter from Birmingham Jail" that "pressure" akin to threats was justifiable was misrepresented.[159] Other radical black thinkers were neglected, as was King's relationship to them.[160]

By joining the legal debates on civil disobedience to his principles of justice, Rawls expanded on them in certain respects: when disobedience was justified, it was because those principles had been breached in the "practices (if not the letter) of social arrangements." Yet he also imposed a significant restriction on the application of his principles. Rawls placed conditions on justifying civil disobedience: it was justifiable "when one is subject to injustice more or less deliberate over an extended period of time in the face of normal political protests; when the injustice is a clear violation of the liberties of equal citizenship; and provided that the general disposition to protest similarly in similar cases would have acceptable consequences."[161] There was another major constraint. It was only in protest against "violations of the equal liberties that define the common status of citizenship"—the liberties of oppressed minorities or religious groups—that disobedience could be justified. It could not be easily justified in defense of the equality principle. Disobeying because of unjust taxation policy was not an option. Nor was protest in defense of economic or workplace freedoms, or in the name of broader social and economic injustices, like poverty, inequality, oppression, or other forms of structural disadvantage.

The implication was that protests around economic justice were destabiliz-ing and illegitimate. In this disaggregation of civil rights from economic justice, Rawls's theory tracked the fate of postwar liberalism.[162] But this meant that his theory excluded many forms of dissent—for instance, the union tactics and forms of strike action that had been deemed illegal at various points in Ameri-can history thanks to the restrictive legal environment forged by the courts.[163] Because of this exclusion, the analogies proposed by Held or Walzer were not relevant. The range of ideas about political action was narrowed. Legal and political philosophers implicitly tied civil disobedience to the "expressive freedoms." Civil liberties did not include economic ones but were linked to constitutional principles above the political fray. Here Rawls's ideas reflected the recent changes in the cause of civil liberties: the ACLU had given up a commitment to economic justice.[164] Lawbreaking in the name of redistribu-tion was not justifiable. Nor could civil liberties be "subject to calculus of social interests"—to "political bargaining," between workers and business or other interest groups. They were taken out of politics. Such a restriction served to limit the legitimacy of protests both in the name of a better future and also to protect fragile and hard-won redistributive achievements at a moment when many recognized the precariousness of even the Great Society legislation.[165] It also reaffirmed Rawls's romantic vision of civil rights and its implication that institutional acts of enfranchisement and changes to the basic structure in line with the first principle were sufficient, successful, and identifiable.[166]

This reflected a broader transformation in Rawls's thought. In the decade since Rawls first formulated his account of justice, his view of state power had become more constitutionalist and had taken on a civil libertarian hue. In the early 1960s, he explained the fundamental importance to justice as fairness of the equal liberties. Soon the first liberty principle took hard priority over the second.[167] The liberties were "fixed points" that "serve to limit political trans-actions and which determine the scope of calculations of social advantage. It is this fundamental place of equal liberties which makes their systematic viola-tion over any extended period of time a proper object of civil disobedience." The justification of civil disobedience rested on the priority of justice over efficiency, "and the equal liberties which it guarantees."[168]

Over the course of the 1960s, the individualizing, constitutionalist ten-dency within liberal philosophy was entrenched. Political philosophers came to prioritize individual civil liberties over pluralist or communitarian visions of the free play of morality of the kind the young Rawls had found appealing. The dynamic of Rawls's theory that became more pronounced was that between

the stability of the game and the liberties of its individual players. Once Rawls set to one side the fair play view of obligation, his aspiration was to secure stability while giving space to the morality that issued from the relations of individual moral persons. Through this appeal to individual morality—the morality of natural duties outside of institutions and the sense of justice within their bounds—Rawls at once emphasized the importance of individual action and the capacity to justify changing the status quo.

The great institutionalist philosopher was thus also concerned with agency and interpersonal appeals and relations. Moreover, his account of moral persons—guided from the bottom up by their sense of justice, who appealed to principles of justice to judge the rules—now provided a mechanism by which incremental change could be part of his system. Yet the non-institutional natural duties of individuals were precisely those to uphold institutions and protect stability. The part of his theory that potentially allowed for change was also the part that pushed against it. Just as Rawls incorporated an element of change in his theory, he constrained the opportunity for that change to be legitimate. At the same time that he made new claims for the individual, he shored up the stability of the system as a whole.

That Rawls placed more constraints on the justification of civil disobedience than he had in his earlier account of obligation was in part a result of his having brought to bear the apparatus of his theory on a particular political question. The theory, now established and well developed, took on a logic of its own: it imposed constraints on what Rawls was willing to argue, justify, and legitimize.[169] But the constraints themselves injected a strong element of status quo bias into his social vision. If the only way to question a law was in light of principles the community already potentially accepts, a young Peter Singer retorted, then nothing that fell outside this boundary could count as a legitimate reason to disobey.[170] There was little room in this vision for the reconceptualization of that community or of the persons inhabiting it—at least not of the kind that the New Left demanded and the Black Power and women's liberation movements had embarked upon as Rawls wrote.[171] Ultimately, Rawls responded to the years of political disorder by entrenching his vision of society as containing within it the possibility of consensus.

As the consensus view of the American creed was challenged, Rawls therefore made clear his intention to rescue it in a moderated form. In a 1968 talk, Rawls had for the first time provided a version of the idea of "overlapping consensus" that motivated his later work. Consensus was "a lucky thing," Rawls wrote, "an accident of circumstances and a contingent, working agreement."

A minimal consensus on political procedures would be sufficient for a "somewhat precarious" stability. For a society to be "viable and stable (not necessarily though unchanging, the equilibrium may be a mooring one), there must exist a certain consensus on political principles." This moral consensus that "supports the basic political procedure (the constitution)" was distinct from the interest-based views of political scientists. It need not demand a full consensus "on fundamental principles of religion or morals." It was sufficient that individuals accept and acknowledge the basic rules of the constitution, even if they do so for different reasons.[172]

Yet for a society to be both stable and just, Rawls saw as necessary an agreement on principles of justice, not as the product of "good fortune of different arguments leading to similar conclusions" but as "an agreement to regulate men's spiritual and other interests by these principles."[173] This idea underpinned Rawls's later notion of "stability for the right reasons" and his "political liberalism."[174] Here he argued that to make consensus practically effective, individuals needed to formulate arguments for the principles in their own terms. Without this, justice as fairness would be "interesting as a piece of ethical mathematics (a primitive game theoretic curiosity) but it will not single out a point of view with any significance for political theory."[175] However, when it came to whether civil disobedience should count as "a reasonable and prudent form of political dissent," the social consensus need not be "strict" but merely "overlapping": it should satisfy the condition of reciprocity and be brought about by different actors reaching agreement for different (moral, religious, or political) reasons.[176] That minimal reciprocity, Rawls implied, was satisfied in the United States. He elsewhere made clear that of the different forms of social injustice—where social arrangements depart from just standards, or where those arrangements conform to an unjust conception of justice or "to the view of the dominant class"—it was only the former case where civil disobedience would be effective.[177] If American society had included a species of the second or third kind of injustice, far more than civil disobedience would have been justifiable. For Rawls, still fundamentally a liberal optimist, the United States was not characterized by class domination or unjust core values.

It was thus during these debates about the ethics of individual action that a particular vision of American society, and of morality and its relationship to political action, became central for the generation of liberal philosophers who now looked to politics. Legal and political philosophers theorized both the morality of institutions and the morality of individuals acting under them. They appealed to the moral basis of society, to moral principles, and to moral

persons within those societies. The philosophers' moral toolkit was applied to new areas of social life. Later, when others took on Rawls's theory of justice, they also adopted this view of civil disobedience as a limiting form of social change. The liberty of individuals to act unlawfully against the state was seen as fundamental, but also as part of the reform and stabilization of a society moving, slowly, toward justice. The appeal to something beyond the rules of society justified breaking them. But many philosophers constrained the conditions under which that justification was possible in far more precise ways than earlier theorists had, which delegitimized much of the dissent they saw before them.

Within liberal philosophy, civil disobedience was reduced to a quasi-legal, stabilizing function. Unjust laws and policy could only be contested through appeals to the moral basis of society—to the morality that was already there. Moral principles were given a role not just in the judgment of institutions but in direct justifications for action. While this brought moral philosophy into politics, it also placed imaginative limits on the kinds of political action that could be brought into philosophy. The action-guiding obligations of citizens were understood not in terms of conflict between plural collective groups or classes, but in terms of individuals and against state institutions. The moral community was not something that could act, but something to which political appeals could be made—a civil society of public opinion, not an agent in itself. Liberal philosophers therefore studied political action only when it was exceptional and in contravention of law, and conceived these exceptional instances as singular, static, individual, and a test of particular laws in the name of legal order. Other accounts of dissent were set aside—whether those that explored lawful political action and participation by citizens, organizers, or politicians, or those that understood actions collectively, across time, in relation to social power and authority beyond law. Rawls made philosophical a set of firm, legal boundaries. They were policed cautiously.

3

War and Responsibility

AT THE INTERNATIONAL War Crimes Tribunal organized by Bertrand Russell in 1966 to try the US government for its crimes in Vietnam, an international group of philosophers, activists, lawyers, and commentators found the United States guilty of the crimes of aggressive war and crimes against peace and humanity.[1] Jean-Paul Sartre accused the American government of the recently named ultimate crime, genocide.[2] Their invocation of the Nuremberg Principles, used to try Nazi leaders and officials at the International Military Tribunals twenty years earlier, fell on deaf ears. In 1966, the Vietnam War was seen, as Daniel Ellsberg later wrote, as a "problem" or a "stalemate," not yet as a "crime."[3] By 1969, this had changed. Revelations about the My Lai Massacre put the issue of war crimes to the center of public debate.[4] Russell and Sartre looked more like prophets than cranks. Stuart Hampshire, then chair of Princeton's Philosophy Department, cautioned "hardheaded liberals" for deriding what they saw as Russell's "simple-minded radicalism"; where their theories had failed to yield accurate predictions, Russell's had succeeded.[5] The war was not just a prudential or strategic error. It was a moral crisis.

It was this moral crisis that galvanized moral and political philosophers into action as they began to address the international and interpersonal problems of life and death that the continuation of war made unavoidable. Revulsion at the "value-free" social scientific realism of expertise, seen as the reigning ideology of government, was widespread. So was anger at the conduits of that expertise—the "American statesmen responsible," Thomas Nagel wrote, "for the more murderous aspects" of policy, in a war "perpetrated," in Michael Walzer's terms, "by professionals and experts."[6] In philosophy journals as much as at antiwar protests, calls for an alternative "new morality" abounded as many tried to find ways to hold to account those responsible for the failure of the

old.[7] The new philosophy of public affairs was part of that challenge. In the founding statement of purpose of *Philosophy and Public Affairs* in 1971, the editors stated that philosophers should "bring their distinctive methods to bear on problems that concern everyone" to show that "philosophical examination" of "issues of public concern" could "contribute to their clarification and to their resolution."[8]

After 1968 and into the early 1970s, as the antiwar movement came to encompass liberals as well as the leftists who had long seen the war as a product of Cold War ideology and neocolonialism, many philosophers took up the problem of morality and justice in war. They synthesized law, ethics, and political philosophy in books titled *War and Morality*, *War and Moral Responsibility*, and *Moral Argument and the War in Vietnam*.[9] First, they looked for an ethical basis for the rules of war and turned to theological resources, like just war theory. They also looked to international law and the precedents of the trials of the post–Second World War period. These promised moral constraints on state action abroad similar to what constitutionalism provided at home. Rawls, Walzer, Nagel, and other SELF philosophers tried to carve out a space for a moral theory to judge the limits of war. They positioned their ideas between pacifism and forms of moral absolutism that forbid all violence, on the one hand, and utilitarianism and consequentialism, increasingly sullied by association with the realism of foreign policy intellectuals, on the other.[10] They wanted a new set of moral rules—to show how to assess the actions of those who broke them, to condemn those who justified murderous ends by claims of necessity, and to answer the question of who was responsible. It took Walzer a decade to finalize his theory and publish his *Just and Unjust Wars* (1977), and Rawls would soon set aside the subject of the international realm altogether until the 1990s. But it was out of their attempts to navigate antiwar protests and the moral limits of war that late twentieth-century liberal theories of war and international morality emerged. It was also here that the approaches to "applied ethics" and "public morality" that later dominated liberal philosophy had their origins.[11]

The war prompted changes in ideas about political philosophy's scope. With attention fixed not on American institutions but on the terrain of the international, the moral rules were stretched beyond the bounded realm of Rawls's basic structure. The two realms were, however, treated separately. The international realm had little philosophical relation to the distributive. While the politics of the war was deeply intertwined with questions of welfare and prosperity—and in the mechanism of the draft, problems of inequality, and

citizenship—the philosophical account of war was tied to moral action, not to distributive justice or political economy. The normative and institutionalist turn among moral and political philosophers was well under way, and it would accelerate after the publication of Rawls's theory in 1971.[12] Yet in discussions of war, ideas that had roots in the study of ethics, philosophical psychology, and the philosophy of action, and were concerned with agency, intention, choice, and responsibility, were brought into the terrain of political action and moral conflict. The problem of distributing goods within a community of shared moral values was severed from that of moral responsibility; the action in question was individual-focused and interpersonally justified, detached from political or distributional conflict between groups or interests. This division of philosophical labor was justified by the distinction between ideal and non-ideal theory.[13] In subsequent years, critics would argue that this conceptual logic was used to justify the unjustifiable neglect of various political realities that could not easily be accommodated within the structures of ideal theories of justice, particularly persistent forms of class, racial, and gender domination.[14] In late 1960s America, such neglect was the result of philosophers focusing on the war without, rather than that within. At this time of domestic disorder, the move to international theory provided a kind of escape valve. Ideas of conflict were externalized, beyond the distributive realm, to the international. The vision of a society founded on moral consensus was thus maintained.

Conflict was also individualized and moved to the terrain of individual ethical decisions. The trajectory begun in debates about civil disobedience continued in those about war. By the start of the 1970s, the challenge of ascribing individual moral responsibility had displaced that of holding citizens and states politically responsible for war and its conduct. The problem of civil disobedience had been concerned with defining when citizens were justified in breaking the rules. The problem of war became how to define when those who waged it were justified in ignoring them. To explore this, philosophers looked not to conflicts between agents but to the internal conflict experienced by agents faced with the "moral dilemma" of choosing between moral principles as they decide on a course of action. Ethical choices in war became a test case for a new vision of applied ethics in which general principles could be established, agreed on, recognized, and applied to particular cases in order to understand what kinds of actions were morally permissible. Applied ethics soon also encompassed medicine, law, and business. But the fact that moral thinking about war, with all its extremities and appeals to necessity,

was one of the first test cases for applied ethics had a wider impact on the development of moral and political philosophy. Its focus on dramatic and extraordinary moral choices was soon imported into other realms of inquiry. Crucially, it was imported back into the realm of domestic politics, which was turned into a case of its own: public morality.[15]

In these debates of the late 1960s and early 1970s about individual agency and moral principles, liberal philosophers continued to respond rapidly to political events. They also continued the ambitious search for a general moral theory that Rawls and his postwar contemporaries began. The challenge of finding general principles to cover many possible cases would lead philosophers into complex territory. It took a particularly thorny form when it came to politics. As such, the Vietnam-era attempts to theorize politics with the tools of philosophy were especially generative: from these debates emerged a distinctive liberal philosophical view of political action as a series of choices in which moral principles clashed, or were confronted by the claims of necessity. Thinking about what was permissible according to general principles and rules also entailed thinking about the limits of morality—the point where morality ran up against other kinds of claims. Here the messy world of Weberian politics and "dirty hands" entered into the study of ethics. The relationship of private and public morals was opened up to philosophical debate.

This had unintended consequences. The concern with dirty hands, necessity, and guilt served to blunt the force of alternative contemporary proposals for dealing with wartime responsibility. One of the consequences of the turn to war taking place on the terrain of individual agency and against the backdrop of Rawls's ascendant institutional distributive theory was the neglect of institutional, corporate agents—the army, the bureaucracy, the state. Political philosophers worried about their students, the draft, and militarism, but said less about the military and the corporate universities they worked for. As they sharpened their ability to deal with moral dilemmas, their diagnostic capacity in this regard was blunted. Longer-term institutional changes, notably the transformation of the army, were largely ignored.[16] Instead, philosophers exchanged ideas about collective responsibility for a focus on the responsibility and punishment of individual leaders. In these debates, the philosophical view of moral wrongs and the delineation of ethical constraints on war became more sophisticated. But understood against the backdrop of the public discourse on war and responsibility, their arguments, in the end, were often less demanding than the antiwar moment required. In the realm of war, the proliferation of a philosophy of moral rules and limits acted as a license as much as

a constraint. Political philosophers began to use moral principles as a political weapon. But the appeal to those principles also signaled a kind of retreat.

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At the start of the 1960s, the Nuremberg Principles and the London Charter, which had set guidelines for constraining war and defining war crimes after the Second World War, had faded from political view.[17] When the trial of Adolf Eichmann captured international attention, Hannah Arendt focused her account of it more on conscience and the nature of evil than on international legal rules and their infraction.[18] For Judith Shklar, this lack of interest in Nuremberg reflected a liberal blind spot. Legalist ideology, which obfuscated the political and non-neutral nature of law, prevented liberals from confronting the fact that the trials had been a tool for coping with the past, not a legal precedent or set of guidelines for the future.[19] Shklar thought that was in some sense for the good: adopting strict Nuremberg definitions of "aggressive war" would serve, just as the older categories of just war theory had, to legitimate the kinds of war left out of the category as "'defensive' in purpose, respectable, and even morally desirable." Yet she did not see this as an immediate prospect: "The distance between this outworn conception of the morality of war and the present actualities of warfare seems too great to make the survival of the theory of the 'just war' likely."[20] Shklar was right that the Nuremberg Principles and just war theory could be used to legitimate rather than restrain war.[21] But she was wrong that they would not survive. They were being revived as she wrote.

The search for an ethics of war began not within philosophy but in the streets and in the courts. As conscientious objectors and draft refusers looked to justify their opposition to the Vietnam War in particular, rather than to all wars, appeals to the Nuremberg Principles and just war theory proliferated.[22] In *United States v. Mitchell* (1966), David Henry Mitchell used the Nuremberg Principles to justify refusing induction as a means of disassociating himself from America's guilt of war crimes under international law.[23] Though he lost his case and appeal, Mitchell's defense was repeated in subsequent cases.[24] The Nuremberg precedent became the standard fare of antiwar petitions like "Individuals against the Crime of Silence" and "A Call to Resist Illegitimate Authority," signed by more than twenty thousand people, including Herbert Marcuse, Susan Sontag, and Paul Goodman.[25] At the same time, just war theory, reinvigorated as a way of coping with nuclear war, underwent a second

revival among Catholic antiwar activists and Protestant theologians.[26] Traditionally an alternative to pacifism and the crusade designed to guide statesmen, it offered a framework for judging the ends and means of war: the *jus ad bellum* (which treats the justice of war); the *jus in bello* (the justice of the conduct of war); and a set of requirements a war would have to meet to be designated "just."[27] Alongside the Nuremberg Principles, it provided a basis for the moral right to refuse service where a war was unjust, and for avoiding complicity in violations of the *jus in bello*. It also potentially provided a legal right to refuse criminal culpability and participation in criminal activity.[28]

As the antiwar movement radicalized, debates over the usefulness of these resources became a proxy for debates about the legitimacy of the protests. Commentators warned against campaigners' "imprecise" use of Nuremberg and just war principles. The veteran socialist campaigner Michael Harrington—antiwar, critical of the government's "dangerously anti-libertarian logic" when it came to draft protests, but skeptical of antiwar militancy—dismissed the Nuremberg analogy as vague.[29] John Courtney Murray, who played a key role in Vatican II's Declaration on Religious Freedom and served as a member of the committee reviewing Selective Service classifications, urged caution in the use of just war principles: if just war theory were legally recognized as a defense of selective conscientious objection, citizens would have to be "cultivated" to exercise the discretion demanded by the theory and to prevent the problem of "erroneous conscience" arising.[30] Paul Ramsey, a Protestant ethicist at Princeton University (whom Rawls knew and whose book he reviewed) had argued in 1961 for a legal category of "just-war objection," but now condemned the "legalist-pacifist version of the just-war doctrine" deployed in the call to the March on Washington for Peace in Vietnam and by Students for a Democratic Society (SDS).[31] His *The Just War* (1968) saw just war theory as a set of criteria for realist statecraft to place limits on modern warfare—not nuclear war but the counterinsurgency warfare that nuclear peace enabled.[32] It supplied justifications for the architects of the Vietnam War, not its opponents.

Yet many also recognized the broader uses of these bodies of theory—as well as the laws of war and international criminal law—to legitimate the constraint of state action. They had the potential to create a direct relationship between international principles and individuals, bypassing the state and the obligations of citizens. Just war theory, Ramsey wrote, introduced into state politics "the transcendent claims of the person and of humanity" as they had been fixed in "international juridical order."[33] International law had long had appeal for those—both liberals and early neoliberals—looking to constrain

or encase the state, but the cosmopolitan dream of international lawyers had faded in the postwar years.[34] Now lawyers began to treat the war in Vietnam as a breach of international law, returning to a view of international politics as an arena of principle. Richard Falk, at the forefront of protests by lawyers against the Vietnam War and also involved with the Society for Philosophy and Public Affairs, saw in the Nuremberg Principles "guidelines for citizens' conscience and a *shield* that can be used in the domestic legal system to interpose obligations under international law between the government and members of the society."[35]

To some philosophers, however, the basis of appeals to theological doctrine or legal precedent seemed thin. The laws of war were weak and nonbinding. Some argued that what was needed was a body of moral theory to which political actors could appeal.[36] Rawls again attempted to provide it. In 1968, at a Harvard antiwar rally, he spoke alongside Noam Chomsky, Rogers Albritton, and antidraft organizers and sketched a justificatory apparatus for the defense of selective conscientious objection. This would go beyond "merely religious" or purely "moral" theories like pacifism. What justified SCO for Rawls was neither an appeal to conscience nor merely the appeal to the sense of justice of the majority that he had used to explain civil disobedience—the "political principles conceiving the *common good*." What mattered was the breach of the principles governing the waging and conduct of war. Where Ramsey had used just war theory to defend the government, Rawls used it to support the antiwar movement. The injustice of a war generated the right, and in some instances the duty, to refuse service.[37]

Rawls did not publish on international ethics until old age. But prompted by these debates, he formulated a theory of war in a course titled "Moral Problems: Nations and War" that he taught in the spring of 1969.[38] Across a semester of biweekly lectures, Rawls surveyed theories of war and generated his own unpublished account of the limits of war. For Rawls, the morality of war was not an extension of the morality of institutions—the principles of justice. It was an extension of morality in general to the international realm where a set of moral rules and principles, independent of state institutions, applied to international actors and individuals. These would be chosen in an original position situation by the representatives of states—behind a veil of ignorance like that of the domestic theory—who would agree, in their national interest, to constrain war, as part of their natural duty to preserve their just institutions. The principles would include the laws of nations and of war and peace, familiar from standard international legal doctrine, as well as traditional

prohibitions on conduct—"the natural duties that protect human life." Here Rawls relied not on Nuremberg, or on more recent theories of international law, but on J. L. Brierly's classic textbook *The Law of Nations* (1926) for an old-fashioned account of international law that turned on the principles of sovereign equality and the duty to uphold treaties and avoided the political complexities of decolonization or international organizations.[39] Like just war theory, Rawls's account tried to move beyond the poles of moral absolutism (a set of moral rules and prohibitions that could not be overridden) and reason of state (which justified a great deal in the name of state stability). It also followed the distinction between judgments about the war and its conduct.[40]

For Michael Walzer, it was the problem of war crimes, rather than draft refusal, that first led him to just war theory. Figures as different as Bayard Rustin and Dwight Eisenhower, he wrote in a 1967 article in *Dissent*, were offering the same theory of moral judgment in wartime. Whether pacifists or militarists, they focused on the justice or injustice of a war and excluded the idea that whatever the justice of the cause, there were moral limits to be placed on its conduct.[41] But some acts could never be justified by the claim of "military necessity" or by the aims of war. The constraints on means that fell under the *jus in bello*—the protection of noncombatants, for example, and the ethical treatment of prisoners—should bear no relation to the ends of war. A series of absolute ethical distinctions had to be drawn. With American search-and-destroy missions in southern Vietnam targeting noncombatants, the line between soldiers and citizens that designated civilian immunity was a priority. By 1971, Walzer claimed that acts that eradicated the soldier-civilian distinction, like the firebombing of cities, were almost impossible to justify.[42]

For Walzer, this reorientation toward the conduct of war was a step toward the kind of moral theory of limits he associated with the account of limited, alienated citizenship in the liberal state. In his first book, *The Revolution of the Saints* (1965), he had differentiated a Catholic idea of limited morality, visible in just war theory with its ethical constraints, and a Protestant all-encompassing morality, seen in sectarian devotional forms of citizenship and the idea of a crusade.[43] On this view, if all are crusading "saints" under God, there is little distinction between combatants and noncombatants; the same was true in a democratic state in which all citizens serve equally in the military to protect their community. Just war theory, with its stringent adherence to the combatant-noncombatant distinction, challenged this thicker idea of citizenship.[44] Yet, as Walzer argued elsewhere, the private lives of citizens—the fact, in his terms, that most people, most of the time, do not want and cannot

afford to be involved in politics—meant that this thicker idea did not hold in practice.[45] Just war theory, on this view, was more realistic in an era when not all citizens served.

Walzer's move to define limits and distinguish categories of combatants anticipated a major shift in debates about the war that took place after 1969, when war crimes became the focus of politics and theory alike.[46] Clergy and Laymen Concerned about Vietnam published *In the Name of America*, a collection of evidence of American war crimes.[47] Seymour Hersh published his exposé of crimes in Vietnam. His revelations about the My Lai Massacre transformed the debate. There was no longer doubt that war crimes had been committed. The question was what should be done. What did the breach of moral conduct that this represented mean for those directly, or indirectly, responsible? Soon after Rawls treated the problem of refusal and the justice of the war, these problems were submerged by concerns with the justice of its conduct.[48] The resources of international law, the Nuremberg Principles, and just war theory, which had enabled justifications for draft refusal on grounds of the injustice of the war itself and the crime of aggressive war, were repurposed to explore its criminal conduct.[49]

This reorientation toward conduct and the focus on noncombatants had a number of implications. As particular areas of war were delineated, others were set aside. One broader consequence of the shift to the conduct of war was the philosophical sidelining of the political and ideological issues around the war. Russell's International War Crimes Tribunal and the parts of the later antiwar movement bolstered by the international anti-imperialist left had linked US war crimes to geopolitical questions about the Cold War, decolonization, and neocolonialism.[50] Some to the left of the philosophical mainstream, like Walzer, Sidney Morgenbesser, Kai Nielsen, and other members of the New York branch of the Society for Philosophy and Public Affairs, continued to comment on the politics of war.[51] Walzer himself would develop an expansive just war theory that included both crimes of aggressive war and crimes of conduct in war; he would use it both to justify opposition to the war in Vietnam and to designate Israel's position in the Arab-Israeli war of 1967 as just.[52] But the focus on conduct and the absolute moral limits to war abstracted from these questions. Most philosophers looked to conduct rather than to politics, and to the actions of individual soldiers and leaders rather than citizens. Just war theory made distinctions that the morality of crusading citizens masked—between soldier and citizen, and between the ethical means of war and its political ends. Once moral and political theorists like Walzer began to make distinctions like

these, others went further—in precisely the way Shklar anticipated. Walzer's focus on conduct and noncombatant immunity was a sign of things to come.

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As more philosophers associated with SELF and the Society for Philosophy and Public Affairs turned to theorize war, their dissatisfaction with the inadequacies of existing frameworks became clear. While lawyers like Nuremberg prosecutor Telford Taylor affirmed the capacity of the laws of war to address war crimes, some philosophers saw the laws as "morally unattractive" and by themselves insufficient to constrain war or the state.[53] The legal philosopher Richard Wasserstrom argued that because they were "not a rational, coherent scheme of rules and principles," their silences legitimated acts left out of the legal code. Unless a soldier was ordered to do one of the few proscribed acts, there was no "readily applicable general principle to which he can appeal for guidance."[54] Moreover, international law had failed to change existing assumptions about war, which dismissed morality. The realist position, derived from General Sherman's "declaration"—which implied that, because "war is hell," anything goes—was still taken seriously in both the theory and practice of international relations. So was the argument that without positive international law and the machinery to enforce it, the morality embodied by those laws was irrelevant.[55] For SELF philosopher Marshall Cohen, the laws of war failed to recognize that morality came first. A "more rigorous" conception of the morality of war that corresponded "more convincingly with fundamental principles" was required to provide the constraints that realist accounts of international relations did not.[56] Moral principles could not be "subordinated" to other interests.[57] But what should those principles be?

When Rawls and Walzer suggested versions of just war theory, they were looking for a set of moral rules that could go further than international law. They sought to carve out a space between moral absolutism and pacifism, on the one hand, and utilitarianism and realism, on the other. Others now also sought a moral theory to navigate these poles of moral absolutism and utilitarianism. At the turn of the 1970s, philosophers were, in general, challenging utilitarianism. Rawls advocated justice over utility. Other attacks on utilitarianism, like the British philosopher Bernard Williams's, were increasingly influential, particularly in discussions of moral responsibility.[58] When Williams attacked consequentialist theories, he argued that they cut out the idea that "each of us is specially responsible for what *he* does, rather than for

what other people do."[59] In the wake of the Vietnam War, the reputation of utilitarianism worsened. Its critics often fused it with a species of realism, on account of its ideological association with the state and its war-making capacities and calculations. By allowing that all means could be justified in the name of greater utility, it justified murderous means. A political critique of utilitarianism thus supplemented the philosophical one. "Bad moral philosophy . . . under the influence of bad social science," Stuart Hampshire wrote retrospectively, was complicit with the wrongs of war. Its "computational morality"—its reliance on forms of cost-benefit analysis where incommensurable goods were traded off against each other—was an "obstruction" to reform.[60] The affinity between utilitarianism and bureaucratic ideology was, Alasdair MacIntyre later argued, not "just a matter of resemblance."[61] Utilitarianism created a false confidence among policymakers who believed the "non-propositional and unprogrammed elements in morality" could be dismissed or controlled.[62] New Left anti-statism here joined with liberal critiques of bureaucracy, militarism, and paternalism to put utilitarianism under pressure. For those who cared about conduct, a theory of war could not be utilitarian: its evasion of responsibility and defense of means-end reasoning ruled it out.

In the search for alternatives, the modern approach to applied ethics was born. Many began to bring to bear tools from linguistic analysis and philosophy of action to posit moral rules, delimit what was permissible, and decide who should be protected in war (irrespective of its ends or politics) and who could be held responsible for it. Philosophers now used abstract, personal, and interpersonal modes of justification to explore the most concrete of existential questions of life, death, and killing—questions that continued to remain at the core of applied ethics.[63]

One of the most influential arguments had been put forward over a decade earlier: "the doctrine of double effect." This old idea had been reintroduced into linguistic philosophy by Elizabeth Anscombe. It had a long afterlife in ethics. By the Vietnam era, Anscombe was known for her blistering critique of modern moral philosophy.[64] She had led Oxford's internal rebellion against the noncognitivist theories of the likes of A. J. Ayer that denied the truth or falsity of moral statements. She was also known for her opposition, alongside Philippa Foot, to the university's decision in 1956 to award President Truman an honorary degree. Anscombe had condemned unlimited objectives in war. She argued that the distinction of "legitimate" killing from murder had "barbarous" consequences, as did the doctrine of collective responsibility (which had been used to legitimate civilian deaths in the atomic bombing of Japan

but was nonetheless still defended in a "lugubriously elevated moral tone"). Exploring the common claim made about Truman's intentions—that he had not aimed to kill innocents, but to end the war—she argued that the choice to kill innocents to achieve one's end was always murder. Truman's was not a borderline case. Anscombe thought that neither emotivism (which reduced morality to the expression of attitudes) nor consequentialism (which justified means by pointing to ends) succeeded in maintaining the prohibition on murder in war.[65] An absolutist moral theory was needed—not pacifism, but one that would nonetheless demand firm rules to prohibit the murder of innocents.

Anscombe turned to the doctrine of double effect. This stated that it is sometimes permissible to bring about as a merely foreseen side effect a harmful event that would be impermissible to bring about intentionally. In *Intention* (1958), Anscombe described intentions as dependent on actions and circumstances. She stressed that action should not be understood in the terms of the natural sciences but in those of ordinary social life—the motives, intentions, desires, and explanations of agents themselves, their non-observational or practical knowledge.[66] After Donald Davidson's intervention in philosophical debates about agency in 1963, this account of intention was dismissed, alongside other "anti-causalist" explanations for action, as ordinary language philosophers swapped piecemeal analysis for Davidson's general theory of meaning.[67] But Anscombe's ideas nonetheless became influential in ethics—particularly her concern with why some actions can be intentional under some descriptions but not others, and how others can be unintentional, even if they are understood as intentional when described as such. This insight was picked up in the doctrine of double effect. Double effect offered a way to delineate what counted as moral conduct and to challenge the casual utilitarianism of war policy without collapsing into pacifism.

Part of double effect's appeal was its wide application, beyond conduct in war. For some, these applications were not wide enough. In "The Problem of Abortion and the Doctrine of Double Effect" (1967), Philippa Foot pointed to its limitations in the context of abortion.[68] Like Anscombe, Foot attacked subjectivist and utilitarian theories that equated the badness of failing to prevent an evil outcome with perpetrating it. She wanted finer ways of delineating what was morally permissible. Foot began with a hypothetical thought experiment. A runaway tram is barreling along a railway track and gets to a fork: if the tram goes one way, it will kill five men who are working on one track; if the driver diverts it to go the other way, it will kill one man on the other. What should the driver do?

Thought experiments like this would become widespread, circulating beyond their origins in Oxford analytical ethics. So would "moral dilemma" situations, in which moral agents had to choose between actions with both good and bad results. This particular one was reintroduced in modified form by Judith Jarvis Thomson as the well-known "trolley problem." (Thomson's decision-maker was a bystander rather than the driver.) Their point was to reveal intuitions not through observing ordinary linguistic usage but by analyzing extraordinary situations. Intuitions were checked against general principles that justified or fit other cases, in order to revise them.[69] In light of her thought experiment, Foot argued that double effect did not fit our intuitions. If it did not apply in multiple situations, it could not be a useful moral rule. She suggested a simpler distinction: between "doing" and "allowing." This had even wider applications, most influentially in the field of biomedical ethics—then rapidly expanding under the aegis of new research institutions like the Hastings Institute of Society, Ethics, and the Life Sciences—in which it was redrawn as the distinction between "killing" and "letting die."[70] It could also be deployed to delineate permissible conduct in war: while doing harm was always morally impermissible, allowing harm was not.

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Throughout the coming years, moral and political philosophers increasingly used thought experiments and the model of intuition-testing through hypothetical cases to arrive at principles. More immediately, these distinctions had significant consequences for debates about responsibility, action, and decision-making. For the SELF philosophers, these ideas were initially tied to discussions of the war. In the attempt to find moral rules to cope with war, double effect and its alternatives provided the circuitous route to an answer. At a meeting in 1968, Thomas Nagel led a discussion, which began from Foot's article, on the problem of intention, double effect, and war. It was the first of many discussions of double effect: Charles Fried together with Gilbert Harman introduced a meeting on the topic six years later, and debates about double effect and noncombatant immunity continued in the pages of *Philosophy and Public Affairs* in subsequent years.[71]

In response to Nagel, Rawls argued that insofar as double effect provided a non-utilitarian decision rule (and thus an alternative to both intuitionism and utilitarianism), it was compelling. In Anscombe's rendering, Rawls wrote, it derived from Wittgenstein's "attack on mental acts as special experiences

or private acts." It provided a way of maintaining a strong prohibition on murder in war that stopped short of pacifism.[72] It made moral rules flexible, without lapsing into utilitarianism. Decisions were not resolved by a balancing of goods and evils. "It makes [absolutism] less restrictive; *adjusts* it to the demands of real life," Rawls wrote. "It *forbids absolutely* only certain means and chosen ends, and not foreseeable though unintended consequences. By suitably choosing our means and ends, we can live within its constraints." And yet it was simply a "local small scale restriction with no apparent intuitive basis." Only sometimes would it lead to "the correct conclusion."[73] Such objections were relatively mild. When Anscombe, who opposed contraception, used her typology of acts and intentions to argue that the rhythm method did not count as contraception, Bernard Williams and Michael Tanner accused her of cavalier absurdity: "Like sophists throughout the ages, she combines a commonsense bluffness against other people's distinctions, with the most sensitive indulgence to the niceties of her own."[74] Double effect could be used to legitimate intuitions and to license as much as to constrain.

Like Anscombe, Rawls wanted to decide what in warfare should be regarded as "morally impossible."[75] He was less concerned than some of his contemporaries with the moral dilemmas of individual agents facing tough decisions. His theory was designed to provide preemptive solutions to such dilemmas, to limit the tyranny of having too much choice. But in war, where the principles of institutional justice did not easily apply, such dilemmas required different solutions. Because so much of Rawls's account of war flowed from the broader moral theory he had begun to call his "theory of right"—the part of his theory that dealt with relations between persons and included the natural duties that bound individuals independently from institutional connections—international morality was determined less by institutional principles than by humanitarian duties to avoid harm, to aid the needy, and so on.[76] What happened when these duties conflicted—for instance, when a soldier might need to kill a man to save others?

Rawls dealt briskly with such dilemmas. He wrote that his priority rules—chosen in the original position to give an order to moral principles—would serve the same purpose as double effect, to provide absolutist limits to the calculus of good and evil, but with more success.[77] There was no need to resort to arguments from utility or necessity in situations of uncertainty or conflict. Decisions could be made by reference to the rules. Yet in war, a situation of noncompliance, the principles needed extra support. Wanting to connect these ideas to his contract theory, Rawls insisted that all principles of

war needed to be those chosen in the original position, and he extended his concerns there with individuals and stability to war. But he also introduced additional principles of stability to solve conflicts in "non-ideal" conditions of partial compliance. These included a system of punishments and penalties and a "principle of individual responsibility"—drawn from criminal and international law—aimed at ensuring that those who broke the rules would pay their due. It was this principle, according to Rawls, that protected noncombatants. But not everything followed from these basic principles. Rawls also provided considerable detail on the more substantive rules of warfare that he claimed would be agreed to in the original position. There would be a ban on weapon manufacturing and the use of those weapons that "necessarily violated . . . the strictures and aims of the just causes of war."[78] "The means of ordinary warfare must not," he wrote, "involve an attack on the '*normal life of the country, its persons and insts* [*sic*]."[79] There were strict constraints on the waging and conduct of war, though Rawls allowed for exceptions: "humane interventions" might sometimes be permitted, in violation of the principle that all wars should be wars of self-defense.

The only immovable moral limit on conduct derived from the principle of individual responsibility and its protection of noncombatants. This was that "*genocide is always wrong.*"[80] Rawls was likely taking aim here at his former teacher, Ramsey. In defending the United States against charges of genocide and exploring the justice of counterguerrilla warfare, Ramsey suggested that "insurgents" bore responsibility for enlarging "the area of civilian death and damage that is legitimately collateral." This argument seemed to make extremely large numbers of collateral deaths permissible.[81] Rawls addressed this directly, writing that it was necessary for his social contract theory to "explain the absolute prohibition concerning genocide." This strikingly minimal prohibition aside, Rawls thought the general "rejection of absolutism had been correct."[82] He did not say whether US acts in Vietnam amounted to genocide. Given his account of intention and his definition of genocide as the deliberate "destruction" of a people, "in the sense of a population with a distinct culture," he probably did not think so.

Here Rawls was trying to find a way of assigning responsibility for wrongs. The tendency of recent philosophy—and Rawls's own—had been toward deflationary views of responsibility. J. L. Austin's influential "Plea for Excuses" was at core about how people account for and explain their responsibility for their actions. In distinguishing between "accidents" and "mistakes," Austin pointed to the difference between acts people do that are determined by

circumstances outside of their control, and acts that go wrong through no fault of their own.[83] Much linguistic philosophy following Austin and also Peter Strawson implicitly rested on a conception of agents as vulnerable to contingency, flux, and fortune.[84] Such ideas also fit with the kind of political arguments that were increasingly deployed in institutional debates about welfare states and social insurance schemes, in which personal responsibility and desert were downgraded.[85] In Rawls's theory, these concerns played out in his rejection of desert as an institutional basis for distribution. Yet his use of a principle of individual responsibility in his ethics of war (and elsewhere, his conventional account of retributive justice) indicated that he was quite content to assign to different social realms and practices—of distribution and retribution—different notions of responsibility.[86] When it came to his account of moral persons, moral feelings, or natural and reactive attitudes, Rawls, like Strawson, saw blameworthiness as crucial to moral responsibility and personhood.[87] Despite his discomfort with notions of merit and desert, Rawls suggested that it was this principle of individual moral responsibility that ultimately grounded the rights and wrongs of war, in the absence of a stricter legal and moral code.

Utilitarianism might let agents off the hook, but a strict absolutism was too punitive or unsustainable. Yet anything less than absolutism might risk being too permissive, like the laws of war. In general, Rawls did not share the philosophical urge of some of his colleagues to make the rules as simple or as general as possible. By contrast, when Nagel turned to problems of war, he tried to find an absolutist alternative that, like Foot's, was simpler than double effect and that did not require Rawls's complex apparatus. Absolutism, he argued in "War and Massacre" (1972), forbids doing certain things to people. It does not forbid bringing about certain results. In war, there exist absolute prohibitions, acts that cannot be done morally—acts that, if done, no argument or justification can make "all right."[88] For Nagel, it was possible to extract those prohibitions from our everyday moral principles—the rules we accept in everyday life. Absolutism about murder had "a foundation in principles governing all one's relations to other persons, whether aggressive or amiable," Nagel wrote. "These principles, and that absolutism, apply to warfare as well, with the result that certain measures are impossible no matter what the consequences."[89] "If there are special principles governing the manner in which we should *treat* people," Nagel went on, "that will require special attention to the particular persons toward whom the act is directed, rather than just to its total effect."[90] Eliminating all weighing of consequences from political

thinking was impossible, so absolutism was not a substitute for utilitarian reasoning, but a limit on it.

Yet absolutism and utilitarianism involved two different ways of viewing the world. Absolutism was associated

> with a view of oneself as a small being interacting with others in a large world. The justifications it requires are primarily interpersonal. Utilitarianism is associated with a view of oneself as a benevolent bureaucrat distributing such benefits as one can control to countless other beings, with whom one may have various relations or none. The justifications it requires are primarily administrative.[91]

For Nagel, what you could do to someone was circumscribed by what you could justify. This commitment—to horizontal, interpersonal justifications and to reject executive decisions that neglected individual persons for the sake of general welfare or a possible future—applied even in war. Was it possible to justify to a victim what was being done to them? The impermissibility of murder and murder in war was derivable from this general requirement of interpersonal justifiability. Adherence to it buttressed the protected immunity of noncombatants and discredited the utility calculus as a guide to action when dealing with the "problem of means and ends."[92] Nagel's alternative to utilitarianism, like Rawls's, was an interpersonal ethics. But where Rawls was ultimately concerned with the institutional contexts of interpersonal relations, Nagel focused on the universal moral rules arising from them. Where the young Rawls took aim at the institutions of the administrative state, Nagel extended the attack to utilitarian reasoning in emergency politics. In doing so, he challenged the idea that there is a form of politics, like the politics of war, where anything goes and emergency ends justify all kinds of means. What was true of war was true of the rest of social and political life. No elaborate theory or specific principles of war were needed; simple rules, built from fundamental moral principles, could provide a moral limit to action.

Such confidence in the capacity and flexibility of moral theory, and in the applicability of general principles to particular situations, was a staple of the new philosophy. Nagel here joined Rawls in taking an interpersonal rather than institutional approach to war. Yet Nagel was ready to acknowledge the need for absolutist moral rules, even if they could not accommodate human failings. Even in war, some means were never justified. That, for Nagel, was how absolutism retains its force even if moral rules are violated. The rules still remain in place, even when they are ignored. The trouble with absolutism was

that real-life agents break the moral rules, as even self-declared absolutists like Nagel knew well. "We have always known that the world is a bad place," he wrote in the aftermath of the My Lai revelations. "It appears that it may be an evil place as well."[93]

The commitment to finding moral rules and principles of war persisted among philosophers. But the approach to moral questions it initiated was not without critics. The response of the British political philosopher Brian Barry was particularly damning. Barry, who studied with H.L.A. Hart at Oxford and whose less systematic approach to philosophy was typical of the Oxford style, would become, following the publication of his *Political Argument* in 1965 and his founding of the *British Journal of Political Science* in 1971, one of the most influential political philosophers in Britain.[94] For Barry, these "moral absolutists" had tried to find a middle ground between theories that let all actors off the hook and theories that held them responsible for all the consequences of their acts. Double effect was a casuistical symbol of the tortured results, an attempt to limit moral liability that had gone too far. It introduced too much uncertainty, justified too much, and, in its willingness to let people off the hook on account of human failings, let perpetrators get away with their crimes. Barry later dismissed these wartime debates as examples of philosophical "simple-mindedness."[95] These debates anyway failed to get at the questions that preoccupied many after My Lai: given that the rules had been broken, how could the people responsible be made to pay?

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These philosophical debates about intention and individual responsibility took place at a moment when many moral, legal, and political thinkers, both outside and within the field of academic philosophy, were debating rival views of responsibility in war. In 1970, congressional representatives invited Daniel Ellsberg and Senator George McGovern to join Hannah Arendt, Hans Morgenthau, and other politicians, political scientists, and lawyers like Richard Falk and Telford Taylor at a conference titled "War and National Responsibility."[96] The attendees debated what approach to responsibility to take. Some worried the talk of leaders' responsibility was a distraction. Morgenthau argued that it was merely "psychologically convenient" to assuage guilt by trying a few individual leaders.[97] Others argued that the "overlegalization" of responsibility obfuscated the political nature of responsibility; the law diverted "attention from our aggregate responsibilities as citizens."[98] For the

journalist Jonathan Schell the question was whether responsibility should be assigned to individuals, to mankind, or more simply to "ourselves."[99] But how? It seemed, to many, to be impossible. It was not clear that American citizens could be understood as a collective, or as a corporate agent that could act and be morally responsible (and, potentially, be punished). The distinction between trying ourselves and imposing criminal liability on leaders was, Taylor wrote, "interesting conceptually but not very realistic."[100]

These discussions about the relative merits and possibilities of individual and collective responsibility had recent precedents, particularly in debates in the aftermath of the Second World War about whether it was possible for the nation, or the citizenry in general, to be held responsible. In 1945, Karl Jaspers had argued that the German citizenry was politically guilty, but with differing degrees of responsibility.[101] Dwight Macdonald attacked the notion of collective responsibility in his memoirs. He thought speaking of the collective responsibility of "the German people" for state violence against the Jews required an implausible organic conception of the state. By contrast, speaking of the responsibility of the "entire white community" of the American South for violence against African Americans during Jim Crow was more viable: that community acted deliberately and often against the state, albeit with its complicity.[102] Arendt, meanwhile, argued that while collective guilt was impossible, collective responsibility was not. That was the definition of political responsibility: responsibility for the political world that citizens make together.[103] Addressing different concerns, C. Wright Mills argued that "the power elite" as a group could be held responsible for the unequal distribution of power in America. Elites could not rescind political responsibility by blaming luck, fortune, or providence. Moreover, those with far less power to control the shape of the social system nonetheless had a collective responsibility to hold elites accountable.[104]

In contrast to these arguments, philosophical debate about responsibility in the 1960s had focused largely on moral and legal, rather than political, responsibility and had taken a different direction. In his attack on "legal moralism," Hart extended the skepticism among linguistic philosophers about ascribing moral responsibility to legal terrain, insisting that moral responsibility was narrower than legal responsibility. Hart, with Tony Honoré, had published an influential account of causality and causal attribution in law.[105] In response to a wave of retributivist defenses of punishment—part of the broader backlash against utilitarianism and its deflationary view of responsibility—Hart provided an alternative that combined aspects of utilitarian defenses of

punishment (their forward-looking nature, which rendered the suffering of the punished justifiable by its deterrent effect) with a defense of the principle of personal responsibility (which retained as morally relevant the distinction between innocence and guilt).[106] The law, Hart wrote, can hold a person responsible for things done by accident. Under the cover of strict liability, that person can be responsible for things done by others. Morally, however, they could not be held responsible for things they could not have avoided doing "or for the things done by others over whom they had no control." For Hart, that way of assigning responsibility conflicted with what it meant to have a morality and the commonly accepted features of ordinary morality itself. For instance, someone could be said to have moral responsibility if we could blame them for doing something wrong. But if we think they could not have done otherwise, we do not blame them. They cannot be described as morally responsible. A legal system ought not to make people liable for what they did by mistake.[107] Punishment and responsibility should track moral blameworthiness. The bar for that should be set high.[108]

Different arguments were made to similar ends by the philosopher Joel Feinberg, who argued that it was conceptually implausible to find every German (or American) guilty for acts done by every person acting under the authority of the state. He described moral responsibility as hinging on fault rather than merely liability. With law, by contrast, a person could be liable without being at fault, and liability could be transferred to other individuals or collectives, or across generations.[109] Arendt, though critical of Feinberg's abstraction from politics, agreed that guilt, unlike liability, cannot be transferred, yet she argued that liability need not imply blame in the same way guilt does. Guilt and blameworthiness were tied to particular agents and were thus much harder to establish. Only those directly at fault could be held responsible.[110]

These arguments were not the place to find a robust way of ascribing responsibility for war crimes. The debate over how much people could be held responsible for their own choices when they might not control the circumstances of those choices continued, with the grounds for responsibility becoming increasingly attenuated.[111] Meanwhile, some sought to show the implausibility of the idea that collectivities or social systems could bear moral responsibility. They acknowledged that in ordinary language we might hold collectivities responsible, but that did not make the members of a collectivity also, or equally, responsible. Others saw a difference between organized groups—an "armed forces unit acting under command"—and random

collections of individuals, but insisted that any case for group responsibility had to begin from the fact that "we can assign responsibility only to persons."[112] "Persons" now meant individuals. There was little philosophical enthusiasm for doctrines of corporate responsibility.[113]

So philosophers concerned with war looked to international law instead. The laws of war offered distinctions for delineating responsibility, but legal philosophers continued to find them wanting. The Nuremberg Principles shifted the bearer of responsibility from the nation to the individual, but collective responsibility was still part of the principles. Article 6 of the Nuremberg Charter established a principle of vicarious liability, whereby any member of a conspiracy could be held liable for the acts committed by others. Article 10 derived responsibility from group membership: if a group was criminal, membership counted as an offense.[114] The charter imposed significant liability on those who accepted conscription—potentially, responsibility for waging war and, through the doctrine of conspiratorial responsibility, for war crimes. The trials had narrowed the scope for group responsibility. Its principle of individual responsibility implicated citizens less, but it still allowed room for the idea that even if accepting conscription did not make soldiers liable, it nonetheless placed them in a causal chain in relation to war criminality.[115]

Many draft refusers had made this case. With hindsight, Richard Wasserstrom wrote that the ideas of group criminality and conspiratorial liability did not generate sufficient fear of punishment to be effective.[116] Moreover, the laws of war failed by creating misleading hierarchies of responsibility, especially in their distinctions between different kinds of killing. The bombing of cities, Wasserstrom argued, was not morally different from other forms of killing civilians. Punishing those who did the latter while rewarding those who ordered the former was unjustifiable. What was crucial was distinguishing among different categories, rather than ontological kinds, of agents—soldiers and citizens, combatants and noncombatants, volunteers and conscripts, military and civilian leaders, and munitions workers and those in combat.[117] Yet even these distinctions did not make assigning responsibility easy. It was hard to apply an ordinary *mens rea* requirement to a typical combat soldier, and in those cases, responsibility rested on the tenuous Nuremberg definition of "moral choice": could soldiers defend their action in the field by appeal to "superior orders and duress"? Did they realistically have a "moral choice" to disobey orders that entailed war crimes?[118] Clear-cut cases like My Lai aside, it was hard to show full culpability. Habituated as soldiers were by obedience, the plea of superior orders still covered their actions.[119]

With leaders, things were different. In the early 1970s, philosophical as well as political attention shifted to the responsibility of leaders, with whom it was far easier to satisfy the *mens rea* requirement of legal culpability.[120] Precisely how the burden of responsibility would fall was more complex. As Shklar had pointed out, Nuremberg was in this respect unique, since so many individuals had been so obviously culpable.[121] Unlike soldiers, leaders were not subject to formal military discipline. They had more discretion, more time, and more power to reflect and make real choices. Many thought accountability, particularly for My Lai, should go all the way to the top. How to determine it? Wasserstrom argued that bad motives were not an essential requirement for responsibility. It was appropriate to hold leaders responsible both for acts ordered that they knew violated laws of war and also for harder cases. "Actual knowledge" was not required, and strict liability was unattractive. The appropriate test for culpability was "what the leaders ought to have known or foreseen" about their actions.[122] This was in effect a reversal of the double effect framework and a claim about its tendentiousness. Good intentions were beside the point. What mattered was foresight. Hart made a similar point: at least from the point of view of criminal law, the known side effects of an action were morally indistinguishable from the actions' intended effects.[123]

Given this, some began to argue that individuals whose legal culpability could be proven should be tried in an international or domestic court of law. Where there was sufficient evidence, there was no excuse that could get them off the hook. Soon, after the release of the Pentagon Papers in 1971, Noam Chomsky would argue that the evidence was more than sufficient.[124] The law, and the legalization of discourse about war, had political intent. Richard Falk had long called attention to the role of law as a political instrument in the antiwar movement.[125] He recognized the practical limitations of the call for trials given the restricted political force of international criminal courts and law. At the "War and National Responsibility" conference, Falk suggested alternative mechanisms to investigate the actions of leaders—international commissions or a more active domestic judiciary.[126] Other proposals abounded. Speakers called for a committee of jurists; additional legal principles; schemes for domestic legal courts, tribunals, commissions, and forums for returning soldiers to provide evidence (and confess); or new bodies of law that covered environmental assaults, including the category of "ecocide," first proposed as a way of indicting the destruction of the Vietnamese lived environment.[127]

Yet many continued to doubt the power of international law to hold even individuals responsible and pointed to the unintended consequence of this

legal discourse. Wasserstrom suggested the overlegalization of responsibility neglected moral responsibility, encouraging conscripts to avoid complicity, not in order to be moral, but to avoid a punishment.[128] Falk, by contrast, organizing with the antiwar movement, insisted that it had important political consequences of its own. Legal responsibility could be used to create politically responsible citizens. Falk consistently tied law to politics, the *jus in bello* to the politics of the war. He distinguished two "orientations toward crime," juridical and political: first, the "indictment model," a conception of crime based on the "plausibility of indictment and prosecution of individual perpetrators"; and second, the "responsibility model," based on "the community's obligation to repudiate certain forms of governmental behavior and the consequent responsibility of individuals and groups to resist policies involving this behavior."[129] Instead of emphasizing the juridical nature of war crimes trials—Falk and other lawyers saw them as legally implausible—he explained the tribunal's mission by reference to the responsibility model.[130]

Nuremberg might have been an example of a real indictment model of war crimes, he suggested, but in the context of Vietnam its function was political. It would connect individuals to the international, challenge state sovereignty, and build "transnational solidarity with every victim of governmental crime." The best outcome of invoking Nuremberg was not holding individual leaders to account. Rather, legal principles had an educative function, encouraging citizen action as a form of responsibility. They should "educate the public" about what it meant to depart from "moral and legal standards." Behind the responsibility model lay the conviction that "individuals of conscience are the most reliable check upon the war criminality of governments."[131] Shklar had described Nuremberg in similar terms. But she had seen its political function as unique to postwar Germany. Falk expanded its lessons: exposing Vietnam policies as criminal was necessary to prevent their repetition. The call for the redress of past wrongs was not a question of legal responsibility and culpability. Legal principles were put to use in the name of future-oriented political mobilization.[132]

There was one very real way for American citizens to take responsibility for and share the burdens of war, but it was being removed from democratic politics altogether. By 1973, conscription was over. The all-volunteer army was in place.[133] With the end of conscription, the most obvious institutional mechanism for putting the idea of collective political responsibility for war into practice disappeared.[134] The idea of citizen responsibility had practical force in the context of a conscripted army: citizens who fight can have a

substantial causal impact on a war by withdrawing their labor. This practical basis for responsibility was threatened by the new professionalized military and what the military sociologist Charles Moskos characterized as the move toward a "split-level garrison state." Harold Lasswell's famous dystopia of the "garrison state" had described a society where civil order was militarized and the distinction between citizens and military personnel obliterated. It had to be updated, Moskos argued at the "War and National Responsibility" conference. The armed forces were now isolated, "more distinct and segmented from civilian society." As a result, overseas interventions had "fewer political repercussions at home." The danger to American democracy was not "the specter of overt military control of national policy, but the more subtle one of a military isolated from the general citizenry, allowing for greater international irresponsibility by its civilian leaders." Only when the consequences of such irresponsibility were felt throughout society could military policy be democratically constrained.[135]

Antimilitarism, this implied, had distracted liberal and New Left intellectuals, who focused too much on the moral critique of expertise—the prioritization of liberty and personhood as a challenge to bureaucracy and administration. They ignored the fact that it was actually the democratic control of institutions and, in turn, democratic accountability and collective responsibility that were under threat.[136] The practical mechanisms by which the burden could fall on "ourselves"—by which the power elite could be held accountable—were disappearing.

In any case, few philosophers had pointed to the draft as a concrete instantiation of collective political responsibility or a way of holding those in power to account. Rawls was an exception. With civil libertarianism ascendant, he nonetheless acknowledged that the institutional changes to the military, wrought by anti-statist campaigns of both left and right, might have consequences for responsibility. Rawls's worries about militarism led not to an all-out opposition to the draft, but to a concession of its importance. In an unpublished essay on military recruitment schemes, he described the "professional and market military" advocated by the libertarian right as inflexible, expensive, and potentially an officer corps in service to specific group and class interests. It would provide an army always ready for "neo-imperialist adventures abroad," without the potential constraint on war that political opposition to the draft allowed in the case of unjust wars.[137] Like the standing armies that once preoccupied Renaissance thinkers, Rawls thought professional militaries had tyrannical implications for liberty. Citizen armies, by contrast, were

more cautious and would provide a check on aggressive international politics, if citizens had the right to refuse service. As an institutional mechanism that gave substance to the idea of citizen responsibility, such armies prevented the slide from republic to empire.[138]

Rawls stopped short of the diagnosis that his postwar anxieties about the state might have entailed and did not pursue a critique of the militarization of the state or the depoliticization of the military. America was showing itself to be still more warfare state than welfare state. Spending on strategic bombing abroad and the so-called "war on disorder" at home outstripped spending for social democratic ends.[139] In light of these wars, Rawls might well have deployed his theory of justice to judge the moral limits of such a state. But his institutional theory was not put to work against the war, nor against state institutions. The concern with concrete legal and institutional mechanisms stopped here. Amid the end of conscription and the libertarian mood of American liberalism, few took up the idea that the draft could be the mechanism for making sense of what it meant for "ourselves" to bear the burden. In the early years of the 1970s, just as the philosophy of public affairs became overwhelmingly institutional and distributional in focus, the distribution of the responsibility of leaders for war was dealt with separately, as part of the turn to applied ethics, law, and individual conduct.

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After Nuremberg, it had not been inconceivable that leaders would be made to pay for their wrongs. During Vietnam, there was less optimism. As the war crimes revelations faded from view, it became likely that civilian and military leaders would go unpunished. What was to be done? In debates about the responsibility of leaders among philosophers of public affairs, they now established a framework for interrogating "public morality."

The political trouble with responsibility was not only that it was hard to distribute. Even locating the responsible parties proved difficult. Was it possible to find "discrete criminals" in the faceless bureaucracy of the American state?[140] Opponents of war crimes trials and "extralegal judgment" appealed to this difficulty. As the legal philosopher Sanford Levinson noted, they invoked the idea that government was a "Kafkaesque world of institutions without actors, a mad kind of world where individual activities (though not 'decisions') culminate in a world that no one desires and for which no one is responsible." Organizational complexity minimized the possibility for finding

legal culpability. By contrast, those who called for extralegal trials of individual leaders took a view of politics based on great individuals, great events, and great decisions, in which responsibility could easily be located and trials should appeal to morality as much as law. The latter group, Levinson pointed out, were too willing to find individuals guilty. The former were too unwilling. In the face of the refusal to take seriously the charges of war criminality, Levinson thought it better to find some individuals responsible than none at all. It was more productive to focus on individual responsibility than on corporate guilt, which he saw as a vague notion that enabled an evasion of responsibility and rarely entailed corporate punishment. Though skeptical of extralegal proceedings, he suggested that a blanket rejection of attempts to enforce the law, in the face of the state's refusal to do so, brought to the fore questions about the legitimacy of norm-enforcing institutions themselves.[141]

Faced with the choice Levinson diagnosed, many philosophers, increasingly frustrated by the government's lack of accountability for war, focused on individual moral responsibility, setting aside the questions of bureaucratic, corporate, and dispersed responsibility. The same names were mentioned repeatedly as the architects of war to be held responsible: McGeorge Bundy, Henry Kissinger, Robert McNamara.[142] To discuss the crimes of such leaders, philosophers used the conceptual frameworks they developed earlier. Philosophical attempts to navigate between utilitarianism and absolutism to find simple rules of war here met with debates about the relationship of law, morality, and punishment, which had proliferated thanks to the concern with civil disobedience. Philosophers who debated what infringements on citizens were justified in emergencies now asked the inverse question of what leaders could justifiably do in equivalent emergencies. The ethics of dissent was redeployed to deal with the morality of powerful agents; to explore not what should happen to individuals who break the rules, but how breaking the rules might be justified.

This practical focus made the puzzle of the relationship of law and morals thornier. If the legal and the moral were one and the same, then civil disobedients were criminals and those committing war crimes had to face the force of the law. If they were different, the civil disobedient could be a moral agent. Could the war criminal? This did not pose a problem for those like Wasserstrom, who saw the laws of war as senseless.[143] But others examined the traditional justification for war criminality: that "military necessity" justified the breaking of a rule in a given situation. Some political philosophers developed a particular approach to discussing the morality of political action, one that

extended the views of intention, agency, and moral decision-making by appeal to moral principles into the political realm. This consolidated the move from applied ethics to a new field of inquiry termed "public morality." It was also here that some of the earliest critics of the application of general ethical principles to particular political cases established an alternative vision of moral action and decision-making—the appeal to the dilemma of "dirty hands," in which the demands of ethics and politics clashed.

When Nagel presented his "War and Massacre" at a *Philosophy and Public Affairs* symposium in 1971, the debates about moral absolutism, responsibility for war crimes, and the fate of political leaders were brought together. He argued that certain moral rules can never justifiably be broken and that even if they were, the rules remained. The two utilitarian philosophers who responded to his paper, Richard Brandt and Richard Hare, retorted that Nagel's absolutism was not without exception. He unwittingly conceded to utilitarianism, they said.[144] His theory unraveled, making war crimes justifiable in exceptional circumstances, which rendered the category of the "war criminal" nonsensical in those cases. If a bad or violent act was morally necessary, was it still a crime? Yet Nagel had suggested that ethical dilemmas could not be dissolved as easily as utilitarians claimed. It was not the case that where absolutism failed, utilitarianism stepped in. Utilitarianism would allow the decision of the agent to do wrong to become "all right," providing them with a justification for acting. Nagel rejected this. The clash of principles could lead into "moral blind alleys," where no course of action could be justified. Necessity could clash with absolutist principles, pushing up against their limits. Politics could require us to do great wrong. Sometimes, Nagel argued, "these two forms of moral intuition are not capable of being brought together into a single, coherent moral system . . . the world can present us with situations in which there is no honorable or moral course for a man to take, no course free of guilt and responsibility for evil." To some problems, there were no perfect solutions.[145]

This framework had antecedents in the philosopher Bernard Williams's critique of the intuitionist view of ethical conflict as a clash of obligations. On that view, when an agent chooses between obligations, one of these obligations, in the end, takes priority and is understood as the right choice. The "ought" that is not acted upon is eliminated and ceases to have a hold on the agent. Williams argued instead that moral conflict was more like a conflict of desires: after a choice is made, the desire is not eliminated but persists, as a moral residue. Moral conflicts were not solved without "remainder" once an agent has done what they ought, but instead have a legacy in the form of regret.[146] As

Robert Nozick put it, where certain principles are justifiably "outweighed" or "overridden" by others and someone is wronged by the act that issues from a decision, they may be owed reparation or at least explanation.[147] Nagel's moral impasse had structural similarities. Though he and Williams disagreed about much—Williams would later write of Nagel that he was more "transfixed" by the problems he set "at the expense of possible solutions"—Nagel, like Williams, disputed demanding notions of responsibility and choice. He was skeptical of the idea that it was possible to have a conflict of obligations and principles where nothing was left over after a choice was made or decision taken.[148] Something remains.

In "Political Action: The Problem of Dirty Hands" (1973), Michael Walzer adapted a version of this in his account of political agency. The "dirty hands" scenario was one in which doing an act was morally wrong, but it was nonetheless right to do so. That was the challenge: not that an agent gets their hands dirty, but that doing so is morally right—even if, or precisely because, the agent feels guilty at having overridden the rules. Responding to Nagel, Walzer focused not on what was permissible according to moral rules, but on the dilemmas facing agents who break them. He was interested in the dissonance faced by an agent who makes a hard ethical choice, and in what happens to them when departing from the rules might be not only legitimate but a duty. What, Walzer asked, was the psychological experience of the political actor who faces "two courses of action both of which it would be wrong for him to undertake?" Nagel made clear that when the moral rules were broken, it does not "become all right." For Walzer, sometimes it was both necessary and justifiable to override moral constraints. Yet even in such cases, there will be a residue. Drawing on Austin, Nozick, Williams, and others, Walzer joined the critique of act-utilitarianism. Act-utilitarians saw each act as justifiable only by its consequences and dissolved the dirty hands puzzle by making wrongs nonsensical. For Walzer, this was not right: when good men do bad things, there is a remainder, in the form of guilt.[149]

At its simplest, the problem of dirty hands was a meditation on the relationship of ethics and politics and the nature of political responsibility. In this rendering of Walzer's argument, the threshold at which necessity claims and utilitarian reasoning entered politics was low. His examples included a scenario where a rebel leader must be tortured to find the location of a bomb, but also that of a local politician in a morally messy situation. Later, he suggested that true dirty hands situations arise only in situations of catastrophe, where extreme necessity trumps moral rules in the final calculation. This was

a "utilitarianism of extremity," the point at which politics trumped morality, where the "moral politician" on the national stage can override the rules of war in order to secure the community's survival.[150] Walzer presented three models for understanding "necessary" wrongs: the Machiavellian actor, whose evil deeds are justified only by the consequences; the Weberian "suffering servant," whose wrongdoings are remedied by guilt; and Camus's "just assassins," who are punished for their wrongdoings by death and have their sins expiated. His preferred model was the last. Moral actors ought to accept punishment or do penance for violating a set of rules, as a way of acknowledging responsibility.[151]

In this way, civil disobedience and dirty hands cases were similar, though the analogy had limits: "In most cases of civil disobedience the laws of the state are broken for moral reasons, and the state provides the punishment. In most cases of dirty hands moral rules are broken for reasons of state, and no one provides the punishment."[152] Here Walzer was likely adapting the view of the dutiful civil rights protester who suffers punishment willingly. In practice, he argued, the moral rules constraining leaders were not enforced. All we have for the agents who break them are "the priest and the confessional." Punishment was not a realistic possibility. Walzer did not look to Nuremberg or make the case for tribunals. In this respect, the call to accept the "reality" of dirty hands was a deradicalizing move. We need, Walzer wrote, to find a way of "paying the price ourselves."[153] After the war's end, he suggested that citizens could be held responsible for an unjust war if they did not do enough to oppose it. Yet the moral burdens of war fell differently among citizens. The most responsible were those in positions of knowledge—intellectuals, who had the time and resources to oppose war and who, "like their leaders, and unlike those fellow citizens doing the fighting . . . are in no immediate danger."[154] By then, Walzer had given up on the prospect of punishment. Identifying guilty individuals, he suggested, was more politically important and plausible than punishing them. With no penalties forthcoming, we should be content with the right kind of guilt. He followed Levinson, who suggested that it was better for individuals to be held to account by the public documenting of their crimes. In place of punishment, shame and stigma would have to do.[155]

In Walzer's dirty hands dilemma, his ambivalent relationship to the new liberal philosophy was visible. Contemporary critics placed Walzer both in the camp of the new "moral absolutism" and among the new "theorists of casuistry"—who responded to the philosophical foregrounding of moral rules and principles by turning to history, cases, and experience to challenge forms of idealization and abstraction.[156] Walzer would further develop his

methodological critique of analytical political philosophy in *Just and Unjust Wars*, its substance captured by its subtitle: *A Moral Argument with Historical Illustrations*.[157] Philosophy, he suggested, had done well by turning to morality. But its focus on abstract rules and hypothetical choice situations neglected the everyday "talk" of citizens arguing about war.[158] It was not necessary to theorize moral rules from scratch or put morality back into politics. It was already there, in the experiences of communities and in the habits, actions, and social psychologies of citizens. Walzer framed these arguments as realist and democratic challenges to Rawls and his followers. Compared to rigid thought experiments and trolley problems, the dirty hands dilemma was meant to be more like real life. Given the backdrop of Rawls's early Wittgensteinian communitarianism, or the description of democratic community invoked by Dworkin or Cohen in their defenses of civil disobedience, the differences between Walzer and Rawls could be overdrawn. Some distance could, however, be put between the institutional practices of communities that Rawls envisioned and the absolutist moral rules and principles of action invoked elsewhere. Walzer capitalized on that distance to make his case.

Yet the problem of dirty hands also became a template for debates about public morality among political philosophers, who asked whether moral principles could apply to both public and private behavior, and what kinds of actions that were privately unacceptable might be necessary in politics.[159] Political agency was increasingly portrayed as a dilemma of choice between principles, as the methods of applied ethics were used to explore forms of public decision-making, from torture to nuclear war.[160] The appeal to morality, which as part of the defense of civil liberties against a mistrusted state apparatus had posited a source of authority beyond the state and its laws, now provided the philosophical tools for constraining unlimited war. But, as part of a new vision of public morality, it also became a form of political evasion. When philosophers examined the morality of powerful agents, they analyzed dirty hands, moral dilemmas, and tragic choices in isolation from both their institutional and ideological contexts and non-electoral mechanisms of accountability and scrutiny, thus focusing on extralegal determinations of guilt and psychologizing political problems of responsibility. Amid the ascent of other areas of distributional ethics, the distribution of responsibility, power, and agency remained an area of relative neglect.[161] Just at the moment when philosophers were becoming most engaged in politics, their theories took a depoliticizing turn. Public morality and public ethics was understood as a sphere dedicated to powerful individual agents in moments of dramatic

choice—an extension of the applied ethics that originated in the linguistic analysis of intention, agency, and responsibility.

The debates about agency thus helped carve out the boundaries of the new liberal political philosophy. Paradoxically, they helped consolidate its institutionalist focus by further delineating it. In the aftermath of the dirty hands debates, some philosophers were concerned to explicitly distinguish different sources of interpersonal, private, public, and political morality. Were the acts of individuals within institutions justified by the institutional principles that covered them?[162] They turned to the question of whether principles of private, individual morality constrained the public, whether one was derivable from the other, and whether personal principles constrained the application of political principles. For Ronald Dworkin, the permissibility of public acts was constrained by reference to a core "liberal public morality," a political principle.[163] For Nagel, public and private morality had different sources. Impersonal consequentialist considerations applied to institutions, and public morality did not derive from private morality—"the state," after all, "has no personal life."[164] The moral constraints on public institutions applied to the actors within them, yet the public point of view did not always justify overruling the private. There were limits on what officials could do in office even for institutional interests. Sometimes an agent's responsibility would be absorbed by the moral defects of an institution, but the "strongest constraints of individual morality will continue to limit what can be publicly justified even by extremely powerful consequentialist reasons."[165]

The distinction between public and private spheres of action came to overlay the distinction between institutional and interpersonal morality. Rawls had not conceptualized a private realm. But he distinguished the institutional and interpersonal and strongly associated the personal with the family.[166] With legal and constitutional debates about privacy politically charged, and Rawls turning in Kantian mode to stress publicity, philosophers reasserted the liberal dichotomy of public and private.[167] Yet the contrast of public and private action did not always map on to the institutional and individual morality distinction.[168] As feminist critics of liberal philosophy like Carole Pateman later argued, it also involved a conflation of the private with the family and the domestic realm. Moreover, though the new liberal philosophy was concerned with the public and the institutional, the concept of the political was rarely to be found.[169]

Many of these ideas about war, responsibility, and agency among liberal philosophers would become canonical, in part because philosophical attention was turning elsewhere. The long 1960s had been an eventful decade, and the

new philosophers of public affairs had reacted by focusing on political action and legal debate. But liberals were exhausted from the decade's disorders—from the prolonged and unaccountable war, the threat posed by economic downturn, and George McGovern's defeat by Nixon in 1972. When Rawls's theory of justice was published, it was taken to embody a postwar liberalism that to many philosophers was still worth saving. It promised the possibility of agreement at a time when consensus was hard to come by. Philosophical attempts to grapple with war and responsibility would soon be submerged by the turn to institutions. Liberal egalitarianism was about to arrive.

4

The New Egalitarians

WHEN *A THEORY OF JUSTICE* was published in 1971, the response was unprecedented for a book of its kind. It was reviewed in journals of philosophy, political science, law, economics, sociology, psychology, education, social work, criminology, and health, as well as in literary reviews and non-academic publications. The *New York Times* listed it as a book of the year, and it was widely acclaimed as the most important work of philosophy since Henry Sidgwick's *The Method of Ethics* of 1871. In that first year, it had four print runs. Stuart Hampshire declared it a "permanent refutation" of the idea that analytical philosophy could not address morality and politics.[1] Even Rawls's critics described it as noble.[2]

Rawls was by then fifty years old. The readers of his early articles had long been waiting for the finished object. Those students and colleagues who read drafts he had circulated over the preceding seven years were now themselves prominent philosophers and often his first reviewers. Rawls was already a philosophical celebrity. "Justice as Fairness" had been reprinted in four collections, "Two Concepts of Rules" in seven.[3] His theory was a touchstone in debates about objective ethics, the "social institution" of morality, social justice, and the choice of "distributive schemes" as well as civil disobedience and war.[4] In lectures to students throughout the 1960s, Rawls set the narrative for a generation of philosophers. Those who saw political philosophy as dead had got it wrong. It was, in fact, ripe for revival. The "analysis of the concept of justice," he said, was what would secure it.[5] With Rawls's book, that analysis was complete. It claimed to provide not only an objective ethical theory but one designed to judge social institutions. It was the guide the philosophers of public affairs were waiting for.

As they waited, the political terrain had shifted. The daily events of the civil rights and Vietnam years had preoccupied philosophers, but the effects of longer-term political changes were also becoming visible. The optimism of the mixed economy and affluent society that infused Rawls's theory dissipated, with the civil unrest, disorder, and economic instability that immediately preceded and followed the book's publication. The "end of ideology" was itself declared over.[6] The line between the public and the private was redrawn. There was a widespread sense of crisis—of democracy, governability, and legitimation.[7] At the point Rawls was solidifying his terms of art, the politics that shaped them was fading from view.

In this new moment, Rawls's theory—with its commitment to public, democratic institutions and to improving the lot of the least well off—looked less like a vision of pluralist civil society regulated by a minimally interventionist state and more like a robust defense of a welfare state committed to significant redistribution. When Michael Harrington called for a "passion to end poverty" in his *The Other America* (1962), he had diagnosed America's problem as "one of vision. The nation of the well-off must be able to see through the wall of affluence and recognize the alien citizens on the other side."[8] Rawls's theory was read by many as facilitating that vision: it showed what a society would look like if it were justifiable to a nation of equals, and what moral persons would be like if only they saw each other clearly. For a generation of philosophers, it was a justification for social democracy, aimed at reducing inequality and fostering reciprocal relations between citizens—a philosophical "gloss on the domestic programs of the 1960s" of Lyndon Johnson's Great Society. "After the deed," one critic wrote, "comes the rationalization."[9]

What kind of rationalization Rawls's theory represented would be determined by his readers. It meant different things to different people. Rawls's book was something of an encyclopedia of postwar Anglophone thought. The ideas and techniques that came to prominence in the years of its production—welfare economics, choice theory, game theory, theories of public finance, analytic jurisprudence, ethics, democratic theory, and the history of ideas—were deployed and tamed in service of his grand theory. Hanging all this together was a difficult process. Rawls, self-consciously and sometimes confusingly, took elements from many traditions—Kantian, Humean, neoclassical—as he squeezed his core ideas into new shapes. Familiar, opposing, and counterintuitive ideas worked alongside each other in unfamiliar ways. Arguments that Rawls developed at different times overlay one another, became submerged,

and reappeared at various levels and in distinct forms—with many in tension, but all rendered compatible, available for use. Taken from a "moral point of view," he suggested, conceptual contradictions and traditional binaries—between conventions and contracts, legal rules and sovereign decisions, individuals and communities, altruism and self-interest—could be dissolved. The internal coherence of *A Theory of Justice* masked its tensions. It also underplayed the consensual vision of society Rawls had to assume was possible in order to secure that coherence.

Though his theory was singular in its scope, Rawls was not alone in his concerns. The Vietnam-era debates had created the constituency of Rawls's readers and shaped the book's "high liberal" interpretation.[10] Over the course of the 1950s and 1960s, the concern with the dangers of the state had waned and new varieties of liberalism gained ground: the liberal defense of economic growth, the social liberal defense of civil liberties and the rights of individuals held against the state, and, still at the margins, a market liberal, and libertarian, defense of constitutions. Anti-totalitarianism had lost its hold on social liberalism. Liberal philosophers, encouraged by the constitutional and legislative victories of the early civil rights movement and the Great Society, began to describe themselves as inheritors of a long New Deal tradition.[11] The idea of capitalism returned to public debate, and its defenders extended the critique of planning in radical directions.[12] The rediscovery of American socialism that had begun with the end of McCarthyism and was buoyed by the social movements of the 1960s reached political philosophy, which continued to look to Britain, where many American philosophers studied and where debates about socialism, the welfare state, and its principles of distribution had persisted.[13] By the 1970s, as a radicalized generation of antiwar protesters moved from graduate school to university positions and the intellectual radicalism of social movements penetrated the academy, Rawls would find a new left-liberal and socialist audience, which influenced him in turn. It was now "hard to deny that the question of socialism and which form of it, must now be squarely faced," Rawls said in 1971.[14] These debates were vital for stabilizing the ideological context within which Rawls's theory was understood, and for shaping the characteristic commitments of the new variety of social liberalism that developed in its shadow.

Like his contemporaries, Rawls was attentive to these specific preoccupations. But his universalizing efforts achieved something unique. *A Theory of Justice* created a philosophical ground zero. Earlier debates would later be forgotten. The order of the principles, the justification of the principles, the

choice, the argument, and the implications of the principles—these were the preoccupations of Rawls's first readers as they put his ideas to work for their purposes. Already in 1973, it was possible to speak of a "Rawls industry."[15] By 1979, Peter Laslett declared that not only was political philosophy not dead, but a new adjective, "Rawlsian," described its transformation.[16] Yet during the 1970s, Rawls's ideas were hotly contested as readers of varied disciplinary and ideological stripes exhumed different parts of his theory, using them for liberal, democratic, and socialist ends. Gradually, however, the generation of liberals who came to intellectual maturity during the Vietnam War naturalized his assumptions, categories, and arguments. His concepts became terms of art, their origins and ideological basis neglected. The political choices the young Rawls confronted—between non-intervention and redistribution, plural groups and administrative experts, equality and common ownership— were obscured, transformed, or reconfigured for a different moment in which philosophical debate began not from these choices but from Rawls's theory. The core ideas of his theory stabilized. Soon the theory, no longer under construction, was set, the result of choices between alternative kinds of moral and political argument. The project became its defense and expansion. Rawls's framework seemed capable of absorbing anything.

The new liberal egalitarianism had a number of distinctive features. It focused on principles of justice applied to institutions and on the benefits and burdens that flowed from social rules rather than the rights that might exist outside them. It prioritized individual moral persons over collective agency. It focused on distribution and rejected desert as a distributive principle. It sidestepped forms of "historical" argument and assumed a cooperative vision of society as a community of principle. During the 1970s, these features were affirmed when Rawls's theory came under attack from the libertarian Robert Nozick and Rawls's followers came to his defense. Philosophers quickly adapted Rawls's arguments to deal with such challenges, as well as with the "public affairs" of the day, from health care to affirmative action. His ideas were shored up in theory just as the rules of the social democratic state were challenged in practice and rendered unstable by ideals that stretched beyond the state—ideals of the market, of international interdependence, and about the environment and individual human rights. The initial reception of Rawls's theory set the terms for liberal philosophy to make sense of this world. But it also gave philosophers a distinctive structure of egalitarian thinking to defend against the libertarian threats to their right and to diffuse the promise of alternatives to their left.

Before Rawls's theory was published, several changes had taken place in the 1960s that helped constitute its audience. The Vietnam years and the debates about obligation, war, and responsibility were crucial to the institutional formation of the philosophy of public affairs and to bringing moral and legal philosophers to political problems. Those years were also a time when distributional questions returned to moral and political philosophy. The shift among postwar philosophers from analytical ethics to normative accounts of social justice had continued. Economic and political thinkers were experimenting with accounts of states and constitutions, markets and morals, institutions and behavior. While Rawls was putting the finishing touches on his theory, they were reshaping the conceptual terrain.

A key development was the rise of economic libertarianism and neoliberalism that took place to Rawls's right. In debates over public finance and constitutionalism, James Buchanan, Gordon Tullock, and others at the University of Virginia's Thomas Jefferson Center founded public choice theory, which applied economic analysis to the study of political constitutions.[17] In tirades against untrustworthy, "self-interested" political agents and "bloated" bureaucracies that gave the lie to notions of the "public interest," public choice theorists took the midcentury critique of centralized power to its extreme conclusion, calling for an extension of market models of decision-making to the state and democratic system as a whole.[18]

In this moment before the political triumph of neoliberalism, public choice theorists seemed to share characteristics with Rawls: the opposition to concentrated, centralized, and discretionary power, the concern with stability, proceduralism, liberty, and free association, and above all a vision of a constitution or basic structure of society within which freedom of action could justly be allowed to take its course.[19] Rawls's concern with uncertainty, risk, and unknowability and his advocacy of a limited yet strong state chimed especially with Friedrich Hayek and Frank Knight, from whom the early public choice theorists drew. Like Rawls, their theory of "constitutional choice," which followed a model of decision-making under uncertainty, was part of the revival and formalization of contract theory.[20] In 1964, Rawls attended the second meeting of the Committee on Non-Market Decision-Making, the network that formed the basis for the Center for the Study of Public Choice and the journal *Public Choice*, established at Virginia Tech in 1969. Along with other neoliberals, including Hayek, Milton Friedman, and George Stigler, Buchanan

saw in Rawls a potential fellow-traveler. Buchanan recognized Rawls as a kindred follower of Knight's—a student of "fair games."[21] In 1968, on Friedman's invitation, Rawls became a member of the neoliberal Mont Pèlerin Society.[22]

Despite methodological affinities, public choice theorists and Rawls disagreed about the desirability of capitalism and the role of government in addressing social issues. The years of the Warren Court led to a bifurcation of constitutionalism and civil libertarian defenses of rights. Amid the racial backlash against the civil rights movement, social conservatives invoked the Constitution against civil rights and labor politics.[23] Public choice liberals also positioned themselves against rights discourses. Buchanan and his followers wanted the ground rules of society to establish a framework for the interaction of mutually consenting persons, but nothing more than this. Government intervention to deal with inequality, discrimination, and, crucially, desegregation was illegitimate.[24] Some public choice constitutionalists embraced a social and racial conservatism.[25] While legal philosophers like Dworkin and Frank Michelman defended rights as having moral value beyond the Constitution or used Rawls's theory to guide a liberal judiciary toward welfare rights, Buchanan condemned civil disobedience and, later, the Court's rulings on affirmative action.[26]

Rawls's difference principle signaled a radical redistribution that, from the perspective of public choice theorists, amounted to a betrayal of their shared commitment to equal liberty and constitutional rules. While Rawls moved with the Keynesian consensus, they turned against it. In 1959, when he had begun to develop a neo-Keynesian account of economic government, he had drawn on the ideas of the economist Richard Musgrave, who brought together Keynesian macroeconomics and the neoclassical concerns of public finance with allocation and distribution.[27] Musgrave had defended a Keynesian position in debates about the reach of government and the theory of public finance (a theory that itself tended to skepticism of centralized state power, on the basis that bureaucracies could not gather accurate information in the area of public goods).[28] In 1967, when Rawls published his account of distributive justice, he followed Musgrave over Buchanan, outlining five branches of government: the distribution branch, to secure fair equality of opportunity and fair value of the political liberties; a transfer branch, to look after needs and welfare services; an "anti-trust" allocation branch to avoid monopolies and unreasonable market power; a stabilization branch, to secure full employment through demand management, the Federal Reserve, government spending, and so on; and an exchange branch to limit state powers of taxation and restrict public expenditure.[29]

The structure of Rawls's theory and public choice theories had parallels, but politics divided them. Rawls did not take on the public choice vision of government. He made clear his commitment to "correct" distributions of wealth and concentrations of power that interfered with liberty and equality of opportunity. Responding to Hayek's claim that "unequal inheritance of wealth is no more inherently unjust than unequal inheritance of intelligence," he retorted that "inequalities founded on either should satisfy the difference principle."[30] Moreover, in Rawls's mature theory, there was no opposition between the ground rules and active state intervention in economic life: the ground rules correctly regulated by his principles of justice indeed required intervention. The year Rawls published *A Theory of Justice*, he allowed his membership of the Mont Pèlerin Society to lapse.[31]

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The 1960s also saw the continued rise of discourses about the persistence of deprivation and poverty amid affluence.[32] The War on Poverty pushed a racialized sociological literature—concerned with "pathology" and "culture" among African Americans as much as class or redistribution—into mainstream discourse.[33] In Britain, as the welfare state's limitations became more visible and Richard Titmuss and others called for its extension to the poor, many placed problems of income distribution and material deprivation alongside concepts that would become key to the new liberal philosophy—concepts of justice, altruism, need, and desert.[34] Michael Young's condemnation of meritocracy, the idea that merit should be the basis of educational opportunities, was given empirical support.[35] The Labour revisionists whom Rawls admired were dismissed by the next generation of political philosophers like Brian Barry as preferring "the rhetoric to the reality of equality."[36] The turn to social justice they began continued, but it radicalized as the mood darkened.

Economic theory now had its own ethical revival. In the first half of the twentieth century, British ideas about the state and its provisions had, even at the most "mundane" levels of social policy, been shaped by the predominance of idealism and its emphasis on "corporate identity, individual altruism, ethical imperatives and active citizen-participation."[37] Economic thinkers from J. A. Hobson to A. C. Pigou had brought ethical criteria into "economic science."[38] That idealism had been long gone, but with utilitarianism and "welfare state philosophy" under pressure, it was revived alongside the search for distributive criteria. There was an overwhelming acceptance, Barry wrote, of the idea

that "some kind of distributive considerations have to be introduced as a constraint or a competing factor on the maximization of aggregate utility."[39] Kenneth Arrow's "Impossibility Theorem" had led to skepticism about citizens deciding social values, but it also opened up the possibility of inserting ethics into economic analysis (particularly through the rejection of interpersonal comparisons of utility).[40] Under the influence of Amartya Sen, social choice theory was taken up beyond economics, and with it an ethical focus.[41] This shift in welfare economic theory provided Rawls with tools for his own. At Harvard in 1968, he taught a seminar alongside Arrow and Sen.

In this context, a debate blossomed at the intersection of British economics, sociology, and political philosophy, about the morality of society and the state and the moral basis for principles of economic distribution, that would be crucial to the Atlantic reception of Rawls's theory. Traditionally, political philosophers distinguished between market societies and altruistic or solidaristic ones. Both social visions had recently been adapted in defenses of social democracy. Altruism had a multifaceted lineage in British thought. It played a role in Victorian legitimations of charity and philanthropy, in socialist ideas of mutual aid independent of the state, and—as part of a contributory ethic of "reciprocal assistance"—in defenses of social insurance, public citizenship, and welfare provision. Altruism and the virtues associated with the voluntary principle could be invoked against the encroachment of the market, or in the name of community and the welfare state. They could be privatized and individualized: the turn away from the state could also be a turn away from the public.[42] The postwar years had seen a revival of altruism as part of a strain of ethical idealism that prioritized "needs," "reciprocity," and "mutual aid." By the mid-1960s, when Titmuss argued that economic policy should not be limited to inequality reduction, he suggested that the state needed to encourage altruism, reciprocity, and social duty to fulfill its function of meeting "socially recognized 'needs.'"[43] Like Karl Polanyi, Titmuss rejected the view that "society was an adjunct of the market."[44] He took this rejection further in his *The Gift Relationship* (1970), which defended voluntary blood donation in Britain against the private blood system in the United States, arguing that the "commercialization of blood and donor relationships . . . represses the expression of altruism."[45] On this view, altruism and needs were central to a well-functioning society, the ethics of individual and social action mattered, and social insurance was conceived of as a form of mutualism rather than a sharing of risk.

By contrast, another postwar defense of social democracy made use of concepts usually associated with theories of market and commercial society.[46]

This was the tradition of Hume, Smith, economics, and social choice theory, which invoked self-interest benevolence, convention, and sociability and placed "exchange" above "the gift." Many new liberal theories of social justice were built from this tradition, in which justice was an artificial virtue of institutions, a just society did not require altruism, and the market had no moral valence of its own.[47] Where the state did not sufficiently regulate the market, it might well be criticized—but not in the name of solidarity or ethical community. The voluntary principle, whether enacted by private charity, community associations, or corporate philanthropy, could not replace the impersonal workings of state and market.

This division was revived in early issues of *Philosophy and Public Affairs*, which featured a debate about Titmuss and the role of altruism in achieving social ends. "Like many economists," Kenneth Arrow wrote, "I do not want to rely too heavily on substituting ethics for self-interest." Titmuss's ideas about the limits of markets in delivering goods followed a long venerable tradition, from Pigou to Knight. But Arrow saw an "elitist flavor" in Titmuss's defense of a variety of "impersonal altruism," which Titmuss failed to recognize was as detached from "feelings of personal interaction as the marketplace." His excessive antipathy to "the market" was a mirror of Hayek's antipathy to "collectivism."[48] In response to Arrow, Peter Singer defended Titmuss and the needs-based altruistic basis of the welfare state. The market could not be trusted. Moreover, Titmuss recognized that the right kind of welfare state could create "a voluntary system" to foster "attitudes of altruism and a desire to relate to, and help, strangers in one's community."[49] Singer saw ethical action as required to secure social ends. Arrow saw those ends secured by the unintended consequences of self-interest in the market, or by the concerted impersonal action of the state. Both, however, conceived of themselves as putting forward what Arrow would later call a "cautious case for socialism."[50] Yet at stake was a fundamental split over the justification of the state and the question of how much it mattered whether people were moral.

The young Rawls had combined an ethical commitment to community with the Humean tradition of market society, but had not been prescriptive about the relative merits of market, community, public, and private. What mattered was that all these could flourish beneath a constrained state. For a time, his Wittgensteinian base had given way to a Humean one, concerned with conventional rather than natural sociability.[51] Alongside his use of the tools of welfare economics and social choice theory, this orientation made many misread his as a strict theory of self-interest. In the 1960s, Rawls's

vision of a moral community of persons was overlaid by a new Kantian language of autonomy and inviolability, which added to doubts about where he stood. Rawls tried to find a way around the supposed incompatibility of ethical traditions and the moral psychologies they presumed. The idea of justice, he wrote, struck a balance "between altruism and the claims of self" and "involves a notion of reciprocity."[52] Thomas Nagel provided a related view of impersonal altruism, in his Oxford BPhil and doctorate under Rawls, published as *The Possibility of Altruism* (1970). Nagel wrote that "altruism itself depends on the recognition of the reality of other persons, and on the equivalent capacity to regard oneself as merely one individual among many." Altruism was "not a feeling," nor anything to do with "self-interest," but it was "rational," a "condition of rationality," and itself involved a relationship with oneself: the principle of altruism "arises from the capacity to view oneself simultaneously as 'I' and as *someone*—an impersonally specifiable individual."[53] By taking an impersonal point of view, such ideas might be reconciled. Rawls likewise provided ways of defending an impersonal altruistic vision. Yet the historic division of self-interest and altruism would nonetheless structure how he was read.

Another set of arguments, closely tied to discussions of altruism, self-interest, and needs, would also shape Rawls's reception. This was a largely British debate about whether the welfare state should act for humanitarian reasons or for reasons of justice. In the 1960s, some theorists appealed to the idea that the state should meet needs as an alternative to social justice. For one conservative Oxford philosopher, justice meant that distributions were calculated according to individuals' contributions to social ends. Large-scale social endeavors—the National Health Service, the welfare state, other societies for "mutual benefit"—should adopt a limited principle and distribute goods according to need in order to prevent such institutions sliding into totalitarianism.[54] Social democratic philosophers rejected this argument.[55] Another Oxford philosopher, David Miller, later distinguished between arguments that began from the premise "that human suffering should be avoided" as a requirement of moral sentiment or humanitarian duty and those that saw "the satisfaction of needs" as a matter of justice and began from a different premise: that "every man is as worthy of respect as every other." Meeting needs was not a matter of humanity, to be left to voluntary systems or the market, but a matter of justice.[56] It could be explained by appeal to an idea of "an underlying equality" between individuals, an idea of basic equality of the kind that Bernard Williams had developed some years earlier.[57]

Even before Rawls published his book, philosophical discussions of the welfare state thus increasingly deployed an idea of justice tied to a baseline equality.[58] In the debates over needs and altruism, justice supplanted humanity. Philosophers became more concerned with the question of how moral deservingness and character mattered in the laws and ethical bases of states and in questions of economic distribution. "To ascribe desert to a person," Barry wrote, "is to say that it would be a good thing if he were to receive something (advantageous or disadvantageous) in virtue of some action or effort of his or some result brought about by him."[59] Desert was important as a principle of individual responsibility: "Desert-dependent principles," as another philosopher called them, were popular in law and punishment.[60] In the 1960s, a challenge for legal philosophers had been to find "humanist" versions of desert principles—what H.L.A. Hart, the foremost proponent of this task, called a "relaxed retributivism," which limited the concept's scope and weight. Feinberg and Hart stressed that "advantages and disadvantages" could only be connected with voluntary actions and their consequences.[61] It was impossible to say someone "deserves" something because it is in the "public interest"— that was simply to "misuse" the word "deserve."[62] But how was desert relevant when it came to institutional decisions and economic distributions?

A number of philosophers analyzed the concept of desert to temper enthusiasm for it or to show, as another Oxford philosopher insisted, that the "criterion of need was more important to justice than the notion of desert."[63] "Desert-dependent" definitions of justice were "behavior-dependent."[64] But if the context was distributive and institutional, and if there were concerns of need, was behavior relevant? "Desert looks to the past—or at most to the present," Barry wrote, "whereas incentive and deterrence are forward-looking notions."[65] When it came to problems of distributive justice, it was the future that was important, not the past. What was at stake in these debates was how much personal morality mattered in accounts of justice and the state. For Titmuss and those who extended the voluntary principle, virtue might be privatized or it might be communal, but it still mattered. For the many philosophers who were beginning to write about justice, the merit of the welfare state was precisely its avoidance of claims about virtue, character, what people were like, and what they had done in the past. They removed the field of "behavior" from arguments about institutions altogether. This was one way of eradicating the discourse of the "undeserving poor."[66]

In 1965, Barry observed that these arguments amounted to an overwhelming "revolt against desert." He associated distributing goods in accordance with

desert with liberal atomism: "Desert flourishes in a liberal society where people are regarded as rational independent atoms held together in a society by a 'social contract' from which all must benefit." The welfare state represented a move away from such atomism. Its corresponding theories were based on reciprocity or need, not desert. Across society, Barry wrote, desert was on its way out: in the legal emphasis on "rehabilitation and deterrence rather than retributivism," in schemes for "workmen's compensation," and in the "welfare state which (in theory if not in practice) pays special attention to the old category of the '*un*deserving poor.'" There were alternative principles of distribution to ensure that needs were met. Barry quoted Roscoe Pound's observation two decades earlier that "the risk of misfortune to individuals is to be borne by society as a whole." This was behind "the insurance theory of liability" and "much social security legislation."[67] Yet few philosophers thought desert claims entirely normatively irrelevant. Many retained a notion of desert to distinguish between earned and unearned income. Without desert, some argued, it might be impossible to counter the claim that "the value of the capitalists' benefits is equal to the value of their attributes," or that capitalists "come to their entitlement without having done something to deserve it."[68] Even Barry sounded a note of caution at the prospect of breaking with desert as a criterion for distribution: only if a society worked without incentives and deterrence would a world without desert look truly different to one with it. Only then would a "radical break" with "just deserts" be possible.[69]

These debates prepared the ground for Rawls's institutional theory of justice and shaped how he was read. Rawls had eliminated as a basis for distribution those things he considered "arbitrary from a moral point of view."[70] He thought his theory demonstrated the injustice of commonly held ideas about distribution—most importantly, the idea that people get what they deserve. Natural talents, like economic wealth, were morally arbitrary. People could not be said to deserve a greater share because they were lucky in their lot, in the talents or wealth they started with. The idea of desert ought not to determine what inequalities of social fortune could be permitted. Rawls's principles would do that instead, by explaining which inequalities caused by accidents of luck and fortune could be justified. But they would do so only at the most general institutional level.[71] In line with the trajectory of political philosophy, Rawls's theory presented a reciprocity-based argument for justice over humanity, which used markets but restricted appeals to desert. Moreover, even as Rawls showed how institutional and interpersonal forms of political justification could be combined at a deeper level, his critique of desert as a

distributive principle was also part of the broader challenge to theories that confused personal with institutional morality, whether altruistic accounts of welfare or ethical socialism.[72] Yet whether this made Rawls's theory a radical departure from "just deserts" or put him closer to the American constitutional theorists whose concerns were not the relative merits of needs, altruism, and self-interest but bureaucratic overreach was, to some of Rawls's first readers, difficult to tell.

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A Theory of Justice did respond to these concerns, and Rawls's ideas had changed substantially in the two decades since he formulated his vision of society as a game. Yet the original parameters of his early theory remained. Rawls's youthful optimism about American society in an age of affluence and his anxieties about concentrated power left their mark: in the society regulated by the principles of justice—where individual persons were protected from the effects of contingency, bad luck, and unjustifiable inequalities—the state would not constantly intrude on the lives of individuals and communities. But now Rawls also insisted that his theory could be timeless. The original position was meant to provide the perspective to see humanity *sub specie aeternitatis*.[73] It could rise above the local concerns with the welfare state. An early adopter of many intellectual fashions, Rawls made clear his aspiration to generality— one that had characterized his search for a moral point of view but was now accentuated with a language of truth and rational choice.[74] The aspiration of his theory had always been grander than the justification of welfare provision. It became more so in the run-up to publication as these debates about the ethics and economics of distribution in social democracies gathered apace. Initially Rawls had intended that his theory would provide the objective basis for ethics that had been so lacking in midcentury philosophy and social science. By the 1960s, it was meant also to provide criteria to replace utilitarianism and a morality for a new legal constitutionalism. It was intended to solve the impasse of welfare economics—to provide a way of judging distributions that went further than Pareto efficiency and to bridge the gap between moral philosophy and economics, which generations of economists had widened. Rawls's preoccupations were born of a midcentury moment that predated these justice debates, but his ambitions grew over time. His theory's scale, innovative conceptual vocabulary, and its reintroduction of the themes of the postwar decades, fueled in part by these ambitions, gradually allowed Rawls's

formulations to eclipse the divisions and distinctions of the 1960s welfare state debates that gave him his audience. Rawls incorporated these earlier ideas, but his success served almost to obliterate them from the philosophical record.

Yet when *A Theory of Justice* was published, Rawls did have to defend its claims to these various audiences that had developed as he wrote. Many of the initial responses tried to pin him down on political questions. But Rawls did not want to be pinned down. He declared often that his theory was flexible as to what kind of society it implied. At a talk at the American Economics Association (AEA) in 1973, Rawls spelled out the stakes. Where only the equal liberty and fair equality of opportunity principle held, there would be "some form of democracy." That would involve social and economic inequalities: the first principle alone did not disrupt how "individuals' life-prospects are significantly affected by their family and class origins, by their natural endowments, and by chance contingencies over the course of their life." It was the difference principle, with its maximin criterion, that ensured that those inequalities were addressed. An "institutional macro-principle," the difference principle applied to "tax and fiscal policy and inequalities in income and wealth that law and government permit" to "expectations and not results." It did not apply to associations—to "churches, firms, labor unions, universities and so on"—but regulated the expectations and prospects of social groups only "as these are affected by the basic structure." But it did get rid of inequalities, not by destroying "natural variations" and "unusual talents" but by recognizing them as an opportunity that could "form a basis for social ties." "The natural distribution of abilities is viewed in some respects as a collective asset," Rawls declared. Institutions could be designed to exploit these, so that they did not threaten relations between free and equal moral persons. With maximin, "inequalities are to everyone's advantage and those able to gain from their good fortune do so in ways agreeable to those less favored." Rawls continued the contrast with economic theory. Unlike the theory of general equilibrium, his theory did not see what was done by institutions as a "summation, or at least a plausible extension, of what should be done by individuals," as the "aggregate result of microeconomic processes." Instead, it provided normative principles to regulate the basic structure, to act as constraints on the "general climate of the market."[75]

As the Cold War thawed and the universities began to incorporate radical dissent, socialist and Marxist ideas became a visible feature of academic political debate.[76] In this new context, Rawls was clear that he wanted to extend the cover of justice theory to the left. In 1973, at a roundtable on his book at the American Political Science Association (APSA) annual meeting, Rawls

insisted that he did not dismiss "socialistic planning" or "Marxian schemes" as "beyond justice." "I have no desire to argue for a representative property-owning democracy above all else," he said. "It is compatible, I believe, with everything I say that some form of federative participatory democracy combined with market socialism should be the most just arrangement, even for us."[77] About larger questions of political economy, Rawls insisted now more than ever that the logic of his theory required flexibility on regime type. Justice could be achieved in both capitalist and socialist systems. In both, the rules of the game could work to the benefit of all the players. Yet if socialism could fit Rawls's rules, it would be market socialism: markets were crucial to the allocation of productive resources, to maintaining efficiency, and to the "free association" of producers, entrepreneurs, and firms.

In this account, Rawls stayed close to the Labour revisionists. More generally, Rawls would attribute various ideas that had independent origins in his earlier thought to his contemporaries: he credited Amartya Sen with the idea of "lexical ordering" and James Meade with the idea of property-owning democracy.[78] He now appealed to Meade to underpin his claim of flexibility between property-owning democracy and "liberal socialism."[79] All along Rawls had been committed to the former. But it no longer meant quite what it had in its earlier anti-statist iteration. It was now a theory of the left more than the right.[80] Yet Rawls's initial anxieties about the state, and about bureaucratic and associational power, still lingered. What was to be avoided, Rawls said, was not a particular property regime, but "the control of economic activity by a bureaucracy regulating a centrally directed system or one guided by agreements between industrial associations."[81] The critique of concentrated power remained in place.

What did all this mean in practice? Rawls put forward many radical ideas, but he also seemed to retract them. Soon his readers began to hold him to task. The canonical interpretation of his theory was gradually set, but not before he was challenged from every direction. Rawls's theory was merely "ideology in philosophy's clothing," one early response declared.[82] For Allan Bloom, Rawls provided a feel-good platform for:

democracy plus the welfare state—leaving open whether capitalism or socialism is the most efficient economic form (so that one need not be a cold warrior); maximum individual freedom combined with community (just what is wanted by the New Left); defenses of civil disobedience and conscientious objection (the civil rights and antiwar movements find their

satisfaction under Rawls's tent); and even a codicil that liberty may be abrogated in those places where the economic conditions do not permit of liberal democracy (thus saving the Third World nations from being called unjust).[83]

For John Schaar, Rawls provided "the ideology that the 'end of ideology' theorists of the 1950s were seeking."[84] Rawls confirmed a soft liberalism that they believed was already there. He promoted a vision of society as a community of principle where all shared the value of cooperation, and he was clear on the importance of blunting the consequences of the unequal power that exists within and between associations and classes. As Bloom and others saw, however, he wanted to leave the political implications of this open. This was in part a political choice. But it was also the result of Rawls adapting his judgments to bring them in line with the anti-intuitionist theory he had created. Rawls would often insist that the logic of his theory permitted multiple answers to a variety of questions (and not only about the choice of property regimes). While some readers were frustrated by this, others saw it as Rawls's genius.

Amid the unanimous awe and enthusiasm the book inspired, readers were therefore divided about how to interpret its political implications. The legal and ethical philosophers in Rawls's immediate circle were gaining in influence, and they used his ideas to consolidate theirs. Lawyers would look to Rawls's principles to underpin their accounts of constitutional law and rights-based liberalisms.[85] Marshall Cohen welcomed Rawls's theory as a defense of the principles "on which our Constitution rests" at the very moment when those principles were being "obscured and betrayed."[86] Welfare economists saw in Rawls an account of value that could be used to critically assess markets and their limits at a time when the confusion of the model of perfect competition with reality was stifling the economics discipline's critical capacities.[87] But for every interpretation of Rawls as savior, there was a counterview. It was equally feasible to see in his constitutionalism a defense of the status quo against dissent.[88] After all, to defend only those protests that demanded rights in the name of the Constitution and its institutions might also involve delegitimizing those that challenged them. Others thought Rawls's priorities were wrong. He conceded too much to economics and self-interest, downgrading community. In the light of the welfare state debates, many thought he prioritized the distributional over the "relational" preoccupations of the altruistic tradition of British social democracy that R. H. Tawney and Titmuss represented.[89]

There were two main dimensions to the conceptual response to Rawls's theory. One focused on the justificatory apparatus for the principles of justice

and explored what this revealed about Rawls's view of ethical and social life. The other looked to the principles themselves. Those concerned with the first worried about Rawls's representation of human nature and the plausibility and ideological implications of his view of the self. Given that Rawls developed his own moral psychology, he might have expected interested critics to look there. Instead, they looked to a part of his theory where the question of the self was more complex and submerged—the original position. What did that choice situation say about Rawls's understanding of human nature? Could the assumptions he made be justified? Rawls stipulated that where the contracting parties met to choose the principles to judge social institutions, they were behind the veil of ignorance, with limited knowledge about themselves and society. The parties chose principles to structure society so that if they drew the worst straw, things would be better than in an alternative society guided by alternative principles. They chose according to the maximin strategy—to maximize the lot of the least well off.[90]

Every step of this argument for the derivation of the principles came under fire. Economists like Arrow and John Harsanyi, who recognized Rawls's original position as part of ongoing explorations in "risk-bearing" and decision-making under uncertainty, were among the first to doubt that the parties would choose principles as Rawls said they would.[91] Harsanyi was skeptical that Rawls had proved that the parties would choose principles of justice rather than utility: if the parties factored in the probability that they would end up with the smallest slice of the pie, they would prefer a distribution according to utilitarian principles. He also suggested that the parties would be more willing to gamble than Rawls allowed, and would opt for a distribution with greater inequality, preferring to take the risk and end up with more.[92] Some critics recognized Rawls's understanding of human nature as not truly like that of economists; one described him as "too cautious to be bourgeois."[93] Others contested his stipulations about motivation—why, for instance, were the parties "mutually disinterested" rather than "altruistic"? There were objections to Rawls's reliance on empirical facts and social scientific laws; to which characteristics Rawls saw as arbitrary; and to the argument that history, community, and identity could be assumed away by the veil.[94] Then critics began to challenge the alternative possibilities the parties were offered. Later, they queried Rawls's restriction of the scope of his principles to the basic structure of society rather than to the international realm, or to civil society, the family, or individual and social action.[95]

For readers wary of procedural or market liberalism, the very fact that Rawls intervened in game-theoretic or neoclassical economic debates revealed the ideological nature of his preoccupations. Walzer said Rawls's theory was a philosopher's "withdrawal" from "the common place": Rawls envisaged "philosophical representatives"—philosopher guardians detached from democratic reality and "legislating for the rest of us."[96] Others seized on the formal arguments and rational choice assumptions of the theory as flawed or as symptomatic of his alignment with managerial and scientistic liberalism.[97] For such critics, the portrayal of the parties as mutually disinterested rational beings was at best a misunderstanding of what people were like; it could also indicate that despite his sometimes communitarian rhetoric, Rawls ultimately envisaged man as *homo economicus*—an atomized "infinite consumer." Just as the lines between the model of perfect equilibrium and real-life markets blurred, so it seemed that those between Rawls's model and his vision of reality did too.[98] Some questioned whether the parties could really be models of Kantian noumenal selves, as Rawls sometimes seemed to suggest. They thought him committed to the pursuit of self-interest and an amoral or immoral understanding of motivation.[99]

Rawls's defenders insisted these critiques conflated the parties in the original position with actual human selves, or even their ideal version. After the charges of economism waned, others noted the parties in the original position were not even individuals, let alone "real" ones, but "continuing lines" or "groups." Those keen to preserve an account of corporate responsibility or to dispute methodological individualism later greeted this with enthusiasm.[100] Jane English and Susan Moller Okin, who saw Rawls's labeling of the parties as "heads of households" as revealing the gendered structure of the theory, attacked it with skepticism.[101] Neither was wrong. As Barry also recognized, Rawls took enough from economics to deploy standard economic units, and it was the household—families, not individuals—that mattered for economic theory.[102] Rawls's theory hailed firmly from the era of the family wage. The family and the smaller associations had a distinctive ethical role for Rawls as the site of moral development, and feminists saw this clearly.

Once the interdisciplinary excitement around choice, risk, and uncertainty subsided, the original position was either set aside as unnecessary relative to other forms of justification or accepted as an argument for justifying the choice of principles to regulate a just society.[103] Earlier experiments in adopting a moral point of view were discarded, even as they had paved the way. These

debates about the original position also laid the foundations for another, one that would outlast the technical debates about decision-making under risk and uncertainty: the debate about what idea of the self lurked behind Rawls's theory.[104] But those concerns were deferred for another decade. With game theory ascendant, the psychological and naturalistic underpinning of Rawls's theory was of little interest. What mattered were the economic ideas that overlaid it: the self-interested rational individual and their Kantian inverse, the autonomous moral person. But Rawls's readers also turned to the content of the principles themselves. As they began to argue over how radical and demanding his theory really was, the aims of liberalism were reinterpreted. It was against the backdrop of arguments over the welfare state, constitutional theory, and civil liberties that the politics of the principles would now be understood.

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Did Rawls's theory aim to improve the lot of the poor, or did it aim at equality? Which of these was the more radical aim for liberalism? Did Rawls take the rich to task, or did he let them off the hook? Political philosophers analyzed these questions, asking what it meant that Rawls prioritized the liberty principle, whether the difference principle was egalitarian, and how much redistribution it demanded.[105] The national difference in reception was striking. In the United States, as Perry Anderson later wrote, "Rawls's delphic masterpiece" was received "as the standpoint of a moderate, liberal left, within a field whose center of gravity lay well to the right of it."[106] Daniel Bell, for instance, read Rawls as providing a full-blown attack on meritocracy and "the most comprehensive effort in modern philosophy to justify a socialist ethic." In Britain, however, Rawls was read as a "figure of the centre."[107]

While Stuart Hampshire situated Rawls alongside Tawney and Titmuss, Barry accused him of lacking in that same tradition of British altruism.[108] Others characterized his theory in relation to contributory, welfare state, and utilitarian theories. Miller thought that Rawls's theory, like utilitarianism, was "forward-looking," but he also thought the notion of desert crept into the principle of fair equality of opportunity. Barry was delighted by Rawls's rejection of desert, but overall it was not the "radical break" with just deserts he imagined. Rawls cared about limiting, not eliminating, inequalities. Too concerned to provide economic incentives for general improvement, Barry thought him content with inequalities that no serious egalitarian would permit.[109] The British sociologist W. G. Runciman went further, in a debate that

prefigured later philosophical disputes about the role of incentives. Rawls's theory contained an attack on the contributive principle.[110] In correspondence, Runciman argued that Rawls's model allowed "extortion" by "fortunate entrepreneurs." He was aligned with Buchanan and Tullock—defenders of perfectly competitive markets and "enemies of the welfare state." Social justice, in Runciman's terms, required constant redistribution.[111] Rawls did not provide for that constant redistribution and attention to need that lay at the heart of the welfare state.

When Brian Barry released his book-length response two years after *A Theory of Justice* was published, he described Rawls as an "unreconstructed Gladstonian liberal." The difference principle was deeply radical, but "surely not since Locke's theory of property have such potentially radical premises been used as the foundation for something so little disturbing to the *status quo*!" Rawls might have aimed his theory at securing advantages for the "worst off representative man," but he fudged what that meant: was the "lowest representative man" the least advantaged of all those in the bottom social position, or was he the "average taken over this whole class"? Locke had dropped the "idea that everyone has property in what he mixes his labour with in the light of the observation that the poorest labourer in England lives better than a king in America. But at least he had the decency to make the claim for the *poorest* labourer—not the average."[112] Moreover, Rawls cared too much about securing the agreement of the rich. Both liberals and Marxists thought his model implausible for its assumption that the rich would give up their positions to benefit the least well off and his faith that the moral point of view would not collapse into the "class point of view."[113] In this sense, Rawls fell between two stools: he did not have the benefits of a fully altruistic view when it came to ideas of social solidarity, but nor did he have the clear-sightedness about power that derived from interest-based views.

Yet Rawls had many left-liberal defenders too. While he dug down on the priority of liberty, they sought to rescue the "radical premises" of the difference principle. Some claimed that Rawls's distributive ideas were inextricably concerned with production. If taken seriously—as the centerpiece of Rawls's theory, relaxing the priority of liberty argument—the difference principle would lead to a wide dispersal of capital, far more egalitarian than any existing welfare state. It was a "people's capitalism."[114] Others, focusing on Rawls's connection of reward to the performance of "social function" and its disconnect from "natural and social fortune," argued that his theory ruled out capitalism: Rawls followed those who saw ownership as not in itself productive, thus not

contributing to the cooperative scheme, and so ruled out capitalist property as unjust and moved toward a democratic socialism.[115] Rawls's intentions need not have been radical. His theory could have radical consequences.

Many left-liberal philosophers therefore tried to use Rawls's theory. Others saw it as a rationalization of a capitalist welfare state.[116] His account of the legal system, which delighted constitutionalist lawyers, made his theory incompatible with the kind of neo-Marxist and critical view of law then gaining ground, which emphasized the ties of the legal system to private property regimes.[117] Rawls was, moreover, reluctant to criticize the market, not only on moral grounds but on those of efficiency, and seemed to some to uncritically accept it as a mechanism of social distribution. To others, his emphasis on ownership and wealth neglected the importance of worker control for justice: Rawls did not see what arrangements were in fact required by market socialism.[118] He missed the roots of capitalist exploitation in private ownership and the division of labor, assumed a class society was "inevitable," and failed to see that socialism could not merely be a mere "modification" of a "capitalist welfare state" with a few workers' councils and public ownership. These limitations were part of the legacy of Labour revisionism—its reimagining of socialism's aim as equality and its accommodation with managerialism. For Barry, Rawls appeared not to consider "the question of improving the working conditions of the bulk of the population as one of justice," despite a nod to the importance of "meaningful work." This downgraded the importance of collective action, political conflict, and the labor movement in securing the conditions of social justice, and even the partial successes of the welfare state. Rawls "suggests no machinery for bringing about the changes he so airily speaks of as being possible," Barry wrote. "One is forced to conclude that he must believe market forces to have some inherent tendency to bring them about, which is completely contradictory to experience."[119] If Rawls's theory had relied on the sociological prophecy of a mixed economy tending toward post-industrial society, that prophecy, still unfulfilled, itself required a justification that Rawls did not provide.

On some leftist interpretations, Rawls neglected the potential collective agent of the working class. From a liberal perspective, a distinctive yet parallel complaint was made: that his emphasis on social ties and equality amounted to a neglect of the poor. Rawls's egalitarianism was seen by certain liberals to come at too high a cost. Among the legal philosophers with whom Rawls's ideas had an immediate impact, some challenged Rawls by extending the logic of humanity- and needs-based welfare arguments, as well as the turn to poverty (ideas that soon provided the basis for "sufficiency" alternatives to

egalitarianism).[120] Michelman, for example, deployed Rawls's principles to defend a jurisprudence of judicially enforceable "welfare rights" and to support the claim that the Constitution itself condemned poverty.[121] He argued that judges could use Rawlsian principles to defend welfare and justify attacks on poverty not just as wealth "discrimination" but as material "deprivation." Though he deployed Rawls's ideas in support of this welfare rights jurisprudence, Michelman nonetheless took him to task for his neglect of the poor for the sake of reducing inequality. Rawls's concern with relative inequality, Michelman claimed, occluded a staunch defense of "a social minimum."[122] Though Rawls advocated one in practice, the thrust of his theory was to say that reciprocal relations between persons and groups mattered more than absolute poverty reduction.

This downgrading of equality turned on a welfarist minimalism and a humanitarian argument about the state's responsibility to meet needs. It was a response to the demand to take seriously poverty in the midst of affluence. But it risked displacing the problem of inequality. Compared to this, Rawls's emphasis on relational egalitarianism seemed a robust answer to that problem. Like older egalitarian traditions that focused on the psychological costs of inequality, Rawls was adamant that inequality between classes of people was destructive to individuals and society.[123] Yet to others, Rawls's egalitarianism was insufficient in another respect. An implication of Rawls's vision that saw the fate of the poor tied to that of the rich was that he did want to fight the rich to give to the poor. The destiny of each was tied to that of all. The rich were not understood as possessing a distinctive economic power; their position was not challenged as a way of confronting relations of domination or corporate capitalism.[124] At the AEA meeting in 1973, Rawls admitted that while the maximin criterion might, "if society were to impose a head tax on natural assets," conform to the precept "from each according to his abilities, to each according to this needs," that was not in fact feasible. Individuals would have "every incentive to conceal their talents," and anyway such a scheme would be a step too far, conflicting with liberty. Society instead could "say that the better endowed may improve their situation only on terms that help others. In this case whatever inequalities exist will effectively benefit the least advantaged, even though, for the sake of equal liberty, they are not as well off as they might be."[125]

In the early 1970s, these political critiques of Rawls came thick and fast. In talks, he defended himself against many of them. He refused the characterization of his theory as confirming the status quo and insisted that he did not, as economists did, "take preferences as given by social institutions but as created

by them." Preferences were "not static," but evolved and developed over one's life. They focused primarily on "institutions not commodities," on "rights and opportunities, not things."[126] When Barry accused him of thinking that "nearly just" societies "actually exist," "in the shape of the USA," Rawls retorted that "I would find it very difficult to see how anyone who has lived in this country for the past decade or so could think that it is a just or nearly just society as I define justice." It might be worth "the effort and devotion" to try to preserve "aspects" of "our political life," since "a condescending dismissal of our political tradition can only be destructive in the long-run." But this was a far cry from the claim that "the basic structure of our society is just, or nearly just." "To think this is to fail to work out the implications of the principles of justice," he protested. "Can anyone seriously believe that the inequalities of our society work out to the best advantage of the least favored, or that they nearly do so?"[127]

In a 1971 lecture, "Liberalism and the New Politics," Rawls had elaborated in what ways American society failed by contrasting his liberalism with New Left ideas. He saw value in the New Left critique of liberalism—its attack on the corruption of political processes, markets, incrementalism, unfair influence, and institutional hypocrisy. But, for Rawls, the problem was not that liberal procedures and institutions themselves led to unfair outcomes, but that in order for liberal procedures to function correctly, they needed to be under-pinned by "conditions of background justice" "that in the US today do not obtain." In some cases, these conditions had been so "flagrantly violated" that no one was bound by the outcome of procedures. Notwithstanding his restric-tions on the justifiability of civil disobedience, Rawls used the example of vot-ing rights, which, in isolation from justice, were "formal and ineffective." Yet it was not, as some "radical critics believe," necessary to "dismantle capitalist institutions altogether." Rather, liberals must be flexible as to "which reforms are necessary to establish the validity of liberal institutions and procedures." Rawls agreed with the argument that "indigenous liberal traditions provide a reasoned basis for radical criticism of our existing institutions and that many if not most of the objections raised against present policies by radical critics can be defended on essentially liberal grounds."[128]

No matter, in the end, what Rawls the man thought. Over time, in the years of debate, interpretation, and reinvention that followed the publication of his book, analytical philosophers did what they do best: they selected particular ideas and arguments and made those as internally coherent as possible. What shaped the coherence they arrived at was an outside challenge. Faced with that challenge, it became clear that Rawls's ideas taken together amounted to

a distinctive kind of political theory. That challenge came not from the welfarist, socialist, or social democratic left, nor from the public choice right. It came from a new right-libertarianism that aimed not to replace Rawls's specific principles but to reconfigure its understanding of justice. It was in response to that libertarianism that the character of liberal egalitarianism was established.

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Rawls's Harvard colleague Robert Nozick was not much concerned with how much room Rawls gave to ideas of altruism, need, poverty, or incentives. He objected to the reach of Rawls's state. Nozick saw any trace of skepticism about intervention in Rawls as irrelevant in the face of his theory's redistributive implications. These, he argued, amounted to injustice. In 1973, Nozick published an article on distributive justice, the first installment of his best-selling book of the following year, *Anarchy, State, and Utopia*, which defended a minimal state whose activities were confined to the protection of individuals, their rights, their property, and their contracts. His minimal state was not the young Rawls's. Society, for Nozick, was nothing like a game. What mattered was not the rules of the basic structure, but rights. Nozick's rights were prepolitical, preceded contracts, and were not granted by institutions. "Individuals have rights," Nozick wrote, "and there are things no person or group may do to them (without violating their rights)."[129]

Nozick did not provide an argument for these rights. For this, his neo-Lockean theory was widely condemned—as "without foundations," as a "reductio" of anti-utilitarian arguments, or as simply "implausible" and "American."[130] This did not stop him providing a withering critique of theories like Rawls's, in which ideal cooperative societies, Nozick claimed, required constant and continual state interference with those rights. All curtailments of individual freedom had to be the result of purely voluntary schemes: social insurance, education, aiding the needy—these were possible, but only if they resulted from individual voluntary action. Nozick thought all obligations were founded on consent. Like Walzer, with whom he co-taught, he returned to a simple idea of consent that Rawls had tried so hard to get away from.[131] On his view, the state existed only to enforce individual rights, particularly the right not to be compelled to take part in schemes to which individuals had not consented. Rights were violated not only by utilitarian institutions that traded off individual for social welfare but by any scheme that imposed a loss on individuals for the sake of the social good.[132]

Here was a libertarian attack on the redistributive functions of the state. No more than a minimal night-watchman state could be justified. This vision generated a series of new fault lines among political philosophers, not only over the extent of redistribution Rawls's theory demanded but about the kind of theory it was. It was institutional: property rights were designated by social institutions and the distributive principles applied to the basic structure that determined what belonged to whom. It was also seen by Nozick as interventionist and unhistorical. Nozick claimed that Rawls and other theorists who relied on "games of fair division" ignored how goods were created and how allocations were reached. They focused on dividing the pie, not on who baked it: Rawls's idea of an economy began with "manna" from "heaven."[133] "Rawlsian" liberals provided theories of redistribution: the implication of eliminating desert as a basis for distributive justice was that those who did not have the talents and goods that would allow them to get by comfortably should be compensated for what they lacked.

Nozick objected to this vision. It mattered how property came to be distributed, and original ownership mattered. Leaving ownership out of the equation skirted problems of causality and responsibility. Nozick made an influential distinction. On the one hand were approaches to distributive justice that relied on "end-state principles," like Rawls's and welfare economic theories, which evaluated only "current time-slices" of distribution but ignored how that distribution came into being. On the other were those that relied on "historical" principles (like his), which saw as morally relevant how individuals came to own what they owned.[134] The justice of an individual's possessions and control over economic goods was not a function of their contribution to the general welfare. That was the kind of claim made by an "end-state" or "pattern" theory in which individuals' claims to goods were just only if they were part of a distribution where inequalities worked to the advantage of the least well off—where the difference principle and its claims on reciprocity held. For Nozick, a distribution was just if it came about by a "just initial acquisition," a "just transfer," or a just "rectification" of an unjust taking.[135]

Nozick's intervention mattered to the trajectory of liberal philosophy in a variety of ways. To many outside the growing circle of philosophers of public affairs, Nozick and Rawls were cut from the same cloth—both were elite Harvard philosophers fundamentally committed to the priority of liberty, the downgrading of utility, and "antipolitical" contractarianism.[136] But Nozick's critique of Rawls was a sign of things to come, and a bellwether for the changing political mood. The sociological optimism of a liberal political culture that

had underpinned Rawls's liberalism and its openness to different regimes was being replaced by defenses of private property, choice, capital rights, and markets, enabled by a radicalized skepticism of state overreach.[137] With the coming crisis of Keynesianism and its left-alternatives, new forms of neoliberalism and economic libertarianism were on the rise.[138] Many began to suggest the state's capacity to intervene in the economy was being squeezed by the "absolutization of the market."[139] Political philosophers encountered these changes in disputes over "markets and morals," in which they extended the division over self-interest and altruism-based theories into critiques of markets—for instance, in debates over health care reform in the late 1970s among Singer, the young Marxist philosopher G. A. Cohen, and others.[140] But it was Nozick, rather than these general worries about marketization, who first helped make the ideas of economic liberty, property rights, consent, choice, and original entitlement central to liberal philosophy.

Nozick sparked a conceptual reckoning with the tenets of Rawls's theory and a defense of its egalitarianism. It was in response to Nozick that Rawls's followers became "Rawlsian" and established the contours of the new philosophy. This included a philosophy of public affairs that applied general principles to "issues of public concern," which continued to be determined by the concerns of the courts. It also included a vision of liberalism with moral principles that applied to institutions and to which philosophers preoccupied with public affairs might appeal. What determined this new liberal egalitarianism's canons of legitimacy was not so much a theorist's response to a particular argument—since a degree of political flexibility was built into Rawls's framework—as that theorist's adherence to a set of assumptions about the basic tenets of the new liberal theory, including what kinds of arguments were permissible and which were excluded. Three in particular, which were sharpened in response to Nozick, had immediate ramifications for the politics of liberal political philosophy.

The first was the importance of the basic structure. The new egalitarians stuck by Rawls's "macro-institutional principles." Rawlsian justice was about finding the right principles to regulate the social rules. The precise distributions demanded by the principles were debated, but the institutional nature of the theory was not.[141] Rawls's argument that principles of justice applied only to the practice that was the basic structure was widely accepted. What exactly was meant by a "practice," and how tightly this idea was defined, had preoccupied Rawls as he formulated his theory. The basic structure had not been a casual formulation, though its intentional capaciousness as something between social institutions and state entailed some ambiguity. That

ambiguity was now underplayed, as many accepted Rawls's theory as primar-
ily institutional. Only later would Rawls's critics challenge this focus, contest-
ing what they saw as the tightly institutional scope of the basic structure for
its neglect of agency. For now, Rawls's theory as stated in *A Theory of Justice*
became the new baseline: all additions and criticisms would respond to its
institutional focus. Meanwhile, his early motivations were eclipsed. The cri-
tique of the interventionist state embedded in the metaphor of society as
a game, in which the basic structure had its origins, was forgotten. While
some shared Nozick's worries about the stability of the basic structure, most
accepted its designation of the structures of a liberal, welfarist, or egalitarian
society and state.[142] After Nozick attacked liberal egalitarianism as excessively
interventionist, the response was to defend egalitarian distributions, state
intervention, and redistribution explicitly.[143] The institutions themselves
were assumed, at the same time that the divide between philosophers who
gave institutions conceptual priority over rights deepened. This divide soon
cut across political lines, but in the first instance Rawls's institutionalist fol-
lowers were also committed to significant redistribution.

Rawls's theory complemented the growing preoccupation among philoso-
phers to prioritize justice over humanity and to join it to basic equality. It was
this egalitarian commitment that became the second defining characteristic of
liberal theory in his shadow. What precisely it entailed preoccupied philoso-
phers for decades in debates about the basis and implications of egalitarianism.
But the redefinition of philosophical liberalism as tied to the value of equality
was also a product of the Rawlsian response to Nozick and the initial wave of
Rawls's left-liberal and socialist critics. In 1977, when Dworkin argued that a
"certain conception of equality" was "the nerve of liberalism," he was shoring
up the philosophical belief in a continuous liberal tradition that presented the
Great Society as a liberal landmark paving the way to social democracy and the
New Deal as a "triumph of pragmatic politics."[144] An earlier generation of lib-
eral critics became the New Deal state's post hoc defenders.[145] For Dworkin,
liberal equality was the core value of the "package" of "New Deal Liberalism,"
the reputation of which had been threatened by the Vietnam War.[146] That
package was translated into Rawlsian terms as a conceptual commitment to
the principles of justice designed to regulate a practice, not to individual rights
and entitlements in abstraction from it: the theory was concerned with a non-
voluntary cooperative scheme characterized by reciprocity, limited inequality,
and equality embodied in the treatment of equal moral persons. At the same
time that Rawls's theory, born in part of anxiety about the New Deal state,

was naturalized in the discipline of political philosophy, it was also written into a narrative of liberal egalitarian progress that claimed the New Deal as its victory.

The third characteristic of the new liberal egalitarianism was its relation to historical argument. Nozick and Rawls were both criticized for erasing history. Some saw their theories as abstract, timeless, inattentive to historical change and context. They were insensitive to personal and communal histories, unconcerned with what people were like.[147] But Rawls was not insensitive; his point was that much of this was irrelevant from the point of view of distributive justice. "Modern-minded men like thinkers to be forward-looking," one philosopher wrote of analytical philosophy's temporal focus, and they "regard it as a mark of obsolescence in the concept of justice that it should be backward-looking"; hence they reduced the importance of desert.[148] Rawls followed suit. Personal histories were irrelevant to just distributions. The original position had little to do with history, nor did Rawls's institutional account of what people were owed. Nozick, by contrast, joined a long line of thinkers who deployed historical origin stories, myths, and arguments to justify distributions. Rawls's theory was primarily hypothetical: the focus on hypothetical agreement and contract would be a crucial characteristic of liberal egalitarian modes of justification.[149] Nozick fused the hypothetical with the historical.[150] He did not try to ground existing property rights in real historical processes but was more interested in how distributions of property might have arisen. Yet he did think individuals come over time to have entitlements to material goods because of what they have done and what they have exchanged, and that institutions that interfered too much with this process were illegitimate. Personal histories of exchange were normatively relevant.

This attention to historical processes was not exclusive to Nozick. His defense of capitalism might have been the political antithesis of socialism, but it was also its philosophical mirror. Nozick's critiques of Rawls's theory shared something with certain socialist objections, which saw it as lacking an account of production or the labor process that defined or created value: it mattered who baked the pie, and who made the effort or contribution. Rawls's early liberal and socialist readers extensively debated whether contribution—to joint enterprises, public goods, or product—should be a major distributive rule of a society, and how much its effects should be remedied by other rules of fairness with different compensation requirements. For some, historical arguments could be used to explain why people deserve to be compensated for their exploitation, or to have expropriated goods, time, or labor

returned. They could help explain why workers, capitalists, or entrepreneurs were or were not productive in a morally relevant way, or why labor's contribution to the production of a good was underestimated relative to capital.[151] Nozick put his "entitlement" theory to different ends. What counted as a just transfer or rectification was extremely broad, and unconcerned with the problem of rectification, he provided no mechanism to correct for exploitation. Justice, on his neo-Lockean view, amounted to the protection of individual property. But as the analytical socialist preoccupation with Nozick in the coming years would attest, these arguments operated on a similar plane to certain anticapitalist ones, especially those that were the legacy of New Left ethics (in which exploitation, for instance, was a moral and historical process by which bosses and capitalists cheated, abused, and defrauded workers of the value of their products). In their philosophical incarnation, these became wedded to controversially Marxian themes of social justice and equality, as well as a critique of capitalism as a system of rules rather than as defined by justice in exchange.[152]

Yet it was first because of Nozick, as much as any leftist challenge, that Rawlsians sharpened their responses to "historical" and "backward-looking" arguments. As liberal philosophers turned their attention from interpreting the details of Rawls's theory to contesting Nozick's and defending Rawls's approach in response, they doubled down on both Rawls's institutional and presentist focus.[153] The removal of history was here the route to universalist egalitarianism. As they rejected the relevance of desert to institutional principles, they also rejected the normative relevance of arguments about how inequalities came about and, with them, non-institutional claims about individual entitlements, initial endowments, and the ownership of resources. Liberal egalitarian justice theories started not from past ownership but from the institutions of the basic structure in the hypothetical present.

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This framework began to push those who accepted it in a variety of directions, just as Rawls had bowed to the logic of the theory he built. Over the course of the 1970s, the account of institutional rules, egalitarian principles, and individual persons at the theory's core came to determine what kinds of arguments philosophers took as permissible. The institutional, hypothetical and nonhistorical emphasis, sharpened in response to Nozick, placed a range of positions outside the new liberal egalitarianism. Many kinds of political

theories were excluded, including the meritocratic, contributive, aristocratic, or statist ones that the young Rawls had explored only to reject.

This was not only the case when it came to determining what kind of society could count as just. The liberal egalitarian guidelines also came to be used when dealing with particular public affairs. The non-ideal realm of "partial compliance," in which most public affairs took place, was increasingly seen as not just guided but constrained by the arguments formulated in debates about ideal justice.[154] Rawls's arguments very quickly became the common-sense baseline that determined what public affairs counted as core liberal concerns. Where his arguments were unclear in their implications, philosophical debate ensued. New subfields of political philosophy were born of attempts by Rawls's followers to stretch his theory to cope with political concerns that he had ignored or not anticipated, or that were difficult to address within the Rawlsian liberal framework. When Dworkin defined a "liberal package" of key concerns, he set aside as only controversially liberal a number of others: "military intervention in Vietnam," "the environment," and the "debatable extension of liberal doctrines, like busing and quotas that discriminate in favour of minorities in education and employment."[155] These concerns were deemed potentially outside the liberal egalitarian purview. When in subsequent years philosophers explored them, they stretched these theories into new territory.

One public affair that liberal egalitarians tried to address was that which a decade earlier Rawls had deemed one of "implementation": the problem of desegregation and, more broadly, of racial inequality and injustice. The philosophical response to these problems was illustrative of the politics of the new egalitarianism. During the 1970s, amid continued resistance to desegregation, political philosophers turned their attention to the ethics of various solutions. In these years, neo-Lockean claims that turned on historical and rights-based arguments similar in structure to Nozick's were not unusual among African American, black nationalist, and anticolonial theorists who argued that reparations were owed to African Americans for slavery and its institutional legacy in Jim Crow.[156] For those who did not receive the benefits of citizenship and its logic of compensation for disadvantage, neo-Lockean demands for repair and rectification were a political resource. After demands for reparations for slavery gained national attention in the late 1960s, a number of philosophers, such as Hugo Bedau and Bernard Boxill, explored how a claim for reparations for historical injustice might fit an egalitarian Rawlsian framework.[157]

The claim to a historical right of reparation was easily accommodated in Nozick's framework. His emphasis on historical principles and transhistorical

rights that existed outside the institutional social rules was a perfect fit. The same was not true of egalitarian, institutional, nonhistorical theories.[158] Boxill illustrated this with an explicit contrast. On the one hand were Rawlsian theories, which rested on the acceptance of social rules and the existence of a "single" "valid community." They were concerned with compensation for bad luck and natural accidents, the costs of which "the whole" agreed to bear. Distributive justice rested on a view of society run in terms of fair competition, which required compensatory programs that were "forward-looking" and concerned with keeping society fair and running smoothly, with its losers protected.[159] On the other hand, the case for reparation was "more primitive," "backward-looking," and derived "directly from self-preservation" rather than any social contract, agreement, or set of social rules.[160] Boxill's account depended, as Nozick's did, on rights—not in his case entitlements in property, but the right of each person to "pursue and acquire what he values." An egalitarian safety net was not the same as reparation to black and colonial peoples: that depended "precisely on the fact that such people have been reduced to their present condition by a history of injustice," whereby the products of slave labor had been expropriated, so that descendants of slaveholders were in possession of wealth not rightly theirs.[161] Such a neo-Lockean view posited a realm of historical argument and transhistorical rights of ownership, property, and inheritance that existed outside of social rules and agreements. For those who did not already exist within a realm of social rules that benefited them, it had a lot to offer.

But such claims were hard to accommodate within the liberal egalitarian framework. When Bedau, who, like other left-liberals in the 1970s, tried to find a socialist interpretation of justice theory, analyzed the demand for black reparations, he saw the need for a "socialist justice" that combined leftist backward-looking arguments and egalitarian present-focused ones.[162] By contrast, in his treatment of Native American claims for the return of land, the utilitarian David Lyons, a student of Rawls's, argued that reparation and rectification were not egalitarian ideas. Though history might be used to causally explain the force of certain redistributive claims—and Native American "deprivation and their claims are rooted, *causally and historically*, in the wrongs that . . . their ancestors suffered"—they had no normative weight of their own. Their claims were not normatively derived from their original historical rights outside of institutional contexts, but from their current disadvantage—not because of transhistorical rights claims but "current inequities (some of which, of course, may trace back causally to the dispossession of Native Americans

and the aftermath)."[163] It was current wrongs that mattered, whether or not they were causally derived from past injustices.[164] Distributive justice was about changing the institutional rules so they worked to the benefit of the least advantaged. Distinctive historical arguments based on reparation were deemed unnecessary.

Egalitarian principles were capacious and flexible, just as Rawls intended. They could be deployed for transformative and radical ends, as Barry thought the difference principle ought to be. But in practice, when tied to the architecture of Rawls's theory, they were moderate, reformist, and served to diffuse alternative radical demands by force of argument. Historical claims about imperialism, colonialism, and global politics had already been left out of philosophical treatments of the Vietnam War, which abstracted core moral concerns from political ones. Now these absences were given broad justification. The practical concerns the Rawlsian framework was best placed to handle were constitutional ones, not demands for reparations, and this had consequences for the political shape of philosophy. The "legalization" of philosophy continued, with the courts determining which political problems absorbed philosophers and which they ignored.[165] In 1971, *Briggs v. Duke Power* made affirmative action law; where whites had long had preferential treatment, now the opposite was demanded.[166] In that ruling's wake, and after the 1972 executive order that brought affirmative action to campuses and then the *Bakke* ruling in 1978, philosophers debated the ethics of preferential hiring, affirmative action, and workplace discrimination. Legal liberals in postwar America tended to take one of two approaches to the workplace: one focused on unions and "workplace majoritarianism" to set the bounds of employer discretion; the other looked to discrimination law and the protection of minorities. It was the latter approach, which both stopped short of reparations claims and displaced labor politics, with which philosophers were concerned.[167]

A number of different justifications for preferential hiring were proposed by philosophers of public affairs. Some appealed to rights. Judith Jarvis Thomson, for instance, did so on grounds that no one has a right to a privately produced benefit, and so employers have a right to hire whomever they like.[168] Preferential hiring was justified as a kind of redress for past exclusion. Arguments like this privatized work even as they justified diversity. But it was the reference to historical, past wrongs that most irked Thomson's critics, who were also concerned with what kinds of rights were at stake in her vision.[169] Others tried to extend Rawls's framework for non-ideal theory to cover affirmative action. Such arguments, developed before Rawls's distinction between ideal

and non-ideal theory had been taken up as a prerequisite, and before many philosophers argued that non-ideal theory had to be constrained as well as guided by ideal theory, were later rejected as "insufficiently Rawlsian."[170] Yet it was clear to many that the solutions Rawls had provided to the problem of the relative weights of desert, merit, contribution, and effort and their relevance to the distribution of opportunities and incomes had implications for affirmative action. Indeed, while critics argued that affirmative action severed reward from character, choice, and effort, and outcomes from responsibility, many suggested Rawls's theory pointed in the same direction.[171]

Whether and in what ways Rawls's theory could support a defense of affirmative action was part of a broader debate over whether it could be seen as meritocratic, as well as about the place of desert in egalitarianism. A common misunderstanding of Rawls, Norman Daniels wrote, was that there was no "scope for reward" within the basic structure. But Rawls did not "nullify" desert. Nor did he entirely disavow meritocracy, within the limits provided by his principles.[172] Rawls might have made desert irrelevant to his institutional principles and stressed that natural assets were not deserved and that starting places in the game were not merited. However, he still thought that desert and contribution could characterize social relations within institutions and within the limits of the difference principle. Indeed, he had explored in detail the extent to which effort or talent might create individual desert and ensured a "principle of redress" that would compensate those with fewer natural assets. He made equality of opportunity substantive rather than formal (via educational provisions) and part of the second principle.[173] Rawls's readers now debated the relevance of institutional and pre-institutional notions of desert in the justification of affirmative action. Some stressed that desert as a principle of individual responsibility had to be better accommodated: treating people "as they deserve" was a vital route to "treating them as autonomous beings" whose "actions merit approval or resentment." It increased "their control over their own lives and fortunes." What mattered in arguments for affirmative action, on this view, was not ascriptive identities of race or gender but the removal of "barriers to effort" and unfair disadvantages.[174] But the revolt against desert also made liberal egalitarianism amenable to a defense of affirmative action. Reparations claims required historical argument, but they potentially implied a strong and punitive idea of responsibility that made distributive arguments into quasi-corrective ones. Affirmative action, by contrast, could fit the Rawlsian framework, since it could be framed in egalitarian terms, with a deflationary view of individual responsibility and of talents as collectively held assets.

Rawls's ambivalence on responsibility and desert could be put to political use in the name of a robust institutional egalitarianism.[175]

Not all aspects of affirmative action were easy to accommodate. For instance, it put the status of groups within liberal philosophy under pressure. This was a major question in the related jurisprudence surrounding desegregation and busing, taken up by the foremost antidiscrimination theorist, legal philosopher, and SELF member Owen Fiss.[176] He posited a solution in his "group disadvantaging" principle, which impugned "facially neutral practices with a racially disparate impact." This "antisubordination" principle argued that laws may not "aggravate or perpetuate" the subordinate status of a specially disadvantaged group.[177] In making this argument, Fiss followed distributive justice theorists in their rejection of certain kinds of historical and group claims: as one commentator argued, he took on the "apparent partisanship of a group-specific approach to the Constitution, with a largely depoliticized account of that group's trajectory."[178] Consistent with his Rawlsian colleagues, he downgraded explicit considerations of the historical emergence of black disadvantage and did not include arguments about compensation for historical discrimination. It was "an ethical view against caste" that mattered, not past wrongs.[179]

Nagel made a similar argument in his introduction to the *Philosophy and Public Affairs* reader *Equality and Preferential Treatment* (1977). Arguments from historical injustice were discounted for the sake of securing future equality of opportunity. Women and African Americans, Nagel wrote, were still "in too poor a competitive position to convert equality of opportunity into equality of achievement." But in the pursuit of that equality—in the inevitable departure from the "merit" system that entailed—claims based on reparations, historical injustice, group unfairness, or prior contribution were set aside. Distributive justice should not rest on past wrongs, original entitlements, or an idea of desert. "An advantage of arguing from the desirability of improving a bad situation, rather than from a claim of right is that it does not require agreement about how much of the bad situation is due to past injustice," Nagel wrote. "We may wish to improve it however it was caused."[180] Instead of claims on behalf of collective or corporate groups, justifications for preferential treatment should focus on "individual unfairness." The skepticism about assigning agency and responsibility to collective entities was reasserted: "When we notice that the only groups for which the group fairness argument is at all plausible are those with strong psychological identification—and historical continuity—we may conclude," Nagel argued, "that the argument's appeal

is due to the fact that it conceals an argument of individual unfairness. There may be a way to defend group compensation and liability without appealing to individual justifications, but it would appear to depend on illegitimate personification of collectivities."[181]

The task of liberal political philosophers became to address various public affairs using only the egalitarian arguments they now defined as legitimate. Rawls's theory provided the first test of that legitimacy. The new egalitarians took it as their baseline and struggled to show just how much it could accommodate. This remained the case for many years to come. For example, as critiques of Rawls mounted, with the philosopher Charles Mills and others later arguing that the Rawlsian neglect of racial injustice illustrated liberal egalitarianism's white supremacist core, certain Rawlsians would respond that Rawls's theory provided the basis for a robust defense of affirmative action and an attack on racial injustice more broadly.[182] Rawls did not comment on affirmative action until later in life, and he never proposed an antidiscrimination principle or account of compensatory justice. Nor did he treat "race" as an independent cause of failures of fair equality of opportunity, but as part of economic inequality. Some argued that his theory nonetheless contained sufficient resources to make those additional arguments unnecessary.[183] After all, since his graduate school days, Rawls's decision procedure had aimed at removing prejudice and irrationality. Considerations of racial disadvantage played an important role in the original position and veil of ignorance, which eliminated knowledge of racial identity and racism precisely to prevent racial inequalities. The fair equality of opportunity principle and difference principle, particularly its accompanying principle of redress, together significantly mitigated the effects of racial disadvantage.[184] A range of black philosophers, including Boxill, Laurence Thomas, and Michele Moody-Adams, saw in Rawls the possibility of a theory of racial justice.[185] Some, like Tommie Shelby, suggested that Rawls's liberalism went far beyond nondiscrimination in the administration of justice: it had the potential to critique institutional racism and racial disadvantage in the name of equality, without using post-*Bakke* arguments from diversity.[186] On this view, a Rawlsian just society left neither stratifications of class nor race in place. Independent historical arguments were not conceptually necessary to redress the accumulation of historical racial or class disadvantage.

The beauty of Rawls's theory was that its arguments could be put to radical ends and admit a more demanding egalitarianism than he might himself have advocated. Yet while this was the fate of its constituent arguments, the

structure of Rawlsianism as an intellectual field and the dominance of particular philosophical preoccupations and assumptions would serve to keep out alternatives. This was the paradox of the new philosophy, and it was already coming into view. By the end of the 1970s, the character of liberal egalitarianism was set. For the foreseeable future, both proponents and many critics would negotiate within its terms. Egalitarian principles applied only to individuals or institutional policies determined by them. Institutional rules became the core feature of a usable theory. Rights outside of them and claims from history were excluded. Liberal philosophers insisted that ideas and arguments excluded by the Rawlsian framework were no longer necessary to deliver an egalitarian politics.

5

Going Global

"IN THEIR LONG-RUN significance," Brian Barry wrote in 1973, "international relations are far more important than domestic politics."[1] Contemporary observers of philosophy would have thought otherwise. As liberal philosophers debated egalitarian principles, they initially avoided connecting those principles to a broader geopolitical terrain, except insofar as they could be squeezed into the framework of the morality of war. International politics more broadly—whether the Cold War, the global economic system, or the consequences of decolonization—was left outside the basic structure and the domestic institutions to which Rawls's principles of justice applied.

The visible symptoms of a strained global system soon made the international realm harder to ignore. The 1971 famine in Bangladesh was followed in 1974 by another. More than a million died. The Bretton Woods system that had underpinned the embedded liberal consensus of the postwar decades was dissolved.[2] The affluence and growth that enabled Rawls's domestic focus appeared to be under threat. The Organization of the Petroleum Exporting Countries (OPEC) oil embargo and price spike of 1973 produced turmoil in the United States and Britain.[3] In the aftermath of the oil shocks and a global food crisis, many thinkers rushed to make sense of the "great world crisis" and the new "interdependence."[4] International crises, whether of energy, food, or currency, became the norm. No country could be entirely insulated. Even the richest appeared vulnerable to actions of distant states seen until so recently as powerless.

While many liberal philosophers were preoccupied with Rawls's book and its implications for domestic concerns, some began to ask whether and how political philosophy might cope with this changing terrain. As they turned to the international realm, they encountered two rival forms of politics. After the

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Biafran war of secession and the crisis that followed, humanitarian emergencies gripped the public imagination as hunger became a problem for international humanitarianism rather than state welfare.[5] On the one hand, international organizations, consumer groups, and transnational corporations became the key actors in a wave of humanitarian politics concerned with human rights.[6] On the other, anticolonial activists demanding national self-determination, economic sovereignty, and global redistribution seemed after the oil shocks to be poised to win international victories at the UN for postcolonial states.[7] Could these countervailing tendencies within international politics be accommodated within the architecture of the new liberal philosophy? Instead of judging the morality of the state from below for its encroachment onto associational life or individual liberties, now philosophers made a horizontal move beyond the state. Liberal egalitarianism went international.

Whether the new accounts of obligation, needs, disobedience, or justice made sense beyond the state was an open question. Over the course of the 1970s, moral and political philosophers experimented with accommodating international politics within their theories. Some looked to debates among development economists and their critics and to ideas drawn from theorists of the global South, while others looked to US foreign policy. As many aban-doned analytical ethical theory for applied ethics and the philosophy of public affairs, they set up centers, such as the Institute for Philosophy and Public Policy, founded by Henry Shue and Peter Brown at the University of Maryland in 1976. These played a central role in facilitating a new "international ethics" that joined problems of individual obligation and duty to policy.[8] Others looked to the liberal egalitarian distributive theory ready at their disposal. Could Rawls's rules be stretched to cover the world or to accommodate the reassertion of discourses of state power and control in a new phase of decolonization?

These challenges lie at the origins of global justice theory. They also helped shape the politics of liberal egalitarianism. Internationalizing philosophy required a reckoning with political questions—about collective agency, conflict, and control—that had been submerged. This served to re-entrench divisions between justice and humanity, self-interest and altruism. A number of philosophers—Thomas Nagel, Barry, and a new generation that included Charles Beitz and Thomas Pogge—now debated what categories best made sense of the international realm.[9] In doing so, they shored up a new vision of the relation of theory and practice, and of philosophy and politics, in which the relevance of certain empirical descriptions of the world was downplayed and Rawls's

theory provided a new baseline for international political thought. By bringing political philosophy into new areas, they stretched that theory beyond Rawls's conception of it. In this context that *A Theory of Justice* had largely ignored, the liberal egalitarian interpretation of justice theory was consolidated.

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The development of an internationalist political philosophy was gradual, and it did not begin with Rawls. The Vietnam War had been the predominant international preoccupation for American philosophers in the late 1960s, and it had pushed philosophers to look beyond the state with just war theory and international law. In the early 1970s, when the countries of the global South came to occupy the political and humanitarian imagination of liberal thinkers, philosophers initially responded in two main ways.

In 1972, during the aftermath of the Bangladesh famine, Peter Singer published "Famine, Affluence, and Morality"—his philosophical call to action. If it is "in our power to prevent something very bad from happening, without thereby sacrificing anything morally significant, we ought, morally, to do it," he declared. His thought experiment became as famous and widely replicated as the trolley problem: "If I am walking past a shallow pond and see a child drowning in it, I ought to wade in and pull the child out. This will mean getting my clothes muddy, but this is insignificant, while the death of the child would presumably be a very bad thing."[10] For those in affluent states, donating a significant proportion of their income to help those in need on the other side of the world was the same kind of morally insignificant cost as muddy clothes.

A negative utilitarian principle applied to both the drowning child and international aid: "We ought to be preventing as much suffering as we can without sacrificing something else of comparable moral importance." Distance was morally irrelevant. Like saving the drowning child, the affluent helping those suffering far away was not an act of charity, a "supererogatory" or saintly act. It was a moral duty that existed whether or not there were other people present who might act on it instead. It was to be discharged by individuals—acting through private organizations, famine relief funds, or whatever institutions were most effective. Governments had duties too, but government inaction could not justify individual inaction.[11]

A utilitarian who began his career working on the problem of civil disobedience at Oxford with Richard Hare, Singer was the first analytical moral philosopher to address international concerns. He did not see moral principles as tied

to institutional relationships. As T. M. Scanlon put it, "the natural tendency of utilitarian theories is to be global in their application."[12] Singer extended his utilitarianism internationally, not with a demand for institutional reform, but with an exhortation to individual moral action. In the absence of perfect societies regulated by complete principles, he argued that "moral expertise" of the kind possessed by philosophers was required to show individuals their duties and how to discharge them—individually or through associations, the state, civil society, or the market.[13]

Singer suggested the institutional means of discharging individual duties were irrelevant: whether the actions were public and governmental, private, or corporate and philanthropic, what mattered were the consequences. His ideas found a wide audience with new consumer activists.[14] Later, his emphasis on altruism was deployed to advocate private philanthropy and corporate social responsibility and in the "effective altruism" movement.[15] In the early 1970s, however, Singer drew from disparate sources to forge a capacious international ethics. He combined utilitarian impartiality with an anticonsumerism born of his writing on the young Marx.[16] He adapted Richard Titmuss's ideas about socially recognized needs and voluntary welfare provision independent of and supplementary to the state. He wanted to defend altruism, giving, and "community feeling" from commodification by the market, which generated a form of reciprocity too reliant on self-interest.[17] Yet, like the generation of moral philosophers to which he was heir, he began from individual duty and obligations. In doing so, Singer initiated a new form of international, humanitarian ethical inquiry.

Singer's contribution came at a moment when many were trying to rethink international politics. US foreign policy intellectuals, development economists, and anticolonial activists and statesmen were all adapting to changing attitudes toward development and decolonization. Old orthodoxies that assumed foreign assistance would "trickle down" and improve poverty without active redistribution were seen as discredited.[18] Attempts to "fix" world poverty had failed to prevent famines. Many challenged modernization theory, embodied by Walt Rostow's *The Stages of Economic Growth: A Non-Communist Manifesto* (1960), which saw poverty as an initial condition that states could outgrow in evolutionary stages of industrialization, eventually reaching a point of mass consumption, choice, and abundance.[19] A growing number of theorists, from neo-evolutionist anthropologists to economists, contested the Eurocentric bias of these theories.[20] For postcolonial states, development doctrines had always posed a double bind: in the postwar years,

anticolonial claims of self-determination were tied to national development models that emphasized the use of state power for industrialization, but the pursuit of modernization had not reversed international economic hierarchies and many postcolonial states remained dependent on foreign assistance.[21] They now looked to alternatives, and American policymakers responded with their own. In 1968, the countries of the global South at the UN Conference on Trade and Development (UNCTAD) had demanded "Trade Not Aid." The same year the World Bank, under the directorship of Robert McNamara, launched its "Basic Needs" approach to solving international poverty. That placed the satisfaction of basic needs, rather than foreign aid, at the heart of development. It also put the measurement of absolute poverty at the center of debate at organizations like the World Bank and the International Labor Organization for the next decade.[22]

Singer offered one response to these arguments. His essay was a call to simplify the moral stakes of relations between global North and South to show the humanitarian emergency in the midst of international politics. Many later followed his humanitarian route. But it was a prompt from the anticolonial left's debates about trade and international order that pushed liberal philosophers to internationalize discussions of distributive justice. Their disagreements helped refine the particular form that international liberal egalitarianism would take.

Among the foremost critiques of modernization theory were dependency theories and theories of unequal exchange. These were associated with the hypothesis, put forward by the German-British economist Hans Singer and the Argentine economist Raúl Prebisch in the late 1940s, that the poverty of the developing world was the result of adverse terms of international trade.[23] Responsibility for underdevelopment lay not with characteristics or policies of developing countries but with the workings of the international system, which created poverty in primary commodity-producing countries and worked to the advantage of industrialized nations. In the 1960s and into the 1970s, many anticolonial thinkers diagnosed a condition of economic dependence. When the German-American development economist Andre Gunder Frank brought a Latin American neo-Marxist version of dependency theory to the United States, he described a world capitalist system in which development at the center generated underdevelopment at the peripheries. Causal responsibility for global inequality was ascribed to the development of rich countries. Northern levels of growth were guaranteed only because of the brutal exploitation of the South.[24] This and similar

diagnoses were widely taken up and joined to international class politics, to critiques of empire as a form of enslavement, and to accounts of structural dependence and "nondomination" in the internationalist socialism of the Black Atlantic.[25] After dependency theory's initial association with the Economic Commission for Latin America (CEPAL), a broader range of Marxist and anticolonial theorists used the analysis to call for a variety of ends: subversions of the international order, strategies of "self-reliance," and revolutionary arguments for withdrawal and against economic integration. Others used the dependency framework to demand reparations or the rebalancing of terms of global trade.[26]

Many of these rival ideas of development and dependency passed through the United Nations as part of debates about the 1973 proposals for a New International Economic Order (NIEO).[27] It was then that they appeared on the horizons of liberal philosophers. In 1974, at the first special session of the UN General Assembly to deal with economic issues, the G-77 of developing nations, emboldened by the OPEC embargo, attempted to reform the international system by proposing the establishment of an NIEO—a vision for the restructuring of the world economic system based on the assertion of the economic sovereignty of postcolonial states. Prebisch had coined the term "New International Economic Order" in 1963, and the UN proposals had a variety of earlier incarnations.[28] Now the proposals were framed within the language of international law, and they prioritized the demand for absolute sovereign control over national resources and for equity to be restored to trade through reforms to raise and stabilize prices for the commodities on which the countries of the global South depended.[29] The NIEO aimed to secure "equity, sovereign equality, interdependence, common interest and cooperation among all States, irrespective of their economic and social systems which shall correct inequalities and redress existing injustices."[30] In practice, that meant debt forgiveness, aid increases, credit extensions, regulation of transnational corporations, and technology transfers from rich to poor countries. With the oil crisis raging, the Northern countries paid attention.[31] Even conservative bodies like the Trilateral Commission looked for redistributive fixes to diffuse anticolonial demands for self-determination.[32] To avoid the material implications of the demand for sovereign equality, foreign policy intellectuals—already scrambling to replace outdated realist ideas of international relations, which focused on interstate behavior and could not account for the "thickening" of transnational relations—declared interdependence the new political reality.[33]

Ideas that had been ignored or rejected when they surfaced in anticolonial, Marxian, and New Left theories of Third World solidarity were now accommodated within liberal thought.[34] The initial supporters of the NIEO proposals had ranged from socialists to reformist welfarists like Gunnar Myrdal, whose ideas represented a departure from radical dependency theories and who saw planning, not revolution or delinking, as a solution to underdevelopment.[35] The NIEO demands were antimarket; endorsed the direct allocation of resources by political authorities; advocated full state sovereignty, autonomy, and control; and proposed to limit the property rights of nonstate actors, crucially corporations. "State rights" were to be deployed against international capital.[36] Yet the NIEO was also oriented toward the global economy. Where dependency theory implied a conflictual vision of world relations, the NIEO demands were more optimistic about achieving a global consensus on the rules of international order. As such, they paved the way for the consensual vision of the international order put forward by the 1980 Brandt Report on International Development, which saw redistribution as a route to justice within a global economic consensus.[37] By the end of the 1970s, the consensual vision had displaced dependency analyses as well as the accompanying ascription of historical and causal responsibility for inequalities to the affluence of rich countries, to imperialism, to colonial exploitation, and to capitalism. To the critics of the NIEO demands, they implied a teleology of capitalist growth—a "socialism among states, capitalism within states."[38]

It was precisely because the NIEO proposals did not commit to a conflictual vision of international order and advocated a kind of redistributive institutionalism that some of the new liberal egalitarians began to find them amenable. As American discussion of the NIEO peaked after the oil shocks, Charles Beitz, a graduate student in political science at Princeton, argued that it was time for international ethics to go beyond the Vietnam-era preoccupations with "war and peace" to "international distributive justice."[39] The NIEO demands, he wrote, rested on the assumption that developed countries had an obligation to "radically restructure the world economic system." Beitz saw an opportunity in Rawls's theory, which had shown how to judge what redistributive obligations were necessary to the pursuit of just institutions.[40] He set out to extend Rawls's account to an institutional international theory, to assess which theory could apply beyond state lines—and to work out how and whether the restructuring of the world system the NIEO demanded could

be justified by a theory of justice.[41] Singer's humanitarian response was soon matched by Beitz's distributive one.

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Beitz was not the first to note that the logic of Rawls's theory was potentially global. The suggestion that the parties in Rawls's original position need not respect national boundaries and that the difference principle might extend internationally had already been made. Scanlon had asked why, given that "systematic economic interaction" counted as an institution in Rawls's sense, considerations of justice did not apply to "the world economic system as a whole as well as to particular societies within it."[42] According to Barry, when Rawls limited the scope of the principles so they did not address the bad luck of being born into a poor society, this was not justifiable. If the risk was that you might end up poor in Bangladesh (not just poor in Switzerland), then you would take the precautions necessary, choosing a global difference principle to raise the global minimum standard of living.[43]

Rawls had anticipated such objections and sought to block these extensions. In notes taken at a SELF meeting in 1969, he wrote that applying principles of justice globally was "psychologically" implausible. A requirement of the principles was that people be realistically able to comply with them. If they were stretched globally, this requirement could not be met.[44] The principles applied only to cooperative schemes for mutual advantage, the boundaries of which were "given by the notion of a self-contained national community."[45] Distributive principles compensated those who were relatively disadvantaged by the cooperative scheme. Where there was no cooperation, there was "no problem of compensation for relative disadvantage."[46] In a world of self-sufficient national societies, there could thus be no global difference principle. Beitz set out to show why Rawls was wrong.

That not all moral relationships flowed from institutional membership and from participation in cooperative schemes and practices was a claim Rawls had accepted. That was the point of his account of natural duties and moral relations between persons. His naturalism provided for a universalist moral theory, even as his notion of the basic structure circumscribed his political one.[47] Beitz used this to say that even if states were self-sufficient, there would be stronger moral ties, duties, and principles than Rawls suggested. Moreover, Rawls left out something crucial: the distribution of natural resources. Rawls's

general moral theory was focused on persons, not things, and pre-institutional property rights—an initial distribution of material goods—were not a key part of his moral theory. Beitz put resources back into that theory.

It was implausible, he argued, that in Rawls's international original position state representatives would only decide laws of war and peace. Claims over natural resources led to interstate moral conflict, and it was crucial to have rules for dealing with them. The parties should thus view the distribution of resources as arbitrary from a moral point of view, just as the domestic parties viewed the distribution of natural talents. Compared to the murky problem of desert and the question of whether people were entitled to keep the benefits that arose from their talents, the issue of natural resources in the international sphere was clear-cut: their distribution was a purer case of moral arbitrariness. Material resources could be separated from people's identity in a way that talents might not be. For Beitz, even allowing for national self-sufficiency, Rawls's theory should give rise to a "resource redistribution principle," according to which "each person has an equal prima facie claim to a share of the total available resources."[48] Departures from this equality could be justified like the difference principle, if the inequalities benefited the least advantaged. This principle provided "assurance to resource-poor nations that their adverse fate will not prevent them from realizing economic conditions sufficient to support just social institutions and to protect human rights guaranteed by the principles for individuals."[49]

Beitz challenged Rawls's claim that the social rules were restricted to the institutions of the state. Citizens did not owe a special obligation to those in their own society because local ties were stronger. Only pluralist localists—like Michael Walzer, he suggested—believed that tight-knit local communities had special claims on portions of societies' wealth. The idea that there was no psychological basis for global principles might equally challenge the existence of obligations in large modern states, where individuals rarely have psychological ties to the state.[50] No argument against international redistributive obligations could rest on the existence of such ties. Yet Beitz also objected to what followed from Rawls's restriction of the basic structure to the state. Rawls saw the institutions of the basic structure as nonvoluntary: it was because of their "deep and pervasive effects on the welfare of people to whom they apply regardless of consent" that they needed to be justified.[51] By leaving the international realm out of the picture, Rawls implied that it was in some sense a voluntary sphere. He misunderstood "interdependence" and the extent to which each state was embroiled in nonvoluntary, international economic relations,

regardless of the degree of their economic interconnectedness. Just as in the state, special obligations did not arise from how close-knit a community was, so the amount of economic interaction in an international scheme could not provide a "straightforward index" of the strength of the distributive principle appropriate to it.[52]

Modern interdependence, Beitz wrote, had been created by the removal of restrictions on trade and investment, the rise of an international division of labor, and the financial and monetary institutions of the world economy. Its effects went beyond the communicative transformation of the world into a "global village" in which distance was no longer morally relevant.[53] Beitz also implied that interdependence was not a recent phenomenon, but a structural, historical fact with deep roots. He later dated the origins of interdependence to those of the modern state, citing Immanuel Wallerstein's uptake of Frank's development of underdevelopment framework in his world-systems theory.[54] The contemporary situation imposed unavoidable burdens on poor countries: as a result of adverse balances of payments, they were forced to sell resources to wealthy countries they would be better off using to the advantage of their domestic populations. The global monetary system and the power of private foreign investment operating through transnational corporations placed poor countries under pressure and at risk—both materially, from everyday disturbances in the world economic system, and ideologically, from the imposition of external ideas of modernization and development. They were the worse-off participants in a nonvoluntary global scheme. If this reality were acknowledged, Rawls's principles of justice could not remain domestic. They had to apply to the entire global scheme and required improving the lot of the least well-off on a global scale.[55] The difference principle would have not only radical domestic implications for redistribution, as its more egalitarian interpreters insisted, but radical global implications too.

Beitz's diagnosis of what was at stake changed over the course of the 1970s. His ideas mirrored the shift among anticolonial thinkers from theories of dependency to visions of the international realm in which reform was conceived as changing the rules of the international game. As he argued for the international extension of Rawls's theory, Beitz focused on the rules of trade and the material basis of global inequality in trade, commodities, and natural resources. Against the view of the economic system as a conflictual zero-sum game, for Beitz, economic interdependence meant the global economy should be understood as a "global scheme of cooperation."[56] Yet this raised a dilemma. Rawls had externalized conflict beyond the cooperative scheme. Outside the

basic structure was a realm of potential war. If the cooperative scheme spanned the world, where would conflict go?

When he introduced his account of international justice in 1975, Beitz tacitly acknowledged the threat that dependency theory's description of global inequalities posed to the Rawlsian, nonconflictual picture. In a footnote he suggested that Frank's account of active underdevelopment was "more plausible" than those that explained inequality by arguing that global trade advantaged some countries and merely failed to improve the situation of others (as opposed to the advantage of one directly causing the disadvantage of the other).[57] But taking Frank's theory seriously required relaxing one of Rawls's definitional constraints—the idea that for considerations of justice to apply to a cooperative scheme, it had to work to the "mutual advantage" of its participants. Since development in one part of the system caused underdevelopment in another, the worst off would not be advantaged by their cooperation. The condition that the scheme was nonvoluntary and benefited some participants was thus, Beitz argued, more important than the mutual advantage condition. Since interdependence could not be said to benefit all, the view that the economic system, particularly global trade, caused "harm" and made things worse for poor countries was more realistic. The Rawlsian vision of a cooperative scheme had limits.

Beitz would change his mind. As he took on the NIEO's focus on resources and trade and hollowed out the Rawlsian vision of reciprocity to a more minimal trading relationship, he also used the Rawlsian tools, honed by the challenge of libertarianism, to domesticate the arguments of the anti-imperialist left. He no longer attempted to squeeze an intellectual paradigm based on conflict into one based on consensus, but chose the latter. Liberal development economists relied more on models of perfect competition and states of equilibrium than historical theories of "dynamic disequilibrium" that deployed ideas of imperialism, neocolonialism, dependence, and unequal exchange, and Beitz made a similar move.[58] By 1979, he had lost sympathy with these conflictual accounts of dependency. Now he challenged the framing of obligations owed from rich to poor countries as reparations, as well as dependency theory, and other arguments based on the historical fact of colonialism. In *Dissent*, Beitz wrote that it was not clear why those who inherit colonial wealth have to bear the burden of the wrongs committed by their ancestors. He rejected the idea that obligations were owed because "poor people in poor countries are victims of a double injustice," both domestic and international, "brought on by participation in a capitalist world economy."[59] Theories of economic

dependency, which rested on the claim that relations between rich and poor countries are exploitative—"the rich are said to prosper *because* of their relations with the poor, and the poor to suffer *because* of their relation with the rich"—were flawed. Rich countries did not always benefit from their relationships, poor countries may be only relatively (not absolutely) disadvantaged by their participation in the capitalist world economy, and dependency did not always correlate with poverty.[60]

History had to be left out of the equation. Beitz wanted to get away from the idea that dependency was the cause of inequality. The point of distributive justice was that it got its "grip on us as people who occupy positions in a social division of labor." The question was not why certain parties had come to occupy positions in what anticolonial activists called an imperial division of labor, or why they owned more of the global social product, but how it should be shared. The historical aspects of dependency theory could have no normative distributive implications. Where distributive justice theorists at a domestic level had rejected the normative force of historical arguments for reparations for chattel slavery in the United States, Beitz did the same in the context of colonial injustices.[61]

The choices Beitz made had further implications for liberal egalitarianism. He loosened the mutual advantage requirement of a cooperative scheme of his early work.[62] But unlike Singer, who was happy for his theory to operate outside the rules, for Beitz the existence of a practice and a scheme of reciprocity was still fundamental. Nevertheless, making the contract global, and removing time and history, had consequences. It involved making the problem of international justice one of distribution in the present, regardless of what had happened in the past, and rejecting historical injustice claims. It also meant rejecting the normative relevance of states, empires, and their boundaries, in the same way that the elimination of history made personal identities and communal histories irrelevant from the point of view of justice. Downgrading the force of historical accounts of accumulation entailed a displacement of the idea of capitalism, just as timeless ideas of the market were being enshrined.[63] At the same time, the removal of history denaturalized states and potentially rendered borders eliminable, opening the door to cosmopolitanism and a borderless politics.

This global institutional egalitarianism, with its vision of trade regulation and its downgrading of borders, served to counter the resurgence of state rights. The economic sovereignty of postcolonial states, the control over their resources and exports, were foundational to the NIEO proposals. Beitz's

theory butted against sovereignty claims, even from the outset. His resource redistribution principle held that each person, not each state, had an equal claim to common resources. With the globalization of the principles of justice and the structural change they implied for the global economic system, "national societies can no longer be viewed as ultimate."[64] In his doctoral thesis, Beitz twice referred to his account as a "cosmopolitan" conception—"in the sense that it is concerned with the moral relations of a universal community, in which state boundaries have a merely derivative significance."[65] Yet he also conceded that though "the 'permanent sovereignty' doctrine may be extreme, sovereignty-for-the-time-being may not be, if it can be shown (as I think it can) that resource-consuming nations have taken more than their fair share without returning adequate compensation."[66] Interpersonal ethics thus posed a direct challenge to doctrines of national self-determination. The interpersonal morality at the heart of the Rawlsian system could lead to a robust cosmopolitanism. Where Rawls had drawn a firm line between the moral community of persons and the political community of citizens, Beitz's theory suggested this was inconsistent. The aim of development and redistribution, whether domestic or global, had to be improving the lot of the least-well-off persons. History was downgraded, persons elevated.

This cosmopolitanism flowed from Beitz's political concerns as much as his philosophical ones. It was also part of his challenge to modernization theory and a political corrective—a critique, in part, of development literatures that neglected domestic distributive justice in developing countries. It put forward an objection to the NIEO that was increasingly common among both liberals and conservatives: that its proposals were not concerned with individual inequality.[67] But Beitz also took on modernization theorists like Rostow and their conservative critics like Samuel Huntington, who had claimed that at early stages of development the protection of liberties was less important than economic growth or political order, respectively, and Rawls, whose priority of liberty prima facie implied the opposite view.[68]

Brian Barry had taken Rawls to task on grounds that this implied a Cold Warrior vision. If the priority of liberty applied internationally, then on Rawls's account it would be impossible, for instance, to say there were good things about Yugoslavia (with low inequality) and bad things about Italy (with its corruption and lack of economic and social freedoms). Yugoslavia would be condemned on Rawlsian grounds for the absence of liberal formal freedoms.[69] Yet, as other critics noted, Rawls also relaxed the priority of liberty in exceptional circumstances: for societies that were at "early stages" of development,

where it was necessary to "enhance the quality of civilization"—that is, for postcolonial states, but not for Yugoslavia (an example of a noncapitalist economy increasingly invoked by democratic socialists).[70] This proviso in the application of Rawls's theory internationally reflected the priority of growth in modernization theory and a broader civilizational hierarchy oriented to the West.[71] For all his aversion to historical arguments, Rawls relied on an evolutionary and stadial view of growth theory and a faith in linear progress. Despite his insistence on the priority rules of the theory of justice, Rawls was flexible when it came to the question of growth in less developed countries. Civil liberties could be restricted for economic well-being, but only in "early" stages of development.[72]

By the mid-1970s, it was clear that growth without redistribution had not worked. In an unpublished chapter of his dissertation, Beitz argued that the requirement to uphold personal and political liberties, liberties of expression, and rights of participation could not be relaxed simply because a country was less developed. Rights had to be protected.[73] Others agreed. They considered Rawls among those who had fallen for the myth that there was a "trade-off" between rights and development. Writing for a symposium on human rights and development after a 1978 trip by ethical philosophers to the Philippines and Indonesia, organized by Henry Shue through the United States Information Agency, the young political philosopher Robert Goodin challenged the claim that "a nation can stimulate economic growth by restricting rights." A wide range of political thinkers claimed that too much political, social, and economic liberty could have bad effects on stability and development by leading, indirectly, to too little capital accumulation, population growth, and political instability as labor unrest, electoral cycles, or local political pressures discouraged foreign investment and threatened development. Goodin argued that all these claims were flawed.[74] In his dissertation, Beitz largely agreed. He conceded that there might well be cases where trade-offs were necessary. (He noted those in which coercive job allocation might be justified and freedom of occupational choice restricted.) But the only justification would be the advancement of social justice—not economic growth or stability.[75] A country's path of development should be held to Rawlsian standards of justice, and justice properly prioritized the basic liberties of individual persons.

Beitz framed this cosmopolitan vision as a challenge to the NIEO's focus on intercountry transfers and economic self-determination, as well as its avoidance of problems of income distribution within poor countries. He saw the NIEO as repeating old development errors and insisted that his egalitarianism,

by contrast, aimed "ultimately at improving the conditions of poor *people . . .* [and] yields a moral case for internal reform as well."[76] The imposition of internal distributional conditions might well violate sovereignty claims, but this was what global egalitarianism required: "The justification for direct transfers itself requires that the transfer be used to narrow the global gap between rich and poor *persons*."[77] Considerations about personal liberty might constrain interference and demands for internal redistribution, but arguments from sovereignty should not. The NIEO reforms were therefore necessary, but insufficient. They did not do enough to "challenge the constellation of dependency" or the "extraneous influences" that were "among the main obstacles to egalitarian reform within poor countries."[78] Extending Rawls's theory to the international meant making the liberty of individual persons the normative benchmark of justice.

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Beitz's disillusionment with the NIEO tracked its fate. By the mid-1970s, it was under attack from a rising neoliberal internationalism in the global North that advocated the retreat of the state from social services and the defense of private property, anti-union measures, and the liberalization of trade.[79] The power of the Southern countries waned. The window in which a rewriting of international rules aimed at global redistribution seemed possible was closing. In this changing international landscape, Beitz's impact on the future of liberal political philosophy would be significant. But it was deferred. Samuel Scheffler, a graduate student in philosophy at Princeton at the same time as Beitz, recalled that the latter's ideas seemed "peripheral" to the "cutting-edge" interpretations of Rawls and debates about domestic equality that constructed liberal egalitarianism from within.[80] Where moral and political philosophers did look beyond the domestic, they were mostly not concerned with how anticolonial demands might be reconceived as cosmopolitan proposals for global redistribution. Instead, many followed Singer and began to extend the framework of individual duties and obligations to ask what was required of individuals living in rich countries.

Turning their attention to aid, famine, and population growth, philosophers extended the debates about duty and humanity in the welfare state to an international setting. They swapped Singer's utilitarianism for principles more palatable to deontological theorists in order to explore whether aid was a charity or a duty of individuals or states, and to address world hunger. Should

individual action take the form of money donations or government lobbying? Should aid or development assistance be conditional, given only to "friendly nations," or tied to other projects, like population control, as McNamara's "Basic Needs" approach recommended? A number of philosophers began to explore the issues that arose from debates among development economists about basic needs and the measurement of global poverty. Should poverty be conceptualized as a problem of inequality, of politics and institutions, or of humanitarian emergency? And how were these ideas to be accommodated within the new liberal egalitarianism?[81]

The different answers to these questions turned on rival characterizations of the international situation. Should its problems be described as poverty or famine—as a moral crisis or a political one? Was the food crisis a result of food shortages, poverty, distributional failures, or underdevelopment? The politics of food, wrote the historian Emma Rothschild in 1976, was "a politics of trade, not charity."[82] Events described as humanitarian crises had to be explored within a political and economic rather than purely ethical framework. Many development economists asked the question that had preoccupied British sociologists of the welfare state a decade earlier: should poverty be measured in terms of "relative deprivation" or "absolute dispossession," or should it be conceived as an issue of basic needs or of equality? Over the course of the 1970s, the basic needs approach that dealt in terms of absolute poverty became dominant, thanks in large part to its sponsorship by the International Labor Organization.[83] It was contested from the anticolonial left for its neglect of the NIEO proposals.[84] Liberal philosophers also explored its implications and the relationship of egalitarianism to humanitarianism and development politics. Amartya Sen, working at the intersection of philosophy and welfare economics, attempted to shift the emphasis from basic needs to entitlements. He later argued in his influential *Poverty and Famines* (1981) that famines should not be understood as food shortages but as created by social systems and their distributional implications—the distribution of entitlements, and who commands what. They were not the result of natural disasters but were always political—a function of the distribution of property rights to food. Yet he also insisted that poverty and equality should be viewed differently; understanding poverty as "an issue in equality . . . seems to do little justice to either concept."[85]

The line between the study and measurement of poverty and of inequality was difficult to draw. How international politics was described was key, as were the abstractions that political philosophers built from those descriptions. In 1977, Thomas Nagel wrote that the food crisis was inseparable from

wealth inequality. At the same time, however, it was so basic that it was beyond the scope of everyday politics: it needed to be hived off and protected from the usual controversies that pervaded discussions and conflicts of distribution, since it was "an extreme case, involving extreme needs." It both exceeded usual considerations of distributive justice and was on a continuum with them, precisely because it was a problem not just of world poverty but of "radical inequality," the solutions to which were always institutional.[86] For Nagel, radical inequality was distinguished from both poverty and colonialism. Simple poverty was what Singer addressed when he suggested that the basic needs of the poor were not created by social institutions and therefore could be solved by rectification through charity. Colonialism was at the heart of arguments that identified the roots of global inequality in the colonial exploitation of trade, labor, and development in poor countries and so demanded reparations. In contrast to both, many liberal egalitarians invoked the diagnostic category of inequality.

Nagel objected to "laissez-faire systems" that permitted prosperity to depend on accidents of birth, background, and talent. The appropriate remedy for systemic inequalities was neither charity nor redress for past exploitation, but a revision of the system of property and distribution of wealth.[87] Nagel followed Scanlon's response to Nozick's critique of nonhistorical principles: what mattered was whether a system permitted inequalities, not whether people did bad things to bring about that system.[88] Even if no one had cheated or exploited anyone else, inequality was still objectionable. At the level of the state, what justice required was "redistributive social welfare." Institutional mechanisms should counter the influence of morally arbitrary factors— differences in natural endowments or access to resources—and correct for inequality, in a way that private giving, motivated by duty or altruism, did not. At the international level, justice required challenging the "international market economy," which permitted morally objectionable outcomes—the existing system of property under which claims of right and entitlement, defined by "mechanisms of acquisition, exchange, inheritance and transfer," were made—as well as reforming the "world economy," which contributed to the production of "radical inequality."[89]

When the liberal international theorist Stanley Hoffmann looked back at a decade of debate on international obligations, he saw Nagel's theory as part of a radical egalitarian "indictment" of the world market economy for disadvantaging the poor.[90] But Nagel was not optimistic that his solution could be achieved. Decades later, in response to the proliferation of cosmopolitan

global justice theories, he doubled down on this early ambivalence, claiming that the basic structure was restricted to the state and theorizing justice beyond it was impossible.[91] Here that idea was only embryonic. Without the coercive mechanisms of the state to redistribute goods, eliminate arbitrary inequalities, and render individual duties of charity irrelevant, equivalent international inequalities could not be solved so easily. Given that absence, Nagel conceded that such an argument about radical inequality simply added "force" to "charitable arguments for foreign aid," making a stronger case against conditional, preferential aid. Ideally, Nagel wrote, aid would be truly humanitarian and "disregard politics entirely."[92] Nagel's uncertainty indicated how unclear it was to many philosophers how much ethical mileage could be gained from describing problems designated "humanitarian" in political terms.

Aid was, however, inescapably political. As the rich countries blocked international trade reforms, the politics of aid was again at issue. Its role in appeasing Third World demands, as well as the relationship of aid policies to the promotion of human rights by civil society groups, human rights organizations, and the Carter administration, were becoming controversial. Many policymakers advocated withholding aid from countries where governments violated the civil and political rights of the person.[93] This political question of the conditionality of aid raised difficulties for philosophers who tied humanitarian duties to an ethics of human rights. With human rights politics on the rise and many philosophers consolidating the conception of human rights as tied to basic humanity rather than citizenship, some defended conditional aid.[94] In *Human Rights and US Foreign Policy* (1979), a publication of the Institute for Philosophy and Public Policy, Hugo Bedau provided a civil libertarian defense of human rights defined as the civil and political rights of the person, which argued that discretionary aid policy should be tied to securing those rights.[95] This kind of argument was also implied by a simple application of Rawls's priority of liberty into a tool of international politics, in which the liberties of the person were prioritized in a humanitarian liberalism.

The shift to human rights that took place among international ethicists also included a moral minimalism of economic and social rights. Instead of abandoning the economic focus of international development and distributive justice theories for human rights or humanitarian needs, the philosopher Henry Shue gave a different view of what counted as human rights and which rights mattered. Challenging the distinction between rights of the person and economic rights, he advocated a "basic rights" approach that prioritized economic rights of subsistence and survival. This was a minimal economic

humanitarianism: basic rights were owed to individuals globally and provided a basis for targeted assistance and the strategic withdrawal of international aid on their violation.[96]

As a theory of the "moral minimum," this contested both Rawls's priority of liberty and Beitz's egalitarianism, arguing for a global subsistence minimum and poverty reduction instead of limiting inequality.[97] For Shue, basic rights were beyond politics because they were below it: subsistence needs had to be met before democratic welfarist politics could even begin. Singer made a similar move. He gave an account of bare "recipient rights," which stood outside the market and state and could not be commodified.[98] If Singer's humanitarianism was the international heir of British voluntarist schemes for meeting basic needs in the welfare state, Shue's sufficiency arguments internationalized the idea of constitutional welfare rights to a basic social minimum of welfare provision.[99] At one level, these arguments signaled the extent to which the Rawlsian focus on the distribution of goods had shaped the philosophical vision of international order. At another, both were a departure from liberal egalitarianism and theories of distributive justice. The force of human rights claims was derived not from state institutions but from their status beyond them.

The appeal to human rights was easy to accommodate within the new liberalism, with its commitment to an idea of equal individual moral persons. Yet the focus on humanitarianism, basic rights, and needs seemed to pull back from the demanding egalitarianism Beitz's theory represented. If there was a choice between principles of humanity and justice, as many philosophers suggested, humanitarianism seemed to undercut justice, replacing it either with purely moral individual duties or a kind of power politics. Some welcomed this move. For minimalist liberals who had seen Beitz's international egalitarianism as utopian—a "negation" not just of history, Hoffmann wrote, but of "the political dimension of politics"—human rights were a way of bringing power back into institutional and distributive theories that had lost their grip on political feasibility.[100] For Hoffman, an account of international justice that invoked minimal rights was the "realistic" response to the moralist urge to internationalize justice theory. Hoffman was a critic of liberal egalitarianism: it was not the case that "we have already an obligation to full equality for everybody, everywhere."[101] But he was also explicit about the extent to which human rights were tied to power . In this, he was an outlier: while the international ethicists who made human rights central to their theories were often applied philosophers whose work was closely tied to policy, few worried

that doing so involved making the assumptions and tools of US foreign policy part of their premises.[102]

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At the close of the 1970s, international ethics was tending in two divergent directions. On the one hand were humanitarian accounts that focused on individual duties and aid but downplayed institutions and inequality. On the other were those that made institutions and inequality central but elevated interpersonal inequality over state autonomy. For Barry, the former dealt with problems of "humanity," and they were a distraction. What mattered was problems of justice. Humanitarian aid was necessary, but it was not possible to "sensibly talk about humanity unless we have a baseline set by justice."[103] Barry was always wary of the depoliticization of liberal theory, and here he objected to the collapse of claims of justice into humanity. In 1979, it was clear to Barry that international politics was undergoing a transformation. The "east-west theme of Cold War confrontation that ran through the third quarter of the century," he wrote, "is being replaced in the final quarter by the north-south theme of confrontation between rich and poor nations."[104]

Barry was supportive of the NIEO demands. At the start of the 1980s, he became more explicit about what that support entailed.[105] He wrote that he wanted to "domesticate" the idea of world distribution implied by the NIEO by putting its demands in the familiar terms of justice theory.[106] What those demands got right was that they put justice before humanity. Barry reworked this old distinction. For him, humanity was "a question of doing good." Justice was "a question of power."[107] Principles of humanity direct us to prevent and relieve suffering. Principles of justice were concerned with "the distribution of control over material resources." International justice, as the NIEO recognized, was not just an argument against discretionary aid or charity but a fundamentally different worldview. The application of justice to international politics would entail "systematic and automatic transfers on a basis of justice rather than discretionary aid, even if that were purged of its present connection with Cold War politics."[108]

Barry explored what account of justice best fit international realities. Although he was less interested than Beitz in constructing a full theory of justice, he tried to apply the liberal egalitarian idea of justice as reciprocity internationally. Since every society has a notion of a gift, Barry reasoned, reciprocity could stretch to cover all social forms.[109] But what kind of reciprocity?

Rawlsian fair play could not make sense of international justice: it required the existence of a practice in which people took part, and the world was not a single practice in the Rawlsian sense. Beitz's argument that it was merely indicated to Barry that he had gotten carried away with fashionable ideas of interdependence and trade. But trade did not mean reciprocity: "The spice trade," Barry wrote, did not "unite East and West." The idea that the cooperative core of liberal egalitarianism could be scaled up was tenuous. Yet other ideas of justice as reciprocity fared no better. Justice as fidelity reduced justice to contract, a move that Barry associated with Nozick. When applied internationally, it was not much use because countries, particularly poor countries, tended to break contracts. (Barry set aside whether this was excusable or not.) Justice as mutual aid, which Singer had implicitly applied in his arguments for famine relief, elided justice with beneficence. If justice was understood as mutual aid, countries that were unlikely to reciprocate could not view the aid they received as justly owed to them. Aid given by the United States to Bangladesh could not be conceived of as in any sense part of a relation of mutuality.[110] Justice conceived as mutual aid failed too.

A more plausible idea, justice as requital or fair exchange, underpinned accounts of unequal exchange and the anticolonial arguments that saw reparations as owed by rich to poor countries. Barry was sympathetic to reparations claims and the capacity of institutions to determine what counted as an equal exchange. But he ultimately shared the liberal egalitarian skepticism. Citing arguments made in defense of reparations for slavery, he suggested that it was hard to argue that descendants of exploiters had no obligation to atone for the injustice of their ancestors if they were themselves richer as a result of exploitation and the descendants of the exploited were poorer. But the argumentative force of such claims derived from current inequalities, not past injustice. Equality was what mattered, not rectification in itself. Claims of rectification were basically "conservative."[111]

Justice conceived as requital in exchanges also had limits. Barry contested the viability of accounts of justice as requital like that he saw in the Greek-French Marxian economist Arghiri Emmanuel's *Unequal Exchange* (1972), which looked to wage levels rather than prices as crucial to historical underdevelopment, and to explaining the absence of international working-class solidarity. Barry contested Emmanuel's use of requital arguments to justify shifting the terms of global trade to compensate poor countries for unequal exchanges of commodities. He was skeptical of the applicability of dependency theory and justice as requital. He doubted that proposals for giving Southern countries

control of prices, or for cartelization as a means of achieving fair compensation, would make countries more equal. The idea that control of natural resources and equal exchange would lead to justice had been mistakenly generalized from the case of oil. Not all countries were resource-rich or possessed desirable commodities.[112] The NIEO proposals were not demanding enough. Something beyond these ideas of justice as reciprocity was needed.

According to Barry, "the glaring limitation of justice as reciprocity is that it can say nothing about the initial control of natural resources."[113] It did not explore the assignment of ownership rights, only their fair trading. Both the reciprocity theories of justice that dominated liberal philosophy and the institutional practice theories that characterized liberal egalitarianism after Rawls neglected initial ownership. Ideas of justice did not apply in a pre-institutional framework. Barry recognized that such ideas were most common not on the left but on the libertarian right. Always hostile to libertarian politics, Barry thought that Nozick's influence on liberal egalitarianism was an insidious distraction.[114] But here Barry made a conceptual move that would become a common one in subsequent years among left-liberals. He helped himself to a set of ideas familiar to those, from Locke to Buchanan to Nozick, who wanted to place fair exchange at the center of their theories and who recognized the need for an additional argument about the initial control of natural resources—a theory of initial endowments "to get things started."[115] The nonhistorical liberal egalitarianism that began from existing practices and institutional arrangements was silent or agnostic on this question of access to resources. It did not say anything about initial subordination and control, or what Sen called in his entitlement theory of famines the "command" of resources.[116] But since Barry agreed with Rawls that the basic structure was not global, an independent argument of this kind, about initial control, was needed to get to an account of international justice. The injustice of the initial allocation of rights had to be addressed.[117]

This would become a major concern for left-liberal and Marxist philosophers in the 1980s, who would try to make the notion of pre-institutional property rights central to liberal egalitarianism in response to the New Right. Here, Barry insisted on the international relevance of this notion. Many neoliberals had recognized that the great potential of the NIEO had been in its capacity to unsettle global property rights regimes. Faced with this potential disarray, they had looked for new rules to restructure the international order in favor of capital rights.[118] Barry was a keen observer of the right, and he may well have noted this response. Unlike them, he did not offer an alternative order based

on a system of rules to protect property rights but began from individual rights to equality of opportunity. He later developed this by restating H.L.A. Hart's distinction between special rights and general rights to argue for a general right to common resources.[119]

Justice was here conceived as equal access to the world's natural resources. Equality of opportunity, Barry stressed, was in its true form about equal claims on those resources, not "equal chances to get ahead in a meritocratic rat-race." This idea Barry thought stood behind Emmanuel's criticism of international order, which had gone wrong only in its commitment to the reciprocity framework. This commons-style entitlement claim sidestepped historical reparation arguments while acknowledging their force. Yet Barry argued it would have far more radical implications than either reparation or reciprocity. The debt owed by rich countries to poor countries was not a form of compensation for what had been lost, but a transfer of resources that already belonged to one country but were in the possession of another. "The planet," he wrote, "is the common heritage of all men at all times and any appropriation of its resources must be subject to appraisal from the point of view of justice."[120] Countries should have their fair share of the world's resources. There was a right before and beyond the nationally bound system of rules.

Like Beitz's "resource redistribution principle," Barry's equal right to common resources directly undercut the UN General Assembly's assertion of countries' "permanent sovereignty" over natural resources—the absolute right of each country to control natural resources in its territory.[121] Yet Barry's account solidified rather than undermined state sovereignty. When it came to international politics, "the main dividing line" between humanity and justice, Barry wrote, was "the autonomy of states."[122] This was visible in how actions motivated by humanity, exemplified by foreign aid, left discretion to the donor and ignored the autonomy of recipients. The claims of aid recipients were dependent on the use they made of resources. They had to spend "responsibly," or according to criteria of assistance. With justice, things were different: given the equal right to common resources, countries were simply owed a certain share of those resources. When transfers were made from rich to poor countries, it was up to the country how it would use the resources it already owned. Barry illustrated by analogy: just as the complaint that a woman claiming "family allowances" spends them on cigarettes instead of her children misunderstands how to measure changes in overall patterns of consumption and betrays a pernicious moralism, so did those who worried about how international aid was spent.[123]

Agents who were the recipients of transfers owed on the basis of justice were autonomous. How they spent what they received was their own business. In the international realm, the recipients were states. International taxation was the essential instrument of this kind of justice. A tax, Barry said, on the basis of GNP—which reflected "the use of irreplaceable natural resources, the burden on the ecosphere, and advantages derived from the efforts of past generations, and past exploitation of other countries"—would be a minimum requirement, distributed directly to poor countries "on a parallel basis of negative income tax."[124] Additional transfers on the basis of humanity could be administered by international organizations. But these were not aimed at returning control to recipients, nor would they modify state autonomy, as Barry wished, to include "a redefinition of what justly belongs to a country."[125]

This argument cut against the subsequent trajectory of liberal egalitarianism in the international sphere, particularly Beitz's internationalizing interpretation, which relied implicitly on international institutions to achieve justice. Beitz had been accused of disregarding politics: his just international scheme "would still be a world in which power and decisions about international regimes are heavily concentrated in the hands of a few." This stood "at the root of the demand for power-sharing in international institutions, or of the claim that the poorer states have the right to exercise collectively whatever power they have to change the rules of the game, since those rules are stacked against them."[126] Beitz had focused on distribution at the expense of control—a Rawlsian tendency that was more visible in the international context. Barry tried to redress that omission. He stressed the autonomy of states and extended autonomy, the capacity for control and agency, to collectivities in general. That was his way of restoring politics to an international ethics of distribution.

Barry's attempt to repoliticize liberal philosophy did not just involve making the state central to international distributive justice theory. He also called into question the place of collective agency in liberal egalitarianism by injecting a focus on collectivities. This flowed from his rejection of the "individualistic ideology" he saw taking over political theory. Its focus on individuals above other units was inaccurate as well as unappealing. In economic theory, Barry wrote, the standard unit remained the family. Like Rawls, Barry accepted this contested claim as fact.[127] Unlike Rawls, Barry used this fact not to make the family the primary site of moral meaning, but to show that collectivities could have political agency and control. By implicitly assuming that individuals were the basic unit, individualistic liberalism neglected the question of who owned or controlled a resource. What made a distribution just

was not its individualist basis but when "the correct people control the correct array of rights and opportunities."[128] There was nothing to restrict "the holders of just entitlements to individuals. We may quite comprehensibly speak of a just distribution of rights and opportunities among collectivities—families, communes, firms, or, for that matter, countries." Moral principles could have collectivities as their subject matter, and they could be the basis for distribution "as much as individual persons": "rights, powers, or resources may be attributes of collectivities as well as attributes of individuals."[129] Echoing the NIEO, he wrote that we should not collapse discussions of justice between collectivities with justice within them. Nor should we

> think of distribution between collectivities as morally significant only insofar as it affects the thing that "really" matters, namely distribution between individuals regardless of their membership in any collectivity. . . . It fails to take account of the significance—for individual human beings—of belonging to collectivities that have the autonomy to take decisions and the resources to carry them out.[130]

This argument did not go beyond states for the sake of an individualist cosmopolitanism or human rights, but pointed to a different kind of collective communality of goods. It gave priority to autonomy and resource control at the state level, for the sake of justice rather than humanity.

Beitz had been criticized not only for separating distribution from politics but also for discarding "the moral dimension of national politics."[131] Barry made these central just at the moment that the NIEO reforms stalled and efforts to reform international economic governance were in retreat.[132] He thought Beitz was mistaken to assume that international institutions were "advanced" enough to justify treating the world as a single cooperative scheme. Not only had Beitz focused excessively on trade but his attempt to remedy the silences of Rawls's theory on the nature of international organizations had gone too far—by suggesting that existing international organizations truly facilitated cooperation and community. These organizations were too underdeveloped to provide the empirical grounds for normative theory, and too unsophisticated to dispense justice in practice.[133] What could rise to the challenge? Barry did not look to subnational charitable and human rights organizations but argued that international redistribution should bypass international institutions in the form of intercountry transfers between rich and poor states. His tacit defense of the NIEO came by way of an assertion of state sovereignty and of the identification—common to both critics and

supporters of anticolonial politics—of anticolonial politics with nationalism and the state.[134] Individuals were not the only subjects of international theory, nor were international institutions its key agents. The state was both the first recipient and the agent of justice.

Barry was out of step. He was writing during the decline of Third World-ist optimism: new splits in the Third World coalition were emerging, and the second oil crisis of 1979 halted the move among European countries to establish trading deals with the global South.[135] In 1980, the Brandt Report had been released. Predicated on cooperation and reciprocity, it advocated a "global social democracy" of international public opinion and a community of nations. For liberal theorists, its vision eclipsed both the sharp edges of dependency theory's anticolonialism and the NIEO's focus on state sovereignty. Debates about international inequality now took place alongside competing visions of human rights and basic needs.[136] Human rights soon became the most prominent language of development and international politics.[137] Philosophy followed.[138] Barry's theory had looked to rights, but he was skeptical of human rights talk. For other liberal egalitarians, the Rawlsian focus on individual persons increasingly found expression in the language of human rights.[139] When philosophers began to look to the idea of autonomy—often in Kantian mode, and more often as a good to be protected by distributive justice than as part of an account of control over distributive decisions—it was the autonomy of individual moral persons, not the autonomy of states or collectivities, that became key.[140] This was true of liberal philosophy in general, and of international justice in particular. Individuals were elevated as the recipients of goods, as the bearers of human rights, as moral agents.

Liberal egalitarianism, institutionalist by reputation, would now become institutionalist at its core. Yet paradoxically the actual workings of institutions or questions about state autonomy and institutional agency were not its main concern. Institutions and states had been conceived by Rawls primarily as practices, cooperative schemes, and background contexts. They were not the agents or persons of state personality theories that had been constructed to deal with claims about responsibility across time rather than distribution in a static present. For Barry, institutions were agents as much as economic practices, but as the latter became the staple assumption of liberal egalitarianism, even his emphasis on the agency and autonomy of collectivities diminished, as did his resistance to endowing individuals with special status.[141] The brief moment when international justice theory tried to integrate the insights of anticolonial theories based on conflictual visions of a state-based international

order was over. Instead, a cosmopolitan, cooperative, and humanitarian vision became intertwined with justice. When liberal egalitarianism definitively turned international, the world itself became the relevant practice, the basic structure to which the Rawlsian principles of justice applied. The worry that cosmopolitanism might undermine national self-determination was displaced along with the NIEO. Human rights claims were folded into justice theories. Distributive justice, so it seemed, need not collapse into humanitarianism, but could accommodate it.

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Despite their differences, these first theorists of international justice shared something significant: an orientation toward "empirical" politics. Their abstractions were designed to make sense of a changing international realm, just as Rawls's had been an attempt to capture conceptually the changing realities of the administrative state and American society. But in the late 1970s, a change was under way among liberal egalitarians, both among those theorizing the international and those focused on domestic justice. Their theories were increasingly oriented not to making sense of reality but to refining theories on internalist grounds—to clarifying philosophical arguments and those of Rawls's system in particular. In the 1970s, Barry and Beitz shared the empirical orientation: their theories were meant to be diagnostic as well as normative, and it was on the basis of their capacity to make sense of the actual workings of the international system that critics to their left, like Kai Nielsen, critiqued them. For Nielsen, Barry's focus on states made him "apolitical" because it missed the global realities of capitalism. His neglect, like Rawls's, of productive justice and his interest in Nozick's ideas about holdings and entitlements were a distraction. Nielsen thought that Beitz, in his internationalism, had done a better job of taking a sufficiently empirical view of systemic global injustice, though he still needed a Marxist sociology if he were to properly name capitalism and modern forms of imperialism.[142] Regardless of whether they were successful, the early liberal egalitarians had tried to make their theories match the world. But the world would slip from their view.

At the turn of the new decade, these earlier theories were challenged for giving away too much to empirical reality, for their focus on "actual reciprocity in the circumstances of justice."[143] The moral philosopher David Richards argued that the application of the principles of justice did not depend, as Rawls had argued, on the existence of empirical circumstances of justice—an

idea, taken from Hume, that stated the conditions of reciprocity, coopera-tion, and moderate scarcity that were necessary for fairness. The key idea was instead the Kantian one of treating persons as equals, as a way of demonstrat-ing respect for their dignity. Barry, among others, had distinguished these two opposing tendencies in Rawls's thought—a Humean, practice-oriented part and a Kantian, ideal, and hypothetical part.[144] Thanks in large part to Rawls's own Kantian self-interpretation and his new explication of constructivism, the latter tendency was winning out.[145] Liberal philosophers and applied ethicists increasingly adopted Kantian ideas of autonomy and dignity, respect for persons, and hypothetical agreement.[146] For Richards, in order for the principles to apply on a world scale, it was not necessary to make the case that global conditions—whether interdependence, trade, or common markets—constituted circumstances of actual reciprocity.[147] Facts about the world could be false, and the facts could change. What mattered was the hypothetical con-tract and the moral ideas that guided it.

Liberal political philosophy began to display signs of a shift that was tak-ing place across many other areas of inquiry—to which liberal philosophers themselves were often hostile. Social and political theorists of various ideo-logical and theoretical stripes were grappling with and responding to contem-porary transformations, whether described as postmodernity, neoliberalism, or late capitalism, by reaching for novel forms of abstraction.[148] Among liberal philosophers, the shift to abstraction took a particular form, as hypothetical modes of justification and argument became more central. Circumstances of actual reciprocity were now replaced by the hypothetical idea of moral reci-procity. Ideal theory became detachable from real-world conditions. Beitz, for instance, conceded that his earlier theory had overemphasized the require-ment that the world constitute a cooperative scheme. He swapped his account of international justice that depended on the existence of economic indepen-dence for a more pronounced moral cosmopolitanism, to which the ideas of moral equality and human rights were key.[149] The first years of reading Rawls led to the entrenchment of his theory's egalitarianism. Now many emphasized its ideal nature. Not only did justice theories function as regulative ideals and assume full compliance but they also idealized and abstracted from the empiri-cal to the moral. This was accompanied by a shift from the material as philoso-phers included explicit discussion of a distinctive realm of culture and value. The concern with natural resources, so particular to an era of international politics that was drawing to a close, stretched to include cultural resources, as debates about fixed commodities and material goods were restated in terms of

opportunity or gave way to theories of human capital and immaterial labor.[150] By detaching arguments for international justice from their empirical base, ideal theory would be less biased toward the status quo. Yet here was also a double move away from the material and the empirical. Philosophers after Rawls's Kantian turn were more concerned "to find the real in the rational, rather than the rational in the real."[151]

Among liberal egalitarians who remained institutional in focus, this change was embodied by Thomas Pogge. As a student of Rawls's at Harvard, Pogge taught a course on global justice in 1980 and completed his thesis, "Kant, Rawls, and Global Justice," in 1983. His *Realizing Rawls* was published in 1988, after he spent the previous year at Shue's Institute for Philosophy and Public Policy. Like Beitz, Pogge tried to adapt Rawls's liberal egalitarianism to the globe. For Pogge, Rawls had granted too much to empirical circumstances. He had tended to the parochial. This was encapsulated by the fact that his single political intervention had been his account of civil disobedience during the Vietnam War, and also in his quasi-Hegelian concern for what was already there.[152] Pogge dug down on Rawls's universalism, making it not merely international but global. The chosen principles must work under ideal conditions and provide the "Archimedian point" to guide the appraisal and reform of unjust institutions. Pogge hardened Rawls's distinction between ideal and non-ideal theory, but he also stressed a particular version of their codependence, writing that "non-ideal without ideal theory is blind, ideal without non-ideal theory is empty."[153] Even so, for Pogge, a theory of global justice had to look to "institutional fixed points" that were "immune" to shifts in power or interest.[154] Ideal theory must not change with the political terrain.

Pogge collapsed Rawls's distinction between humanitarian international ethics and institutional domestic politics, stretching the universal ethics to cover the politics. In certain respects, he was one of Rawls's most faithful interpreters. The "individualistic base" of Rawls's theory was the starting point, and the extension of the principles globally was, Pogge argued, the logical consequence of Rawls's Kantian conception of human beings "as ultimate units of equal moral concern." Pogge rejected the idea that the parties might represent associations or states. Justice was the extension of a naturalistic humanitarianism of persons. The parties in the original position would decide on global principles. The institutional production of inequality and "moral concern" for it did not stop at national borders. So the parties would choose to correct for the bad fortune of nationality as well as other morally arbitrary contingencies.[155] The ground rules of the global practice should be assessed, he argued,

from the point of view of the globally least advantaged, who lacked fundamental rights and liberties as defined by Rawls's first principle and also by the Universal Declaration of Human Rights.[156]

This theory, Pogge argued, could guide a "New Deal" on the "global plane."[157] Like Rawls, he emphasized that the principles were designed to judge the constitutive ground rules of society that governed the distribution of resources and shaped inequalities in the first place. He prioritized redistributive stabilization over intervention, supplementing Rawls's principles with an internationalized, quasi-Keynesian set of rights to health care, education, and employment (though not a New Deal–style public works program or transfer system).[158] As interested in the federalism of the European Community as the NIEO, Pogge was less concerned with the politics of North and South than with the idea that the "invisible hand tends to guide things in the wrong direction": left unregulated, the "laissez-faire market system" would lead to poverty, war, and violence.[159] He was faithful to the egalitarian rejection of historical argument. The legacies of racism and colonialism were acknowledged but deemed normatively irrelevant.[160] It was "enough that the lives of the vast majority of persons are profoundly shaped and affected by events reverberating through an international scheme of trade and diplomacy in which we are highly advantaged participants."[161]

Yet Pogge moralized a distinctive political terrain. Amid a new phase of the Cold War, the brewing culture wars, and the ascendant human rights movement, the materialist economic focus of debates about international order gave way to renewed emphasis on a minimal morality and shared values.[162] Intellectual anti-totalitarianism was resurgent in Western Europe and the United States as many liberals complained of the "exhaustion of utopia." Others defended a vision of social democracy that prioritized human rights and a "lifeworld" where the interpersonal needed to be protected from market and state.[163] Pogge updated justice theory accordingly, with an eye on worst scenarios. He saw the current global basic structure as a mere "modus vivendi" that enabled a system where "great powers" with repressive domestic politics and spheres of influence prevented international justice. The task was to overcome the "violence and starvation" that characterized that regime.[164]

The solution was not for half of the world to submit to the other: one cannot, he wrote, "advocate a capitalist or socialist ideal." "The horrors of this world" were not tied to either capitalism or socialism per se, but were "the horrors of an inconstant modus vivendi among deeply hostile governments each fearing the eventual destruction of its values." For the sake of those

values, greater tolerance was required, as well as a "shared preference for a heterogeneous world including Capitalist and Socialist societies."[165] What was needed was a "thin" universalism, grounded in human rights, and a "'thin' global set of basic liberties." This would provide grounds for an international value pluralism—a global value consensus to accommodate the "inter-cultural diversity of convictions even about justice" and tolerate different regimes and ideologies without conceding the grip of universal rights claims.[166] Such a consensus would allow for a new international system to protect the victims of natural and social conditions. Where Rawls had been open to capitalist and socialist regimes because both were vulnerable to the same administrative overreach and markets could work efficiently in either, Pogge redeployed Rawls's openness as part of the search for neutrality and moral agreement. Yet this accommodation went only so far and had to be in line with a minimal justice. Pogge invoked the threat of totalitarianism to shore up the ideal nature of justice theory. The appeal to "cultural diversity" was too often used to shroud continuing injustice. Normative principles should not be affected by empirical realities: moral standards could not be changed "when a constitutional democracy lapses into totalitarianism or authoritarianism (as Germany did in the 1930s or Chile in the 1970s)."[167]

The right rules, Pogge implied, might transcend political divisions in a post-ideological international settlement. As such, he oriented his global justice theory toward humanity. In this vision, worries about political economy and control were downstream from technical distributive questions. Pogge stretched the boundaries of Rawls's practices across the world to create a philosophy in which individual moral persons inhabited a cosmopolitan moral community that downgraded existing institutional constellations. In this global egalitarianism, the moral and the institutional came together, but the political and the distributional were pulled apart. There was little room for the collective agency and control of the kind demanded by supporters of the NIEO. The agents of justice theory were not states seeking global reform, but international institutions and individuals discharging their moral obligations, acting in civil society by following Rawls's "natural duty of justice" to uphold just institutions and reform unjust ones. Pogge strengthened the capacity of Rawls's theory to attribute moral responsibility. He stressed the contribution of individuals to the problem—our complicity in a practice—as grounding that duty. The theory of justice, even philosophy itself, was endowed with agency.

Over the two decades that it took for liberal egalitarians to fully reorient toward international distributive justice, political philosophy was reconceived

as part of the shift in value that would bring about global change. The conception of global justice provided standards to specify "our moral task gradually to *improve* the justice of this order."[168] Rawls did not merely show us how "to lead irreproachable lives," Pogge wrote, but confronted us "with our inalienable task in the world, our obligation to minimize injustice and human suffering."[169] As collaborators in an unjust "institutional scheme" who benefited from its injustice, advantaged individuals had the moral task of taking political action.[170] Duties and responsibilities were straightforwardly actionable; Pogge was not too concerned with the constraints placed on agency by structures, or with patterns of complicity and interests. At the same time, Pogge placed international ethics above politics. His emphasis on value was designed to deal with the excesses of the market, but its neglect of power as a solution to market coercion could in the end do little but sustain it. Global justice theorists would later revisit this divorce of distribution, agency, and political control, but for many years it remained central to international liberal egalitarianism.[171] In ideal terms, it was global principles and international institutions that would regulate this community. In the meantime, it fell to individuals to create it.

6

The Problem of the Future

IN THE FACE of the crises of the 1970s, many political philosophers tried to extend the Rawlsian rules across time as well as space, into the future as well as across the globe. The future seemed suddenly uncertain. By 1970, economic growth had stalled. Some economists began to wonder whether it was "obsolete."[1] With rising unemployment and inflation, fear mounted, particularly in Britain, about long-term "declinism."[2] There was panic about the governability of democracies and the legitimacy of the state.[3] But the legitimacy crisis worried philosophers less than it might have: given the centrality to liberal egalitarianism of a belief in shared values at the core of society, the idea that democratic states might no longer be able to deliver the goods that made those values possible was perhaps too large, and too threatening, a problem to contemplate. Another crisis instead caught their attention—the environmental one, which fused anxieties about population growth and resource depletion with attacks on the "growth-mania" of postwar liberalism.[4] After the publication of Paul and Anne Ehrlich's *The Population Bomb* in 1968, racist and racialized worries about overpopulation reached fever pitch.[5] By 1970, the book had gone through twenty-two printings, and by 1974 it had sold over two million copies.[6] *The Ecologist* published its "Blueprint for Survival" in 1972, the same year that the Club of Rome released *The Limits to Growth* report, which forecast that growth amid finite resources would lead to "overshoot and collapse."[7] Four million copies were printed, in thirty languages.[8] The problem of the earth's survival became mainstream.[9] Models of alternative futures proliferated, from economic theories of "steady" or "stationary" states to scenarios of "zero population growth" and prophecies of mass starvation and famine.[10] Environmentalists became apocalyptic.[11]

These anxieties lie at the forgotten origins of liberal political philosophy's turn to the future. Philosophers responded to the declarations of crisis and

demands for an "ecological ethic" and "new ethic for survival" by extending moral theories to cover relationships with the natural world and nonhuman animals. Some began to defend animal rights.[12] Peter Singer provided a utilitarian defense of animals in *Animal Liberation* (1975).[13] Others founded journals like *Environmental Ethics.* But many also explored how to value the future—and how to accommodate our moral relations to it—within the framework of the new liberal philosophy. Rawls's theory reflected the era in which it was built: it was underpinned by assumptions about growth, affluence, and stability that shared the optimistic temporality of postwar liberalism and was common to macroeconomics, theories of modernization and post-industrial society, and even the "futurology" boom.[14] Rawls had borrowed from some of these. Now they all seemed to be coming apart. From the late 1960s into the 1980s, moral and political philosophers looked to theories that might do better with the challenges of the new age. They extended legal and political accounts of obligation to explain why the living should care about future generations. What obligations did the present generation have to its successors? Were there individual duties to save and invest for the future, or to not have children? Out of these debates, intergenerational justice theory was born.

In the early 1970s, many philosophers extended the methods of applied ethics adopted during the Vietnam War to cover emergency life and death situations beyond war. The threats of famine and overpopulation were preoccupying. "Intuition pumps" like the trolley problem proliferated as increasing numbers of moral and political philosophers tried to address the ethical dilemmas raised by the neo-Malthusian diagnoses of the international situation. It was in debates about the future existence of the world that these philosophical methods were consolidated. So was a particular aspect of the new approach to public affairs: philosophers now looked to test general principles about the nature of morality and personhood on hard cases. Yet the problem of population also generated novel philosophical puzzles, most famously those theorized by Derek Parfit. A distinct relationship between contemporary dilemmas and their philosophical resolutions began to take hold as complex moral questions were detached from continuing political controversies. With problems of the future deinstitutionalized, moral philosophy went to a new realm of abstraction. The racist and civilizational discourse of overpopulation would gradually become politically toxic for liberals and the left as antiracist critiques of eugenics, sterilization, and population control gained traction.[15] But it was philosophically durable. Overpopulation and ecological survival became problems

for the moralist and metaphysician. Liberal philosophers mastered the art of turning an ethical crisis into an anodyne puzzle.

At the same time, others tried to accommodate these dilemmas of the future within justice theory by looking to the technical instruments of economic theory to make the future present. Some worried that thinking in terms of the earth threatened to undermine the Rawlsian framework—and, potentially, the core assumptions of humanitarian ethics more broadly. An ecological perspective might support the move to an ethics of the global, beyond Rawls's bordered theory. But it also undercut it. For just as the international ethicists' vision of a global moral community was shot through with political and historical differences, there were also drastic disagreements over what the present should sacrifice in the name of the future. "Survivalist" discourses of scarcity scenarios and conflicts over population size threatened to undermine the terms of justice theory, as well as the assumptions on which liberal egalitarianism rested. Moreover, the very category of the individual moral person, which philosophers valued so highly, now came under pressure—not because of a new interest in animals and the earth, but because of controversial philosophical ideas that issued from the overpopulation debates.

Could justice theory survive survivalism? As moral and political philosophers responded to a new set of preoccupations, it sometimes seemed like the Rawlsian paradigm would be unable to accommodate them. Ultimately, it did. Countervailing ideas were absorbed. By the close of the decade, another plank of the Rawlsian framework—intergenerational justice theory—was in place. For the most part, liberal egalitarians avoided debate about the legitimacy crisis, which might have threatened philosophical liberalism in the same way it did political liberalism. Instead, they responded to the environmental emergencies with new moral theories. In the end, these proved the resilience of the new philosophy of public affairs. For even where new ideas cut against the core tenets of liberal egalitarianism, they helped to shore up something more fundamental: a view of philosophy, underpinned by a commitment to a general, impartial morality, which abstracted from political problems in order to solve them.

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When Rawls was piecing together his theory, he made clear that the future raised conceptual challenges. Back when he had conceived of society as a game, he had viewed certain related concerns as outside the game's normal

course of play: the "conservation of resources" and "future generations" could not be left up to the vicissitudes of luck and competition.[16] Within the history of political thought, this challenge of incorporating the demands of the future was familiar.[17] Political philosophers had long been concerned with how ties of sentiment, self-interest, or community could extend through time. Theories that relied on self-interest conventionally gave little value to the future, while conservatives or communitarians extended the duties of the living far across temporal lines. Democrats tended to view present decisions as unable to bind those of the future: what mattered was the collective decision, the aggregated subjective preferences of the living, the sovereign people. The more radical the democrats, the more presentist their temporal view.[18] Many also recognized that the future required particular kinds of institutions. Insurance, wills, credit, the modern state itself, were all devices designed to work for the future. State theorists imagined artificial corporate persons, whose existence outlasted the lives of the natural persons who formed their constituent parts, as necessary to bequeath security to remote posterity.[19] By the 1970s, philosophers had abandoned this approach. An "eternal moral person" of the state was no longer viable, Peter Laslett declared: "What is wanted is a relationship between generations which is individual as well as social, and passes through mortal individuals rather than through deathless collectivities."[20]

In twentieth-century political thought about the future, the main dividing line when it came to institutions was between those who supported planning and the attempt to command the future and those who rejected planning in the name of the market or individual freedom. In the early Cold War, the importance of leaving individual futures open became a feature of defenses of liberalism and capitalism: where neoliberals and social liberals disagreed was about how much and what kind of institutional intervention was required to secure the conditions of an open future.[21] These concerns permeated postwar thought at various levels. A philosopher like Stuart Hampshire condemned any vision of social life, notably utilitarianism, that prevented individuals from acting in the world as future-oriented "active experimenters."[22] For liberal economists, what mattered was individual control over an open future, whether it was achieved through the actions of calculating men who were no longer mere "partners in exchange" but "entrepreneurs" of themselves or through social mechanisms to tame uncertainty and manage risk.[23] After moral and psychological approaches were displaced in postwar neoclassical economics, microeconomic theories of decision-making, like subjective expected utility theory, became the dominant, formalized approach to theorizing the future.

Models of decisions under conditions of risk and quantifiable uncertainty were stretched to cover choices between future distributions, investments, and social systems as well as to study conflict.[24] These tendencies to individualize and formalize expectations about the future would be extended when the critique of Keynesian and macroeconomic ideas represented by the "rational expectations" revolution and efficient markets hypothesis made fully informed individual choices and predictions of future events the "microfoundations" of economic theory.[25]

Rawls adapted many liberal economic ideas. He shared with the neoclassical orientation toward expectations and choices a downgrading of historical arguments. He wanted individuals to have sufficient goods to pursue their "life plans." What they did with those goods was up to them. At the level of the choice of society—of what system would best facilitate that pursuit—Rawls argued that the parties in the original position would want to protect themselves against bad future outcomes. When faced with uncertainty, they would insure against natural and social misfortune. In that sense, they were not entrepreneurs. They made institutional plans to take care of the future. Nor did Rawls endow his choosing persons with total information, but restricted knowledge.[26] Yet Rawls did see the problems of the future, conceived of as a discrete object, as having a peculiar political status. Were obligations to future generations distinct from other obligations? And were these obligations a matter of justice? Rawls's theory was a contract theory, and contracts with the future were hard to envisage. International justice theorists had found making distant people the subjects of contract theory hard enough. Making contracts with future people who did not yet exist was harder still. In Rawls's case, the contract turned on the existence of a practice—a cooperative scheme characterized by reciprocity. Given the radically nonreciprocal relationship between present and future, how could contractual relations hold across time?

Rawls thought a reciprocal relationship with the future was impossible, and his principles of justice did not apply to it. Aspects of the relations with the future were still a "matter of justice," but the interests of the future in general were outside the normal play of the social game.[27] Most considerations about the future were supplementary to the principles. They were to be seen as a part of obligations in the present, the "natural duty" to uphold just institutions. Rawls's main argument was the "just savings principle," which qualified the application of his principles of justice.[28] This principle circumscribed relations between generations by setting an appropriate savings rate and constraining the accumulation rate, so that the actions of current generations benefited

the future. The "ideal society" was one "whose economy is in a steady state of growth (possibly zero) and which is at the same time just."[29] The point of the savings principle was to secure growth until that society was reached, and to maintain affluence once it had been. Practically speaking, what this meant was that when a just society established its social minimum, the savings principle would be factored into the calculation. What counted as an acceptable social minimum in the present would be in part determined by how much the present generation needed to save for the future.[30]

These ideas were modeled in the original position, where the just savings principle would be chosen as the principle that regulated relations across time. Yet this was not straightforward. The parties in the original position were meant to represent people from all parts of society. Would they include people from one generation or from every generation—from all "stages" of social development or from one? Rawls argued that incorporating parties from all generations did not work. To think of the original position as including all actual or possible persons would, he wrote, "stretch fantasy too far."[31] Instead, he introduced the "present time of entry" interpretation.[32] The parties were contemporaries, but the veil of ignorance blinded them to which particular generation they collectively belonged. They shared a fixed temporal location in the present from which they chose the principles to govern the future. This introduced a problem. Why should the parties care about the future? If they were biased toward their own interests in the present, why should they save?

Rawls provided two lines of argument. First, he deprived the parties behind the veil of ignorance of knowledge of which generation they belonged to, so that they would not select principles that allowed any generation to deprive its successors. The second argument raised problems of moral psychology about the relative strengths of altruism, sympathy, and self-interest among the parties, whom Rawls described as "rational and mutually disinterested." That meant they were impartial. Something more was required to make posterity matter. Rawls's solution was to stipulate a "motivational assumption" to remedy present bias. The contracting parties were "regarded as representing family lines with ties of sentiment between successive generations." They saved, that is, because they cared about their children (and their children's children).[33] It was this additional stipulation that gave the future value. In correspondence with the economist Robert Solow, Rawls explained it as "given by the balance between what a typical son feels it reasonable to ask of his father and what this son is prepared to do for *his* sons. This balance varies as these compromised attitudes adjust to different levels of economic

advance on the way to the conditions necessary for a just and well-ordered society." This account was not entirely governed by the principles. Only one aspect of maximin remained: "The representative sons and fathers are thought of as belonging to the least advantaged group in each generation . . . what the least fortunate would be ready to save for their descendants is what settles the rate of capital accumulation."[34] The just savings principle and its motivational stipulation was how Rawls got around the limitations of contract theory when facing the future.

These arguments were also in part Rawls's response to a preoccupation of neoclassical economists. In the 1950s and 1960s, Solow, Edmund Phelps, and others proposed models of economic growth to explore the fundamentals of capital accumulation and consumption. These models, which theorized the relationship between rates of savings, interest, and growth—and tried to set balanced rates of consumption with savings and investments—had various implications for accommodating the future in calculations about welfare and the allocation of resources. This included the question of how future generations could be incorporated within economic decisions and what the role of governments might be in protecting them.[35]

Rawls followed these arguments closely. His understanding of time and the future reflected those of the growth theorists, who traced their ideas to Frank Ramsey's "A Mathematical Theory of Savings" (1928). Ramsey had formalized the terms of debate about the optimal allocation of resources across time by providing a solution to the problem of whether a nation should consume or save its income (if its goal was to maximize welfare over an infinite time horizon).[36] In 1961, Phelps put forward an influential model of growth that provided an alternative. He described a path of growth toward a "steady state" of high and sustainable consumption, which would be reached by following a "golden rule of accumulation." This was the savings rate that allowed per capita consumption to be at its maximum possible constant value, as would the Solow growth model.[37] In subsequent years, the viability of the golden rule preoccupied economists. Ramsey's placing of future generations on an equal footing with the present (by advocating a zero rate of pure time preference) was challenged. So was A. C. Pigou, who had placed high value on the distant future and saw the task of government as counteracting individual short-termism and acting as a "trustee for unborn generations."[38] His theory was dismissed as "undemocratic" and "authoritarian."[39] These older theories were said to require too much of present generations, demanding excessive savings and sacrifices for the future.

By the 1960s, a range of economists—Paul Samuelson, Amartya Sen, William Baumol, Stephen Marglin, and Gordon Tullock—were arguing over how the social discount rate, which gave a present value to future goods, could be adjusted to make savings efforts fair across generations by counteracting overly high savings rates that gave the future excessive weight. In the aftermath of Kenneth Arrow's argument that democratic aggregation of preferences was impossible, some were skeptical about extending pricing tools from individuals to collectives: "the calculus of collective savings vs. consumption decisions," Marglin argued, "was fundamentally different from the private calculus."[40] Joan Robinson thought discounting the future could not solve the problems of present-future trade-offs in government.[41] Others disagreed over whether government intervention was required to counteract individual time preferences, or whether such intervention posed a risk to democracy.[42] But soon, few objected to thinking about the future in terms of the social rate of discount. Individual short-termism was assumed to apply at the level of society. While an earlier generation of economists had debated the psychology and morality of savings and investment, these debates gave way to the standard picture of economic behavior contained in the assumption of positive time preference. A certain theoretical structure was also assumed: the discount rate determined the rate of savings and ensured that the welfare of future generations had less weight than the present.

It was to these ideas that Rawls looked when he developed his just savings principle and when he described his own just society as aiming at a "steady state."[43] Rawls wanted to make institutions last. He believed that endless growth was unnecessary to do so. But he also thought it was vital to set a savings rate to achieve a degree of intergenerational equity. Modernization arguments that might justify extreme inequality for the sake of future generations—either vast accumulations of wealth on the part of the rich or extreme hardship for the poor—were not permissible. Rawls, however, unlike economists, set his savings rate by an additional appeal to justice rather than utility. Only in non-ideal circumstances would discount rates be used. Justice constrained saving: each generation should save only as much as was necessary for justice to be secured.[44] In this respect, while the savings principle was not itself a principle of justice, it was still embedded within his broader approach. Yet Rawls did not want to give too much to the future. Just as he constrained the application of the difference principle in the justification for civil disobedience, or beyond national borders, now he insisted it did not apply across time. The demanding savings and redistribution that would entail was not required.[45]

This ambivalence—the willingness to look to the future but circumscribe its present value—was reflected in Rawls's justification for these ideas. The lines he drew between the parties in the original position and real individuals were here at their most blurred. It was not obvious, Rawls implied, that people alive today owed anything as a matter of justice to strangers in the future. Nor was it realistic to ask partial people, with limited time horizons, to save for posterity in general—only for their children, as "fathers . . . care for their sons."[46] This assumption of individual short-termism entered the original position, in this gendered and patriarchal form, alongside the assumption of mutual self-interest. But Rawls also wanted to expand the psychological and moral horizons of the parties. The motivational stipulation entered as a way of coping with present bias, making the parties want to save for the descendants they cared about—those two or three generations along. Ties of sentiment were the motivational glue between overlapping generations, and ties of sentiment could stretch only so far.[47] It was up to just institutions to reach the parts of the future that sentiment could not.

Rawls's account of the future reached an accommodation with growth theory by providing it with a set of moral constraints. He accepted its economic temporality of linear, infinite time horizons, but he also sought to view society from the "perspective of eternity."[48] He thought morality was time-neutral, but he objected to discounting the well-being of future generations on time preference alone. On the one hand, the future was not less important simply by virtue of being further away. On the other, drastic redistributive action in its name could neither be easily justified nor accommodated within the frame of the two principles. This did not mean that concern for the future was not important. It meant that Rawls assumed things were getting better. Growth would continue. With certain reforms, justice could be achieved.

These assumptions that underpinned *A Theory of Justice* were made possible by the two decades of exceptional, unprecedented economic growth that characterized the postwar years.[49] But at the time Rawls's book was published and read, this liberal optimism about the direction of the American economy and the capacities of government had been challenged by social unrest and economic downturn and would continue to falter with the stagflation that followed the end of the Bretton Woods settlement.[50] To some of his readers, especially economists like Solow and Arrow, Rawls's demanding maximin principle, rather than his just savings principle, offered the basis for a more robust theory of intergenerational equity.[51] For those concerned, however, with the current political predicament—the controversies over stalling

growth, fiscal overreach, resource battles, and the energy crisis—the savings principle offered little by way of solution. The same was true for those concerned not with growth but with its limits. What struck philosophers was that Rawls seemed to have little to say about a problem that the humanitarian crises of the early 1970s made a key public concern: population.

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The popular panic about overpopulation initiated by *The Population Bomb* came at the end of a decades-long period of political campaigning for global population control.[52] In its wake, moral and political philosophers explored various ways of grappling with the population question. Many began with utilitarianism rather than Rawls's theory.

As a technocratic theory of government, utilitarianism was historically associated with colonial policies of population control and eugenics, which had progressive as well as conservative iterations and were popular among British and American nineteenth- and twentieth-century liberals (a fact increasingly invoked by the late twentieth-century libertarian right to discredit government welfare programs).[53] In utilitarian moral and economic theory, trade-offs about the size and welfare of population were often analyzed in prosaic terms. Henry Sidgwick had distinguished two forms of utilitarianism: the "average" view, in which the community that had the highest average happiness per person was best; and the "total view," where the best community was the one with the greatest total amount of happiness.[54] The average view advocated a population increase if the person born would have more happiness than the average person. On the total view, the larger the population, the higher the total amount of happiness. Population increases were thus advocated regardless of the happiness of each individual. To twentieth-century social liberals, accustomed to viewing the control of "quality" of life as part of politics, the total view was often rejected—not because population control was bad in itself, but because it encouraged the birth of people whose lives were not "worth living."[55]

When Rawls had turned to these problems in 1952, he wrote that the problems of "optimum population size" and "birth control" raised moral questions it was "repugnant to discuss." Rawls was then still sympathetic to utilitarianism, but he had already made clear his aversion to any utilitarian suggestion that population expansion was a route to increasing welfare. There were circumstances where population control would be necessary—where it should be exercised by "social institutions in some orderly way, or else it will be

exercised by war, famine, disease, and worse"—but population size was ideally left up to individual liberty.[56] In *A Theory of Justice*, Rawls was largely silent on population control, stating briefly only that a "reasonable genetic policy" might be important to a just state.[57] Privately, he wrote that he had "considerable unease in applying the conception of justice to the problem of population size."[58] The control of life was not for Rawls the domain of politics.[59]

Yet as overpopulation became a talking point, some suggested that utilitarianism could be made to deliver a justification for population control and rescued from its association with the "repugnant" total view. Just at the moment that Rawls mounted his attack on utilitarianism, others rallied to its defense. The new welfare economics had recently revived these arguments by placing the question of optimum population size within debates about growth and savings rates.[60] This brought to economic thought a streak of Malthusianism, which had been central in the nineteenth and early twentieth centuries but was pushed aside by growth theory's confidence about technological capacities and demographic "transition."[61] Now this revived neo-Malthusianism sparked debates about how the future could be accommodated in a utilitarian calculus.

If all possible people in the future were included in calculations about welfare and utilitarianism was taken as temporally neutral, then large sacrifices would be demanded of the present for the sake of those future people. If only those alive today were included in the calculus, utilitarian calculations would be biased toward the present. Should utilitarianism be temporally neutral and include people across time—those yet unborn—in the calculus? Or should it include only those alive in the present? Did the same concerns also apply to Rawls's own calculations? In 1972, the young Cambridge welfare economist Partha Dasgupta wrote to Rawls that he had gone wrong when he supposed that the calculus that compares "sums of utilities over various alternative social states" could not factor in the "unborn state"—the "'state' of not being born"—as one possible state to choose from. Once the unborn were factored in, everything would change. It was possible, Dasgupta insisted, for there to be levels of consumption below which welfare is negative. If that were the case, when those were summed, an increase in population size would not be advocated.[62] The idea that the total view of utilitarianism always tended to population increases was incorrect.

These problems of population and the future also raised questions about the nature of morality. In 1967, the then utilitarian philosopher Jan Narveson asked what procreation duties fit with the utilitarian principle. Narveson delineated a conception of morality as concerned with relations between currently existing persons. Morality was "person-regarding"—it took as the only

"ground of duty . . . the effects of our action on other people." "Whenever one has a duty, it *must* be possible to say on whose account the duty arises—i.e. *whose* happiness is in question. . . . If we cannot envisage effects on certain people which would ensue from our acts, then we have no moral material to work on and we can do as we like."[63] An act is bad only if it is bad for someone.

What did this mean for whether new persons should be brought into the world? If a person had not yet been born, they did not exist. They were thus not "subject to a moral relation," since "morality has to do with how we treat whatever people there are."[64] Utilitarians were only concerned with "increases and decreases with the general happiness," conceived as the happiness of people; actions with no effect on the general happiness were "morally *indifferent*." Whether to bring children into the world was usually a matter of moral indifference: it did not make sense to say that a child was "happier" as a result of being born. There was no comparison to be made, since the child's happiness had not been "increased" by being born.[65] People in the present were what mattered: Narveson used this bounded nature of morality to argue that the extinction of the human race would not be a moral problem, even if it might well be a shame. If all morality was to be "person-regarding," adding people to the population was morally neutral. "We are in favor of making people happy," he wrote, "but neutral about making happy people."[66]

Yet Narveson, worried about overpopulation, added another argument. No moral considerations would arise until a child is born. But once born, there was a duty to reduce the child's suffering. There was thus an asymmetry in the duties of prospective parents: while there was no duty to have a child, there were duties not to bring suffering people into the world. Like Singer, Narveson proposed a negative utilitarianism: its ultimate aim was not the production of happiness, but the avoidance of inflicting misery. To reduce misery where it exists, where we can predict that a child would be miserable, we have a duty not to have it. Moreover, when "indirect effects" were considered (that is, more than simply the happiness of the child), this argument for a duty not to have an unhappy child was strengthened. We have no right, Narveson thought, to produce a child who would burden the public, and so the public have the right to prohibit having miserable children who would burden the state.[67]

With Narveson's essay, population ethics was born. It took a particular form. Instead of exploring the controversial question of population control within an institutional framework, philosophers moved population out of the political realm and made it a problem for ethical theory. The moral problem of population was here recalibrated as a problem with the temporal orientation

of morality and whether it was possible to have "obligations to non-existent persons."[68] How could the future be made to count? There were two main responses. The first decoupled morality from persons. Some responded by arguing that utilitarian obligations were not owed to persons at all, but were obligations to bring about states of affairs, to produce goods, and to prevent evils: we have a moral interest in future happiness, not future persons.[69] This argument required that more people be added to improve welfare, so others amended it by swapping utilitarianism for general duties of benevolence aimed beyond persons, to form the basis of an ecological ethic. This would generate responsibilities concerning ecology, even if these were not conceived as responsibilities to future persons.[70]

The second response was to retain the tie between morality and persons, but avoid the presentist consequences of only counting the living. Rawls had done this with his motivational stipulation that persons care for two or three generations into the future, as fathers care for their sons. Others, like Daniel Callahan, the director of the Hastings Center, a new applied ethics research institute, proposed extending the kinds of persons who counted to those who could be "implicitly contract[ed] for," thus tying moral concern to foresight, limited to immediate posterity—the next hundred years or so.[71] Extending moral concern to the future also posed difficulties for rights theorists, since many thought that only existing persons could be said to have rights. Rights needed a referent, a bearer. Some assigned rights to the not yet born by suggesting that future persons would have rights once they existed—they "will claim" rights in the future—so we should discharge our obligations to them as parents do for children.[72] Joel Feinberg thought ascribing rights to unborn generations was possible because they had interests: "Interests can exert a claim upon us even before their possessors actually come into being, just the reverse of the situation respecting dead men where interests are respected even after their possessors have ceased to be."[73] This did not mean that particular future persons had the right to be born, but that future generations, once in existence, would have interests that those alive today ought to protect—on the assumption that they would in fact get born. Similarly, it made sense to speak of the rights of unborn generations against us, given that we had duties to conserve our environmental inheritance for them (and where there were duties, there were correlative rights). Population control, moreover, might be sensibly reframed not as an issue of control but of rights.[74]

These ideas had wide applications in ethics, particularly in medical ethics and in debates about the rights of unborn persons or those deemed without

full capacity for moral personhood. They were used to consider euthanasia, "brain death," abortion, and genetic engineering.[75] The search for general principles to cover multiple cases now extended to these debates about personhood and was accelerated by political developments. In the buildup to and aftermath of *Roe v. Wade* (1973), philosophers debated whether fetuses counted as persons, and whether potential persons had a right to life. In the *Philosophy and Public Affairs* abortion reader, they extended the use of thought experiments and intuition pumps from the ethics of killing to the ethics of abortion. The most famous defense of abortion was given in Judith Jarvis Thomson's violinist example (which, with foresight, did not rely on the arguments from personhood that subsequently underpinned attacks on abortion).[76] Others foregrounded problems of personhood, the question of whether abortion rights denied the "potentiality principle," and debated whether potential personhood entailed a right to life.[77]

The abortion debates in turn had implications for population control: if potential persons had no right to life, not only was abortion permissible but population expansion could be halted.[78] In this connection between abortion and population control, liberal philosophers tracked the focus of the abortion rights movement. At the time of *Roe*, this was constituted in part by the women's movement and privacy rights advocates, but also by the movement for population control that claimed to aim at the "reduction of suffering" at a global level.[79] Yet the connection between reproductive rights and population control was already disavowed by black and Native American women campaigning against coercive sterilization in the United States.[80] It would later be rejected as black and anticolonial feminists drew attention to the sterilization of women of color in the global North and, after the mass forced sterilizations of the Indian "Emergency" of 1975–1977, in the South.[81] But in philosophy, the debate over abortion overall remained less concerned with political and economic problems of coercion and choice in access to medical care, and more closely tied to problems in the ethics of personhood, population growth, and future persons. The rise of applied ethics continued.

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What made a future person whose existence we could predict different from one in the remote future whose future existence was uncertain? If potential persons did not have rights, what were the grounds of our obligations to future generations? In the mid-1970s, philosophers debated the implications of these

questions for the reception of *A Theory of Justice*. Could future persons be incorporated into the original position?[82]

Richard Hare thought that Rawls's "present time of entry" requirement, which gave moral weight to existing persons but did not "shroud the question of existence," showed that Rawls had "nothing to say" about population, abortion, and future and potential persons.[83] Others worried that making potential or future persons count led back to the total utilitarian view: if existence were shrouded, Rawls's parties might choose to procreate on an enormous scale in order to raise levels of welfare.[84] If those who did not get born did not count, Barry argued, early extinction might be likely. As with an average utilitarian view, an ideal contract of actual human beings would recommend a "short time-span for the human race, as those who are alive splurge all the earth's resources with an attitude of 'après nous le déluge.'" By contrast, a timeless total utilitarianism that "enfranchises potential people" was biased toward actualizing potential people but not toward "spreading them over a long time-span." It would not matter when welfare was at its maximum, so long as it was reached at some point. Extinction would be possible in that case too. Alternatively, if potential people included in a contract chose a principle other than utility, they might well recommend not bringing the human race into existence. If the difference principle were applied across all possible people, there would, in the course of human existence, be at least some people whose quality of life was such that they would prefer not to have been born; in this case, parties in the original position faced with maximizing the advantage of these least well off possible people might well choose not to bring anyone into the world at all.[85] To Barry, there seemed to be few good solutions.

Rawls himself sidestepped these concerns. In correspondence about population with Dasgupta, he insisted that the parties did not have to consider "the utility level of the unborn state, since this alternative is not open to them." His stipulation that the parties include persons from two or three successive generations was enough "to bind the whole sequence together."[86] But Rawls was also wary of these discussions for deeper reasons. In his 1974 presidential address to the American Philosophical Association, he went further, arguing that political philosophy in general could ignore "metaphysical" questions of existence and personhood.[87]

Not all agreed. One philosopher who disagreed would become particularly influential, and his critique of Rawls would cut to the core of liberal egalitarianism. "The more I think about population policy," the young Oxford philosopher Derek Parfit had written to Rawls in 1971, "the more puzzling I find

the subject."[88] That year, Parfit gave a seminar at Oxford on population ethics whose participants included Narveson and Singer. He developed a variety of arguments that were later circulated in articles, an unpublished manuscript on overpopulation, and, eventually, *Reasons and Persons* (1984).[89] That book had four parts. It explored rationality, time, personal identity, and problems of existence and future generations, as well as the "self-defeating" character of existing moral theories. "Philosophers," Parfit wrote, breaking with his Oxford predecessors in the ordinary language tradition, "should not only interpret our beliefs; when they are false, they should *change* them."[90]

Prompted in part by the debates about population and personhood, Parfit used thought experiments to develop discrete, individually named arguments about the self, time, and the future. He suggested that accepted assumptions often rested on philosophical confusions, while certain philosophical problems were intractable. The first idea Parfit set out to change was the view put forward by Bernard Williams, among others, that personal identity was determinate, or tied to physical identity.[91] This view held that having the same functioning brain was enough to say that a person was the same person. Parfit argued instead that the continued existence of a person involved no more than relations between mental states at different times. People were not continuous selves, but aggregates of psychological experience. This had significant implications for how to think about the future. Most people care about the future because they think it is *their* future. For Parfit this was a mistake: our later selves are more like separate people than like us. What made it rational for me to care in a special way about my future fate was not that the person in the future will be me, but that they will be psychologically related to me.[92] On this deflationary view, personal identity was not what mattered.

Another of Parfit's arguments, the "Repugnant Conclusion," built more explicitly on the utilitarian population debates. It reinterpreted the idea that total utilitarianism justified adding additional people (as many as would have lives worth living) to a population as a route to increasing welfare—and that this was the case even if their lives might be miserable, and even if it led to overpopulation.[93] But of all his arguments about the future, the most immediately influential was his "non-identity problem." This was the paradox created by the fact that our decisions today affect what individual people will exist tomorrow; different courses of action bring different people into existence. When we talk about whether future people will be better or worse off as a result of our choices, actions, and policies, we cannot therefore expect that the same people will exist to be affected by one or another of our choices.

Parfit distinguished between future people (who will exist whichever way we act) and possible people (whose existence depends on our actions). Asking whether "our decision not to have children" could harm these possible people's interests, he answered no. We cannot harm those whom we do not conceive. When we act in a certain way in the present, different particular people will be born. Given this, if what Parfit described as Narveson's "person-affecting" view was taken seriously, no one in the future would be worse off because of our actions in the present. The happiness of people who would have been born if we had acted in a certain way cannot be compared to people who were not born because we acted in a different way. Did this mean that there were no obligations to the future, because there were no particular persons to whom we had obligations?[94]

Parfit wanted to avoid this conclusion. Some acts that brought people into existence were wrong even though they did not make things worse for, or were not bad for, the person they caused to exist (or for any other existing or future person). In place of the person-affecting view, Parfit presented an impartial one. If morality did not always affect a particular person, then it was not morally significant that different future people were affected by our actions. Depleting resources could still be morally objectionable. We just had to get rid of the idea that the only way it could be was by affecting someone in particular.[95]

These ideas formed the basis for subsequent debates about environmental ethics and the future. If no one in particular could be said to be worse off because we squandered resources, how, then, should we explain why it mattered morally whether or not resources were depleted?[96] Numerous journals and volumes, entitled *Ethics and Population* and *Obligations to Future Generations*, now dedicated essays to Parfit's ideas about identity.[97] The implications of the non-identity problem divided moral and political philosophers. Some resisted its force, arguing that who the members of future generations turn out to be should not matter to the ethical assessment of our acts that affect them. Others suggested that the consequences of the non-identity problem were impossible to avoid: the question of how choices in the present affect the composition of future generations will delineate what choices about the future are permissible.[98]

After Parfit's interventions, population ethics exploded as a distinctive field of "moral mathematics."[99] But population also steered moral philosophy back to foundational questions—in the opposite direction from Rawls's attempt to hive off the political from the meta-ethical and metaphysical. The ethics of

population, Narveson observed, required philosophers to return to problems of identity, of "logic, semantics and metaphysics."[100] Parfit challenged Rawls in other ways too. For instance, Rawls had argued that utilitarianism did not take seriously the separateness of persons and, through the impartial spectator device, extended the principles of individual choice to social decision-making, thus conflating different persons into one. On Parfit's view of identity, the idea that there was a metaphysical distinction between persons was mistaken. Utilitarians could be justified in ignoring the distinction between persons, for the distinction was not what it seemed.[101] This cut against liberal egalitarianism's focus on individual moral persons as the only true subjects of morality. "Persons," Parfit wrote elsewhere, "are like nations, clubs or political parties."[102] Here he implied an ontology that might have supported the young Rawls's pluralism, yet it was one that Rawls would have shied away from. Parfit himself did not refocus philosophical debate on collectivities above the individual, but on points of existence below it. His "dismantling of identity" provided a "utilitarian analogue" to poststructuralism, Perry Anderson observed—one grounded, ironically, in a "materialist response to the arrival of medical transplants and genetic engineering" (a list to which Anderson might have added population control).[103]

Parfit's critique of self-interest theories was also part of a broader effort among moral and political philosophers to resist the overreach of neoclassical economic ideas and assumptions about the rationality of individual motivation. In the late 1970s, a number of prominent economic thinkers were challenging neoclassical orthodoxies of economic rationality. Robert Heilbroner, for instance, argued that such views of rationality had diminished society's sense of ethical responsibility for the future. Economic rationality gave no convincing answer to why we should care about the future and instead framed the question as "what has posterity ever done for me?" What was needed was a "survivalist ethic" to commit us to "life's continuance," to defy the "homicidal promptings of reasonable calculation," and to discover the "transcendent importance of posterity."[104] Amartya Sen, Martin Hollis, and others joined the new behavioral economists to critique "rational economic man" and the "rational fool" of *homo economicus*, characterized by the view of "abstract individuals" choosing between "abstractly defined alternatives."[105]

The ideas about personal identity that Parfit proposed similarly undermined received notions of self-interest, "laissez-faire," and economic rationality and dissolved certain philosophical puzzles altogether—such as the rationality of individuals sacrificing something now for the future, and the choice between

action now and action later.[106] Parfit implicitly challenged Rawls's adaptation of economic ideas. He rejected the use of social discounting techniques for weighing future risks.[107] Discounting entailed treating matters of morality as if they were questions of monetary value and was a clumsy way of accommodating temporal problems. Its absurdity was obvious, Parfit suggested, if time was compared with space: "No one thinks that we would be morally justified if we cared less about the long-range effects of our acts at some rate of n per cent per yard." Time should be the same.[108] His broader theory reinforced this. Not only must we be careful about imposing future consequences of our own actions onto other people. Since our future selves are not simply extensions of our present selves, but in important respects separate persons, we should be equally careful of imposing those consequences on our future selves. The question of when became irrelevant.[109]

Taken together, Parfit provided a set of arguments that were independent of the Rawlsian apparatus, and that pushed philosophers toward an ethical impartiality in which the value of states of affairs was independent of their impact on particular people.[110] Both person-affecting views and total utilitarianism were replaced by a theory that evaluated acts rather than agents, and that could account for something being wrong without it having to be wrong for a particular person. In Parfit's wake, the search for an impartial ethic proliferated. Yet among the philosophers of public affairs, there began to be disagreement about the political uses of such an ethic. Parfit created more puzzles than he solved, but his philosophical talent became the stuff of legend. For some quarters of moral and political philosophy, it was conceptual coherence and sophistication like his that mattered above all. Others suggested that the value of moral theory—though often a response to public affairs—could not be judged by its "practical effects." If our beliefs were in error, then we should change them, but we need not believe that philosophy could change much else. For some this was cause for political pessimism: "Moral judgment and moral theory certainly apply to public questions, but they are notably ineffective," Nagel wrote, conceding normative theory's limits: "When powerful interests are involved it is very difficult to change anything by arguments, however cogent, with appeal to decency, humanity, compassion or fairness."[111]

The relationship of the philosophers of public affairs to politics during the Vietnam era had been strikingly synchronous. That began to change as many philosophers shied away from political controversy. Some now sought in abstraction not the solutions to contemporary political life, but a kind of refuge from it. This refuge view of philosophy allowed for the persistence of the

discourse of overpopulation in ethics long after it became politically toxic. In part, this persistence was due to Parfit's influence, but it was also because of the extent to which population ethics abstracted from concrete political problems. At the moment that population control and the regulation of reproduction became politically fraught, with the New Right's backlash against reproductive rights and the embrace of feminist and antiracist critiques of eugenics, philosophers looked to these complex problems of "moral mathematics" at a "higher order of abstraction."[112]

For some of Rawls's followers who were engaged with international and humanitarian ethics, this was an inadequate response. They opted for a different route, trying instead to bring the life-and-death ethics of population into the framework of justice, obligation, and ideal visions of society. For Rawls's student, the Kantian moral philosopher Onora O'Neill, the utilitarian debates about population had not taken seriously the "imminence" of the situation brought about by overpopulation, famine, and the world food crisis, and they ignored its "implications for today." They had been concerned with the question "how many people should we add?" when what mattered was "how few people could we lose?"[113]

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In "Lifeboat Earth" (1976), O'Neill sought to develop an ethics appropriate for a society that was not much like a game or cooperative practice. The metaphor of the lifeboat was the most fatalistic of recent efforts to theorize the "whole earth."[114] It was a response to another, which had come to prominence when Adlai Stevenson, in his last speech as American ambassador to the United Nations in 1965, described the earth as a spaceship.[115] On spaceship earth, resources were limited, life was fragile, and the time to save it was running out. As passengers on a spaceship with finite resources and no exit, we—the inhabitants of the earth—had to cooperate and steer it in the right direction. We were all in it together. The image of spaceship earth became central to a strain of antigrowth ecological economics associated with Kenneth Boulding and Herman Daly.[116] For the neo-Malthusian biologist Garrett Hardin, however, earth was not a spaceship, but a lifeboat. The world's peoples were not one harmonious crew, working together with a captain steering the ship to safety. Instead, the passengers were disorganized, their fates intimately connected as they battled for space on a tiny boat, with too many on board and not enough food or fuel to last. With the threat not uncertain but imminent,

some would have to get off—if not of their own accord, they would have to be pushed. Their aim was not peace and stability, but survival.[117]

Hardin had come to notoriety with his "The Tragedy of the Commons" (1968), which argued that individuals acting in their own self-interest were destined to deplete the world's common resources. By the time he published *Explaining a New Ethic for Survival* (1972), that earlier essay had been reprinted more than two dozen times, and the ongoing food and agricultural crisis seemed to confirm fears that population growth would outstrip food provisions. For ecological economists like Boulding, who appealed instead to a cosmopolitan ethic in the name of the earth, these problems were caused by the fixation on growth under capitalism.[118] For Hardin, the population "explosion" required existential, coercive intervention to make the future safe for capitalist civilization to survive for the few. The stakes were civilizational, and the solutions were national: "If we renounce conquest and overbreeding our survival in a competitive world depends on what kind of world it is: One World, or a world of national territories," he wrote. "It is unlikely that civilization and dignity can survive everywhere; but better in a few places than in none." In Hardin's racist vision, population control in poorer nations was necessary for capitalist growth to survive. "Fortunate minorities," he continued, "must act as the trustees of a civilization that is threatened by uninformed good intentions."[119]

In the panicked atmosphere of the 1970s, as philosophers began to explore the possibilities for ethics in the context of famines, population scares, and the "limits to growth" thesis, Hardin's lifeboat vision was taken up by liberal philosophers—even though it required drastic coercion and implied a view of society incompatible with a Rawlsian cooperative scheme.[120] O'Neill thought the metaphor of spaceship earth suggested too much "drama" and too little "danger."[121] A more likely future was the lifeboat situation of emergency and radical scarcity. "Even the more optimistic prophets place it no more than decades away."[122] For O'Neill, lifeboat earth was a thought experiment as well as a possible future—one of philosophy's now typical "lurid situations." She used it to explore the rights and obligations of those alive in the present to prevent future deaths, from famine and starvation: the ethics of life and death in the "present situation of global sufficiency of the means of survival and the expected future situation of global insufficiency."[123] As population control became a fixture of debates about humanitarianism and US foreign assistance policy, O'Neill brought population into the new international ethics of human rights, justice, and international obligation, combining these ideas with the wartime approach to the ethics of killing.[124]

O'Neill argued that emergency famine situations required both drastic global famine policies (maximizing the means of subsistence) and population policies (minimizing the number of people) in order to prevent future disasters and long-run scarcity situations. Famines were inevitable unless fertility was curbed, pollution reduced, and consumption patterns altered.[125] O'Neill grounded these policies in what she called our "right not to be killed." Against the use of double effect and the distinction between killing and letting die to limit moral responsibility, O'Neill showed that once the causal chains between famine deaths in poor countries and the actions of individuals, governments, and corporations in rich ones were properly understood, those actions could be properly described as forms of killing.[126] In normal, nonscarcity situations on a "sufficiently equipped earth," "some persons are killed by others' distribution decisions." We can all be threats to the lives of others: even when we are what Nozick called "innocent threats," our distribution decisions can nonetheless kill.[127]

O'Neill pointed to a causal connection between famine deaths and a variety of actions, including wage-setting and commodity pricing decisions, which violated individuals' rights not to be killed. In the coming lifeboat situation, the effects of all this would be more severe. Some killing would likely be unavoidable. But taking the right not to be killed seriously and acting on our distinctive duties "to prevent and postpone famine deaths" required that we enact policies that would prevent complicity in future deaths.[128] Such policies were crucial to avoiding killing in the present, as well as a future situation of global scarcity in which we might have to choose who to kill and who to save. If we did not act now, we might get to a point where "further grounds" would be sought to "justify overriding a person's right not to be killed," and where that right might justifiably be violated. To prevent such scenarios, it was necessary to support charities like Zero Population Growth and policies that could range from the "mild to the draconian"—from contraception to sterilization to the "elimination of further births"—depending on the estimation of the threat.[129]

Survivalism here met with a cosmopolitan humanitarianism and became not its opposite but its twin. Hardin's survivalist ethics had threatened cosmopolitanism, but O'Neill brought them together in a politics of emergency that assumed crisis would become norm. On the one hand, this was a morally demanding account of individual moral responsibility, common to neo-Kantian Rawlsians.[130] On the other, she joined the international ethicists who prioritized a minimalist ethic of sufficiency that preceded the demand for justice, appealing to fundamental rights that were not relational but tied to bare

life. Like Shue, O'Neill saw food as different from other problems of inequality: as a question of subsistence, beyond a normal framework of distributive justice.[131] Global inequality was one cause of famine deaths. In her lifeboat situation, the control of the means of subsistence was unequally distributed: some passengers traveled first-class, others were stowaways with no property rights at all. Inequality created the situation in which the investment decisions of corporations or governments could cause famine deaths. But solving inequality was not part of her prescribed solution, and like Singer, she did not specify what institutions should discharge individual duties. An absence of property did not deliver a claim to redistribution. Property rights were not implicated in rights to subsistence, which existed separately from a given distribution and were not relevant in the face of life and death.[132]

O'Neill's ideas were part of the current within liberal philosophy that focused on emergency and subsistence rights separate from practices and systems of property. The apparatus of justice theory was not required. Moreover, in this context, justice theory had a grave limitation. Rawls's "circumstances of justice"—those facts about the world that had to be in place before the principles could apply—included an assumption of moderate scarcity. The lifeboat, with its situation of severe scarcity, was a long way off from the circumstances of justice. Any survivalist theory that flowed from it, however cosmopolitan, required a different imaginary. O'Neill's right not to be killed, Shue's basic rights, and even Richard Falk's right to a "liveable environment," which he proposed following the environmental damage wrought by the Vietnam War as part of the legal category of "ecocide"—all these issued in obligations to aid or avoid harm, which existed outside the bounds of justice and egalitarianism.[133] Yet even where they assumed that population size should be controlled via policies of conditional aid, none agreed with Hardin that keeping the lifeboat afloat mattered more than relieving suffering, or that aid might contribute to sinking the lifeboat. The relief of suffering in the present was always a priority for liberal humanitarian philosophers and a constraint on survivalist policies, whether in solutions to address catastrophic prophecies of overpopulation or in plans for international redistribution like those contained in the Brandt Report, subtitled *A Programme for Survival*.[134]

There were other philosophers, however, who rejected any future-focused plans for survival that required drastic action in the present, often on grounds of conceptual incoherence. John Passmore suggested that uncertainty about the future required that immediate posterity be given priority. Martin Golding, a fellow at the Hastings Institute, agreed that the future was too uncertain

to justify action for its sake. We did not know what future generations would want or what ideals they would have. "Remote" generations were unlikely to be much like us, so we did not know "what to desire for them." Uncertainty about the distant future meant that no shared moral community could be assumed. Rights and obligations were established by membership in a moral community and a shared conception of "the good life." Future generations were owed things only insofar as they were members of "our" moral community.[135] Instead of succumbing to "ecological panic" and planning for "mere survival," what mattered were obligations to "immediate posterity," "not to plan for them": we should only remove obstacles that stood in the way of future generations "realizing the social ideal." To say more would be "gambling in futures."[136]

These kinds of arguments from uncertainty were increasingly common in the 1970s, particularly among neoliberal thinkers. They invoked uncertainty and information problems as part of their critiques of planned and measured economies that purportedly limited options in the future. In the context of the population debates, neo-Hayekian technological optimists like Herman Kahn and Julian Simon condemned catastrophism and sought to show that the "doomsayers" were wrong: given uncertainty, and assuming the advancement of technology and an unfettered market, the future could take care of itself.[137] Kahn and Simon condemned Ehrlich, Hardin, and population theorists and also any state or coercive action that planned for the future, including "redistribution" and "reducing inequality." Arguments against population control were deployed against planning, the state, and investment for the future in general.[138] The young Keynes had been a Malthusian; now many anti-Malthusians were also anti-Keynesians.[139] Planning for the earth's survival was a concern for advocates, not critics, of state action for welfarist ends.

But could that survivalism be part of an egalitarian theory? By the mid-1970s, some were trying to show how liberal paradigms, from discrimination law to Rawlsian justice, could accommodate ecological concerns.[140] Philosophers debated whether Rawls's theory was adequate for the challenge.[141] "He does not so much as mention the saving of natural resources," objected Passmore. "How rare it is for moral philosophers to pay any attention to the world around them!"[142] Rawls's theory demanded too little for future generations. Though he ensured they were entitled to savings, the savings principle did not deliver the redistribution of the difference principle, nor the sacrifices of temporally neutral utilitarianism. Some also objected to the overextension of the distributive paradigm and to the casting of relationships

with nature in distributive or economic terms. It was "strange," Laslett wrote, to try to cover all intergenerational relationships with savings, since "an argument about social relationships in general which is based on ownership of material things is hardly likely to be reputable." In any case, "the one thing any society at any time could be relied upon to do is save." The problem was how to avoid wasting and consuming "important elements in the environments, in the way that the Ancients used up gold, or the Elizabethans the English forests."[143]

Brian Barry tried to fit together the concerns of equality and ecology. While he was experimenting with extending theories of justice internationally across the world, he was also looking to stretch moral principles into the future to accommodate problems like overpopulation and resource depletion. In 1973, he wrote that political theory had to come to terms with the "ecological" viewpoint.[144] This he associated with the anticonsumerist critique of growth and materialism by the British ecological movement, with its philosophy of "enoughness" exemplified in E. F. Schumacher's *Small Is Beautiful* (1973).[145] In the light of "exponential growth" and the "interdependence" of nations, as well as that of living and nonliving things, its relevance was "irrefutable." "The human race is on a crisis course," Barry wrote, and "only a sharp reversal in many of our ingrained ways of thinking can avert a catastrophe at some point in the future." Where Parfit thought ecological and population problems, like other collective action problems, required moral solutions, Barry thought ecological problems reaffirmed the importance of politics.[146] There would be no moment, as "Victorians of left and right" had hoped, when productive capacity reached a point where it could provide "sufficiency for all" and remove the conflict at the basis of politics. Ecological crisis made political problems "more intractable" by revealing existing inequalities and "widespread and acute" conflicts of interests.[147] Given this, the task was to find a way to accommodate obligations to future generations.

In 1977, nearly two decades after the resurgence of theories of obligation, Barry surveyed the philosophical scene. Theories that grounded obligation in mutual protection, self-interest, or community were all guilty of "disregarding the future," especially the remote future after "our grandchildren" are dead.[148] The tradition that ran from Hobbes and Hume to Hart and saw morality as nothing more than "mutual self-defence" could not generate obligations to future generations, who had no "bargaining power" and could not reciprocate; it thus made sense to ignore their interests. Communitarian theories, like Michael Walzer's, in which obligations depended on "actual rather than

potential reciprocal relationships," ruled out obligations to subsequent generations too. Worst were arguments like Golding's for selective future obligations, which required membership in a moral community. This Barry found "more morally offensive than a blunt disregard of all future interests." It was "a diachronic version of the common American view that famine need only be relieved in countries with the right attitude to capitalism."[149]

It was better to say that "our moral principles hold without temporal limit."[150] In practice, "atemporal morality" had unacceptable consequences. Even a timeless utilitarianism could be turned into a theory that protected only immediate posterity, by adding concerns about uncertainty and ignorance.[151] "In the context of universalistic utilitarianism the appeal to ignorance normally functions as a smoke-screen, to conceal the fact that we are simply not willing to act in the kind of saintly way that a serious application of the doctrine must entail." Passmore had abused uncertainty in this way. Economists did no better: they were guilty of "drawing blank cheques on the future to cover our own deficiencies." This "attitude of expecting something to turn up would be rightly considered imprudent in an individual," Barry wrote. "I do not see how it is any less so when extended to our successors." Libertarians similarly licensed caring little about the future. Nozick's natural rights to property entailed a "right to dispose of our property as we wish," and justified potentially unlimited consumption and resource destruction.[152]

A "new ethic" would, at minimum, "include the notion that those alive at any time are custodians rather than owners of the planet, and ought to pass it on in at least no worse shape than they found it in."[153] For Barry, Rawls's focus on goods to be saved, rather than harms to be prevented, belied an economic temporality typical of growth theories that misunderstood the temporality of ecological concern and where and when its political difficulties and solutions lay. "Investment," Barry argued, "has a characteristic that enables discussion of it to dodge the most awkward difficulties." It relies on the actions of intervening generations to help remote generations. Though present generations might save with their remote successors in mind, there is nothing to guarantee that the next generation will too. Focusing on the just savings rate reduced intergenerational relations to the relations between a generation and its immediate successors, and to the behavior of those later successors, "whom we have no way of binding."[154]

The same was not true of avoiding harm. Conservation for remote successors might depend on the actions of immediate successors. But what of those "ecological sleeper-effect that we set off now with no ill effects for some

hundreds of years and then catastrophic effects"? Sleepers—actions that have more significant effects in the long run than the short run, or those that are beneficial in the short run and harmful in the long run—had to be taken into account.[155] There was a major distinction between "investment, which has the property that our successors can choose whether to pass on the benefits we leave them, and ecological damage, which has its own adverse effects on remote future generations whether or not our successors add to it." Rawls had collapsed two problems into one. "The really nasty problems," Barry wrote, "involve obligations to remote descendants rather than immediate descendants and on these Rawls has nothing to say."[156]

Rawls had been more concerned with problems of stability than survival. Still, Barry believed that obligations to the future had to fit within the framework of justice. Duties of humanity and benevolence were insufficient. He tried to amend Rawls's assumptions about growth and self-interest to make justice theory fit an ecological age. By turning to familial ties as a motivational assumption, Rawls had both inserted his own prejudices about the importance of the family and undone the technical beauty of his theory, blurring the lines between the parties in the original position and real-life persons. For Barry, giving preference to immediate successors placed unnecessary temporal limitations on the scope of justice and biased the theory to the status quo by making justice "parasitic" on the "sentiments people actually have." Thus, the "limits of caring were the limits of justice."[157] But the task for any moral theory of the future was, as one philosopher put it, to "break the bonds of self-concern."[158] Theories that relied on present interests or sentiment tended to miss that because the interests of particular individuals in the present were "interdependent" with those in the future, the welfare of future generations had to be conceived of as a public good.[159] Moreover, interest theories were, the British political theorist John Gray wrote to Barry, "offensively anthropocentric."[160]

Barry was reluctant to give up on them. But though it gave him "great intellectual discomfort," he saw doing so as the only way of generating an ethic appropriate to an ecological age. He came to believe that it was impossible to derive the value of human existence from an account of the interests of actual or future human beings. Nor could the aversion to the extinction of the human race be explained by the idea that extinction would injure the interests of those "who will not get born." To explain that aversion conceptually, there was no choice but to disconnect ethical principles from interests. Only by appealing to something beyond human interests, to what he called a sense of "cosmic

impertinence," could Barry find grounds to oppose the extinction of the human race—a position that he saw as necessary for any ecological theory.[161]

This insight was tied to another critique of Rawls; taken together, these pushed Barry, like many of his contemporaries, to consolidate his emphasis on the hypothetical. He again attacked Rawls as the heir to the Humean tradition that relied on reciprocal institutional practices as the condition for a theory of justice and deemed the circumstances of justice—of "moderate scarcity, moderate selfishness and relative equality"—as necessary for its application.[162] This requirement excluded from the scope of justice relationships in which the circumstances did not apply—with animals or between generations. By upholding the condition of moderate scarcity, Rawls ruled out the relevance of justice in scarcity situations, whether postwar Britain, where rationing was necessary, or any scenario of the future put forward by even optimistic ecologists.

For Barry, Rawls's parochialism ran deep. Only an affluent postwar America supplied the background conditions of his just society. Accepting the "insidious" Humean circumstances as necessary for justice made the future far too bleak.[163] The moderate scarcity clause should be removed—not because the future was uncertain but because it made Rawls's justice, like Hume's, too fixated on property rules. If justice was simply the rules of property, then its requirements could be waived in situations of extreme scarcity. To concede that justice only applied in conditions of moderate scarcity would be to concede that the ethics of lifeboat earth amounted to no more than simply pushing overboard those who weigh us down. What was needed was a criterion for evaluating who should get what in conditions of scarcity. Barry discarded the Humean dimension of Rawls that provided a theory of agreement and an understanding of contractualism as "justice as rational co-operation," for the Kantian theory of hypothetical choice, "justice as universal hypothetical assent."[164]

As with the debate over international justice, the intergenerational context revealed the divergence between these two dimensions of Rawls's theory in the hands of his interpreters. At the turn of the 1980s, the move from the empirical to the hypothetical was made across both space and time. Strangers in the future, Gregory Kavka argued, had just as many needs as strangers in the present. The same hypothetical maneuver that had been performed to justify obligations internationally was now required to do so for the future.[165] David Richards saw the idea of a Kantian moral person as providing the grounds for considering relations between generations—as well as relations globally—*as if* they were reciprocal.[166] Barry focused on Rawls's second argument in the original position to make the future matter. For the theory of mutual hypothetical

assent to work for the future, the parties in the original position would have to be drawn from every generation, but would not know to which they belonged. For Barry this meant they would choose not a principle of just savings but a principle that took seriously the idea that later generations would regret not restricting "resource depletion and damage to the environment." They would choose a principle of equality of opportunity, which would leave the future open. This was not tied to the circumstances of justice, but was concerned with the right to an equal control of resources in an initial position. Justice demanded not that present generations make the future better off, but that they not use up resources and narrow the overall range of opportunities the future would enjoy.[167] Where resources were unavoidably used up or opportunities closed down and future generations were denied choices, they should be compensated.[168]

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At the same time that liberal egalitarians removed historical questions about reparations and rectification from distributive justice, others incorporated compensation for the future. Compensating for depleting nonrenewable resources took the form of investments to preserve the range of opportunities for future generations—by giving them at least the amount they would have had if we had not acted in the way we did.[169] Barry did not argue that one day we might go beyond growth and reach a stationary state. This was the preoccupation of the "sentimental" Victorians he dismissed.[170] Instead, his account of obligations to the future focused on harm prevention. Yet though his concern with survival made him pessimistic, Barry arrived at a theory of openness: an open-ended account of present obligations to the future in which obligations were born not of humanity or rights to sufficiency but of justice and equality. An open future, he argued, was possible even in scarcity. Even as the catastrophist intuitions of political philosophers subsided, particularly about population growth, such aspirations to openness would characterize many subsequent theories of intergenerational justice. These often became tied to a vision of the abstract, remote future in which time was collapsed and flattened and tomorrow became morally the same as today.[171] This was due in part to justice theory's hypothetical justification. Once divorced from empirical considerations, theories of the future could fit a survivalist landscape as easily as one of moderate scarcity. After the late 1970s, more philosophers and economists took up the challenge of integrating scarcity concerns into egalitarianism—first, gradually, in the

context of energy depletion and nuclear energy, and then in greater numbers once the threat of climate change made environmental concerns central.[172] As others tried to accommodate obligations to future generations within justice theory, they upheld the abandonment of present bias and empirical circumstances that had characterized the interest theories Barry contested and the person-affecting theories Parfit rejected.

On the one hand, then, a hypothetical account of justice and an impartial view of morality won out. The framework of Rawls's theory was stretched to accommodate even those survivalist ideas that threatened its fundamental assumptions. On the other hand, Rawls's institutional emphasis was interrogated less. As morality stretched into the far future, theories that gave existing institutions, communities, or families a special role in generating reasons to care about the future were largely set aside. Philosophical treatments of the future became conceptually independent of either the circumstances of justice or other institutional contexts. Problems of political institutions, designed to deal with the fact that reality often fell short of morality, were replaced by those of identity or individual choice.[173] Rawls's initial concern with savings and discount rates remained, but as moral and political philosophers borrowed increasingly from welfare economics, these technical questions were detached from Rawls's ethical apparatus and from the worry about whether individual decisions could be scaled up to collective ones. The concern with discounting suggested that discharging obligations to the future could be analogized to individual preferences in a marketplace. By the 1980s, models of intertemporal choice, developed in collaboration with behavioral economists, featured centrally in debates about energy policy and became crucial to securing the new liberal environmental aim of "sustainability."[174] These choices about the future were themselves deinstitutionalized: individual choices, not institutions, played a role in making the future present. Indeed, when behavioral economists later wielded substantial influence at the level of government, their policies about the future took the form of "nudging" individuals to make decisions about their own futures, not creating institutions to plan for the future conceived as a public good.[175]

The temporality of Rawls's theory, particularly its reliance on an optimistic vision of growth, persisted across liberal philosophy and underpinned this incrementalism. Even as he had tried to dispense with teleological assumptions and explicit philosophies of history, his vision was nonetheless premised on the assumption that long-term economic equalization would continue. Later, Rawls tried to correct for this limitation by stressing that justice as fairness was

compatible with a society beyond exponential growth. He merged growth theory's idea of the steady state with John Stuart Mill's idea of the stationary state, which he had previously mentioned only in footnotes.[176] In a 1985 lecture on Mill, Rawls explored Mill's stationary state as a version of a well-ordered society, one in which institutions were arranged "to preserve the natural world so that all the higher pleasures can be pursued by all citizens under conditions of equal justice." The stationary state was a society where high productivity, low population growth, and a shorter working day—as well as the absence of an "idle class" of rentiers who did not work—allowed workers to lead a "decent life" and pursue the higher pleasures. Rawls was pessimistic about whether such a state could be realized. Mill, he wrote, had been "apolitical," for he "underestimated the dynamism of capitalism" and "the depth of political conflict." "He seems *now* at least," Rawls wrote, "too optimistic."[177]

With age, Rawls thought the same about his younger self. In the decade after *A Theory of Justice* was published, philosophers had explored new visions of the future: of future persons and scarcity scenarios and theories of savings, openness, and intergenerational justice. Though born of crisis, few were dynamic. Rawls grew more anxious about the objection that his theory was a mere defense of capitalism. Yet he responded by looking not to forms of dynamism but of stasis. He wanted to show that his theory might accommodate a stationary state, even if he was more pessimistic than Mill about its realization. Disillusioned with the postwar concern with growth that had underwritten his theory, he became insistent that the ideology of the "capitalist business class," of "economic growth, onwards and upwards, with no specific end in sight," led to a "civil society awash in a meaningless consumerism . . . which we already have in the United States."[178]

This critique of endless growth signaled the deepening of Rawls's anticonsumerism. It also reflected his growing worry about the persistence of greedy capitalists in his just society. This was a response to his critics who thought his theory permitted such capitalists, and part of Rawls's broader concern that interpretations of his theory as institutionalist—as not concerned with moral psychology or agency—had entrenched the division between theories that gave altruistic or humanitarian defenses of the voluntary principle and egalitarian institutionalisms reluctant to judge individual behavior. This division would come under scrutiny in subsequent years. Yet these concerns did not reflect a major transformation of Rawls's theory of the future itself. Rawls did not change the temporal underpinnings of his savings principle to address the limits to growth. That would have involved not just appending Mill's stationary

state to the list of societies his theory could accommodate, but also altering the orientation of the theory itself.[179]

What liberal philosophers did not address was the crisis in the politics of growth that hit when the growth and productivity gains that had legitimated the postwar political settlement stalled. In that fiscal crisis, Marxists saw the state's support of capitalist accumulation, obscured by social spending, now revealed.[180] Social conservatives thought the crisis was the result of unrealistic demands born of affluence, but they agreed that the state would continue to face difficulties unless citizens asked for less and adjusted their expectations.[181] Neither diagnosis caught the attention of liberal philosophers. They continued to assume that the welfare state and social democracy would be fine. By and large, they passed up the opportunity to think about what justice might look like in circumstances where growth was not assured, or to consider how the egalitarian vision might be maintained in a different political and economic settlement. Only Barry tried to do so, by implicitly decoupling justice from growth.[182] The legitimacy crisis passed philosophers by. Yet its ideological consequences would become impossible to ignore.

7

New Right and Left

BY THE END of the 1970s, the New Right had arrived.[1] Under the Reagan administration, state-sponsored financial deregulation and the turn to global capital markets alleviated and postponed the state's crisis.[2] At the same time, "the market" was enshrined as the solution to the problems caused by the end of the age of affluence.[3] Markets were introduced into new areas of public and private life, and weaponized as the alternative to the state in attacks on its welfare and democratic functions.[4] Amid the fracturing of the Keynesian consensus, and under the influence of monetarists like Milton Friedman, various forms of neoliberalism gained ground in liberal and conservative intellectual circles: antibureaucratic public choice theory, Austrian-inspired libertarianism, rational expectations theory, and supply-side economics.[5]

The neoclassical framework was projected from economics to politics. Economists, lawyers, and political scientists attacked aggregate concepts; conceived behavior in highly individualizing terms; condemned "unaccountable," "rent-seeking" governments, bureaucratic "inefficiency," and "non-market decision-making"; and argued for the privatization of public enterprises.[6] For some, the government was no longer a unique authority, as Keynesians assumed, but one among several maximizing units.[7] Others downgraded the state to an information- and knowledge-collecting entity and framed welfare provision as a drain on the economy. The argument that democracy causes inflation gained traction, as inflation was constructed as an "all-encompassing social crisis," the prevention of which justified massive transformations in economic governance.[8] American conservatism's long-standing commitment to laissez-faire within labor markets and hostility to unions had free rein.[9] Decisions were taken out of democratic politics and removed from public view. Both the public and the private were privatized.[10] Yet the state was shored up

for anti-statist ends as government policies and mechanisms forced change and realignment, strengthening capital rights and incentivizing doctrines of choice, responsibility, and competition in education, health, incarceration, and social services.[11] This was a radicalization of and departure from the midcentury rhetoric of anti-statism that had penetrated liberal philosophy. It had been a mark of Rawls's youthful barebones liberalism that one of the few responsibilities he ascribed to the state was to run lighthouses. By the 1970s, libertarian economists no longer argued that lighthouses were public goods made necessary by market failure. Even they could be privatized.[12] Social justice, Hayek declared, was a "mirage."[13]

Liberal philosophers underestimated how high the New Right would rise. Many did not see or did not object to the process of marketization taking place, whereby social relationships were subordinated to market logic and new aspects of life were commodified. In part this was because they were preoccupied not with the rising right, but the left. For political philosophers, the ascent of Margaret Thatcher and Ronald Reagan initially provided an opportunity to consider the nature of the social democratic left's egalitarianism. The collapse of affluence during the previous decade, particularly in Britain, had looked at first like it might benefit the socialist left. "In the 1950s many of us thought that inequalities would diminish as society became more prosperous," wrote the Labour Party grandee and later founder of the Social Democratic Party Roy Jenkins in 1972. "It is now clear that this view was at best oversimplified and at worst just wrong."[14] Over the course of the 1970s, the Labour Party had responded by returning to ideas of industrial democracy and public ownership.[15] In the United States, even as the traditional working-class constituency of left politics fragmented and was recomposed, and the political efforts to sustain it were abandoned, the Cold War thaw and leftward tilt of academia enabled the radicalization of philosophy, seen in the appeal of anticolonial global redistributive politics and Rawlsian engagements with socialism.[16] With the relationship of capitalism to democracy under scrutiny following the fiscal crises, a socialist resurgence gradually became visible within political philosophy. "The apparent pause in economic growth, the crisis in stabilization policy occasioned by the current inflationary threats and realities, and the loss of purpose in redistributional measures all combine," Kenneth Arrow wrote in 1978, "to raise anew the question of alternatives to capitalism."[17] By the 1980s, liberal political philosophy was being pushed to the left. Marxism was poised to enter the philosophical mainstream.

In response, a new wave of egalitarianism emerged, which brought more expansive and holistic ideas of justice and equality. A particular kind of

socialist theory came to prominence, one populated by individual rather than collective agents and focused on distribution and ownership rather than labor. As neoliberal ideas were entrenched, philosophers developed new strategies to defeat, oppose, and accommodate them. These included the deployment of the ideas of the right in their theories—sometimes deliberately, often indirectly. Liberal Rawlsians had seen rebutting Nozick as a key part of the defense of egalitarianism and the redistributive state. Now the engagement with right-wing arguments was on a broader terrain. Philosophers explored ideas of the market and contract, private property rights and choice, responsibility, and welfare dependency. Some worried that the state's capacity to intervene in the economy was being squeezed by the market, but many others embraced the rhetoric of the "magic" of the market.[18] Markets were indispensable, and potentially neutral.[19]

Political philosophers began to debate ideas of property rights, ownership, and its moral analogue, responsibility. For Rawls, property rights had been institutional, part of the basic structure. Now pre-institutional property rights became crucial to many theories. A range of liberal, socialist, and Marxist philosophers, including Ronald Dworkin, G. A. Cohen, John Roemer, and David Miller, explored ideas of private, common, and joint ownership. Some liberal egalitarians used the resources of the right to advocate a shift to the left, incorporating New Right ideas about responsibility, markets, and choice for egalitarian ends. Debates about agency and ethical behavior that had been divorced from the distributive realm were placed within it. Others lowered their sights, abandoning the most demanding forms of egalitarianism and generating minimalist defenses of the welfare state under attack. For the first time since the transformation of philosophy in Rawls's wake, it seemed to many that political and economic changes might undermine the bases of theories of justice and the liberal welfare state.

These encounters with left and right shaped liberal philosophy in a variety of ways. Egalitarians now debated the market and socialism, and to some extent the state and capitalism. On the one hand, many of these ideas were brought together within the distributive, egalitarian, and individualist paradigm and signaled its triumph. In discussions of the equalization of resources, an increasing number of social and political goods were rolled into bundles of endowments to be distributed. On the other hand, Rawls's conceptual frameworks came under pressure. The equality debates marked a kind of disembedding of the Rawlsian project.[20] Until that point, the ideas about consensus, practices, growth, and the conditions of midcentury America's aspirations

that were built into Rawls's theory had not been fundamentally altered when philosophers attempted to expand them into global and intergenerational terrains. Yet as they focused on the redistributive problems for which justice theory was built, they departed from Rawls's assumptions. Many continued to develop accounts of hypothetical consensus and agreement, but others abandoned Rawls's vision of the relationship of individual and institutional morality. In debates about pre-institutional property rights, responsibility, and desert, the boundaries of the institutional and political were redrawn. Rawls's emphasis on the formative role of institutions on individual rights and choices was contested or set aside. An emphasis on the neutrality of institutions and processes made room for concern with outcomes. Political philosophers moralized a realm beyond the juridical and institutional framework, calling into question the concept of the basic structure itself. These critiques of the basic structure came from the bottom up: instead of the rules of the game, philosophers looked to the relations between players—to markets, to the realm of the social, and later to the "ethos" of justice and equality.[21]

The irony of this change in focus was that it did not help philosophers identify the transformation in the state they were witnessing. Those most focused on the New Right overlooked the decline of democratic control that followed from the depoliticization, privatization, and weakening of the welfare functions of the state that occurred in the 1980s.[22] By contrast, many who maintained Rawls's assumptions and sought to deepen liberal philosophy's democratic procedures did not engage with the radicalization of egalitarianism. Moreover, this radicalization would not last. These debates about egalitarianism came at a particular conjuncture when the ideas of socialism and equality, though philosophically and morally coherent, were politically at odds and signaled different programs. The postwar conflict between socialism and equality—during which equality was prioritized as part of the abandonment of socialism—resurfaced in British political thought during the battle for control over the future of the Labour Party in the early 1980s.[23] In philosophy, liberal egalitarianism would win out. As leftist ideas were taken up, their hard edges were softened. Over the course of the decade, philosophers made even Marxist ideas fit the egalitarian framework or domesticated them in service of liberal aims. This was true of the debates about ownership and redistribution, and also of the few attempts by philosophers to politicize the economy and increase democratic control of distributive decisions. These ultimately gave way not to socialist theories of democratic control but to liberal theories of deliberative democracy and public reason.

Rawls's theory outlasted its alternatives. As the state was privatized and new forms of regulation, capital investment, and financialization took economic decisions even further away from democratic politics, the experiments in analytical Marxism and democratic socialism that characterized philosophy in the last years of the Cold War led to liberal variants after its end. Socialism entered liberal egalitarianism, only to be subsumed by it.

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1979 was a good year for the political right, but it was also a good year for liberal egalitarianism. When Amartya Sen gave the Tanner Lectures, he took for granted that there was no need to justify his focus on equality. Instead, he asked, "equality of what?"[24] Rawls had equalized primary social goods—"things that every rational man is presumed to want"—rather than utility, welfare, wealth, income, or equality of opportunity. Sen's task was to replace Rawls's primary goods with his "capabilities," understood to encompass considerations of both need and choice. This, Sen argued, was the correct "currency" of egalitarian justice.[25] This move began a technical dialogue between political philosophers and economists like Arrow, James Meade, Anthony Atkinson, and others concerned with inequality and poverty who were to the left of their rightward-tending discipline. They sought to free economic thought from utilitarian welfare maximization and make it sensitive to distributional questions by supplementing the methods and "compensation criteria" of the new welfare economics with normative standards and weights.[26] Sen drew on their work and elements of the British welfare state tradition, with its nod to ethical socialism and focus on poverty, needs, agency, and well-being.[27] His question about the metric of equality preoccupied egalitarian philosophers for the next thirty years.

In 1981, Ronald Dworkin—then Chair of Jurisprudence at Oxford, teaching at NYU, and famous for his defense of rights theories—responded to Sen's provocation.[28] He published a two-part essay that provided a defense of "equality of resources." Dworkin thought that equality should be determined in terms of what is distributed, rather than in terms of the satisfaction of recipients' wants or preferences. Like Rawls, he wanted a theory that avoided the difficulties associated with measuring welfare. An account of equality should ensure that recipients of resources were free to do with them what they chose, but also should avoid a problem that plagued accounts that distributed according to welfare or "subjective" ideas of utility, which allowed people who had

expensive tastes to claim a right to more goods. Dworkin argued that Rawls had not gone far enough. What was required was a distinct and prior theory of equality that went beyond Rawls's institutional practices and that was concerned with what equality demanded in a deeper sense.[29]

The political implications of Dworkin's conceptual turn to equality were also clear. Writing in the aftermath of Thatcher's first electoral victory, Dworkin argued that that election represented not an "ideological revolution"—a collapse of faith in the welfare state or a belief in "free enterprise"—but a signal of the "*non*-ideological" nature of the British electorate and the failure of the Labour Party to persuasively set out its core egalitarian principles. Labour, Dworkin continued, "must give up trying to deduce a vision of the fair society from its historical association with the trade unions. The basis of that association must follow from the party's principles, not the other way around."[30] Like many British liberals who championed the left's move to the center in the aftermath of Thatcher's victory, Dworkin wanted a social democratic theory of equality that could be decoupled from its historic association with the labor movement. He, like them, underestimated the rise of the right in part because he underestimated how this decoupling of equality from collective bargaining would hasten the hollowing out of social democracy.[31] Instead, Dworkin's task was to show that the ideas of market liberalism could be incorporated into egalitarianism without damaging the cause of equality.

The thought experiment Dworkin introduced to justify his account of equality briefly rivaled the original position in its notoriety. A group of people are shipwrecked on an uninhabited desert island and want to share the island's resources equally. Each islander is given an equal share of the new currency—clamshells—and in an auction they bid for the resources that matter to them, until they are satisfied with their share. In the auction, people have to give up more clamshells to get something that others also value highly. They give up less if they have unusual tastes. When eventually a distribution results from the auction, it flows from the situation of initial equality and reflects people's choices. But because individuals are not the same—they have different talents and different "handicaps"—additional transfers are needed for the distribution to be sensitive to these circumstances.[32]

So Dworkin introduced a second device to supplement the auction, the idea of a "hypothetical insurance market." The islanders are imagined now to be in a situation of limited knowledge similar to that behind the veil of ignorance. They do not know whether they have a disability, or whether their "talents" are productive and marketable. Each can purchase insurance against

the risks they face—against the possibility they will end up with low marketable talent or, in a separate insurance market, against the risk they will have a handicap of some kind. If they end up with a level of talent below that they insured against, they get a payment. If they end up having a more marketable talent than they predicted, they pay out. There is no further redistribution. Inequalities that now emerge are justifiable. Each individual has been compensated for any bad luck in their circumstances they did not choose. From that point on, they are responsible for the consequences that flow from the choices they make. They can play it safe, or take risks. Either way, their fate is up to them.[33]

This was a theory of equality that relied on markets.[34] It began with a hypothetical auction to define equality of resources. It corrected for inequalities through a hypothetical insurance market to determine tax rates. But Dworkin was also clear that real markets were necessary to egalitarianism. The market had "come to be regarded as the enemy of equality," because of the "vast inequality in property" that markets have in practice "permitted" and "encouraged." "Both political philosophers and ordinary citizens," he wrote, had pictured equality as the "antagonist or victim of the values of efficiency and liberty supposedly served by the market, so that wise and moderate politics consists in striking some balance or trade-offs between equality and those other values, either by imposing constraints on the market as an economic environment, or by replacing it, in part or altogether, with a different economic system." Dworkin rejected this picture. "The idea of an economic market, as a device for setting prices for a vast variety of goods and services, must be at the center of any attractive theoretical development of equality of resources."[35] The market was conceived as a mechanism of neutrality. Competitive markets had been part of Rawls's theory, but Dworkin gave them new weight, even at the level of metaphor: where Rawls's discomfort with state planning led him to the democratic discussion, Dworkin's invoked the auction.

Ideas of choice and responsibility were also central to Dworkin's argument. He rejected simple equality of welfare, since equalizing the welfare of individuals required compensating people for bad choices they made "freely," such as being lazy. People should be held responsible for the outcomes of their choices. But they were not responsible for the circumstances in which they made those choices (if those circumstances were not themselves chosen). Distributions, Dworkin argued, should be "ambition-sensitive" but "endowment-insensitive."[36] People should be compensated if they were unlucky. But compensation was only due for certain kinds of bad fortune. It

was not due to all of society's losers. Dworkin distinguished between different kinds of luck. "Option luck" was "a matter of how deliberate and calculated gambles turn out—whether someone gains or loses through accepting an isolated risk he or she should have anticipated and might have declined." Situations of option luck were those where individuals had deliberately chosen to enter into a risky situation. "Brute luck" was "a matter of how risks fall out that are not in that sense deliberate gambles."[37] Situations of brute luck were those where individuals had not chosen to gamble but were exposed to risks because of factors beyond their control. An unpredicted "falling meteorite" was the paradigm case of bad brute luck. A bought stock that rises was good option luck. The ideal of equality of resources only required full compensation for the differential effects and outcomes of brute luck. If you gambled and had bad option luck, no compensation was owed.[38]

The timing of Dworkin's intervention was propitious. His foregrounding of choice, responsibility, and markets came at a moment when nonmarket forms of social organization were under attack. Many attempted to close the gap between the economists' model of a perfectly competitive market and real-life markets, to enshrine the latter as the only reliable mechanism for social choice, even as monopolies were protected in practice.[39] The state encouraged citizen responsibility and entrepreneurial values, while abdicating responsibility for citizen welfare.[40] Individual choice and consent (actual rather than hypothetical) became the basis of legitimacy claims. Dworkin made these ideas in general important to egalitarianism in a way that had hitherto been true only of "right-wing political philosophy."[41]

Dworkin also addressed one specific set of arguments, associated with the "law and economics movement," about the relative effects of private property rights and competitive markets on distributional outcomes.[42] These arguments had roots in debates among welfare economists, for whom the question of the distribution of initial endowments and property was traditionally crucial to determining the fairness of outcomes. Politically, this kind of theory could go both ways. Where the state was deemed responsible for securing this distribution, the emphasis on fair initial distribution could point toward a revolutionary statist politics. Some social democratic economists suggested this possibility in the early 1980s.[43] Yet most neoclassical economists separated efficiency from distribution, suggesting that competitive markets could secure (Pareto-) efficient (though not necessarily fair) outcomes without fair initial distributions. In 1960, the economist Ronald Coase's theorem of social costs had dramatically expanded the domain within which markets were thought

to lead to efficient outcomes.[44] In his wake, many claimed that competitive markets could ensure efficient outcomes, regardless of the initial distribution of property rights, and that the requirement for public goods was a "costly illusion."[45] These ideas percolated into law and philosophy through the work of Richard Posner, who saw the task of law as increasing economic efficiency.[46] Common law—property, torts, crimes, and contracts—already took the structure of economic reasoning and could be explained in terms of its tendency to maximize preferences.[47] Tort law and personal injury claims had been revived at midcentury as part of the defense of the rights and integrity of the autonomous individual, the repudiation of the administrative state and direct government regulation, and the privatization of compensation and welfare.[48] Now they were adjudicated as a means of increasing economic value. Property rights established in common law were a basis for market exchange. They could underpin market deregulation and privatization.

Like many legal and political philosophers, Dworkin was steeped in this literature. At a fundamental moral level, he opposed these ideas. He was not alone: various legal schools challenged this view of law as efficiency. Critics of law and economics included neo-Marxists, critical legal theorists, and legal realists who saw law as power and politics, as well as welfare rights and constitutional theorists who saw law as an instrument for realizing the deep constitutional values, morality, and the highest ideals of the nation.[49] Dworkin was on the side of the latter. In a response to Posner and Guido Calabresi, he attacked the law and economics view that wealth maximization was a value in itself or that it could be traded off with justice. It "makes no sense as a social goal," he wrote, "even as one among others."[50] The economic analysis of law suggested that the chief moral purpose of law was efficiency, understood as being based on "willingness to pay."[51] Dworkin condemned that view outright. For a rights theorist, allocating property rights to those whose use of them was most "valuable" was anathema. Dworkin rejected their priorities, joining others who described the normative conception of efficiency as "ideological"—biased toward the rich (who will pay more) and the productive (who own more productive assets).[52]

But Dworkin also adapted structural elements of their framework. He was not antigovernment like these thinkers, though the non-interventionist possibilities implicit in the ground rules vision of liberal egalitarianism made it amenable to antibureaucratic arguments. Like Rawls, he thought that excessive government intervention was not necessary for people to make choices and live their lives well, if the social structure was set up correctly. But for Dworkin, what

that meant was providing everyone with a fair initial endowment of resources and setting up a fair framework for interaction in a market economy, with tort and criminal law protections. Thus, initial endowments, insurance markets, private property rights, and a tort conception of responsibility were imported into egalitarianism. Dworkin used the "resourcist" framework of bargaining, markets, and compensation, but inverted it to secure equality.[53] He relied on a principle of willingness to pay to determine what others would pay for what an individual person possesses in an ideal marketplace. Yet he claimed to eliminate that principle's bias to the rich by making it operate blindly, in an insurance market where participants began as equal. He introduced an idea of responsibility developed in debates about "contractual immunities" and accidents. This adapted common law debates about how people should be compensated for their bad luck and behavior (about whether they should take responsibility for costs of accidents, and how compensation works for the uninsured in regimes of strict liability or negligence). He suggested that rights, insurance, and the common law twinned with the efficient and fair mechanisms of the market could enable equality and guard against market excesses.[54]

Dworkin's theory of equality was among the first after *A Theory of Justice* that did not focus on opposing Nozick or on shoring up liberal egalitarianism's institutional, nonhistorical character in response to Nozick's critique. Nozick had drawn from the new law and economics but had been far more interested in providing a philosophical basis for initial distribution—his justification of unequal distributions of property rights in terms of first occupancy or labor.[55] Like Nozick, Dworkin began with rights outside the institutional realm. He held that people were, and should be held, responsible for their choices, and used a market to account for initial endowments. Yet he insisted his market was not historical and contingent, like Nozick's, but purely hypothetical and "servile." It was designed not to direct resources to their highest-valued uses regardless of the initial distribution of property rights, but to make the initial distribution equal and fair.[56] Against left and liberal squeamishness about the moral limits of markets, Dworkin insisted they could serve egalitarian ends.

This was both an extension of and a departure from Rawls. In many respects, Dworkin continued Rawls's project. He wanted to derive equality from impartiality and rationality. Committed to state neutrality between conceptions of the good, he extended aspects of Rawls's idea of primary social goods, which did not have neutral consequences and implied that people with expensive tastes would get less from the same resources than people with modest tastes.[57] He also extended Rawls's wariness of continuous state intervention.

Social institutions would mimic the basic idea of the thought experiment: that for many goods, redistribution takes place only once, to make individuals' starting places fair. Dworkin brought to the fore the questions about luck and fortune with which Rawls had struggled: about whether people could be said to deserve their misfortune, whether that misfortune could be linked to their "free" choices, and whether protection from the consequences of bad luck should be universal or conditional. Rawls had answered these questions by making individual behavior, character, and choice irrelevant from the point of view of distributions. His treatment of natural talents as collective assets and his downgrading of desert (as an institutional principle and in judgments about natural endowments) had offered a philosophical counterpart to the welfare state's rejection of the distinction between deserving and undeserving welfare recipients. With that state in crisis, a market logic twinned with a focus on individual property and responsibility now supplanted the "revolt against desert."[58] Deflationary accounts of individual responsibility were left behind. Dworkin reintroduced a distributive relationship between ethical behavior and distributive reward—one that turned not on altruism but on choice.

The result was a demanding egalitarianism. But alongside the centrality of the market, the return of choice looked like a concession to the right, as many of Dworkin's readers—including, most influentially, Elizabeth Anderson— later saw.[59] It raised questions that a social liberal like Dworkin might have wanted to avoid: should needy citizens be left to suffer if their needs were caused by "irresponsible" and chosen actions of their own? Despite this, it was not the right that took up Dworkin's theory. Another change was under way within philosophy, one that would lay the groundwork for Dworkin's ideas to be put to work for the left instead.

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Philosophers came to the Anglophone revival of Marx some years after a "historically centred Marxist culture" developed among historians and sociologists.[60] But by the end of the 1970s, the resurgence of socialist and left-liberal ideas had made Marxism ascendant. With exceptions like Robert Paul Wolff and the New Left followers of Herbert Marcuse, philosophers in the 1970s steered clear of Marxism. They ignored the American socialism associated with *Monthly Review*, the debates over the reception of "Western Marxism" that took place in the pages of *New Left Review*, and the American reception of critical theory in *Theory and Society*, *Telos*, and *New German Critique*.[61] Now

analytical philosophers and political theorists began tentatively to explore the ideas of thinkers like Jürgen Habermas, whom they saw as forging something novel out of the Western European disillusionment with Marxism.[62] Above all, however, they went back to Marx himself.[63] Some wanted to make Marxian ideas safe for liberal and democratic frameworks. Peter Singer published an introduction to Marx that rendered him a cross between a humanitarian Hegel and an ethical socialist.[64] Many tried to extract a theory of justice from Marx.[65] Others stripped the working class of its historical role as Marxism's collective agent. Sheldon Wolin enlisted Marx as a disillusioned theorist of the "omnipotence" of capital. The theory of revolution provided "solace" in the face of despair at rising technocracy—an account of what human agency was no longer able to achieve under meritocratic, managerial capitalism.[66] Others explored the prospects for a Marxist theory of law and the state.[67] In 1983, the annual publication of the American Society for Political and Legal Philosophy was on Marxism. Reclaiming Marxism became a way for many to signal the belief that "society can be better than it is."[68]

One group of theorists who sought a systematic engagement with Marxism of a methodologically novel kind began to focus on ideas of property, ownership, and responsibility in a way that was not only consistent with but transformative of liberal egalitarianism. In 1978, a set of philosophers, political scientists, economists, and sociologists known retrospectively as the founders of "analytical Marxism" began meeting annually. Their initial members included G. A. Cohen, Adam Przeworski, Hillel Steiner, Philippe Van Parijs, Jon Elster, John Roemer, Erik Olin Wright, and Robert Brenner. These theorists engaged in a series of controversies within Anglophone Marxism, about the value controversy, the world capitalist system (sparked by the work of Immanuel Wallerstein), and the transition to capitalism debates (prompted by Brenner's account of the development of agrarian capitalism, which became a cornerstone of a new "political Marxism.")[69] But they also developed a distinctive methodological approach of their own that turned on a belief that Marxism could be reconstructed through a "search for foundations" and made compatible with the tools of modern social science. Marxism, Roemer wrote, emphasized class struggle, collective action, and "the social formation of the individual." Social scientific tools, by contrast, postulated the individual as an "agent with given preferences and objectives, determined outside the model, who maximizes individually subject to constraints."[70] The central claim of analytical Marxism was that the two approaches could be brought together.

Each member of the group did so in different ways. Cohen looked to functional explanation, while Brenner, Roemer, and Elster used rational choice and decision theory to introduce new ideas, like that of "adaptive preferences," into debates about economic rationality.[71] Some saw their use of rational choice as strategic. It was a bourgeois "paradigm" they intended to "disarm" by showing that it could be used to draw "anti-bourgeois conclusions," just as Marx had done.[72] For most, their opposition to European Marxism ran deep, reflected in their unofficial name, the "Non Bullshit Marxism Group."[73] But their intellectual efforts had more than methodological results. In their debates with liberal egalitarians, they made market socialism a distributive theory of equality. Marxian ideas were made to fit the Rawlsian framework.

For political philosophers, two of the most important members of the analytical Marxists were Cohen and Roemer. Cohen, a Canadian with youthful Communist Party roots in postwar Montreal, had trained at Oxford under Gilbert Ryle. Now at University College London, he was already debating the likes of Nozick, T. M. Scanlon, and public choice theorists when he published his *Karl Marx's Theory of History: A Defence* (1978).[74] That book defended a determinist conception of the theory of historical materialism and sought to provide an alternative to various currents within European Marxism.[75] Cohen's stated aim was to extend the study of Marx's *Capital* that Louis Althusser and Étienne Balibar had recovered, while challenging their approach, particularly its sociological framework and metaphors of levels, conjunctures, and divisions. Althusser's vision dominated British Marxism, from the New Left to Marxist feminism.[76] Cohen rendered the Marxist view of society closer to the analytical philosophical one, constituted by individuals and by horizontal rather than vertical relationships.[77] His technological determinism was also a rejection of E. P. Thompson and the First British New Left, whose emphasis on class consciousness as the "hallmark" of class formation, rather than "objective" ownership relations, was deemed too voluntarist and subjectivist for Cohen.[78] By using functional explanation to conceive of the economic structure as determined by productive forces, Cohen downplayed the agency of collective entities and the role of class struggle.[79]

Cohen's book helped to spark a series of debates about the validity of the labor theory of value, ideology, class, and transition.[80] The analytical Marxists used rational choice tools to pinpoint the dynamics of transition between phases of capitalist development and to stipulate the conditions for successful socialist transformation.[81] They also renewed debate about the theory of exploitation—whether exploitation could be defined in ethical as well

as technical terms, and whether it applied only to transactions in the labor market or to any markets (including noncapitalist ones).[82] In the debate over exploitation, Cohen gave a sense of what was in store for analytical Marxism. He abandoned the labor theory of value and the conception of exploitation as the unequal exchange of social labor. In its place, he used a distributive framework, asserting a quasi-Rawlsian idea of exploitation defined in terms of nonreciprocity. He defined exploitation, in terms of interpersonal power, as taking "unfair advantage" of someone.[83]

Roemer's intervention in the exploitation debates took a less agent-centered approach and focused on property. He decentered the labor market as the primary and particular site of capitalist exploitation, focused on ownership and income rather than labor and exchange, and redescribed capitalism as a system of social inequality. Roemer defined exploitation in terms of the "unjust distribution of property in the means of production."[84] A former mathematics teacher and organizer with a San Francisco teachers' union, Roemer was responding in part to a set of arguments within American Marxism that focused, after the publication of Harry Braverman's *Labor and Monopoly Capital* (1974), on the sociology of the labor process, problems of control and coercion in the workplace, and the implications of the entrenchment of managerial control in modern corporations for the future of class struggle, conceived as resistance to workplace coercion.[85] Those who, like Roemer, were skeptical of the sociological focus on class composition and the labor process sought to displace it with what critics labeled a "market-oriented" approach to capitalist accumulation and crisis.[86] It was a mistake, Roemer argued, to elevate "the struggle between worker and capitalist in the process of production to a more privileged position in the theory than the differential ownership of productive assets."[87] Class struggle could not account for the transition between modes of production. To say otherwise was to reduce "historical materialism to a voluntarist social theory"—not a theory of history, but a "sociology of domination."[88] Focusing on the labor process would lead to a "faulty" or "nonmaterialist" analysis, whereby exploitation in socialist countries could be deemed the same as exploitation in capitalist ones.

Here Roemer took aim both at the New Left's elevation of alienation and at those who saw the domination of the worker as primary to understanding exploitation and class. He argued that work organization defined only the nature of alienation. By contrast, the coercion that was definitive of exploitation came not at the point of surplus extraction in the labor market but at the point of maintaining property relations.[89] Capitalist exploitation was "the appropriation of the labour of one class by another class, realized because of

their differential ownership of or access to the nonhuman means of production."[90] The focus on the labor market was neither necessary nor sufficient for exploitation since the transfer of value can take place through product markets, credit markets, or both. Property distribution was primary. Workers' control and industrial democracy were reducible to more general concerns.[91] Workplace coercion, he argued against his Marxist critics, was implied by property relations: the distribution of assets and endowments included social relations of production; viewing capitalism as a "system of unequal property" did not preclude seeing it as also a system of unequal work.[92]

This definition of exploitation was designed to enable its diagnosis in different kinds of regimes. There was feudal, socialist (between workers' cooperatives), and status exploitation (within centralized planned states). In the international division of labor and unequal exchange that Roemer called "imperialism without empire," a combination of these persisted.[93] This expansion of the theory was an accommodating move. Both Roemer and Cohen were as interested in exploring Eastern state socialism as they were in alienation within Western capitalism.[94] Over the long term, Roemer's extension of exploitation theory suggested his foresight: in a period of deindustrialization, financialization, and the ballooning of credit markets, Roemer's account freed the theory of exploitation to diagnose exploitation beyond the labor process.[95] In the short term, Roemer's redefinition of exploitation cleared the way for his justification of market socialism. With a continuous distribution of property, market socialism could enable superior efficiency, as well as freedom and equality. As many on the left focused on market fundamentalism as the major threat to freedom, equality, and community, Roemer looked for the source of unfreedom not in the marketplace but in the state-maintained property rights regime.[96] This was the basis of his critique of the capitalist state as the underwriter of property rights regimes.

The focus on property distribution also paved the way for the accommodation by liberal justice theorists of socialism, now with the workplace dethroned. Analytical Marxists would soon move seamlessly between these accounts of exploitation and egalitarian distributive justice. The liberal egalitarian and Marxian paradigms were being rendered compatible. By the mid-1980s, socialism was a philosophical force.

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The interest of analytical Marxists in property relations converged with the return of debate over private property rights to the core of neoclassical

economics and Dworkin's resource framework to bring about a resurgence of interest in property and ownership.[97] Outside philosophy, the politics of property was back, in battles over property taxes, in the revolution in share-holder value, and in the "new capitalism of asset appreciation" that boomed in the 1980s.[98] Within philosophy, these changes were reflected in the rush to theorize property across ideological divides.[99] Sen's and Dworkin's provocation to rethink the currency of egalitarian justice was answered in increasingly technical, welfare economic form, with new theories of equality of resources, wealth, opportunity, and human capital. Sen and Martha Nussbaum introduced their account of capabilities.[100] Roemer theorized talents, Richard Arneson argued for equal opportunity for welfare, and Cohen insisted on equal access to advantage.[101] Both egalitarians and socialists explored how markets and initial endowments operated in tandem to secure fair property distributions. For the remainder of the 1980s, philosophers on the right and left took up the problem of ownership at many levels of argument. Dworkin's desert island thought experiment, for instance, was adapted by Roemer in his exploration of class formation and exploitation. (Later, the coupons of his "coupon socialism" functioned much like Dworkin's clamshells.) Many accepted that to get their theories off the ground they needed an account of initial endowments, property rights, and a market mechanism, which were only implicit in earlier justice theories.

Yet in politics, the relationship between ideas of socialism and equality was vexed, particularly in Britain, and philosophers at Oxford and elsewhere remained engaged with party politics. In the United States, many socialists might have seen social democracy as a necessary first step. But as Dworkin's comments on the future of the Labour Party after Thatcher's election showed, in Britain there was a live choice between social democracy and socialism. After the split of the Labour Party, the formation of the Social Democratic Party (SDP), and Labour's 1983 election defeat with its socialist wing at the helm, the "modernizing" right and the soft egalitarian left of the party competed in a struggle to frame "Old Labour" socialism as a thing of the past.[102] The conceptual coherence of ideals of socialism and equality was threatened by a political incompatibility, as many who opposed socialism weaponized equality to do so. This conflict was reflected in the writings of left-liberal and socialist philosophers in Britain, who were consumed by questions about the future of socialism, its alternatives, and its survival in the face of the New Right.[103] Postwar Labour thinkers had not taken the threat of neoliberal ideas very seriously and had dismissed Hayekian critiques of planning; the heirs to Labour's revisionist wing now actively engaged them, defending

pro-market anti-interventionist forms of social democracy.[104] Economists like James Meade and Richard Layard had long advocated using the market rather than the bureaucracy to restrain prices and monopoly power.[105] Their ideas about taxation and income planning found new defenders within the Labour Party—for instance, with soft left MP Bryan Gould (whose *Socialism and Freedom* [1986] used Rawls's theory to defend liberty and equality as socialist ideals associated with the state as an engine of "development" rather than "planning").[106] There was a wave of interest in Rawls and Meade's vision of property-owning democracy and debate over whether the market or private ownership was the key producer of inequality. Some defended "mixed regimes" and the redistribution of ownership, not just of personal property but also of "social property" and productive assets.[107] The idea of property-owning democracy was reinterpreted as being even closer to liberal socialist regimes. The efforts by Richard Krouse in this direction would shape Rawls's reinterpretation of his own ideas in *Justice as Fairness: A Restatement* (2001). Reading Krouse further radicalized Rawls's initial presentation of property-owning democracy and led him to accentuate its departure from welfare-state capitalism.[108]

These debates about socialism, equality, and ownership raged among philosophers at Oxford, which by the 1980s rivaled Harvard as political philosophy's international elite center of gravity. Its faculty included Dworkin, Derek Parfit, Sen, David Miller, Joseph Raz, and soon Cohen; Bernard Williams would join in 1990. Like Meade, Atkinson, and the welfare economists of inequality at the London School of Economics, many were supporters of the new SDP or wanted to reinvent socialism through the market. At a Fabian Society– associated "Socialist Philosophy Group" meeting in 1986, its members asked what place markets had in "the realisation of socialist values of equality and justice": could they be relied on, or were they "irrevocably imbued with the ethos and practice of capitalism . . . just another version of the mixed economy, i.e. humanism with a capitalist face?"[109] Miller, the foremost philosophical proponent in Britain of the view that markets could provide for socialism, thought it possible to construct from the libertarians' "basic insight into the virtue of markets" a "theory of socialism that included a full-blooded, unapologetic commitment to a market economy."[110] Aligning his ideas with the pluralist democratic socialism of Michael Walzer's *Spheres of Justice* (1983), and also Robert Dahl's defenses of pluralist economic democracy, he insisted that defending markets was not about "rolling back the state."[111] Markets were efficient, but they also gave workers autonomy (particularly in occupational choice) and allowed people

to "flourish as individuals" by responding to the fact that "we are all unique persons with distinct tastes and preferences."[112]

It was possible to start from the same place as the right, Miller suggested, and to defend a "pure model" of market socialism according to which capital ownership was socialized and the market mechanism abolished for labor and capital, but retained as a means of providing goods and services. He envisioned a society of cooperative enterprises in competition, where "different returns to individual desert flow within distributive boundaries set by a strongly constitutionalist state." Inequalities were only permissible within cooperatives if they stemmed from differences of skill and responsibilities among members, and between them, if arising from "variations in market conditions and economic performance." Miller stressed that this was a development of social democracy, not a departure from it.[113] He did not uphold the liberal belief in market neutrality. Nor did he go fully toward a decentralized socialism—his cooperative vision still required central investment banks—which invited critiques from market liberals like John Gray, who saw it as collapsing into state planning.[114] Miller disagreed. Antibureaucratic liberalism here met with British market socialism, in a turn away from the state. At the same time that egalitarians looked to markets, socialists did too.

This interest in markets and property had another dimension that focused more on agents than on structures and property relations. Concerns with ownership had a moral analogue: the ownership of personal actions, and individual responsibility for them. These had become concerns of the right, but the left now took them up, responding to Dworkin's ideas of choice and responsibility and the libertarian idea of "self-ownership."[115] Rawls's initial followers had shored up the institutional character of liberal egalitarianism in response to Nozick's historical arguments and, as Cohen argued, had questioned the liberal assertion that "each person has full private property in himself." For Cohen, this showed Rawls, Dworkin, and others to be more like social democrats than liberals: they denied self-ownership by seeing talents as morally arbitrary and a matter of luck. Talents did not, morally speaking, belong to individuals but to society. By contrast, "right-wing liberalism" accepted the assertion of ownership and added that self-owning persons could acquire rights to unequal amounts of external resources.[116] Left-wing liberals accepted self-ownership but added that individuals were egalitarian with respect to external resources. Cohen took seriously Nozick's suggestion that there was a clash between self-ownership, freedom, and equality. Many egalitarians would disagree, taking up the commitment to self-ownership

alongside the equal division of resources, but Cohen remained committed also to a socialist vision of the "joint ownership of the world's resources." He suggested that maintaining a true "equality of condition," associated with joint ownership rather than equal division of resources, would involve giving up on the "flirtation" with ideas of self-ownership.[117]

Yet Cohen saw a strategic value in arguing from libertarian premises. "Dworkin," he wrote, looking back in 1989, "has performed for egalitarianism the considerable service of incorporating within it the most powerful idea in the arsenal of the anti-egalitarian right: the idea of choice and responsibility."[118] Dworkin had made central the question of whether inequalities generated by differences between individuals that went beyond their class positions were justifiable. People had different talents, or they lacked them altogether. Some had expensive tastes, which they developed themselves or inherited. Some worked hard, others were lazy. Some were virtuous, others were lucky. These differences generated "individualized inequalities," many of which arose from people's choices: their productive work habits, their irresponsible or expensive lifestyles, their bad luck and disadvantage.[119] Against Rawls's long-standing commitment to the moral arbitrariness of talents, Dworkin had argued that individuals were responsible for these when inequalities were traceable to their tastes and preferences, but not when they derived from their resources and capacities. While egalitarians like Scanlon responded to Dworkin by downplaying the relevance of choice when it came to compensating people for their "chosen expensive tastes," Cohen took Dworkin's argument further.[120] "The fundamental distinction for an egalitarian," he wrote, "is between choice and luck in the shaping of people's fates."[121] Inequalities due to brute luck were nullified. Egalitarianism did not "enjoin redress of or compensation for disadvantage as such," but attended to "'involuntary' disadvantage, which is the sort that does not reflect the subject's choice."[122] Disadvantage was "to be redressed when it reflects either exploitation or bad luck." The aim of egalitarianism was to eliminate involuntary disadvantage.[123]

Cohen put choice, responsibility, and the ownership of actions as well as resources at the center of his demanding egalitarianism, which required significant redistribution and implied a strong, interventionist state. This was part of his effort to moralize a wider terrain and move political philosophy away from liberal worries about neutrality and processes to a concern with outcomes.[124] Cohen was a self-declared "moralist." He brought a wide range of relations and actions under the purview of justice and equality. His view of equality entailed that "everything that is contingent about us in relation to other moral beings is

potentially a matter of distributive justice between us." It evened out the "general arbitrariness of fortune" in a way that, some suggested, was more the job of a "just God" than a "requirement of human justice."[125] On this view, action should not be disregarded by distributive theories, in the way that Cohen later accused Rawls of having done with his focus on institutions.[126] What was needed was a theory that held individuals to account for the outcomes they produced, regardless of specific social relations.

This foregrounding of responsibility was meant to ensure that the rich were not let off the hook. Ethical socialists were used to thinking about value in terms of contribution and were not afraid of moral distinctions between, for instance, the idle and the laboring poor, or the investing capitalist and the idle rich. Cohen continued this tradition. He critiqued Rawls for demanding too little from people's personal commitments, for demoting the "egalitarian conscience," and for allowing the rich high levels of income as an incentive to increased production (an enrichment that was justifiable for Rawls if it benefited the least well off). This, for Cohen, was inadequate in principle.[127] But it was also inadequate in a political landscape of increasing inequality and a rising super-rich. The socialist emphasis on the rich made good egalitarian sense.

Cohen's egalitarianism attacked the relaxed attitude of Rawlsians to incentives and the implication that there need be no absolute limits placed on the wealth of the rich. His opposition to Rawls's restriction of justice to the basic structure also sought to accommodate the lessons of the feminist claim that the "personal is political."[128] While his reinterpretation of Marx had been accused of replacing politics with technological determinism, his later work swapped determinism for agency and a focus on the "repugnant motives" and greed of the capitalist rich.[129] The commitment to choice and responsibility drew many objections. Practically, the bureaucratic challenges in deciding what counted as choice were enormous. Politically, his ideas were accused of paternalism.[130] Conceptually, he ran up against the "morass of the free will problem," though Cohen was happy to grant that in metaphysical terms much of human life, including our choices, may well be outside of our control.[131]

It was also bad timing. The egalitarian incorporation of choice and responsibility seemed not so much a service to social democracy as a "capitulation" to the right.[132] Problems of responsibility and luck had lurked around the fringes of justice theory in debates about law, public morality, and political crimes since the Vietnam War.[133] But they had not played a major role in distributive theories.[134] When philosophers finally invoked them, it was during a political moment when attacks on the unaccountability of state bureaucracies were

joined with critiques of the welfare state's "culture of dependency" among "irresponsible" welfare recipients. Ideas of responsibility were not used to attack the rich but to criticize the behavior of the poor.

These disputes over the ownership of actions and property redrew conventional distinctions between liberals and socialists. The turn to property reshaped liberal egalitarianism. The distributive and choice paradigms also reshaped socialist philosophy. In the last years of the Cold War, socialist philosophers began to give up the commitments that once divided them from liberals, particularly the defense of public ownership. In 1989, Roemer still insisted that the rejection of private property rights was definitive of socialism. He disputed claims that private ownership was necessary for efficiency and redistribution of private property rights was sufficient for equality, insisting that state ownership of productive assets was vital for the latter and did not threaten the former.[135] Yet the argument that markets promoted equality was soon used to justify the rejection of public ownership. When the postwar generation of liberal socialists had abandoned public ownership as definitive of socialism, they had justified this move by appealing to the expansion of managerial control across property regimes.[136] Rawls's regime flexibility had in turn implied that the distinction between public and private ownership was not what mattered, so long as property was widely dispersed. In the early 1990s, Roemer made a similar move, for different reasons. He insisted that the connections between market institutions and property relations were less determinate than many had understood, in both capitalism and socialism. Socialism was best thought of as a "kind of egalitarianism, not the implementation of a particular property relation."[137] Property relations were brought to the center of Roemer's theory, only to be subordinated to markets.

Here, the collective imperative was abandoned. Roemer's later coupon socialism sat within a tradition he retrospectively saw as including property-owning democracies of the liberal egalitarian kind.[138] Market socialism, redefined as first a form of egalitarianism, was compatible with a variety of regimes, including "social republican" ones in which private property was constrained by its uses.[139] Other analytical Marxists also swapped commitments to public ownership for income-based solutions to distributive inequality, like a "universal grant" of guaranteed income, which was described by Robert van der Veen and Philippe Van Parijs in 1986 as a "capitalist road to communism."[140] Many gave up the commitment to joint-ownership, looking to self-ownership, initial endowments, and equalization of resources instead. The anti-interventionist logic of these theories led philosophers to take on increasingly libertarian

positions. A left libertarianism emerged, associated first with Hillel Steiner, whose "starting-gate theory" argued that every individual starting a life should get a right to use an equal amount of natural resources.[141] These theories, described by Cohen as the response of "a politically bereaved" left, had individualizing tendencies, since the wide dispersal of ownership could lead to a diminished capacity for collective control. Many of their proponents set questions of control aside.[142]

The main conceptual division among analytical political philosophers that followed from these debates was not between liberal egalitarians and socialists over the distribution of property. It was about political theory's vision of social institutions and the state. The debates about equality, property, and socialism broke down the distinctive shape of post-Rawlsian liberal philosophy. Political philosophers brought to the fore elements of Rawls's theory that had been submerged within his concept of the basic structure of society. After *A Theory of Justice* was published, Rawls's readers had set the character of liberal egalitarianism as institutional, nonhistorical, and focused on existing practices, not rights outside them. Though many had challenged Rawls's theory, they had mostly contested the scope of the basic structure, not Rawls's institutional focus itself. Philosophers who chastised Rawls for ignoring international or environmental politics tried to extend that focus to the world and the future. The consensual core of Rawls's theory, born of his idealization of midcentury American civil society and his framing of that society as a system of practices, remained intact. This was true despite challenges from theories that framed society in terms of domination or conflict, questioned the narrative of incremental progress on which Rawls's theory relied, and attacked the social contract tradition.[143] Those theories—leftist, anticolonial, feminist, critical race—were kept outside of the philosophical mainstream, their exclusion given philosophical legitimation by their incompatibility with the central tenets of liberal egalitarianism.[144] Many philosophers continued to accept those tenets: when the foremost Rawlsian feminist philosopher, Susan Okin, in her *Justice, Gender, and the Family* (1989), challenged Rawls's designation of the family as beyond politics and the subordination of the realm of moral relations and private action to institutions, she still argued that one remedy for this naturalizing of the patriarchal family was its inclusion within the basic structure.[145]

When pre-institutional property rights were brought into the debate about equality, however, the commitment to the idea of basic structure began to waver. The dissolution of the basic structure led philosophers to new realms: challenges to it from the point of view of gender and racial injustice would

slowly be incorporated into mainstream philosophy. Other challenges were slower to materialize. Though states were being transformed by processes of privatization, political philosophers did not revise their conceptions of the state to diagnose these processes, which often took place beyond traditional juridical and legislative institutions.[146] Instead, they reconfigured the basic structure by revising the relationship of institutions and persons. Persons were always prominent within the Rawlsian institutional apparatus, though this had been recently accentuated at the level of justification—in the moral basis for justice theory's cosmopolitan extension and in Rawls's Kantian reinterpretation of his theory. Yet individual ethics and action had remained in a realm separate from distributive justice. Now, at the same time that Parfit was breaking down the Rawlsian framework, the analytical Marxists expanded justice and equality beyond the institutional frame and brought a wider range of relations into moral and political consideration.

Despite his institutionalist commitments, it was Dworkin's introduction of personal responsibility and choice that put this process of dissolution in motion. Dworkin made the problem of moral responsibility for individual choices central to distributive justice. Cohen's egalitarianism helped to enshrine in philosophy a set of categories, which he used to make demanding egalitarian arguments that took on a life of their own.[147] The choices of individuals became crucial to debates about distributive equality. Elizabeth Anderson would later designate a fundamental dividing line between institutional or relational egalitarians and these "luck-egalitarians." Their "equality of fortune" theory drew from "the worst aspects of capitalism and socialism." In prescribing "rugged individualism" plus "insurance policies," it amounted to a defense of capitalism and the welfare state. Luck-egalitarians conceived of equality merely as a "pattern of distribution."[148] They downplayed the effects of individual choices on the fortunes of others and also struggled to establish the conditions of choice and responsibility in a way that helped rather than punished the constituencies of a socialist politics.[149] The distributive paradigm had been extended too far, at the expense of its institutional and relational basis.

The philosophical strategy of using the premises of the right for egalitarian arguments had been a risky one. It introduced ideas into egalitarianism that had valences of their own. The revival of property and responsibility cut both ways. Egalitarian principles incorporated conditionality into their universality. Even as egalitarians set an extremely low threshold for the point at which these choices affected distributions, they reopened questions about the responsibility of individual agents over their outcomes, the place of individual desert, and

the place of contributory principles in welfare states.[150] At a time when the right dominated debate, the strategic decision to include choice, responsibility, private property rights, and the market served to preserve these ideas in "fact-insensitive" principles.[151] Liberal philosophy's capacity for incorporation was such that even these became part of ideal theory.

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Meanwhile, other political philosophers were abandoning the heights of ideal theory and problems of ownership. They addressed the changes brought about by the New Right in other ways, by exploring questions of democratic control and legitimacy or developing minimalist approaches to defend the welfare state and its policies.[152] The most sustained minimalist justification of the welfare state during this period was Robert Goodin's. He aimed to "fight free-market opponents of welfare states on their ground," deploying "'internal logic' arguments" to do so. Goodin defined the welfare state as primarily a "compulsory, collective and largely nondiscretionary" mode of welfare provision.[153] Conventional justifications for it rested on the claim that if basic needs were not being met, they must be met by the state. Moreover, the welfare state preserved "nonmarket relations and values."[154] Just as there were interpersonal relationships that should stay outside markets, so the supply of certain goods and services should too.[155] We had a moral responsibility to protect the vulnerable, and this set limits to markets.[156] Yet Goodin wanted to show that these principles, which placed the welfare state "*outside* the market, outside its operative laws and its underlying justificatory logic," did not have to carry "all the weight" of justification. It was possible to show, even from market premises, the necessity of the state and nonmarket provision.[157]

With welfare provision threatened with privatization, Goodin provided a defense of the welfare state that could be sustained in these circumstances. Not just any market reason for welfare would do. The welfare state could not be justified by the neoclassical logic that saw it as correcting market failures, or by its role in coordinating charitable impulses and providing public goods and benefits that private markets could not. The view of the welfare state as social insurance designed to remedy the failures of private insurance markets did not work either. Insurance was not fundamentally redistributive, but functioned to preserve expectations and remove uncertainty. There were anyway moral objections to insurance models of social welfare: "Insurance norms simply cannot justify the welfare state's most characteristic function, which is to

guarantee to meet the basic needs of those persons who are antecedently most likely not to meet them without assistance."[158] Instead, Goodin argued that the welfare state provided crucial "preconditions" of the market. Market interaction required people to be "independent market actors." So dependency had to be eliminated. It was this that the welfare state guaranteed.

Dependency was a signature idea in the right's assault on the welfare state.[159] It had been part of the debate about poverty and entitlements in the United States since Nixon's failed guaranteed income plan of the late 1960s; by the 1980s, it had returned to the discourse of the right in two interrelated strands.[160] One was part of a radicalized "moral" defense of capitalism that attacked social security and promised to return "personal control" to citizens. The other was part of a racialized discourse around the "culture" of poverty. As commentators on the right went beyond the use of anti-inflationary hysteria to justify the deregulation of business, the disciplining of labor, and the privatization of social security, they framed the welfare system as a drain on the economy and a drag on capitalism. If money spent on welfare was left in private hands, it would generate sufficient growth to eliminate poverty. Welfare institutions themselves kept people poor by discouraging risk-taking and encouraging "welfare dependency."[161]

Such moral defenses of capitalism that saw entrepreneurial culture as the solution to poverty went much further than efficiency arguments for markets. The radical conservative champion of supply-side economics George Gilder, whose *Wealth and Poverty* (1981) was described as the "bible of the Reagan Administration," criticized not only Hayek but Friedman for providing merely "technical and pragmatic" defenses of capitalism.[162] This was a long way from the midcentury defenses of free markets or the free enterprise system, and from market liberals' ethical critiques of capitalism. Gilder condemned social insurance and redistribution as perpetuating poverty by breaking the link between "hard work," effort, and reward and by stifling entrepreneurship. "Altruism," he declared, "is the essence of capitalism."[163] These attacks on the welfare state in the name of the market and capital rights intersected with the second invocation of dependency arguments, which focused on the restoration of "family values" and "family responsibility"—a key demand of the Christian right and the "pro-family" cultural conservatism of the late 1970s, and a feature of both neoconservative and neoliberal family policy.[164] When Charles Murray's *Losing Ground* was published in 1984 amid racist attacks on "welfare mothers," it rejuvenated conservative arguments about the "pathology" of the "underclass."[165] These included claims that "poverty programs produced the

poverty they paid for." Only the "work ethic" encouraged through workfare could "cure" the psychological and moral phenomenon of dependency.[166]

Goodin tried to reclaim these ideas to defend the welfare state. He wanted to turn the idea of "family responsibility" to "strategic advantage" by showing that moral responsibilities to provide for needy strangers derived from the same source as responsibility to provide for families.[167] "The problem that the welfare state is designed to answer," Goodin wrote, "is the problem of dependency." The state did not produce poverty, but rather solved it—in a way that even the moral defenders of capitalism might approve. It was only in the welfare state that "needy citizens" no longer depended—"as they did historically (and, if the New Right gets its way, once again would) under a regime of public or private charity—upon the arbitrary will of those dispensing the benefits." The problem of dependence had historically been solved through work, wages, or property ownership. For Goodin, the solution was the impersonal and non-arbitrary provision of goods and services to the needy to allow them access, participation, and political "independence."[168]

Bureaucracy here was given a qualified defense, at a time when many on the left saw the welfare state as part of the problem and some left critiques converged with the narratives of the right. Walzer, for instance, accepted that political dependency was the disappointing outcome of the welfare state and proposed instead socialized distributions or new schemes to ensure the "self-respect" and "self-esteem" of the poor.[169] A small group of social democratic and socialist feminist theorists disagreed: they characterized the welfare state as a means not of creating but addressing dependency, and challenged the leftist skepticism about state power, paternalism, and instability.[170] Goodin aligned with them. In doing so, he added a twist. In a series of essays and later in his *Reasons for Welfare* (1988), he insisted that the problem of dependency was in fact "the problem of exploitation."[171]

Dependency and exploitation were not often taken together in these debates. Exploitation and relations of economic subordination were at this time often distinguished from the political category of dependency, which was applied to those outside the workforce. Many who wanted to describe oppressive relations outside the realm of productive labor—or beyond the scope of technical Marxian exploitation—had deployed ideas of subordination, domination, or oppression to differentiate between these realms or had instead expanded the imaginary of work and the worker.[172] Goodin went in the opposite direction, collapsing the distinctions by marrying a republican language of arbitrary power and dependence with the analytical Marxists' expansive conception of

exploitation, in a way that moved both beyond the realm of labor and economic power.[173] Exploitation was not only a characteristic of economic relations, reducible to "non-reciprocity" and dependency theories of "unequal exchange." It was a process, not an end-state, and could be personal as much as economic, institutional, or distributive: "Lovers can exploit one another just as surely as can economic classes," Goodin wrote.[174] "Just as the analysis of the notion of 'adultery' is parasitic upon an analysis of the duty of marital fidelity, so too is the analysis of exploitation parasitic upon an analysis of this duty to protect the vulnerable."[175] Interpersonal exploitation occurred in situations that ought to be characterized by fair play, where power was unequal or monopolistic, and where it was "wrong to play for advantage" when "your relative advantage derives from others' grave misfortunes."[176] Yet it could be rendered even more basic: exploitation involved "a violation of our duty to protect the vulnerable," both people and things.[177] The point of the welfare state was thus to prevent the exploitation of dependencies. By providing needed, nondiscretionary assistance, the state "safeguards those dependent upon its services from exploitation" and secures the minimal independence required "for them to participate in the other market and quasi-market sectors of their society."[178]

This was a defense of the welfare state that turned on vulnerability, not fairness, protected interpersonal life as much as economic relations, and domesticated Marxian categories to appeal to market liberals.[179] The emphasis on avoiding market dependency had parallels with the contemporary analysis of the welfare state as enabling decommodification.[180] The focus on arbitrariness was shared by republican political theorists like Quentin Skinner and Philip Pettit, who were beginning to retheorize freedom as independence and non-domination and who addressed the social dimensions of subordination to challenge liberal egalitarianism.[181] With the focus on the vulnerable, Goodin reasserted a utilitarian form of the needs-based welfare state tradition.[182] His was a domestic humanitarianism, akin to the international theories of the moral minimum. His claim that needy strangers were like needy family members was key to his later cosmopolitanism. Yet in certain respects, Goodin also moved to a new site of political philosophy. He used the tools of theories that refocused on social and interpersonal relations to open up liberal philosophy to concepts of domination, exploitation, and relational power. But he trained his attention on the state. With this combination of concerns, Goodin pointed not beyond the basic structure but to a new realm within it. He looked at aspects of the state that many philosophers ignored and that common legal and juridical interpretations of the basic structure precluded—the administration and delivery of welfare rather than the justice of courts, legislatures, and taxation.

Though Rawls had intended the basic structure to capture the administrative state in theory, in practice his primary interests had been in legal and distributive efforts to constrain the administrative and executive functions of the state and its agencies via the Constitution and lawmaking bodies. Subsequent liberal egalitarians had thus focused on distributional questions about inequality and ownership or on juridical ones about laws, courts, constitutions, and the democratic communities that interpreted them. The critiques of Rawls's institutionalism tended to miss his interest in persons, psychology, and community, but they also thus missed the ways in which the institutions of state had been limited in Rawls's vision, with its partial representation of the administrative state. With philosophers now as interested in outcomes as in processes, and egalitarians extending the distributive paradigm at the expense of the administrative, these state institutions became even more attenuated. In this context, Goodin stood out by not only looking from legal and legislative institutions to different kinds of associations, relations, or norms but by focusing on different elements of the state—its bureaucratic functions as a welfare provider. In his contribution to the responsibility debates, he focused not on the recipients of goods or the dirty hands dilemmas of great leaders, but on bureaucratic officials and public service providers—what Dennis Thompson had termed the problems of "many hands."[183] But Goodin also applied liberal egalitarian lessons to this new subject matter. His work remained characterized by a wariness of bureaucrats: he wanted official discretion in the delivery of welfare to be curtailed, to minimize the risk of exploitation. His remedy for bureaucratic overreach was the liberal one of binding the hands of state officials with impartial rules to constrain discretion—a culture of bureaucratic responsibility that imposed "obligations, duties and responsibilities" on public officials—not the neoliberal alternative of having the market do the job instead.[184] He defended the nonconditionality and universality of welfare provision, but he remained largely silent on how the political constituencies might be built to implement those impartial rules or instantiate the moral and political principles they were meant to express. Bureaucratic expertise was not constrained by party, unions, democracy, or the decisions of collective actors, but by prior ground rules and regulations independent of them.

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In these years of debate about equality and socialism, the liberal philosophers who began to think about the state had, for the most part, a different set of concerns: with the justification and authorization of basic institutional rules

of social order. Prosperity within nations was no longer as widely shared as in the postwar decades.[185] Demands for social spending to ensure social harmony went unmet, and distributional conflicts threatened stability. A decade after the welfare state's crisis, philosophers began to explore its motivational and democratic bases and to interrogate the legitimacy and justifiability of the existing liberal order. Midcentury British theorists had seen that state as designed to meet needs and as underpinned by either altruism, social solidarity, or both. Rawls's theory had required people to have a sense of justice to uphold and comply with the principles of justice. Given widespread declinism, many asked whether those bases still could exist—or whether they ever had.[186] Economists and sociologists argued that "slow growth" and threats to affluence undermined altruism.[187] It seemed that political philosophy would have to adjust in more ways than simply incorporating the premises and tropes of the right. Could a demanding egalitarian or Rawlsian justice theory be justified against this backdrop?

To answer that question and explore the empirical constraints on normative theory, some philosophers revisited the historical circumstances of the welfare state. Goodin claimed that the welfare state had not been founded on altruism but was best understood as a mutual insurance scheme to protect against uncertainty, and thus a result of enlightened self-interest.[188] Rather than attribute the wartime origins of the British welfare state to altruism or increased national solidarity, he argued, the experience of war had increased uncertainty and led people to join a risk-sharing scheme. Miller responded that this view made the welfare state vulnerable to market liberal arguments: if social insurance were the aim, that insurance might just as easily be purchased in a competitive market.[189] Altruism, he argued, better reflected the motivational realities of welfare states, in times of peace as well as war. It made people open to entering into a scheme where the better off were willing to contribute to the welfare of the worse off. British attitudes signaled that altruism still underpinned the welfare state: people did not mind if others privately bought "superior medical care or education," so long as there was a welfare floor. Yet this did not signal a strong sense of social justice, which would be expressed in the belief that everyone was required to have reciprocal access to the same goods. A social justice basis for the state dispensed with the idea of the welfare floor and required a more "thorough displacement of the market."[190] In the absence of such a basis, altruism was a "second-best foundation."[191] Goodin disagreed. Transfers should be reconceptualized as "insurance against interrupted earnings." Counter to what neoliberals argued, this insurance was

more efficient when delivered through public rather than private mechanisms. Substantial redistribution could be justified on the insurance view, without appealing to outdated ideas of equality or altruism. The "solidarity" of the shared risk pool was enough.[192]

Compared to this demanding egalitarianism born of either Rawlsian liberalism or analytical Marxism, these defenses of social insurance seemed a lowering of sights. But some insisted such minimalism could deliver socialism. In "The Continuing Relevance of Socialism" (1988), Brian Barry proposed an account of socialism that downgraded ownership and claimed the collective control of life conditions as its central principle, with the practice of social insurance as its embodiment. Resisting the collapse of socialism into egalitarianism, and critical of both the new market socialism and egalitarianism's obsession with the "free will problem," Barry argued that "no reorganisation of ownership"—including cooperative—could "overcome the inadequacies of the market."[193]

Barry looked on in horror at the placid acceptance of libertarianism. He saw the anxieties about the threat that inflation posed to democracy as a ploy "to get democratic approval for tying the hands of elected governments in perpetuity" and "to cripple the ability of governments to make economic policy." Any concession to public choice or monetarist liberals involved viewing the "democratic state, with its inevitable tendency to regulate, make collective provision, and redistribute, with antipathy." James Buchanan's decade-long call for a "constitutional counterrevolution" to undo the work of the New Deal and the Warren Court benefited from "anti-inflationary hysteria," which had allowed him to "mobilize behind proposals that would, in calmer times, be widely recognized as reactionary twaddle."[194] Philosophers had given too many concessions to the libertarian right: they took on right-wing ideas of private insurance markets, choice, responsibility, and good behavior and accepted the logic of the market and the corrosion of politics. The idea that once the rules were set down people could act individually but not collectively was pernicious. The triumph of liberal individualism had made people believe that "the worst thing you can say about some area—education, say, or public transport—is that it has become politicised." Thatcherism's success lay in the identification of "selfish, antisocial choice with self-interest, so that the choice in favour of the interests which we share collectively is treated as a piece of self-sacrifice."[195]

The challenge was to remove this ideological obfuscation and find a new legitimacy for the state. This could not be done through a "mass conversion to altruism." The task was one of education, via collective action for shared ends—in trade unions, mutual benefit societies, and public schemes of

insurance.[196] To date, the "underlying ethos" of British society was based not on an insurance model of income replacement, but on a means-tested "needs model" of "Good Samaritanism writ large."[197] It focused on sufficiency, which, Barry argued, contra Goodin, was only made possible by the social solidarity of wartime (rather than the fear of uncertainty war produced). Without that solidarity, welfare benefits could not be expected to be generous. By contrast, an insurance model did not rely on altruism or a high level of solidarity. But it enabled citizens to control their lives. For Barry, it was that control, not ownership, that mattered for socialism.

While British theorists debated the foundational moment of the postwar welfare state, American philosophers began to revisit the American founding in a parallel debate about the legitimation of the American state, which proved as important to the direction of American liberal philosophy as socialism had been in Britain. A number of legal philosophers associated with SELF, including Frank Michelman, Bruce Ackerman, and Cass Sunstein, defended a constitutionalist "civil republicanism" that looked to the American republicanism recently reinterpreted by J.G.A. Pocock for historical models of "popular participation," not only in legislative assembles but in "a dispersed and continuous process of political discussion among coconstituents . . . and their representatives"—images "of taverns and town meetings, the people out of doors."[198] The US Constitution, Sunstein argued, prohibited "naked preferences": the distribution of resources to private groups on the basis of their political power. Society should aim not to reconcile opposed, private, exogenous interests, but to transcend these in a search for a common good, in which preferences were formed through government processes and "collective self-determination."[199] Liberal constitutional lawyers turned to republicanism and to history. They often did so, however, in order to reinforce the defense of the judiciary and the same legal liberalism they had developed in the aftermath of the Warren Court.[200]

With the lines between public and private being redrawn, political philosophers defended the public in a variety of ways. Some joined historical models to theories of interpersonal justification. Rawls's arguments about hypothetical consent, which saw government arrangements as justified if they could or would be accepted by contracting parties, were extended and contested.[201] Scanlon's version of contractualism, which determined the acceptability of moral principles by appealing to reasons that no one would reasonably reject, became influential. Rawls had emphasized the importance of the condition of publicity to political justification in *A Theory of Justice*. But in new work

leading up to its long-awaited sequel, *Political Liberalism* (1993), he developed it further in his account of "public reason." The practice of public reason–giving—which was built from his Kantian conception of persons as free and equal, and that looked to the deep values that Rawls believed determined a government's relation to its citizens and their relationship to one another—was meant to provide the political justification to ensure that the rules that regulated society were acceptable to all those who lived under them.[202] Alongside the works of Habermas, increasingly read by Anglophone philosophers, these ideas provided the basis for new theories of "deliberative democracy." Rawlsians explored the parallels between Habermas's theory of communicative action and ideal speech situation, in which all speech is free of compulsion, and Rawls's original position. Habermas, in a much-quoted passage, had argued that in this speech situation the "unforced force of the better argument" prevailed. It provided a model of reason-giving through which democratic consensus could emerge.[203]

With this account of public reason, a range of egalitarian, liberal, and socialist political and distributional arrangements were given novel forms of liberal moral justification. Just as distributional theories were focusing on individualized initial endowments in a way that threatened to hollow out the public, others thus set about establishing deliberative schemes and procedures to rebuild it. Egalitarians who relied on market mechanisms and assumed exogenous preferences defended ideal procedures for public, rational discussion to transform motivations and preferences. The market, Jon Elster wrote, should give way to "the forum."[204] These theories interrogated the Rawlsian democratic deficit and provided legitimizing correctives to the Rawlsian distributive focus, which risked encouraging a technocratic "administrative" form of politics. "The public" became the alternative to both market and state. In such liberal visions, however, it remained in a non-antagonistic relationship with both.

This marked a return to liberal egalitarian's postwar roots. It soon became conventional to see Rawls as having transformed his theory while developing his political liberalism by taking a "relativizing," "pluralist," and "political" turn.[205] But Rawls and the political philosophers who turned to public reason and deliberative democracy were revisiting familiar territory.[206] Rawls's postwar concerns with discussion, present in his early "discussion games" but given up in the interpersonal focus on "you and I" of the original position and reflective equilibrium, were revived. Tocqueville enjoyed another renaissance. This was even true among analytical Marxists; Rawls's early suggestion that Tocqueville sounded Marxist seemed to be shared.[207] The town

hall meeting or equivalent forms of democratic politics had been essential to Rawls's account of the acquisition of the sense of justice. The motivational basis of justice theory was now again held to require democracy of this form.

The move to democratize liberal egalitarianism by appeal to republican and deliberative ideals and liberal democratic institutions was in part a response to the growing popularity of market critiques of the state and bureaucracy. The town meeting was the symbol of liberal philosophers' efforts to provide democratic alternatives to state and market. Under the influence of these ideas about justification, the rise of deliberative democratic theory took place at some distance from the search for socialist control. There were, however, exceptions: in the early work of Rawls's student Joshua Cohen, they came together. Cohen argued that deliberative democracy was itself a form of socialism. To get a deliberative procedure modeled on ideal speech situations off the ground required economic democracy. Ideal deliberative procedures were both justification and model for deliberative institutions. Like Walzer, who analogized "town meetings" and "workers' control," Cohen thought that socialism followed from democracy.[208] He also argued that it was workplace democracy combined with the public control of investment that provided the institutional conditions from which free deliberation could proceed.[209] "Normative accounts of socialism commonly focus on the question: *who* should have the bundle of rights that comprises the ownership of capital?" This was the wrong question. "Social philosophy should not premise a highly unified conception of property and confine our attention to different ways of shifting the bundle around." Ownership should be "unbundled." The key socialist ideas were "democratic association" and the dispersal of powers—ideas that collective ownership did not easily accommodate.[210] Here Cohen broke with the emphasis on ownership and distribution within analytical Marxism and egalitarianism and also rejected the idea that common ownership was definitional of socialism. What mattered instead was an assertion of control and the politicization of the economy.

Cohen moved away from these ideas, leaving behind the political-economic arrangements he had stressed as necessary for the realization of deliberative democracy. He later focused more on "associational democracy" than socialism, alongside Jane Mansbridge and other New Left–inspired theorists of participatory democracy.[211] Their focus on social actors and struggles tried to return a social justice orientation to liberal philosophy, one that had been promised by its origins in responses to the social movements of the 1960s but remained largely unfulfilled. Once ideas of public ownership and large-scale

collective control were abandoned in the Third Way debates of the 1990s, more attempts to rebalance away from ownership toward control would culminate in theories of "stakeholder" democracy, as well as "agonistic" critiques of liberalism.[212] But the question of democratic control that connected the theories of interpersonal justification and deliberation with egalitarian debates about distribution took a back seat among Rawlsians, who rarely joined their demanding egalitarian institutional vision to the kind of account of collective politics in a class-divided society that might have enabled it.[213] What remained was a challenge to bureaucracy and depoliticization in the name of democracy and deliberation. The experiments in socialism gave way to a liberal deliberative account of justification and legitimacy that conceived of democratic politics in terms of speech and public reason-giving rather than collective action against injustice. An "ideal proceduralism" came to be seen as the foundation for democratic legitimacy.[214]

At the end of the Cold War, it was clear that the 1980s had marked the success of liberal egalitarianism in certain respects and its contestation in others. Even as the new approach to liberal philosophy triumphed, its politics and its conceptual commitments were challenged. Egalitarianism became more technical, because of its relationship with economics. At the same time, in response to the attack on the welfare state, it became more strategic. The distributive paradigm that turned on questions of ownership was more robust than ever. The demands of equality were at once more radical and more concerned with the themes of the right—luck, choice, and responsibility. Many had begun to contest the fundamental assumptions of Rawls's conceptual architecture. Some went beyond liberalism to embrace the ideas of the socialist and Marxist left, or looked to the ideas of the right. Others found the marketization of liberalism hard to resist. As G. A. Cohen and others tried to extend the reach of egalitarianism, they shifted the Rawlsian focus from the basic structure to other institutions, relationships, and forms of social power.[215] Many moved from a general institutional focus to initial endowments, the market, and the forum.

These paved the way for bottom-up challenges to the basic structure, to widen its scope and to include gender, racist, and interpersonal injustices. But there were few top-down reassessments. Political philosophers looked from the rules of the game to the ethos of the players, but still few asked who controlled and managed the teams.[216] The worries about the place of collective politics did not generate a socialist justification for egalitarian distribution or a philosophical diagnosis of the transformation of the administrative state and global capitalism, but instead liberal theories of public justification and

reason-giving. The horizons of philosophers were shaped by defenses and critiques of the market, and so, like nearly everyone else, many misdiagnosed the changes they were living through. In the end, the response to the New Right accelerated the triumph of the philosophical view of politics as distribution and deliberation.

8

The Limits of Philosophy

BY THE 1980S, the new philosophy was under attack. While liberal egalitarians grappled with the ideas of the New Right, a number of critics rejected both Rawls and the approach to political philosophy he was taken to represent. Political philosophers had elevated constitutional law and constructed a "distributive paradigm."[1] They had made morality fundamental at the level of justification, interpersonal relationships, and institutions, and had applied ethical principles across an increasing number of spheres of social and political life. All this was now challenged. A number of philosophers and political theorists, including Michael Walzer, Judith Shklar, Alasdair MacIntyre, Charles Taylor, Bernard Williams, Stanley Cavell, and Michael Sandel, published critiques of philosophy, liberalism, or both. Liberal philosophy, according to these critics, misunderstood psychic and ethical life. It misconstrued the nature of the self and human agency. And it neglected the realities of morality, community, and politics. Over the course of the decade, these critiques came to be understood as the standard alternatives to liberal egalitarianism. The irony was that they ultimately aided the remaking of political philosophy in Rawls's shadow.

To many in the 1980s, the postwar liberal order seemed to be coming undone. Liberal universalisms were contested across the human sciences. New approaches and interpretive strategies were taken up within the Anglophone academy. Anthropologists, historians, and postcolonial, literary, and cultural theorists wrestled with the implications of feminism, deconstruction, post-Marxism, and poststructuralism, as well as new critical theories that challenged, destabilized, and redescribed identity and agency.[2] This forced a reckoning with the universalisms of midcentury socialism and anticolonialism as much as those of liberalism.[3] New market and business ideologies made others worry about the fragmentation of civil society, the dissolution of the pluralist

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"civic culture," the decline of character, and the hollowing out of institutions. Political scientists argued that social life had fragmented and atomized and traditional communities had been destroyed.[4] There was disagreement about the source of that destruction: some saw the problem as the age of affluence and consumerism; others worried about its passing. But the idea that the current social order left people "bowling alone" was widespread.[5] Faced with the right's efforts to curtail the welfare state, many started to invoke the value of community. With the Cold War freeze, and with neoliberal policies and international humanitarian politics gaining ground, the welfarist and internationalist schemes of the previous decade receded.[6]

The challenge to universalism and the worry about community took a particular form within liberal political theory, as these ideas were deployed in debates at both the center and the margins of the intellectual world that philosophers had built. A number of political theorists and philosophers borrowed from these discourses to challenge the dominant assumptions and claims of liberal political philosophy. The postwar search for objective ethics, out of which Rawls's theory was born, had long inspired opposition. Since the 1960s, many had criticized the attempt to carve up morality and politics into purportedly universal and objective principles. While analytical philosophers had looked for universal grounds for judgment, others had explored alternative ways of understanding the nature of the self and the tasks of philosophy. By the 1980s, the critics of liberal philosophy also challenged the philosophical search for systematicity by appealing to literature, history, and interpretation. Liberal egalitarianism, and analytical political philosophy in general, was criticized for its commitment to neutral rules and universal principles. Its critics came to be identified with ideas of interpretation, experience, the local, and the particular. Some aimed to replace the unrealities of "Kantian abstractions" with thicker visions of self and community, opposing both liberal proceduralism and the encroachment of the market into social life. Others appealed to humanity instead of equality and stressed the fragilities of ethical life and the need to protect individuals from cruelty. They focused on the threat of group and state power to bodily security and the physical and psychological risks that politics could pose to individuals if power were left unchecked.

For these critics, Rawls and his followers were key targets. Liberal political philosophy came to be seen as a technocratic and bureaucratic form of thought that prioritized consensus and distributional decisions over legitimacy or democracy, and interpersonal and procedural justification and "public reason" over collective reasons and control. Many political theorists came

to associate the commitment of liberal philosophers to neutrality in markets and institutions of governance with a legalistic, antidemocratic expertise that put philosophy above democracy or community. Divisions between liberal egalitarians and their critics thus hardened, with consequences for how political philosophy and, in turn, political theory were understood. The field of normative political theory had developed its postwar disciplinary identity in opposition to behavioralist political science's claims to value-neutrality.[7] But it had also defined itself increasingly against Rawlsian political philosophy, in meetings of professional associations like the International Conference for the Study of Political Thought (founded in 1967) and journals like *Political Theory* (founded in 1973). Divisions among political philosophers and political theorists in part followed the already established divide between "continental" and "analytic" theory, which itself tracked the demographics of elite philosophy departments where continental theory was marginalized and labeled heterodox.[8] While European post-Marxist and critical theories were largely ignored by the analytical philosophers of public affairs, the political theorists who were heirs to the New Left's democratic critiques of liberalism embraced them and now canonized alternative theorists, like Hannah Arendt, Jürgen Habermas, and Sheldon Wolin.[9] Though some of these traditions of political theory prided themselves on having nothing to say to Rawls or his followers, others challenged him directly. For the still mainstream liberal strand of normative political theory that now turned to ideas of democracy and community and a liberal skepticism of state power, Rawls came to stand in as definitional of the liberal philosophy under critique.[10]

Rawls's theory was thus associated with many characteristics that he himself had opposed. His critics revisited arguments that he had explored as he formulated his own opposition to midcentury administrative politics. They assessed the abstractions that were fundamental to his early work, such as his ideas of the self and community. Some retraced his steps by exploring problems of objectivity in ethics and by reimagining the possibilities for American society. As they did so, they sometimes entered territory that liberal egalitarians neglected, like the claims of disadvantaged groups or problems of culture. Others returned to the analysis of totalitarianism and the individual that had first structured Rawls's social philosophy. By the end of the 1980s, a communitarianism and an anti-totalitarian liberalism became liberal egalitarian's most influential alternatives among political liberals. With liberal egalitarians turning inward, by debating equality in technical terms, their critics looked backward, to postwar concerns. They remained within the philosophical world

built from postwar liberalism, even as that world changed as they wrote. Those
political theorists who challenged fundamental liberal premises by appealing
to distinctive intellectual traditions rarely achieved a similar prominence in
elite institutions. The mainstream alternatives to liberal egalitarianism were
those that could be accommodated within the postwar liberal paradigm and
that continued to take Rawls and Rawlsian liberalism as target or referent.
They were authored often by close colleagues who worked at the same uni-
versities. Many of these theories therefore provided mirror images of liberal
political philosophy, not the political alternative they promised. Political
theory remained in the shadow of the theory of justice.

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Already in the 1970s, a number of philosophers and political theorists had
objected to certain characteristics of the new liberal philosophy. Critics chal-
lenged its commitment to rationality, rules, neutrality, and objectivity, and
invoked anxieties about Cold War "algorithmic rationality," as well as charges
of "rationalism," "formalism," and behaviorism to do so. In his criticism of
social science for its role in the Vietnam War, Stuart Hampshire, for instance,
had claimed that modern moral philosophy faced the same problems as behav-
iorialism. "Computational" moralities dismissed the nonpropositional and
unprogrammed elements in morality altogether, "falsely confident that these
elements can all be ticketed and brought into the computations."Rationalist
"ethicists"—with their focus on agents able to give reasons for their actions—
neglected that which could not be consciously articulated and ignored the
philosophical premise Hampshire called "the inexhaustibility of description."
Practical dilemmas could not be solved through the rational application of
principles. Nor were the processes of reasoning that preceded moral and polit-
ical decisions easily "reconstructible," like legal decisions. Knowledge of moral
laws was no substitute for practical reason gained through "experience."[11] The
vision of the relationship of theory and practice at the heart of liberal philoso-
phy failed to capture what ethical, social, and political life was like.[12]

The critique of rule-bound moralities would be a key part of the critique
of Rawlsian philosophy in the 1980s. It began in response to social science
and utilitarian moral philosophy. In 1972, Bernard Williams had argued that
utilitarianism forced individuals to live an incoherent life.[13] By inviting agents
to see their lives from a utilitarian point of view, it required that they view
their moral feelings as "merely objects of utilitarian value." But "because our

moral relation to the world is partly given by such feelings, and by a sense of what we can or cannot 'live with,' to come to regard those feelings from a purely utilitarian point of view . . . as happenings outside one's moral self, is to lose a sense of one's moral identity; to lose, in the most literal way, one's integrity." Utilitarianism, for Williams, alienated a person from their "moral feelings" and actions.[14] It was "too much and too unknowingly caught up" in "the modern world," "unreflectively appealing to administrative ideas of rationality."[15] It missed what the agent's life was about. Over time, these arguments were extended beyond utilitarianism. It was not the only ethical theory that neglected the desires, beliefs, and projects of particular persons. Faced with the rise of deontological ethics after Rawls, Williams reoriented his critique to encompass Kantian moral philosophies of contract and obligation. Kantian ethics was likewise insufficiently involved in concrete ethical realities. Conceptions of rational agency that depended on a "particular conception of the business of making rules" were at the "heart of the Kantian enterprise."[16] But real people did not think in terms of moral rules or utility. Neo-Kantian Rawlsians had not moved as far away from utilitarianism as they believed.

In the 1980s, the Oxford-trained, social democratic Williams became one of the foremost critics of the philosophy of public affairs. His critique was somewhat internal. But despite, or perhaps because of, his shared concerns, he objected deeply to its trajectory. In *Ethics and the Limits of Philosophy* (1985), Williams delivered a bruising challenge to the "morality system" that encompassed utilitarianism, applied ethics, and the impartial morality he saw as underpinning justice theory. That system was self-deceiving. It stood in the way of proper ethical understanding and people's capacity to live an ethical life. Where utilitarians eclipsed agency by weighing states of affairs, deontologists overmoralized agency by allowing the notion of obligation to structure ethical thought. It was a mistake to think only an obligation could "beat" an obligation.[17] Moreover, Williams argued, the modern institution of blame rested on an untenable conception of voluntariness that purported to "cut through character and psychological or social determination, and allocate blame and responsibility on the ultimately fair basis of the agent's own contribution, no more and no less." This was an illusion. The "purity" of moral philosophy, its "insistence on abstracting the moral consciousness from other kinds of emotional reaction or social influence," worked to create a series of extreme contrasts—between "force and reason, persuasion and rational conviction, shame and guilt." But it was not the case that "without voluntariness, there is only force," that without morality's "very special obligation, there is only

inclination."[18] In real life, moral obligations were escapable, and that was often a good thing. "Almost all worthwhile human life lies between the extremes that morality puts before us."[19]

By adhering to binaries between the moral and the nonmoral, philosophy ignored the range of human feelings, ethical behaviors, and relationships that might not be covered by the label of morality.[20] Williams was as biting about new developments as he had been about postwar analytical philosophy, which he deemed "original" in having not discussed "moral issues at all."[21] He thought that liberal philosophy was plagued by a tyranny of logic that resulted in bad and "casuistical" arguments in which principles were taken to their logical conclusions, resulting in answers that were antithetical to people's expectations and beliefs about their own lives. From the doctrine of double effect to the claim that abortion was morally equivalent to infanticide, the philosophical tendency to invite rationalist extremes was widespread.[22] All this provided a false picture of morality as able to provide "a shelter against luck."[23] Williams shared the liberal egalitarians' preoccupation with luck and fortune, but he questioned their approach and conclusions. He had influentially claimed that neither practices of blame nor ethically important feelings like guilt and regret were tied only to voluntary control. We blame people not only for what they have voluntarily done but for what they have done as a matter of luck. We often justify actions by how a situation turns out, and sometimes we blame people not for what they do but for who they are. Ascribing moral responsibility for outcomes to individuals was thus more complex than the morality system suggested with its claim about the impossibility of moral luck.[24] Williams thought morality's realm had been overextended. It did not know its limits in the realm of value, where it had become hegemonic, dominating realms best left to other kinds of valuation. Nor did it in the realm of fortune, where it failed to understand the accidents of character and history.

At the turn of the 1980s, Williams was not the only prominent philosopher to argue for the abandonment of the belief that impersonal, systematizing, and rule-based theories could make sense of the particularities of the world. But his attacks were particularly explicit. "Ready-made philosophical theory" could not be applied to historically, psychologically, and politically specific circumstances.[25] When it came to "applying ethics," every part of life and each professional morality had different virtues and psychologies. Philosophers went wrong when they took models of ethically "special" relationships—the lawyer and client, the doctor and patient—to be general and widely applicable. What was needed was to ask political questions about politics, which had its own

ethical practices, not impose preformed questions from other parts of philosophy. Alasdair MacIntyre also saw the attempt to formulate rules and principles in abstraction from particular applications as confused: rules did not exist apart from some range of applications.[26] Rawls was himself sympathetic to aspects of such critiques. In 1985, he privately denounced the reinvention of philosophy in his image. "I am at the moment persuaded," Rawls wrote to H.L.A. Hart, "that the aims and methods of much current political philosophy are misconceived." "I find myself sympathetic to what Bernard Williams has been saying," he continued, "but for somewhat different reasons and from another point of view."[27]

Rawls's Harvard colleague Stanley Cavell also contested dominant visions of morality in his *The Claim of Reason* (1979), which combined ordinary language philosophy, literature, and psychoanalysis (and like Rawls's theory took over two decades to complete). "Morality must leave itself open to repudiation," Cavell argued. "It provides *one* possibility of settling" or "encompassing conflict," but there were others: "politics, religion, love and forgiveness, rebellion, and withdrawal." "Morality is a valuable way because the others are so often inaccessible or brutal; but it is not everything."[28] Most philosophy failed to capture this. Too often, it conceived of morality as a game. Cavell contested the young Rawls's analogy of morality and games, as well as Rawls's fixation, shared with postwar utilitarians, on promise-keeping as paradigmatic for morality. He also challenged the suggestion that practices and forms of life were like settled institutions. For Cavell, morality was precisely not like a game. The "form of life called morality" was not the same as a moral "code." No rules "could in principle function in the moral life the way 'practice' rules function in Rawls's account of them." When people decided what course of action they "must" or "ought" to take, the alternatives open to them were not, "unlike the case of games," "*fixed*."[29] Cavell's conventionalist reading of Wittgenstein provided an influential way to challenge the institutionalist focus of Rawlsian philosophy. The irony was that the origins of many of the component parts of that philosophy were also found in a proceduralist interpretation of Wittgenstein's late ideas that had since been abandoned.

One of liberal philosophy's challenges, according to Judith Shklar, was to avoid legalistic conceptions of morality. In the 1980s, Shklar, a close colleague of Rawls and Cavell, joined the ranks of critics. To Shklar, liberal philosophy elevated general principles and regarded agents as abstract moral persons outside of time, a move that entailed a "legalistic distortion of experience."[30] It portrayed agents as existing in a dramatic moment of "stark choice and great decisions"—of "dirty hands" situations of "shaking, personal and spectacular

crisis," which Shklar described as fantasies only "appropriate to the imaginary world, in which these people see themselves in full technicolor."[31] Theories modeled on law fell into the trap of assuming consensus. In her critique of the ideology of legalism, she had suggested that legal systems exaggerated the extent of social cohesion and consensus.[32] Legalistic philosophy made a similar mistake. It relied either on shaky assumptions about the potential for hypothetical agreement or on assumed moral consensus, and it treated morality like an uncontested body of common law, necessary to make the judgment of hard cases possible.[33]

Shklar also objected to the primacy given to obligation, autonomy, and the voluntariness of choice. This primacy was a product of the ascent of contract theory, made possible when the "welfare state became the warfare state." It was when "social justice made moral rather than historical claims that obligations to society became a respectable topic of philosophical discussion again."[34] After the Vietnam War, philosophers "got bogged down in the issues of conscientious objection and just war theory," which had left "a rather tepid debate about whether one has or has not a prima facie duty to obey the law of a relatively just state." "Little follows from this," she wrote, "since no one argues for unconditional obedience in response," yet philosophy ever since had operated "within a narrow contractualist paradigm."[35] Philosophers offered a false choice between overly moral and narrowly political treatments of obligation. They viewed relationships through the lens of rules, principles, contract, and consent, and redescribed them in terms that elided experience. Theorists of war, for instance, in distinguishing between soldiers and civilians on the basis of the degree to which they had consented to war, failed to see that it was "the helplessness of the civilians that exempts them from attack, not the absence of such consent that might be imputed to a conscript who is shooting at another draftee." The reasons why certain acts were morally egregious often had little to do with prior relationships and agreements (hypothetical or otherwise). Institutions and relations of power were misunderstood if viewed through contracts rather than as interpersonal relations. Shklar put this another way when she described what was wrong with cruelty: it was "a vice that disfigures human character, not a transgression of a divine or human rule."[36] Cavell made similar claims.[37] The problem with beginning from the need to justify "promise-keeping" was that promises resembled "legal contracts," unlike most human commitments. This "involves a whole way of looking at society, one in which all human relationships are pictured as contractual *rather than* personal."[38] But most of ethical life was not like law.

How, then, was ethical life to be understood? When these critics came to provide alternatives, their ideas intersected with a broader set of intellectual developments. They each argued in different ways that, to grasp the realities of "lived experience," a different approach was needed. For Walzer, who increasingly challenged his former co-members in the SELF group, that involved looking to historical and sociological cases and examples of political action or distribution.[39] Hampshire also argued that abstract forms of reasoning neglected psychological experience, ethical complexity, and the importance of practical knowledge to making sense of human action.[40] He advocated an appeal not to principles but to "actual examples" and to "true stories, drawn from direct experience, of events which have actually involved difficult decisions."[41] This narrative and literary emphasis became prominent among those who objected to the new liberal philosophy for its neglect of ethical conflict and ambivalence. As Shklar wrote in *Ordinary Vices* (1984), though "literature" and "historical narratives" were never quite "like personal experience," they managed to capture it better than philosophical principles. The advantage of "telling stories" was that they did not "rationalize the irrationality of actual experience and of history. Indecision, incoherence, and inconsistency are not ironed out or put between brackets. All our conflicts are preserved in all their inconclusiveness." "Story telling" was crucial to understanding the "ritual, display, social exchanging, and acting out" of politics on the public stage.[42]

Experience was conceived of as a distinctive realm that theory must try to capture. When political theorists aligned their critiques of rules and law with such accounts, they joined a turn to the study of experience across the humanities. In the late 1960s, as the feminist theorists of the women's liberation movement argued that the personal was political, some had proposed a politics of experience, which a range of psychoanalytic and Marxian theorists had tried to integrate into their theories.[43] In subsequent decades, when historians, anthropologists, and social theorists challenged empiricist frameworks and elevated the importance of everyday life, some made experience into a quasi-normative standard or foundation.[44] This raised a set of conceptual questions about meaning, explanation, and interpretation that many dealt with through deconstruction and poststructuralist frameworks. But such questions also preoccupied Anglophone philosophers of social science, especially those influenced by Wittgenstein, whose ideas provided ways of thinking about cross-cultural or interpersonal understanding. In the 1950s and 1960s,

debates about the problem of other minds and how to understand another person's pain had given way to debates about how to understand another culture.[45] Were only participants in a given practice able to understand it? If what mattered was "the deed," the "bedrock" of the practice, the point where philosophical principles "grasped intellectually" ran out and what remained were forms of "carrying on," was it possible to understand a form of life by observation, sympathetic reconstruction, or imagination?[46]

First philosophers of social science and action, then anthropologists, sociologists, and historians—including Peter Winch, Thomas Kuhn, Clifford Geertz, and Quentin Skinner—argued that it was impossible to understand actions without understanding the rules that governed them.[47] While debates about the ontological status and explanations of actions continued among philosophers, the clash between theorists of meaning and exponents of causation birthed an "interpretivist" social science that rejected "positivism," challenged objective and universal standpoints of comparison, and attacked the idea that the natural sciences were a model for the human ones. Winch's *The Idea of a Social Science and Its Relation to Philosophy* (1958), which framed meaning as bounded by forms of life and cultural categories as not translatable, shaped debates about the possibility of evaluating divergent societies and about whether cultures could be understood from the outside. These had implications for the philosophical status of sociological knowledge and the very possibility of social science.[48] For moral philosophers, such claims suggested the impossibility of universal forms of reasoning or the evaluative comparability of different worldviews and raised the threat of relativism.[49] They also pointed to alternative forms of reasoning, for instance, in cases rather than through the application of principles.[50] In the 1960s, these insights had shaped the choices facing philosophers of social science: Was methodological individualism or social holism the appropriate frame? Was social science part of natural or "unified" science? And could behaviorism give a convincing account of human action, or could action be understood only by sociological observation and historical reconstruction—via *Verstehen*, "imaginative re-enactment," or its anthropological analogue, "thick description"?[51]

By the late 1970s and 1980s, these ideas were adapted in critiques of liberal philosophy's claims to objectivity, neutrality and universalism. A number of different attacks were launched against the naturalizing theories and legitimating narratives of Enlightenment liberalism by feminist, poststructuralist, and postcolonial critics who stressed the contingency and limitations of contemporary conceptual frameworks, the implausibility of liberal assumptions about agency and the subject, and the extent to which all these assumptions

were bound up with power and produced by the structures and norms of colonial modernity.[52] Liberal philosophers and theorists rejected the more radical aspects of these theories, which destabilized the position of the theorist and her categories.[53] Instead, they borrowed ideas of difference, identity, partial standpoints, and local cultures from literary scholars, historians, and anthropologists, prompting charges of relativism and historicism from their opponents in the culture wars.[54] It was in this context that a number of lawyers and philosophers argued that morality and meaning had to be accessed through interpretation, which involved attention to local and particular cultures.[55] The foremost philosophical exponent of interpretation was Charles Taylor, whose work on Hegel had done much to introduce the phenomenological tradition to analytical philosophy, and whose attack on claims to neutrality in behavioral political science had been met with sympathy by many theorists, Rawls included.[56] But as Rawlsians debated the neutrality of liberal institutions, it was his critics who picked up where Taylor left off and leveled the claims of interpretation against the claims of objectivity to contest the "thereness" of meanings—whether they were to be interpreted, invented, or discovered.

One influential proponent of these arguments was Richard Rorty. His *Philosophy and the Mirror of Nature* (1979) challenged the correspondence theory of truth and the attempt to construct rational justifications for truths that transcended nature and culture. His neopragmatist view that prioritized intersubjective agreement and saw truth as what is "good for *us* to believe" formed the basis of his attack on objectivity and the norms of liberal philosophy.[57] The search for truth, Rorty argued, was a way of distancing a person from their community. Instead of relating to "actual persons" and thinking of themselves as a "member of some other real or imaginary group," philosophers mistakenly believed that the "idea of Truth" existed as something to be attached to, "that can be described without reference to any particular human beings."[58] For Rorty, the philosophical attachment to objectivity was antithetical to community and democracy.[59]

In this way, appeals to interpretation were given political force. For Walzer, who became an influential advocate of the anti-objectivity position, invoking interpretation was part of his critique of liberal egalitarianism in the name of democracy. He argued that political theory—as distinct from the political philosophy he now associated with Rawls and his followers—had to begin with the concrete realities of community. It could not discover or invent a new morality, but had to "interpret" that which was already there. "Justice and equality," he wrote, "can conceivably be worked out as philosophical artifacts, but a just or an egalitarian society cannot be. If such a society isn't already

here—hidden, as it were, in our concepts and categories—we will never know it concretely or realize it in fact."[60] Walzer described the new "school" of Rawlsian liberalism as portraying a false and pernicious model of politics, based on philosopher kings rather than democratic citizenship and the interpretation of communal categories. He quoted Wittgenstein against Rawls: "The philosopher is not a citizen of any community of ideas." That Rawls's ideas were more popular among lawyers and economists than citizens spoke to their undemocratic core. Ideal theory, with its framing as a "founding" philosophy, was an intrinsically "authoritarian business."[61] It did not look to a real "social process" or to "real men and women" but was a philosophy of "procedural design" that enabled the "aggrandizement of judges"—a search, in Bruce Ackerman's terms, for the "philosophers' stone." For Walzer there was "no such thing." "The stronger the claims made for philosophy, the harder it is to make the case for democracy." Rawlsian philosophy's rejection of experience was testament to its antidemocratic underpinnings.[62]

This invocation of experience tracked the anti-empiricist move of historians and anthropologists who appealed to the interpretation of language, meaning, and culture.[63] Yet Walzer, who was at this time very close to Geertz, did not look to critiques that took all categories of analysis as contextual, contested, and contingent.[64] Instead, he naturalized and elevated experience and its interpretation against the objectivist claims and legalization of liberal philosophy. He extended his early commitment to the study of the "real experience" of "actual people" into an ethical standard.[65] Others also now used antibureaucratic arguments, which had focused in the postwar and Vietnam years on utilitarianism or attacked cost-benefit analysis for neglecting the particularities of experience, against justice theory.[66] Wolin and those associated with his short-lived journal *democracy* argued that the legal proceduralism of American liberalism and the ideology of economic productivity had squeezed out democracy.[67] Liberal egalitarianism was deemed a theory of the "procedural republic."[68] Thanks in part to its overreach, "the political" was disappearing. In response, some promoted local cultures and practices, while others defended political education as a counterpoint to expertise and an experiential vision of participatory democracy.[69] A robust civil society was defended against bureaucratic power.[70] Soon, a distinctive agonistic democratic theory would develop out of post-Marxist thought, which rejected the consensus vision at the heart of liberal philosophy.[71]

Not all who advocated interpretation rejected liberal egalitarianism. Far from being alien to Rawls's theory, the claim that political philosophy rested

on the "discovery" of existing morality had been fundamental to his vision of its task. After all, he had viewed philosophy as aiming to locate principles by exploring a morality that was already there, within a given practice (the reach of which could not stretch to the world). His constructivism also appealed to many historicists.[72] In the 1980s, a number of liberal philosophers incorporated the idea of interpretation into their theories, most notably Dworkin.[73] Dworkin had earlier argued that the role of courts was to "discover" and enforce preexisting law and had, like Rawls, foregrounded the importance of existing moral communities.[74] Now he accommodated interpretation within liberal "rationalism," arguing for the law-creating functions of courts, positing a view of judicial activity as the interpretation of "a country's legal history," and downgrading the importance of "asserting or denying an 'objective' truth for legal claims."[75]

Nonetheless, critics of liberal egalitarians often restated the dichotomy between rationalist philosophy and democratic experience and placed Rawlsians on the side of the former. Even those who accepted the substantive commitments of Rawls's liberalism challenged its prioritization of what Rorty called "objectivity" over "solidarity."[76] These debates returned to older questions about the possibility of an objective ethics and about ethical decision procedures that had preoccupied the young Rawls.[77] Both liberal philosophers and their critics were primarily concerned with the sources of social and moral agreement. Was it enough to appeal to forms of life and ways of carrying on, or were principles necessary to provide standards of judgment? Walzer suggested that correct moral principles could be found, but only in "our shared meanings."[78] For Rorty, the idea that social disagreement was resolvable through appeal to general principles was a misunderstanding of democratic life, where tensions were resolved by appeal to what Dworkin called "convention and anecdote." Democratic discourse was, Rorty wrote, "the exchange of what Wittgenstein called 'reminders for a political purpose'—anecdotes about the past effects of various practices and predictions of what will happen if, or unless, some of these are altered."[79] Political problems should be solved by looking to custom, agreement, or ways of carrying on. Rationality must be conceived as "criterionless muddling through." Rorty was happy to say that "we," "the liberal Rawlsian searchers for consensus," must be ethnocentric, and that "our" views were justified merely as "the way *we* live now."[80]

The split between those who put general principles first and those who challenged them was thus reframed by the latter as a battle over the imposition of ethical norms from above and the generation of them from below. By the mid-1980s, these divisions over justification and critique had hardened.

Accusations of relativism, misinterpretation, and disingenuousness flew between Dworkin, Walzer, Nagel, Rorty, and others. The critics suggested that liberal philosophers' commitment to consensus, and their focus on distributional decisions and procedure rather than democratic control, implied a tacit acceptance of technocracy and inequality.[81] Objectivity and impersonal modes of knowledge came to be associated with antidemocratic expertise. The language of interpretation and experience was joined to the critique of the liberal procedural state.[82]

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Out of these debates came a distinctive set of ideas about the self and identity that were embedded in a larger defense of community. In these years, conservatives harnessed appeals to community to the antigovernment resentments of groups that saw themselves as "left behind" by the social projects and civil rights and women's movements of the 1960s.[83] With whiteness no longer the explicit basis of claims against the state, "race" was replaced rhetorically by community, culture, and ethnicity as the basis for group identity claims.[84] But the turn to community also had analogues among liberals and on the left. Many had long argued that both bureaucratic liberalism and bureaucratic socialism denied the possibility of community, producing experiences of moral desolation and alienation (as well as material deprivation).[85] The task for New Left intellectuals had been to recover the power and agency of communities whose experiences had been buried beneath the impersonal structures of welfare and monopoly capitalism (a task that resulted in historical explorations of "moral economies," tradition, custom, and participation).[86] With the neoliberal entrenchment of market forms of decision-making, theorists concerned with the flux and uncertainty of a market order appealed again to community, now deploying not Marx but R. H. Tawney or Karl Polanyi to argue for its protection against liberal capitalist atomism and commodification.[87] When Walzer published his *Spheres of Justice* (1983), he argued that market-based inequalities must not be allowed to cross the boundary of the market sphere into other "spheres" of citizenship— whether education, health care, or public honor.[88] Self-styled communitarians began to claim that liberalism misunderstood the social nature of the self and that the liberal subject created a hostile and alienating social order.[89] That liberal philosophical anthropology had difficulty accommodating communal relations was not a new claim, but it was now joined with the interpretive turn against naturalism and liberal neutrality, and a localist, democratic critique of

Rawls.[90] A Hegelian counterpoint to Kantian universalism took shape, herald-ing the overthrow of an "abstract," "individualist," rights-based politics and a return to "patriotism," the "primary bond of community," and "the family."[91]

Among the communitarian critics of liberal philosophy, the first concern was with the self. This was in part a response to trends within liberal egali-tarianism, particularly the growing centrality to liberalism of the Kantian ideal of the autonomous moral person and the egalitarian foregrounding of choice, responsibility, and behavior. The entrenchment of ideas of autono-mous personhood signaled the Anglophone hostility to the contemporaneous dismantling of traditional conceptions of identity and the reconstitution of the subject of modernity by social theorists. Even the enthusiastic readers of Derek Parfit's theory, which dissolved the self into sequences of contingently associated states and potentially threatened the liberal subject in much the same way as those ideas, downplayed its radical implications.[92] Most Rawlsian liberals retained a commitment to individual persons and their rational life plans conceived over time. It was this commitment that became a primary target for communitarians.

Charles Taylor offered the most influential interpretive account of the self and the constitutive features of human agency. In the late 1970s, as he developed his hermeneutic framework, he distinguished different notions of "a responsible human agent."[93] There was the "radical chooser" of liberal individualism (and existentialism), the "simple weigher" of economic and utilitarian theory whose authentic evaluations were "non-qualitative," and the "strong evaluator." The strong evaluator did not make decisions by choos-ing between simple alternatives and evaluating courses of action, but through appeals to a deeper ethical "vocabulary of worth" and "identity" concerned with "what kind of life, what quality of agent they are to be."[94] This identity set the "horizons of evaluation." Those who repudiated their identity would be "cripple[d]," and left without the essential part of themselves that allowed them to make "authentic" evaluations. Moral agents did not make decisions either by principle or by open, radical choice, but looked to their "most fundamental formulations, and at what they were meant to articulate." These articulations were not descriptions, but acts of self-interpretation, constitutive of experi-ence. Deciphering them engaged the "whole self" in a way that judgment by reference to a fixed "yardstick" (of utilitarian or other principles) did not. This form of evaluation was an essential feature of a person. It was neglected, Taylor claimed, by liberal theory, with its emphasis on freedom as choice-making and its strong sense of moral responsibility. Taylor was keen to differentiate his

constitutive self from a determined one, common to various kinds of determinism and materialism. Unlike the latter, the former did not eliminate moral responsibility, but grounded it. In reflection on our selves, he wrote, we find responsibility for ourselves.[95]

Taylor contrasted this authentic self with the liberal "bearer of rights."[96] Defined by the capacity to plan—the strategic powers to lay out possibilities and calculate value in terms of goals (and of the probabilities and costs of their attainment)—that "modern subject" was a person to whom respect was owed by virtue of these powers to evaluate, choose, and act on life plans.[97] The subject autonomously discovered their ends, which were set by nature and objective scrutiny. It was free, choosing, and self-defining, and was "capable of objectifying the world, reasoning about it in a detached, instrumental way." Utilitarianism was a product of this conception, with its stress on calculation, its naturalistically identified ends, and its neutral, "interpretation-free account of human choice in terms of preferences."[98] The authentic self, by contrast, was not a calculating machine. It was endowed with and constituted by meaning. Real agents were defined not by their strategic power to make choices, but as beings for whom things matter—subjects of significance, able to recognize and constitute goals and ends. "The essence of evaluation" did not consist only in "assessment in the light of fixed goals," Taylor wrote, "but also and even more in the sensitivity to certain standards, those involved in the peculiarly human goals. The sense of self is the sense of where one stands in relation to these standards, and properly personal choice is one informed by these standards."[99]

Did the moral person of liberal egalitarianism fit this picture of the liberal chooser, the modern capitalist subject? Some presumed so, but Rawls's portrayal of individuals had also long been recognized, even by his staunchest critics, as ambiguous.[100] Rawls's rational man was a maximizer, wrote C. B. Macpherson, but his ends were "far from bourgeois." Yet Macpherson saw that man's duality—at once maintaining a class society and aiming at non-bourgeois ends—as typical of liberal capitalism: "ambiguity" was "the hallmark of bourgeois man."[101] Other critiques of Rawlsian rationality had focused on the parties in the original position, not on Rawls's account of persons. Taylor appreciated the difference and did not apply his critique to Rawls. He knew they shared an understanding of agents acting within constitutive practices, for whom their plans were only ambiguously of their own making. Nor were pre-institutional rights a foundational element of the Rawlsian apparatus: Rawls's individuals, like Taylor's, were always institutional and situated within forms of life.

When Taylor redirected his critique of social science and utilitarianism against liberal philosophy and objected to a rights-based, "atomistic" vision, his focus was therefore not Rawls's account of moral persons embedded in practices, but Nozick's rights and entitlements theory.[102] Indeed, this critique came when Rawls's trajectory was diverging from later luck-egalitarians, who focused on individuated ownership and choice in ways that made Taylor's claims more powerful. Barry had identified this tendency toward choice as a "complacent kind of liberal conservatism" that defined freedom in terms of choice-making and implied that the capacity to choose life plans was something liberal persons were metaphysically endowed with (rather than something to be secured through collective political action or produced by power).[103] Among those who agreed, Taylor's account of the self gained traction.

A number of communitarians tried to connect Taylor's vision of agency and interpretation to long-standing critiques of liberal views of choice, market, and civil society. The most provocative was Michael Sandel's. Sandel, a former student of Taylor's and Dworkin's, was teaching at Harvard in its peak Rawlsian years. His target was Rawls's vision of the subject, which he described as a "subject of possession, individuated in advance," prior "to the ends it chooses," for whom the capacity to choose was what mattered most.[104] This "unencumbered self," Sandel argued, was at the core of Rawls's theory. It was evidenced in the rational, disembodied choosers of the original position but also in Rawls's rejection of desert and merit as bases for distributive justice. Sandel attributed to Rawls the atomistic self that Taylor had seen in Nozick. He also fastened on the concerns that egalitarians were trying to address: the discrepancy that many perceived in Rawls's downgrading of desert, responsibility, and agency in his account of distributive justice (in which "character" was morally arbitrary and irrelevant to the distribution of goods), but not in his account of retributive justice (in which responsible agents could deserve punishment as a result of "bad character").

Rawls's theory had prompted a debate about the relevance of desert in market societies compared to its appropriateness in more tight-knit communitarian and solidaristic societies, with some objecting to his downgrading of desert as part of their more general rejection of liberal atomism.[105] Taylor had criticized theories that eliminated desert and contributory principles for their accompanying displacement of ideas of moral worth and recognition, but did not object to Rawls's account of the divergent relevance of judgments about responsibility and character to retributive and distributive justice (perhaps because Taylor attributed it to a strong interpretation of the noncomparability

of practices). For Sandel, however, Rawls's devaluation of claims of desert and merit, based on his claim that natural and social assets were morally arbitrary, showed that he drew too strong a distinction between the "attributes and constituents" of a person. Because of the arbitrariness of fortune, Sandel read Rawls as arguing, "'my' assets do not belong to me in the strong constitutive sense," so I cannot be properly said to deserve them.[106] Like Nozick, who had seen Rawls's distinction between "the self and its various possessions" as violating personhood and the right to holdings, Sandel argued that the distinction of the self and its possessions was untenable. Rawls misunderstood the socially situated nature of the self and the importance of natural and social assets to its historically and culturally constituted identity.[107]

Sandel's critique extended an argument of Daniel Bell's, suggesting that liberal attacks on meritocracy and discrimination went so far in their effort to get rid of notions of character and moral worth that the "person himself has disappeared. Only attributes remain."[108] To save Rawls's theory from itself— the difference principle in particular—Sandel argued that an "intersubjective conception" had to replace the unencumbered self. He posited a constitutive conception of community in which individual identities were shaped by relations between citizens and associations that were discovered, not chosen. In certain circumstances, he wrote, the relevant description of the self would "embrace more than a single empirically individuated human being."[109] Instead of divorcing the self from its possessions, he socialized the self that bore the assets in the first place. This did not mark a return to problems of corporate agency or collective action, but a refocusing of political theory so the relevant units were the encumbered self and its community. The defense of the "social self" was the key building block of the communitarian critique of liberalism.[110]

Politically, however, this critique pulled in a number of different directions.[111] Some communitarians built a defense of family, culture, and nation.[112] MacIntyre, who had journeyed from Marxism to Christianity and a trenchant rejection of the modern, condemned the "emotivist self," devoid of social identity, and praised a premodern and anti-Enlightenment vision of the self constituted by kinship and motivated by virtue.[113] A critique of the Rawlsian subject and the vocabulary of moral worth, responsibility, culture, and character also came to stand in for worries about the kinds of people produced by the "technocratic" "adversary culture."[114] Ideas once characteristic of the antibureaucratic left were deployed by the neoconservative right, whose antibureaucratic arguments focused on attacking the welfare functions of the state

rather than on corporate bureaucracy.[115] The language of communitarianism was used both for conservative ends, in the racially coded discourse around welfare entitlements and poverty, and in the liberal response, later found in the pages of Third Way journals like *The Responsive Community*, which accepted and rendered legitimate many premises of the right's discourse.[116] Some on the left saw this clearly: Barbara Ehrenreich urged Sandel not to mistake the New Right's racism and authoritarianism for a search for moral meaning, nor to allow for a liberal "coziness" with right-communitarianism.[117]

The immense impact of the communitarian critique was in part a function of this malleability.[118] But communitarianism also became influential within political theory because it did not seriously threaten the assumptions of the postwar liberal order. While New Left theorists of community had also critiqued monopoly capitalism and the bureaucratic state, the discourse of the social self after the cultural turn was motivated more by a worry about the contamination of a moral realm by market and contractual relations and by the attack on universal principles and choosing persons. The communitarian search for the good was the inverse of the New Right's antibureaucratic libertarianism: it deemed procedural right and the political creation of "strangers" by the "deontological republic" more of a threat than corporate power.[119] While some communitarians worried that the egalitarian turn to choice and responsibility undermined the socialist value of fellowship and community, many abandoned socialist principles, did not demand the socialization of ownership, wealth, and power, and prioritized the preservation and extension of traditions, "shared understandings," and identities instead.[120] As debates about ownership thrived among egalitarians, the communitarian retort to the distributive paradigm was to focus on moral meaning. Yet like the liberals they criticized, few communitarians foregrounded problems of political action or control. In Sandel's influential critique, politics appeared as a deus ex machina in its final pages, as a call that through politics "we can know a good in common that we cannot know alone."[121] But what that politics might look like, and how it might differ from anything liberal egalitarians envisaged, was rarely worked through. Moreover, those who mourned the decline of community and the growth of anomie and alienation tended to see that story as a cultural or quasi-metaphysical one. Few told the story of the breakdown of unions and communities as a product of deliberate political action or as the result of policies of state repression. Unlike a growing number of theorists who developed critiques of liberalism from the standpoint of democracy, among communitarians the demands for collective politics were acknowledged but not interrogated.[122]

Many aspects of communitarianism could thus be accommodated within the paradigm of liberal political philosophy, as the liberal critics of communitarianism themselves insisted.[123] This set it apart from both the more radical critiques of the liberal self—that focused on the discursive, regulated subject or dissolved the subject entirely and left little room for communitarian views of encumbered yet autonomous agency—and the feminist theories that challenged the gendered male subject of contractarian liberalism and contested both the liberal distinction of private and public and the communitarian commitment to small associations like the family.[124] By contrast, the communitarian critics left in place key aspects of the Rawlsian vision. There was a family resemblance between them. Interpretivist communitarianism originated in the same Wittgensteinian moment as Rawls's theory. Walzer, MacIntyre, Taylor, and Sandel were seen as the Hegelian opposition to Rawls's Kantianism: in the critical words of Bernard Williams, they deployed the later Wittgenstein for "Right-Hegelian purposes."[125] But in doing so, they revisited Rawls's early concerns. Just as deliberative democratic theorists addressed the democratic deficit of distributive justice theory by returning to the Tocquevillian town hall meeting with which Rawls had begun, communitarians looked to Hegel, Wittgenstein, and ideas of community typical of Rawls's youth too.

This was not lost on communitarians, or on Rawls himself. Sandel acknowledged the "intersubjective sounding passages" where he discussed the importance, for Rawls, of social union for self-realization and Rawls's claim that the "self is realized in the activities of many selves."[126] He thought these claims showed Rawls's fundamental inconsistency, given his theory of the unencumbered self.[127] Yet Rawls's "intersubjective sounding passages" were not "metaphors." They illustrated the centrality of community to his conception of persons and society, and his view of identities and moralities not as something chosen but as attachments to be discovered. As Rawls wrote in *A Theory of Justice*, "in drawing up our plan of life we do not start de novo."[128] Rawls, like Sandel, had once loosened the bounds of the self to allow for pluralist group agency.[129] Moreover, in attributing to Rawls something like a theory of possessive individualism, Sandel took as his starting point precisely the atomistic, egoistic contract theory that the young Rawls rejected.[130] Rawls and his critics had a common history, even if they did not remember it the same way.

Rawls stressed that he had been misrepresented by his communitarian critics, whose ideas he saw as tending toward conservatism. In a 1986 lecture describing the "contemporary philosophical scene," he depicted Walzer, MacIntyre, and Sandel as "the three stooges." (Rawls considered adding

Taylor, but he did not make the final cut.)[131] Others protested Rawls's misrepresentation, stressing that liberal egalitarians in fact also objected to the individualizing and administrative tendency of utilitarianism and worried about alienation under technocracy.[132] When Rawls eventually published *Political Liberalism*, he responded to the communitarians in ways that misleadingly suggested a change of mind.[133] That book generated new debates about Rawls's focus on problems of toleration and pluralism, democracy, public reason, and justification. Many read it as a retreat from universalism toward communitarianism.[134] But Rawls had always had something in common with the position communitarians defended. On problems of judgment and justification, the gulf remained significant: Rawls never gave up the theoretical apparatus that he developed to distinguish ethically between existing values and practices.[135] Yet he was consistently frustrated with the communitarians: they misunderstood the extent to which his theory was an answer to their problems. Rawls's concern, like Walzer's, was to interpret and reveal what was already there. They shared other ideas too, about what modern subjects were like and where meaning was constituted. Both envisaged a democratic pluralist community where the associations that mattered morally were not those created or encompassed by the state, but consisted in a community of persons that flourished beneath the state. Walzer's critique, Rawls wrote in 1983, was "generally very inaccurate, or worse. I am not sure in most cases how far the views of *TJ* [*A Theory of Justice*] properly understood, *differ* from the things he wants to say, or conclusions he wants to reach on substantive questions."[136]

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The communitarian critique of liberal egalitarianism was not the only one spurred by the cultural turn and the dissatisfaction with "atomism." A number of others involved a return to tradition and a reimagining of the past. Some suggested friendly amendments to liberalism: the legal philosophers' search for civil republicanism, for instance, and the egalitarian shift from the market to the Tocquevillian forum.[137] More critical was the recovery by historians of civic republican ideology, which involved deemphasizing the study of liberal national constitutions and principles.[138] J.G.A. Pocock, Quentin Skinner, and those associated with the Cambridge School of the history of political thought were among those who sought to puncture liberalism's triumphalist narratives, particularly the claims of rights theories to universal, timeless status, as part of their recovery of republican ideals of freedom as independence and

nondomination.[139] In debates about American citizenship and the interpretation of the American tradition, both historians and theorists sympathetic to interpretivist approaches used the arguments about the noncomparability of forms of life to defend a nonfoundationalist, Rortyian "ethnocentrism."[140] Political theorists began to write declinist histories of the procedural republic that were often tragic in tone. In these, private ideas of freedom and myths of state neutrality were created when "immigration," the "growing diversity of the nation," and "the emerging consumer society" rendered republican visions of self-rule impossible.[141]

Such narratives did normative work for communitarians who rejected objective foundations for judgment and emphasized local cultures above universalizing liberalism. Walzer had long based his vision of citizenship on group commitment and a constitutive vision of the self, though he had also suggested that the liberal welfare state made a return to a politics of civic virtue implausible and undesirable. Now he overlaid his earlier commitment to political solidarity and the ethics of oppressed groups with an appeal to communal and cultural experience. This pushed toward ethnocentrism of the kind Rorty deemed justifiable, as Walzer came to insist on social criticism in a "national-popular mode."[142] This provoked a reaction among liberal philosophers (Walzer said it made him an "apostate"), who argued that deference to community left him with little recourse for choosing between conflicting traditions and few grounds to defend the leftist politics he held dear.[143] Did this deference not tend toward conservatism, especially now that the welfare state was under siege from a resurgent right? Walzer worked hard to dispel this reading of his work. He was adamant that his account of social criticism still allowed grounds for critique and insisted that his commitment to human rights and a "moral minimum" provided a standard for judgment—a universal ground in the flux of interpretation—that radical interpretivism and historicists did not.[144] Walzer's critics were not satisfied. There seemed to be a "progressive teleology" at work in his theory. Without an ideal theory (and with no philosophy of history joined to his immanent critique), Walzer's justificatory framework relied on an unjustified faith in the democratic nature of the American polity that looked to find solutions within its "national history and culture."[145] Despite the expansion of the procedural state and the commodification of ethical life, American democracy could be presumed to be unfolding through history.

These reinterpretations of democratic America resonated with the story of constitutional change that Rawls had upheld in the wake of the civil rights movement. Both Rawls and his critics relied implicitly on such a teleology—one

liberal, the other civic—that assumed an incremental path toward democratic inclusion and integration in a constitutionalist, consensual ideal.[146] In these stories, which proliferated in the early 1990s, America was a site of democratic realization. "Returning to 'we'" would provide the basis for change and reform.[147] Such stories were intended also to offer normative visions of local communities, in which the democracy of everyday life went untouched by the expansion of the technocratic institutions of the state, market, and courts. Some made central the ascriptive hierarchies and inequalities of American society, but they nonetheless reaffirmed the ideals of American values and institutions, even where they recognized their practical failures.[148] In different ways, these histories thus evaded how social and racial conflict shaped the American dream on which liberal and communitarian pluralism rested, how stability was purchased at the cost of ignoring those conflicts, and how the dream itself not only was exclusionary but produced hierarchy, inequality and new forms of domination at home and abroad.[149] They replicated older models of American exceptionalism by downplaying histories of subordination, vesting hopes in an undifferentiated democratic agent unaffected by exclusions of race, class, or gender, and treating the history of black chattel slavery as a unique original sin or a contingent aberration.[150] The vision of a society founded in moral consensus, potential or actual, was never far from view.

In these narratives, the distance between liberals and their communitarian critics collapsed. Yet the opposition between them persisted, and it continued to structure divisions within political theory. Communitarians focused on who people were, rather than what they had or what they did. As such, they had distinctive preoccupations. Indeed, it was through the debates about community that group claims found a place within mainstream liberal political theory, which focused centrally on individuals. Rawls had designed his decision procedure to remove class interest and group prejudice, and the Rawlsian framework largely dealt with individual rather than group disadvantage. There had been little attention paid to the struggles of subordinated groups and the agency of oppressed minorities: the political demands of the women's liberation, anticolonial, and black freedom movements had not permeated mainstream philosophy, except insofar as they could be rendered compatible with institutional egalitarianism in the form of principles of antidiscrimination and affirmative action.[151] But now group claims entered the communitarian framework, not through debates about equality, domination, or disadvantage, but via the appeal to communal experience, tradition, and identities understood through categories of constitutive social meaning. The group claims that

political theorists now considered were those that demanded the recognition of cultural difference and adapted the communitarian and pluralist critique of Rawls as part of recognition theory, elucidated by Walzer and, most influentially, Taylor.[152] This opened up new areas of concern about the politics of oppressed groups. Yet it risked depoliticizing them: ascriptive identities were not destabilized, as categories produced by institutional power or forms of economic subordination to be overcome, but naturalized, "discovered," and "negotiated" "through dialogical relations with others."[153]

Thus, even as the liberal-communitarian debate faded from view, a version of it was reinscribed. Self-consciously Hegelian recognition theory became a counterpoint to Rawls's mature Kantian liberalism of redistribution.[154] It responded to the inability of distributive theories to account for the injuries—of dependency, of "misrecognition"—that persisted when baseline economic and social needs were met in welfare state societies.[155] For Taylor, recognition of identity was a "vital human need."[156] It was possible to build a collective form of resistance out of the struggle for recognition that took as its starting point the "hurt feelings" born of the experience of unjust treatment.[157] These ideas laid the ground for defenses of multiculturalism and debates about the affirmation of equal citizenship amid the recognition of difference.[158] They also provided a counterpoint to the ascendant global justice theory, with its commitment to a moral cosmopolitanism of persons, and a basis for defenses of cultural nationalism, "ethnic pluralism," and the rights of indigenous peoples.[159] Yet, from the point of view of many liberal egalitarians, the recognition framework risked restricting its diagnoses of subordination to what Barry called the realm of "culture," rather than "equality" (and it added little to Rawls's account of the social bases of self-respect.)[160] Despite the roots of recognition theories in critiques of domination, distributive theorists retorted that the theorists of multiculturalism and difference who were its heirs fell short.[161] The fact that the politics of oppressed groups entered political theory via the debate about recognition meant that egalitarian theorists dismissed them as insufficiently concerned with distributive justice.

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The turn to community and group experience prompted a response from another set of liberal critics who now waged a battle on two fronts. While the backlash against neo-Kantian ideas of personhood produced the self-interpreting view of constitutive agency and the social self, it also generated

an alternative account of the liberal individual that challenged both Rawlsians and their communitarian critics. As political theorists refocused on the self, a minimalist liberalism emerged, more Humean than Hegelian, that questioned the consensus vision, distributive paradigm, and deliberative rationality of liberal egalitarians. In the 1980s, the grander universalizing claims of egalitarianism were disaggregated—a process hastened by the abandonment of socialism by the mainstream European left, exemplified by the French socialists' change of direction and the split between the British Labour Party and the Social Democrats.[162] A realist politics of worst-case scenarios returned, and forms of anti-totalitarianism were rejuvenated, in what Walzer called an attempt "to revive the spirit of the cold war."[163] As anxieties about the right spurred a liberal anti-leftism, a number of liberals reoriented their theories and turned from distributive to humanitarian claims, reconceiving the claims of individuals against powerful political forces.[164]

Those who had emphasized the importance of lived experience and storytelling against legalistic, abstract, and distributive liberalism now tried to put a different kind of individual agent back into moral and political theory, one that captured the complexities of ethical and political life and took a perspective that viewed a life lived as a whole. Bernard Williams joined his philosophy to a humanistic moral psychology to question the unrealistic picture of the self and identity at the heart of the morality system. Cavell, as well as Richard Wollheim in his *The Thread of Life* (1984), adapted psychoanalytic accounts of the self to stress the continuity of the "process of living."[165] They conceived of individuals as more particular and less capable of voluntary action, and as acting in contexts that were less well structured and ethically rigid. Shklar reoriented her political theory around a timeless vision of a conflictual, alienated, and "ambivalent" self, characterized not by its capacity for choice but by its "failure to choose."

For Shklar, that self, with its accompanying deflationary account of responsibility, stood at the core of her objections to the reason-giving, decision-making self of philosophical liberalism.[166] She looked to deinstitutionalized notions of individuality and to ideas of the individual abstracted from their institutional contexts and the contractualist paradigm. In the early 1980s, she had been resistant to the humanitarianization of politics and to claims that "humanitarian causes were non-political." Though she did not "weep for socialism," Shklar wrote, she was "as revolted as Tawney ever was by what he called 'the mood of tranquil humanity.'"[167] She objected to making the body the basis for a minimal politics of institutions, designed to protect only "bare

life."[168] She focused on institutionally unprotected agents, particularly those excluded from citizenship, and berated the new global justice theory for its neglect of problems of membership: the "issue of excluding aliens," she wrote in 1983, was neglected by "the general question of international redistribution with which Barry and Beitz deal."[169] Her concern was with refugees, but also with internal exiles, victims of injustice, and those alienated from legal and political systems. In an unpublished essay, she tried to isolate a realm of "pure conscience"—contrasted with decisions made by appeal either to principles or to the "we" of community—and returned to ideas that liberal egalitarians had set aside during the debates about conscientious objection decades earlier, when they abandoned claims of conscience for the principles of justice.[170]

Over the subsequent decade, these attempts to look beyond distributive justice led Shklar to the humanitarianism she had earlier eschewed. Shklar's agents were creatures, endowed with humanity, whose psychological experiences were matched by their bodily ones. She raised the physical needs of individuals to the same status as the psychological and formulated a negative politics based on their protection. What mattered was breathing, living, real-life agents, not their better selves or their potential futures. The task of politics was to look after them. The rights of the body, and the right to be protected from torture and cruelty, were the building blocks of Shklar's self-declared "survivalist" politics.[171] This was a minimalism designed to protect the humanity of individual agents after the optimistic stability of the age of affluence had given way to survivalist pessimism. Shklar's survivalism signaled a retreat to an anti-totalitarian liberalism. She famously described it as "The Liberalism of Fear."[172]

The liberalism of fear became an influential alternative to liberal egalitarianism. At its core was the argument that liberalism exists to protect individuals from cruelty, fear, and the abuses of institutional power. Shklar's lifelong portrait of the fragility of individuals became foundational to the anti-totalitarian Cold War liberalism of her later years.[173] When Williams, Rorty, and others adapted Shklar's idea, they prioritized the minimalist politics of individual human rights, sufficiency, and survival. Though all attacked, with varying degrees of ferocity, the Kantian pursuit of reason, they explained and justified their use of the liberalism of fear differently. Rorty's rejection of the pursuit of objective truth led to a defense of the liberalism of fear as what "liberals"—defined as those "who think that cruelty is the worst thing we do"—contingently, thanks to "time and chance," believed.[174] By contrast,

Williams trod a path between a Nietzschean and Foucauldian suspicion of Enlightenment ideals and a defense of those ideals (which led him to condemn pragmatists, Rorty included, as "deniers of truth"). He defended the liberalism of fear as a "bottom-up," anti-universalist "universalism" that stressed "the reality of politics."[175] What mattered was individual life, and Williams thought that liberalism was better placed than its alternatives to allow individuals to lead meaningful, "authentic" lives. This was a liberalism that required social democratic institutions, but no more than that. Williams did not advocate a collective politics to secure those institutions: during the 1980s turmoil on the British left, he had been clear that socialism in its conventional sense was no longer viable.[176] Like Shklar, he lowered his sights.

The individual agents who formed the building blocks of these minimalist liberalisms were meant to be more ordinary, less moral, and less abstract than the Kantian persons they rivaled. They were the Humean counterparts to liberal philosophy's Kantian turn. As such, they were often described in biographical or historical, rather than moral, terms. Their personal histories went beyond the communal pasts of social selves and the open futures of the abstract moral person with bundles of goods and life plans. Yet this liberalism was also tied to a muscular realism. The emphasis of Shklar and others on psychic fragility, ordinary vices, and humanity aimed at a benign institutional politics to take care of individuals. But the appeal to fear led to an emergency politics of its own. Many kinds of unpleasant, unfair, unjust, and exploitative domestic and international political arrangements could be justified in the name of protecting individuals from fear: humanitarian interventions, war, or the injustices accepted for the sake of the lesser evil.[177] The liberalism of fear, born of an attempt to repoliticize moralist liberalism, could thus lead to a different kind of deradicalizing moralism that appealed not to universal principles but to history.[178] It warned not to ignore the cruelty involved in much utopianism, and it challenged philosophers who neglected their duty of "not forgetting or lying about the horrors" of politics.[179] Whatever the intentions of its authors, the refrain of the liberalism of fear became a disciplining move against "transformative politics" and those who "forgot" where radicalism could lead.[180]

History here was both a teacher of lessons and a bearer of warnings. The appeal to history was less a call to write history or an attempt to integrate time as a principle of explanation or a vehicle of analysis into political theory. It was a summons to heed the horrors of the twentieth century, and it often involved the invocation of slippery slope arguments that suggested that the grander egalitarian schemes of philosophers might culminate in disaster.[181] In the 1990s

and after, these claims about the history and memory of war would underpin justifications for humanitarian intervention.[182] Yet certain liberal theorists also appealed to history more broadly, as part of a revolt against liberal egalitarianism's "timeless" quality.[183] While communitarians looked to history as part of an appeal to tradition, or for narratives of lived experience, the minimalist critics of liberal egalitarianism invoked history as part of a broader appeal to complexity, contingency, and uncertainty. Sometimes they drew lessons that functioned less as warnings and more as political constraints, deploying historical cases to evidence the limitations that human nature placed on political change. For those like Shklar, Williams, or Rorty, who in different ways saw liberal philosophy's commitment to rationalist principles as a kind of displacement that enabled a distancing from and avoidance of psychic and political realities, history was a way of bringing those realities to life.[184] It could show the contingency of moral beliefs, as well as the uncertainty and complexity that accompanied any translation of political principles into practice.[185]

These ideas of contingency, complexity, and uncertainty were increasingly adapted to justify a political philosophy that focused on legitimacy as much as justice.[186] Rawls had chosen the principles of justice to limit the effects of contingency on collective life. Shaped by midcentury anti-totalitarianism, he had stressed the fragility of constitutional democracies and the luck involved in being born in one. In the hands of the new anti-totalitarian critics, the appeal to contingency became a way of rejecting the confidence of liberal egalitarianism and undermining its more universalizing claims.[187] Such appeals had been mobilized in critiques of historical materialism or determinist views of history, as well as in social theories that sought to elevate agency against structure or to destabilize the position of the theorizing subject.[188] It was also used against liberal egalitarian certainties. In Rorty's hands, contingency was a neopragmatist tool for challenging the justification of liberalism and social democracy as transhistorically just.[189] For Williams, once history revealed the contingency of beliefs, the justification of liberalism required a kind of "confidence" (which itself came to match that of the universalizing philosophy he scrutinized).[190] Such invocations of historicism and contingency often stood in tension with the transhistorical moral psychologies posited by liberal theorists like Shklar. These liberals did not follow the radical theorists of contingency all the way: they did not seek to overthrow Enlightenment liberalism, but to find nonfoundationalist grounds for its defense, even as they disrupted the appearance of easy consensus and ideological unity among philosophers.

To do this justificatory work, some liberal theorists turned to a different set of historical narratives—not about American democracy or the welfare state, but about the origins of liberalism. In rejecting communitarianism and diffusing the challenges of difference, they appealed to vindicatory histories that were first told in the early Cold War.[191] Instead of framing liberalism as the antidote to socialism, they emphasized liberalism as a victory for toleration amid pluralist conflict. Rather than the revolutionary era, the birth of capitalism, or the founding of the welfare state, it was the wars of religion that became liberalism's founding moment. This had been a trope of postwar democratic theory, which championed diversity against the absolutism of totalitarian and objectivist moral theories that attempted to "impose" "unity of belief." At the turn of the 1990s, that move was made again, not just by critics but also by proponents of liberal egalitarianism as part of their response to the challenges of multiculturalism. For Rawls, Barry, and others, whose liberalism hardened in otherwise distinctive ways, the wars of religion became the founding moment of a secular, pluralist liberalism whose task was to tame group life as much as the market or the left.[192]

The liberalism of fear produced various attempts to politicize liberal political philosophy by making it concrete and by revealing the fragility of individuals in contexts of power. Yet it was also deradicalizing. The liberal turn to contingency and conflict was put to use, not for a collective politics, but for an individuating one, in which psychic conflict mattered more than class or group struggle. The appeal to history had a conservative tendency when history played the role of constraining the possibilities for transformation. Moreover, histories of exclusion, exploitation, or appropriation were either ignored—as they were with the Rawlsian rejection of the normative relevance of historical argument—or understood to signal failures of implementation rather than a challenge to liberal ideals themselves. These were histories of liberalism that were not bound directly to histories of empire and capital, accumulation, or power. They tended instead to appeal to humanity, both to pose a challenge to difference and to question the priority in distributive theories of equality over poverty reduction.[193] The liberalism of fear signaled a worry about the overextension of the distributive paradigm.[194] Such worries were not new: Williams had decades earlier pointed to the limits of a single-minded commitment to distributional equality, particularly given its requirement of extensive state intervention, on grounds that such a commitment would conflict with another idea of equality, the equal respect of persons. But these worries were restated with renewed force by those who were concerned about pluralism and

value conflicts and who stressed the liberal critique of the state and executive power.[195] Over time a new critique of Rawlsianism was built from this: an appeal to "political realism," which took both conservative and leftist forms, and looked to a foundational politics of legitimacy that was prior to distributive justice.[196] Instead of distribution, stability came back into view.

The irony was that these debates also retraced Rawls's early steps. Indeed, the thinkers who came to hold canonical status, as liberal or critic, had one feature in common: they in some ways returned to ideas that Rawls had left out and left behind. Rawls had begun with the problems of the self and its social relations, both communitarian and humanitarian. His early social theory had been designed, in the shadow of totalitarianism and war, to limit the powers of the interventionist state, at a moment when the task of building political constituencies to support that state or its policies was assumed to be already successful. The small associations he imagined were not groups to be built through politics but communities, families, and churches that existed by convention—much the same as those assumed in many of the new communitarian pluralisms. He also began from a minimalist, barebones liberalism that feared the power of the state and did not make redistribution the first priority. Among the most prominent alternatives to liberalism were thus a domestic anti-statism, a moral psychological liberalism, and a Wittgensteinian communitarianism—alternative ideas similar to those that the young Rawls had downplayed or discarded.

The very capaciousness of Rawlsian liberalism, its capacity to domesticate and diffuse alternatives, led to a narrowing of the ideological terrain. The moral focus of liberal philosophers was mirrored by that of their critics, whose alternative theories also occupied the terrain of morality and the self. Distributive justice theory, in its focus on foundational questions, had tended to neglect problems of political control, collective agency, and the institutional mechanisms of power. But now communitarians did so as well. Just as Marxism had been defanged and made compatible with liberalism, now the politics of group disadvantage was subsumed into communitarian concerns with identity. Minimalist liberals defended fragile individuals and saw abuses of power everywhere in the state and the community, but rarely in the workplace or the corporation. The appeals to community and fear downgraded redistribution. Neither liberal egalitarians nor their most prominent critics provided broader accounts of the different modes of social and economic life or their potential transformation. That remained the province of the left, and of those outside mainstream political philosophy. The legacy of these debates was therefore

to constrain the politics of political philosophy even as they broadened its psychological and ethical scope. This was not only a return to an older communitarian and anti-totalitarian worldview but a kind of retreat. The outcome of the realist and communitarian critique of Rawlsian liberalism was an ethical vision made up of fragile individuals and social selves. It was also a philosophy, and a politics, with a less ambitious reach.

Epilogue

AFTER THE END of the Cold War, Rawlsian liberalism came to occupy a position a few paces to the left of the liberal ideology known as the Third Way.[1] In the post–Second World War era, when many thought the age of ideology was over, Rawls had wanted to provide a critical framework for judging the incremental reforms of societies moving gradually closer to justice. Now, at the so-called end of history, liberal egalitarianism seemed, like liberal democracy, to be hegemonic.[2] The luck-egalitarian debates continued.[3] Debates about public reason and deliberative democracy flourished.[4] Even as many challenged the institutional focus of egalitarianism and its neglect of the political for the procedural, others extended its distributive tenets into all parts of social and ethical life. It now became influential as a theory of international order. In 1993, Rawls published "The Law of Peoples," prompting philosophers to examine in greater numbers the possibility of global distributive justice and cosmopolitanism. During the Iraq and Yugoslav wars, they debated humanitarian intervention.[5] Many explored problems of multiculturalism, federal constitutionalism, and globalization, particularly those working in Canada, Australia, and Europe, where they responded to rights-claims by indigenous peoples and to European integration after the Maastricht Treaty. Others defended varieties of nationalism and patriotism, framing the nation-state as protecting communities, identities, solidarity, and diversity as much as equality.[6] With worries about climate change, more turned to intergenerational justice, the non-identity problem, and the challenge of discounting the future.[7] Still Rawls's theory was amended and challenged. As a result, Rawls—or at least the idea of him—continued to haunt philosophical debate and provide the referent for his critics as much as for his followers. This was even the case for the agonistic theories of democracy that became increasingly influential in the 1990s.[8] The price of admission into political philosophy at many elite universities remained a facility with Rawlsianism or its fellow-traveling alternatives.

Liberalism may have been politically triumphant, but most liberal egalitarian philosophers did not think that history had ended. Rawls resented the suggestion that his theory merely legitimated the capitalist welfare states whose fates now seemed secured. In the final statement of his theory before his death in 2002, *Justice as Fairness: A Restatement* (2001), he asserted that his vision of a "property-owning democracy" was to the left of the theory of the welfare state.[9] Rawls was much taken with the leftist interpretation of his ideas put forward during the debates about property ownership in the 1980s. That view of Rawls's theory as providing a mixed property regime brought out his early emphasis on starting places in the game, and it framed his theory as relying on a strategy of equalizing initial distributions of property and skills endowments—of inheritance laws, savings, and education policies—in order to ensure the wide dispersal of property ownership.[10] Later, in the aftermath of the Third Way's failures, these ideas of "predistribution" were seen as its egalitarian alternative.[11] In his last years, Rawls insisted they always had been. He had throughout his life wanted something more than a capitalist welfare state.

Rawls had certainly always wanted something distinctive. But one of the aims of the story told in this book is to show how much is lost in and obscured by Rawls's claim of continuity over time. Rawls was part right and part wrong about his own past, as everyone perhaps always is. He stood steadfast and stable in his own ideas, to a far greater extent than the standard narratives about his turn to *Political Liberalism* suggest. But Rawls's ideas also had ideological and political meanings that transformed over time. The idea of a property-owning democracy had multiple valences and was deployed in different ways, from Jefferson to Thatcher.[12] Defending ideas later described as theories of predistribution meant something different in the decades after the Great Depression and the Second World War than in the aftermath of the New Right and the successes of neoliberal assaults on democratic state institutions. At midcentury, when even minimalist liberals saw some scope for the public ownership of productive assets, the young Rawls's "prenez-garde" state, which turned on predistribution rather than state intervention, displayed anti-statist sympathies. Rawls's theory was born in dialogue with visions of post-industrial societies that might transcend capitalism, but it was also shaped by a liberal anti-interventionism that was wary of concentrations of power and that aimed to avoid destabilizing a stabilizing system. He had something in common with early neoliberals, who likewise carved out a minimal welfarism wary of laissez-faire and who, in their committed opposition to state intervention in the economy except to maintain

capital rights and encase markets, were divorced from the midcentury consensus and its brief accommodation with state control.[13]

What is striking is how far from that midcentury consensus mainstream liberal economic and political thought traveled. Rawls began as skeptical of state intervention and changed his mind, moving toward the consensus to advocate a postwar liberalism based on egalitarianism without planning. But the consensus itself changed and moved away from him. The neoliberal ideas that were outliers in the 1940s were the new normal by the end of the twentieth century. As the center of gravity pulled right, Rawls and his followers, who stood by his vision, became definitive of left-liberalism. From liberal skepticism and Labour revisionism to the civil libertarian social liberalism of the 1960s and the egalitarianisms of the 1980s, liberal philosophers adapted their preoccupations to fit the changing landscape, but they did not give up their core concerns.

They also did not adapt as much as Rawls's original vision intended. They began from what was already there—from existing intuitions, which changed with the times and formed the basis of their theories. Just as Rawls's account of justification required, his principles remained tied to society. But few updated the underlying social vision. The apparatus Rawls constructed, which became not just a doctrine to be consulted but the philosophical architecture of an ideology, remained at its center unchanged. The vision of society as characterized by a consensual core was always an idealization, but it lost its grip on reality as the reality itself transformed. Rawls fully intended that the assumptions that went into his theory would constrain what kinds of ideas came out of it. But the idealizations on which liberal egalitarianism relied were formulated in a society that had little in common with that of later decades. It was a society of stable growth, lower economic inequality, higher union density, and greater racial and gender inequality in which welfare systems had widespread legitimacy but were exclusionary, piecemeal, and unstable. It was also a society forged through war and empire, structured by the Cold War, and sustained by rapid economic growth and the Bretton Woods settlement. The political theory it generated was one based on a deliberative vision of politics that focused on juridical and legislative institutions but assigned a smaller role and less value to other social, political, and international institutions. It looked to the distribution of goods rather than to the broader dynamics and organization of economic and social life.

The relative absence of the state in liberal egalitarianism can in part be explained by the fact that Rawls set out to formulate his conception of state

and society at a moment when he was wary of the former's encroachment on the latter. Yet one of the great ironies of Rawlsian liberalism is that it ended up being among the most statist and procedural of available political theories. Liberal egalitarians became the defenders of a dying breed of universalizing, redistributive, state-focused politics, at least when compared to their prominent rivals—whether the communitarian, humanitarian, cosmopolitan, anti-totalitarian, or realist theorists who dominated the mainstream of political philosophy and political theory; the poststructuralist, black, feminist, and postcolonial critics of the state relegated to the disciplinary margins; or the right- and left-libertarians who inherited the preoccupations of Nozick and analytical Marxism. Liberal egalitarians also came to be seen as less concerned than these other theorists with agency and character. Despite Rawls's early interest in social actors and institutions beyond individuals, those actors and institutions were attenuated in his mature vision. Ultimately, his readers saw them as dispensable. After the socialist engagement with Rawls, when the theory of public reason came to dominate philosophical debate in the 1990s, philosophers made deliberation the explicit model for politics. This was at once demanding from an egalitarian point of view but depoliticizing from another. An orientation toward social actors and nonstate institutions was secondary. It was not all that surprising that a political philosophy that began as averse to corporations, unions, and coercive group agency became a politics of ideal speech detached from social movements. The distributive and institutional was severed from the political. With groups downgraded and appeals to morality taking precedence over the force of ideology and interest, discussion between individuals within liberal institutions was what remained.

While the young Rawls had been sensitive to ideas of social power and control, the distributive transformation of philosophy he oversaw produced theories unmoored from both, which were easily accused of the technocratic tendencies he had once targeted.[14] Rawls's framework was challenged from below: the scope and conceptualization of the basic structure came under fire for obscuring nonstate relations of social domination.[15] But precisely because Rawlsianism came to be viewed as a procedural theory, it was rarely contested from above: few questioned its account of the state and the state's role in reinforcing and reproducing power structures, or its assumptions about who controlled the state's political and administrative functions. As postwar liberalism came apart, many challenged proceduralism and marketization in the name of community, human rights, and identity. But they rarely explored how its neoliberal successors changed the state—by outsourcing and privatizing public

welfare functions, expanding the state's carceral functions and the reach of public management, and introducing competition, deregulation, and new transnational forms of clientelism and governance.[16] Liberal political philosophers were no exception.

Yet liberal egalitarianism survived the undoing of the postwar liberal settlement. It did so to some extent because of its tendency to disaggregate and its capacity to accommodate new "public affairs" within its framework. Liberal egalitarianism has thus been a historic success. Like all successes, it has its costs. Rawls's theory itself reflected the contradictions of postwar liberalism, both its triumphs and its limits. The horizons of the philosophers who came of age in the founding moment of the philosophy of public affairs were formed in the era of civil rights reforms and postwar affluence. These philosophers gave persuasive answers to the questions they posed. But there were questions they did not ask, often because, to their mind, these questions had been satisfactorily answered: full moral and political equality and civil rights, for instance, were presumed. Other questions were not philosophically puzzling or politically pressing: whether economic decisions should be politicized was not part of their agenda. In this sense, the concerns of political philosophy were shaped by its ideological context, and its horizons were fixed by what it was possible for its authors, like any historical actors, to understand about their political environment. The 1960s was the age of affluence, civil rights, and the Great Society, but it also marked a period of urban crisis and mass incarceration and the beginning of a new phase of deindustrialization and financialized capitalism in which public investment was decreased and the labor movement quashed.[17] Liberal philosophers assumed the triumphs but did not yet foresee the costs.

Their conceptual concerns had broader consequences for the shape of political philosophy. In the last decades of the twentieth century, liberal ideas were extended, contested, and applied to many moral and political situations and puzzles. Liberal egalitarianism became defined as a theory based on moral and political consensus. It was a nonhistorical, institutional, and individuating theory that relied on a vision of interpersonal morality in which agreement could be found. Its overwhelming focus was on questions of distribution and ownership. Over time, its assumptions became less open to interrogation. The constitutive parts constrained the kinds of politics that could be incorporated into the Rawlsian vision. Historical arguments were rejected. Ideas of the future were admitted, but only a certain kind of abstract, moralized future. The logic of liberal philosophy toward greater abstraction and complexity pushed philosophers to look to challenging philosophical puzzles, like

those surrounding overpopulation, and to go to great lengths to accommodate future decisions in presentist theories. But this came at the neglect of other problems, equally puzzling but more politicized, that philosophers might have tackled, like problems of historical injustice and reparations. There were many roads not taken in the history of liberal egalitarianism. The conceptual structure of Rawls's theory often legitimized philosophers' choices and provided the mechanisms by which its liberalism was preserved intact.[18]

The dominance of this framework had an impact on the critics of liberal philosophy too. Many on the margins of the philosophical mainstream saw that by using the Rawlsian framework they could earn a kind of legitimacy for their claims.[19] It was often only through adopting the form of either liberal egalitarianism or its mainstream alternatives that substantive ideas excluded by the structure of liberal egalitarianism itself—whether Marxian, feminist, critical race, anticolonial, or otherwise—were considered. Liberal philosophers began to take seriously feminist concerns, for instance, when they were framed as part of a Rawlsian concern with the basic structure, the family, and the distribution of goods, or as part of a communitarian concern with markets and commodification.[20] The success of the ideological constellation limited the potential for meaningful alternatives. When ideas that pulled in different political directions were taken up by liberal philosophers, they were those that could be subsumed within the broader framework. Liberal forms of survivalism were incorporated into theories of stability. Analytical Marxism was admitted into egalitarianism insofar as Marxism could be rendered a theory of property distribution. Democratic ideas that could be squeezed into theories of discussion and deliberation were too. As Barry made unabashedly clear, the claims of the New International Economic Order needed to be "domesticated" to fit the canons of justice theory.[21]

This book has aimed to denaturalize and defamiliarize those canons and the broader architecture of contemporary liberal philosophy. The story of the construction of that architecture is a story in which accumulated philosophical choices have significant implications for the political orientation and shape of political thought. What it suggests is that the choices made in the construction of this form of liberalism had lasting effects on what was kept in, and what was kept out of, philosophy—even by those who wanted other things from politics than Rawls himself did. The Rawlsian framework came to act as a constraint on what kind of theorizing could be done and what kind of politics could be imagined. This book has tried to locate not only the political effects of liberal philosophical ideas but also their political origins. This is not a story of simple

decline—a fracturing of welfarism into individualism, democracy into neo-
liberalism.[22] It is part of that story, but declinism occludes a past that was not
welfarist or redistributive in any simple way and suggests a sharp transition
that does not hold true at the level of ideas. It also ignores that at moments
liberal egalitarianism has provided the grounds for a radical indictment of
injustices and inequalities, and that it always had the potential to do so.

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In the first decades of the twenty-first century, liberal philosophers began to
return to ideas that their predecessors had set aside. The social vision at the
core of the Rawlsian apparatus was placed under greater pressure than ever.
The family had for some years been a subject of contestation. The church and
firm had lost their place in the foundations of pluralism long before. After the
crisis of 2007–2008, some began to turn to the corporation, the workplace, the
labor market, and the union as plausible sites for theories of justice.[23] Others
looked to the philosophy of money and finance or repurposed labor republi-
can theories of exploitation and domination to supplement distributive princi-
ples.[24] Increasing numbers of political theorists argued for the repoliticization
of political philosophy along agonistic, realist, non-ideal, and institutionalist
lines.[25] Problems that had once been foreclosed by the nonhistorical nature
of justice theory and the conceptual focus of the basic structure were interro-
gated. Some revisited the ethical questions raised by the structural legacies of
colonialism and explored theories of historical injustice, corporate responsi-
bility, and reparations.[26] Others began to put pressure on the coherence of the
basic structure and considered whether Rawls's abstractions represented con-
temporary political institutions or adequately captured the nature, trajectory,
and privatization of the state and bureaucracy.[27] There was a resurgence of the
study of ideology after a number of philosophers brought insights from criti-
cal race theory, feminism, and Marxism to the philosophical mainstream.[28]
Political philosophers seemed to find ways of navigating the ideological blind
spots of their forebears. Or perhaps those forebears had answered their own
questions so comprehensively that a new generation was able to move on to
new territory.

   Yet the old framework of political philosophy persists. Like much of the
human sciences and thanks in part to the constraints of a professionalized and
increasingly precarious academic system, political philosophy continues to be
oriented toward solving particular problems rather than to systematic social

and political theory. Even as the substantive concerns of political philosophers have begun to change as new subject matters enter the philosophical domain, much debate still takes place in the shadow of a set of ideas that reflect the assumptions of a different age. The period of flux that followed the crisis of 2008 has shone a particularly bright light on the political paradoxes at the heart of liberal egalitarianism. At one level, liberal egalitarianism looks now to have been the perfect left-liberalism for the period of the end of history. In that period of relative calm and liberal optimism, when politics appeared to be technocratic, concerned with distributional decisions, and characterized by a new consensus, it seemed that philosophy might be left to dig down to fundamentals, as Rawls had hoped in the postwar decades. The task seemed to be to reform an already successful liberalism. Now that the claims of the end of history seem not only complacent but mistaken, the political role of this philosophical liberalism, or its capacity for judgment, is not so clear.

Many aspects of the Rawlsian vision—whether its method, its scope, or its aim—make it seem unable to deal with the current political situation, as these recent critics have suggested. Its long neglect of "non-ideal" realities, interests, and ideologies has been shown to be untenable. The assumption and aim of agreement and consensus look out of touch as the persistence of division has everywhere been revealed.[29] The philosophical tendency to create conceptual problems out of realities that do not fit a given paradigm is an unproductive one in moments of crisis, particularly if the paradigm is consensual. Ideological divisions thus become puzzles to be solved rather than assumptions to be worked with, which makes it hard to make sense of politically divisive moments—especially when the liberal reframing of individual or group intuitions as representing the values of an entire community may itself be part of the problem. Without an account of interest, collective action, control, class, crisis—and with its assumption of potential value consensus, continued growth, and lasting stability—the Rawlsian vision looks no more capable of fully making sense of the current conjuncture than it did during the crises of the 1970s, when its proponents explored international and ecological ethics at the expense of the domestic political cases they might have confronted.

At another level, however, the distributive arrangements demanded by liberal egalitarianism seem radical. Some have begun to argue that they might offer institutional blueprints for the recent revival of socialist aspirations on the British and American left that have taken many by surprise.[30] In this respect, the fact that liberal political philosophy did not move beyond postwar liberalism and did not fully accommodate itself to the post-1970s era is one of

its strengths. Though postwar liberalism was shot through with inequalities and born of war and empire, aspects of it now seem attractive, especially if it is understood as the beginning of reform, not its end. Thus, even though parts of liberal philosophy seem to be bound up in the political structure that lay behind the crisis of 2008, others seem well suited to provide solutions to this moment of dramatic inequality, with its longing for universalizing principles. Above all, liberal egalitarianism is an unparalleled resource for schemes to organize and justify property distribution and limit inequality. During the years of the Third Way, the problem of inequality was often ignored in politics, but it was never ignored by philosophers.

Moreover, across all of the humanities, political philosophy has been uniquely underaffected by the denaturalizing, anti-essentializing, and particularizing intellectual movements that gained ground in the second half of the twentieth century. This disengagement paradoxically leaves it well placed to adjust its aims, drop some of its justificatory armor, and turn to critical or emancipatory programs of the kind that its concern for universalisms and egalitarianisms might easily support. What was once an impoverishment might become a benefit: by giving up its naturalized assumptions and viewing certain forms of argument and justification as bound to a political moment that has passed, philosophy might do new political work—not only of justification but of persuasion. The terrain philosophy has moralized could be politicized in a way that learns from its critics by connecting universal, maximalist principles to psychologically realistic accounts of what people are like, conceived collectively as much as individually. Philosophers might then be freed to make the case for why the kinds of democratic politics required to implement universal principles of justice in class-divided societies matter. There are elements to be discarded from liberal egalitarianism, but also much to be saved.

It is a truism that all philosophy relies on abstractions, as does all social theorizing. Liberal philosophy has for a long time drawn from received ones, which had roots in the efforts of Rawls and others to reinvent the individual and the state after the Depression and the Second World War. As Rawls saw then, the search for abstract fundamentals was as important during times of conflict as during those of consensus.[31] One of the lessons of this book is that we often underestimate the political distance traveled between that world of political consensus and our own. Today political philosophers might do well to begin that search anew, looking to social theory, history, and political struggle as much as to law and economics, as Rawls himself initially did. They might ask different kinds of questions and focus on some of the social and

political transformations—in the nature of the state, of agency under capitalism, of gendered power and racial inequality—that have taken place since the moment when Rawls constructed the framework that put those questions beyond investigation. In the years since the rise of liberal egalitarianism, the state has expanded, but it has also been privatized. The nature of capitalism and of work has transformed and will continue to do so, likely in dramatic and unexpected ways. The constituency of the least well off has been reconstructed, and both its composition and its place as an agent of change rather than a recipient of goods need to be again interrogated. Politics is changing, as radical movements and new oligarchs battle in a landscape shaped by unaccountable financial institutions, new media platforms, technological transformation, and climate change. Liberal philosophers have some of the tools to deal with these changes, but our questions also require new frameworks that depart from one invented in a period of ideological battles quite unlike our own. Perhaps it is time to see the dominant philosophical liberalism of the late twentieth century not as the primary resource for political philosophers but as one doctrine among many, and to understand Rawls's theory as a discrete chapter in the history of political thought—a part of our usable past, and like all political theories, a product of its time.

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NOTES

Preface

1. J. H. Wellbank, Denis Snook, and David T. Mason, *John Rawls and His Critics: An Annotated Bibliography* (Garland Publishing, 1982). More generally, the philosophical literature on Rawls is vast. For influential interpretations, see Thomas Pogge, *Realizing Rawls* (Cornell University Press, 1989); Norman Daniels, ed., *Reading Rawls: Critical Studies of Rawls's "A Theory of Justice"* (Stanford University Press, 1975); Chandran Kukathas and Philip Pettit, *Rawls: "A Theory of Justice" and Its Critics* (Stanford University Press, 1990); Samuel Freeman, *Rawls* (Routledge, 2007).

2. The paradigmatic statement that political theory was "dead" was made in Peter Laslett, "Introduction," in *Philosophy, Politics, and Society*, ed. Peter Laslett (Basil Blackwell, 1956), vii. This death and revival narrative has frequently been reproduced by political philosophers, even where it is contested. See Brian M. Barry, *Political Argument: A Reissue with a New Introduction* (University of California Press, 1992), lxix.

3. On this folk narrative, see Mark Bevir and Andrius Gališanka, "John Rawls in Historical Context," *History of Political Thought* 33, no. 4 (2012): 701–25.

4. Daniel T. Rodgers, *Age of Fracture* (Harvard University Press, 2010); Samuel Moyn, *The Last Utopia: Human Rights in History* (Harvard University Press, 2010).

5. For the most powerful statement of this view, see Samuel Moyn, *Not Enough: Human Rights in an Unequal World* (Harvard University Press, 2018), 39–40.

6. For accounts of the limits and contradictions of postwar liberalism in the United States, see, for example, Thomas J. Sugrue, *The Origins of the Urban Crisis: Race and Inequality in Postwar Detroit* (Princeton University Press, 1996); Judith Stein, *Running Steel, Running America: Race, Economic Policy, and the Decline of Liberalism* (University of North Carolina Press, 1998); Elizabeth Hinton, *From the War on Poverty to the War on Crime: The Making of Incarceration in America* (Harvard University Press, 2016). Gabriel Emmet Winant, "Crucible of Care: Economic Change and Inequality in Postwar Pittsburgh, 1955–1995", PhD dissertation, Yale University (2018). For postwar Britain, see David Edgerton, *The Rise and Fall of the British Nation: A Twentieth-Century History* (Allen Lane, 2018).

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12. Marc Stears, *Demanding Democracy: American Radicals in Search of a New Politics* (Princeton University Press, 2010); Anne Kornhauser, *Debating the American State: Liberal Anxieties and the New Leviathan* (University of Pennsylvania Press, 2015); Ira Katznelson, *Desolation and Enlightenment: Political Knowledge after Total War, Totalitarianism, and the Holocaust* (Columbia University Press, 2003).

13. For the postwar decline of American philosophy's "potency," see Bruce Kuklick, *A History of Philosophy in America: 1720–2000* (Clarendon Press, 2001), 199. For its Cold War narrowing, see John McCumber, "Time in the Ditch: American Philosophy and the McCarthy Era," *Diacritics* 26, no. 1 (1996): 33–49; George A. Reisch, *How the Cold War Transformed Philosophy of Science: To the Icy Slopes of Logic* (Cambridge University Press, 2005); cf. Thomas L. Akehurst, *The Cultural Politics of Analytic Philosophy: Britishness and the Spectre of Europe* (Continuum, 2010). On sociology, see Andrew Abbott and James T. Sparrow, "Hot War, Cold War: The Structure of Sociological Action, 1940–1955," in *Sociology in America: A History*, ed. Craig Calhoun (University of Chicago Press, 2007).

14. P. Mackenzie Bok, "To the Mountaintop Again: The Early Rawls and Post-Protestant Ethics in Postwar America," *Modern Intellectual History* 14, no. 1 (2017): 153–85; David A. Reidy, "Rawls's Religion and Justice as Fairness," *History of Political Thought* 31 (2010): 309–43.

15. Ben Jackson, *Equality and the British Left: A Study in Progressive Political Thought, 1900–64* (Manchester University Press, 2007); Alice O'Connor, *Poverty Knowledge: Social Science, Social Policy, and the Poor in Twentieth-Century US History* (Princeton University Press, 2001).

16. See, for example, the essays in Thom Brooks and Martha C. Nussbaum, *Rawls's Political Liberalism* (Columbia University Press, 2015).

17. Nils Gilman, *Mandarins of the Future: Modernization Theory in Cold War America* (Johns Hopkins University Press, 2003); John G. Gunnell, "The Rise and Fall of the Democratic Dogma and the Emergence of Empirical Democratic Theory," in *Modern Pluralism: Anglo-American Debates since 1880*, ed. Mark Bevir (Cambridge University Press, 2012), 129–53.

18. On "eventfulness," see William H. Sewell Jr., "The Temporalities of Capitalism," *Socio-Economic Review* 6, no. 3 (July 2008): 517–37.

19. Niall Ferguson, Charles S. Maier, Erez Manela, and Daniel J. Sargent, eds., *The Shock of the Global: The 1970s in Perspective* (Harvard University Press, 2010).

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22. Greta R. Krippner, *Capitalizing on Crisis: The Political Origins of the Rise of Finance* (Harvard University Press, 2011); Alasdair Roberts, *The Logic of Discipline: Global Capitalism and the Architecture of Government* (Oxford University Press, 2010); Bruce Schulman, "The Privatization of Everyday Life," in *Living in the Eighties*, ed. Gil Troy and Vincent J. Cannato (Oxford University Press, 2009).

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Chapter 1. The Making of Justice

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Chapter 5: Going Global

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Chapter 8. The Limits of Philosophy

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