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Rawls, Nozick, and The De-Politicizing of Political Theory

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Much recent political thought assumes that moral philosophy is the proper starting point for political philosophy. This assumption underlies a trend which may accelerate due to the influence of two recent books in political philosophy, John Rawls' *A Theory of Justice*\(^1\) and Robert Nozick’s *Anarchy, State, and Utopia*.\(^2\) Nozick puts it succinctly, “Moral philosophy sets the background for, and boundaries of, political philosophy,” for what people may and may not do to each other “limits what they may do through the apparatus of a state.”\(^3\) But there are very real dangers for political philosophy if these books become firmly established models for subsequent writing.

Both books suspend their theories in mid-air. They are essentially hypothetical constructions, not simply because of their use of social contract and state of nature devices, but because they do not undertake the task that political philosophers have traditionally accepted, the diagnosis of the crisis of the political order.\(^4\) Their theories are therefore solutions for problems that are not investigated. Rawls simultaneously opposes moral relativism and the substantive commitment to utilitarianism. Yet, he never explains why utilitarianism is of concern to anyone outside academic philosophy departments, and he does not explore the causes of moral relativism, a task that would require an explanation of the reasons for the lack of moral consensus in contemporary political societies. Nozick constructs a theory of the minimal state without showing why the individualist anarchism he opposes is a problem; he argues for an entitlement theory of justice without discussing the political issues that necessitate the theory. The positive state is his enemy, but he does not explain its emergence, perhaps because of the damaging effect such an investigation would have on his theory. For he would have been forced to confront matters he prefers to ignore, the political problems that formed the context for the emergence of the positive state.

Since Plato, western political philosophy has found that the diagnosis of the crisis of the political order requires not just abstract moral argument, but an analysis of political experience, the articulation of coherent theories of the self.

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3 p. 6.
and politics. A political philosophy that does not explore either human nature or politics, that widest arena of human association, is ultimately sterile. Both Rawls and Nozick reject the traditional role of the political theorist, which is, according to Spragens, “to understand politics by looking at it against the background of human nature and other features of our world which we must take as ‘givens’.”

Because Rawls and Nozick fail to relate moral principles to human experience, they have little to say about the ways men behave politically. Because they neglect the self in society they offer little diagnosis of the problem of political order, and they can give the political actor little guidance for its reconstruction. A work that does not accept these major tasks traditionally undertaken by political theorists does not simply evade theory; it is deeply flawed. This will be established through an examination of Rawls and Nozick.

Rawls’ *A Theory of Justice* is less consistent than Nozick’s book, but it is much more profound and comprehensive, a genuinely creative work that deserves the continuing analysis it will receive. But whatever its many merits it suffers from its attempt to develop principles of justice from a neutral stance toward human nature. This supposed neutrality covers its acceptance of a particular view of the self, the atomistic individualism of Lockean liberalism, a view that is itself contradicted by the approach to human experience Rawls develops in his discussion of the sense of justice, the internalization by people of moral principles as they live in association. The unity of this important book is thus broken at its core.

Rawls’ purposes are well known. He seeks rationally defensible principles of justice for the basic structure of society. He believes that a social order requires a public conception of justice, principles that are widely accepted and known to be accepted. These principles “assign rights and duties in the basic institutions of society, and they define the appropriate distribution of the benefits and burdens of social co-operation.” Rawls tries to circumvent moral relativism in the choice of principles of justice by a methodological device that would bring agreement on the principles. He claims to write within the social contract tradition when he argues that we may project ourselves into an “original position,” a hypothetical situation characterized by a “veil of ignorance.” Each individual within this artificial condition would know he has some plan of life, but he would not know the details of that plan. Each would know, however, that necessary to the attainment of his plan are certain “primary social goods,” which include “rights and liberties, opportunities and powers, income and wealth.” Each would have general knowledge about man, society, and economics, but no one would have any particular knowledge

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5 Ibid., p. 4.
6 See especially pp. 118-75.
7 Chapter VIII.
about his own society and his place in it. Nor would anyone know his own personality, capacities, or desires. Circumstances of moderate scarcity are presupposed, for it would otherwise either be impossible to agree on principles of justice or they would be unnecessary. Each individual would be mutually disinterested in the sense that he would not concern himself for others. Each would seek principles which if accepted as a public conception of justice would most likely maximize his own holdings of the primary social goods. The two principles that Rawls believes would be adopted are in serial order; the first takes priority over the second.

(1) Each person is to have an equal right to the most extensive total system of equal basic liberties compatible with a similar system of liberty for all.

(2) Social and economic inequalities are to be arranged so that they are both:
   (a) to the greatest benefit of the least advantaged . . . , and
   (b) attached to offices and positions open to all under conditions of fair equality of opportunity. 12

In his argument that the two principles would be chosen by "free and rational persons concerned to further their own interests" 13 Rawls assumes these principles are founded on a neutral perspective toward human nature. He believes that whatever else we may think about the self we can all accept principles of justice that would be chosen in a condition that did not pre-suppose unselfish persons who cared for each other. But this is not simply a minimal view of human nature. It is rather a particular conception. As John Scharr has shown, it is the individualism of classical liberal theory. 14 Although Rawls' individual wishes to choose principles that he would prefer no matter what he should later find his interests to be, he sees himself as a separate individual with particular, though unknown, interests.

Later in the book Rawls outlines a different, contradictory theory of human nature. He is led to this discussion by his argument that the two principles of justice will be chosen in part because they are more "stable"; they will engender their own support, since when followed they will confirm more closely to moral psychology than alternative principles. The "strains of commitment" to the two principles will thus be less than those to be encountered if other principles are adopted. These facts of moral psychology will be known to

8 pp. 3-11.
9 p. 4.
10 pp. 11-12, 136-42.
11 p. 92.
12 p. 302.
13 p. 11.
persons in the original position and will support the choice of the two principles. This view of moral growth that Rawls sketches resembles Kohlberg’s stages of moral development.

For Rawls the person develops in three stages. In the first stage, the morality of authority, the child responds to the love of his parents. He comes to love them and wants to express those forms of action that correspond to the sort of person they want him to be. In the second stage, the morality of association, the person develops moral standards appropriate to his role in the associations to which he belongs. He acquires skills necessary to see things from the points of view of others. He comes to desire the friendship and trust of his associates, because they both affirm his well-being and express personal qualities that he wishes to develop in himself. In the third stage, the morality of principle, the person realizes that those for whom he cares are the beneficiaries of institutions he accepts as just. He wishes to support those institutions as he sees that a common allegiance to them provides a perspective from which people can adjudicate their differences. He thus comes to accept moral principles that will structure his wider relationships.

Rawls presents a very classical view in which a person becomes human through participation in widening social groups. He comes to see himself as part of larger social wholes — families, communities, political societies. He does not define himself simply as a separate individual with a purely personal life plan; he is rather bound to others through his sense of identity. Because the person develops his moral capacity by engaging in a dialogue with others, his free and social dimensions are coherently related.

This social and developmental view of man is in opposition to the assumptions about human nature that underlie the central methodological device of A Theory of Justice — the original position. Each of these conflicting approaches to the self leads to a different concept of both rationality and values. But because he neglects the implications of his social-developmental view of the self, Rawls locks himself into the type of rationality and values implied in the idea of the self as a separate individual. The individual in the original position operates by a calculating rationality. He searches for the most efficient means to given ends, the maximization of his control of the primary social goods in the society to be built on the principles that are selected. This sort of rationality is derived from and inconceivable without the view of the self as a separate individual.

Much comment on A Theory of Justice has occurred within the framework of a calculating rationality. A pervasive focus for discussion of the book has been the issue as to whether it would be most “rational” for the individual in the original position to choose the two principles. What is neglected in these arguments is the recognition that this is only one possible approach to rationality. Rawls unfortunately does not explore the type of rationality implicit

15 pp. 455-56.
16 These stages are discussed in pp. 461-79.
in his discussion of moral development. This perspective would, if developed, reject a calculating rationality in favor of a comprehending rationality. Comprehending rationality would lead the person to understand himself as part of wider relationships and associations. To the calculating rationality of the individualist view the highest value is the freedom of the individual to pursue whatever plan of life he chooses. From the viewpoint of comprehending rationality, the person will seek to maintain and improve the relationships and associations of which he is part, not because they take precedence over his own good, but because his own good is inseparable from them. Because he will not define himself as a distinct, separate individual, the person’s pursuit of his interests will not be an absolute value, limited only by acknowledgement of the co-relative rights and interests of other individuals. If other groups and institutions are important, then individual interest cannot be absolute; but if people are understood as separate individuals, institutions cannot be more than contractual relationships entered to further the interests of their members.

Other writers have offered important criticisms of Rawls’ concept of persons in the original position. Robert Paul Wolff argues that it is logically impossible to attribute to such persons the knowledge Rawls ascribes to them. Brian Barry shows that because Rawls denies substantive moral sentiments to these hypothetical individuals the principles chosen would not necessarily be principles of justice. John Schaar correctly observes that it will be impossible for rational egoists who chose the two principles in ignorance of their own interests to abide by the principles when the veil of ignorance is lifted postcontractually.

We can easily imagine such persons adopting Rawls’ principles in a situation of complete uncertainty or ignorance about the future, but it is hard to imagine them keeping those agreements once they begin to acquire some knowledge. . . . The principles of justice are accepted precisely because they can be shown to be advantageous to everyone, and that showing simply cannot be made in the postcontractual situation, where persons know their real situation and can adopt strategies and principles appropriate to it. . . . It will be instantly clear to any rational egoist that the two principles are not advantageous to him in every concrete social situation. Hence, on Rawls’ own argument, which makes advantage sovereign, he would not be bound by the two principles in cases where they damaged his interests.


20 Schaar, op. cit., p. 78.
Another equally serious problem for *A Theory of Justice* flows from the inconsistent approaches to human nature in the book. If human moral development is as Rawls describes it, the principles of justice could not be chosen from the original position. If the original position were to be an acceptable methodological device, his discussion of the social process of moral development must be rejected, and his major argument for the stability of the two principles is undermined. It makes no sense to say that individuals who have projected themselves into the hypothetical original position can have as part of their general knowledge the facts of moral psychology that Rawls describes. For in this social-developmental view of the self the person’s self-understanding would prevent the choice of principles of justice as a separate individual from an imaginary situation. It is only from the viewpoint of a calculating rationality that individuals could project themselves at any moment into a hypothetical situation from which they would determine the principles of social organization that would probably benefit them most. People who believe themselves fundamentally related to others could not make this leap. They would develop moral principles only from a social process in which they come to care for other persons and associations of which they are part. There is of course a sense in which individuals who imaginatively enter the original position could recognize a social “condition,” for the interaction of separate individuals in society must be regulated. But if man is a social “being” he could not enter the original position. It would be as if Aristotle had said that man is a social and political animal and then developed principles of justice from individualist premises.

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In Part I of *Anarchy, State, and Utopia*, Nozick argues against anarchists that a state is justified. He utilizes the state of nature device to show how a state could arise in an “invisible hand” fashion from the contractual arrangements between individuals and “protective associations.” A “dominant protective association” would emerge without violating anyone’s rights. It would perform the functions of a state. In Part II Nozick argues that only a “minimal” state can be justified. His is the “night watchman” state that may not legitimately intervene in social or economic affairs except to protect individuals from those who would threaten their rights. All other state action would violate their “entitlements.”

Nozick’s theory of “entitlements” is the most important and provocative part of *Anarchy, State and Utopia.* He argues specifically against Rawls and in general against all positions which hold that there is some acceptable redistributive role for the state. Redistributive theories of justice are, he claims, “patterned” or “end-state” theories because they try to fit people’s holdings to some “natural dimension” like moral merit, needs, marginal product, or effort. He states that his is an historical theory, one that evaluates the justice of a distribution in terms of its origins. People have rights to things they produce,
either themselves or through buying or contracting for the held resources used in the production process. They are also entitled to things they receive through voluntary transfer, as in the case of contracts, gifts, and bequests. Nozick accepts from Locke’s analysis of property in the state of nature the proviso that one cannot have a right to a previously unowned thing if the liberty of others to use the thing is worsened. Then he strictly circumscribes the principle. It would not be acceptable for one to buy up all the drinking water in the world; yet, a medical researcher might synthesize a drug to treat a disease but refuse to sell to others except on his own terms, since others have access to all the materials necessary to produce the drug.

The consequence of the entitlement theory is that when a person is forced to give up something to which he is entitled he is subjected to forced labor; he becomes simply a means to another’s ends. Nozick even goes this far: “Taxation of earnings from labor is on a par with forced labor.” 22 No benevolent achievement of social ends can be justified by taxation which forces some to give up part of their holdings to others. Furthermore, a society which respects the entitlements of its members will be a contractual society. Each individual will buy and sell, transferring his holdings to others for their holdings or cooperation. Thus Nozick rallies us behind his slogan: “From each as they choose, to each as they are chosen.” 23

Nozick actually offers no positive defense of his entitlement theory. His arguments are negative; they attack distributive positions, particularly that of Rawls. 24 For all its ingenuity, Nozick’s entitlement position is ultimately tautological — people are entitled to their entitlements. But the tautological character of the argument is hidden in his assumptions about human nature. He states that there is no social entity with a good that undergoes some sacrifice for its own good. There are only individual people, different individual people, with their own individual lives. Using one of these people for the benefit of others, uses him and benefits the others. Nothing more.

These limitations on what we can do to each other reflect the fact of our separate existences. They reflect the fact that no moral balancing act can take place among us; there is no moral outweighing of one of our lives by others so as to lead to a greater overall social good. There is no justified sacrifice of some of us for others. 25

21 See especially pp. 150–82.
22 p. 169.
23 p. 160.
25 pp. 32–33.
Given this view of human nature, Nozick’s model of human interaction quite naturally becomes that of exchange relationships. People are “distinct individuals, each with his own life to lead”; they relate as they make deals to further their mutual interests.

Only on such assumptions about the self could Nozick discuss the possible origin of the state from contractual arrangements between individuals and protective associations, for only in such a view could the individual be assumed to have the calculating rationality necessary to the exchange process prior to the development of political society.²⁶ Nozick’s position on human nature also leads to the entitlement theory. It would of course be logical to say that people should be able to keep what they have acquired; of course government or other institutions should not interfere. If people are really separate, isolated individuals, then they should be free to calculate their interests, to compete with one another, and to retain what they acquire. But from a social-developmental view of the self, it would be possible to argue that other values, such as the needs of other persons or the general welfare, might take precedence over the individual’s right to retain everything he owns.

What is objectionable is not that Nozick has a position on human nature, but rather his assumption that this position is a fact, that it needs no defense. He bases his whole book on undefended assumptions. We must remember that one can proceed from undefended assumptions only if the argument is not entirely dependent on the assumptions. If everything else follows from the assumptions there is no real argument at all. Nozick posits a position on human nature that Plato attacked in extended argument, but he fails to acknowledge any other approaches that must be examined. Any theory that begs the question of what it means to be human, yet draws important conclusions from its assumptions about the self, is simply an abandonment of political philosophy.

Nozick’s undefended assumptions about the self lead him into a theoretical quagmire. He wants all relationships between individuals to be strictly voluntary. He thinks that one individual does not have a legitimate say in the decisions of another simply because those decisions may affect him. He uses marriage as an example. An individual who wishes to marry another but is rejected cannot claim the right to interfere in the other’s choice of a mate. Nozick errs in transferring to society as a whole such a voluntary personal relationship as marriage. He believes that any forced interdependence is slavery. But only within his position that the self is a separate individual could interdependence be strictly a matter of choice. From a social-developmental approach to the self a person is in a web of interdependence all his life before the state compels him to serve others’ needs. Since interdependence is forced on a person by his nature, to say that forced interdependence is oppressive would be an admission that human nature is oppressive.

Nozick's belief that each individual retains free, unstructured choice if he is not physically aggressed by others flows from his undefended assumptions about the self, assumptions that prevent discussion of the preconditions of human fulfillment. His utopia is a vision of society in which each person can do what he wants. It will be provided by a minimal state that "allows us, individually or with whom we choose, to choose our life and to realize our ends and our conception of ourselves, insofar as we can, aided by the voluntary cooperation of other individuals possessing the same dignity." But this utopia is only for the wealthy. Nozick's book can be justly condemned for the lack of seriousness that motivates Rawls' work, for Rawls realizes that "primary social goods" are necessary to the achievement by an individual of his life plan. 

Anarchy, State, and Utopia ultimately degenerates to ideology. Nozick assumes the structure of holdings in market societies is just, that it derives from original acquisitions of the unowned fruits of nature plus voluntary transfers. He accepts the fairness of the outcome of market transactions without attempting to show that those who control major economic institutions justly acquired their holdings. He does not acknowledge the power element in economic transfers, in the selling of labor, in the buying of products, in the determination of what is to be produced. Although he claims to defend an historical entitlement theory, there is, as Sheldon Wolin points out, "no reference to any historical circumstance," and there is "no reference to any actual political event, action, or society."28

The failure to develop a coherent theory of human nature is closely related to the apolitical character of both books. Given Nozick's wholehearted acceptance of the view of man as a separate individual and his relegation of political institutions to the protection of individual entitlements, there is little need to discuss politics. Further intervention by the state is unnecessary. Nozick is very much the classical liberal, but he gives no fundamental defense of his position. He relegates political life to the realm of force; government is the agency of coercion, society the arena of spontaneous action. As there need be only a minimal role for political action, so there is also a minimal role for political philosophy. "Political philosophy is concerned only with certain ways that persons may not use others; primarily physically aggressing against them."29 Political philosophy can thus have nothing meaningful to say about that total relationships within which men become moral beings.

Rawls also gives little attention to politics. Part Two of A Theory of Justice outlines the constitutional and legislative stages, when rules for particular political societies are adopted after the veil of ignorance is partially lifted. But

27 p. 334.
28 Wolin, op. cit.
29 p. 32.
this section is limited to discussion of an abstract set of political functions that must be arranged in accord with the two principles. Rawls makes a distinction between ideal theory and non-ideal theory and claims to be primarily engaged in the construction of an ideal theory. He states that only after ideal principles are derived can one have a standard by which to judge actual political situations in which these principles may be only partially implemented. Yet, he never deals with the many problems that stand in the way of the implementation of the two principles. There is no discussion, for example, of alienation, bureaucracy, or powerlessness. We are left only with the two principles as general guidelines for the constitutional and legislative stages. Nor is it simply the implementation of his ideal principles that is at stake. Although we do not demand that the political philosopher give detailed outlines of specific institutional procedures or policy decisions, we do expect general exploration of the causes of social disorder and an argument that his prescription will meet the crisis he explains. Rawls is of course concerned about the need to protect basic liberties and to mitigate inequality, for the two principles are addressed to these matters, but we are left to speculate about the nature of the threats to liberty and equality in industrialized societies.

It is the methodological approach used in the construction of his ideal theory that leads Rawls from a discussion of political crisis. He imagines an objective position from which people might agree on principles of justice, but the original position and the veil of ignorance preclude knowledge of specific circumstances of individuals and problems of society. If Rawls had abandoned the original position and attempted to derive the two principles from his discussion of the process of moral development, it would have been necessary for him to show how social and political life poses problems to which the two principles provide solutions. He would have discussed the crises of social order that prevent persons from coming to see the truth of the two principles. He would have shown how the process of moral development could lead people to see that the two principles would bring order. For example, he might have argued that the egalitarian aspects of the difference principle would be derived when the person's locus of caring is extended to the whole community. And he might have shown that the basic freedoms of the first principle would be supported by people as they learned to care for others.

Rawls and Nozick probably ignore serious political problems in part because such a discussion would call into question either their assumptions about human nature or the possibility of achieving social order given these assumptions. Both neglect crucial political difficulties when they base their theories on a fundamental harmony of interests in society. They presuppose no incompatible interests; society, it is assumed, can accommodate all legitimate demands. Rawls builds a basic harmony of interests into his theory when he states that the original position will presume conditions of "moderate scarcity,"

\[30\] pp. 245-46.
scarcity so that principles of justice to apportion the benefits of social cooperation will be necessary, moderate scarcity so that agreement on principles by which to live will be possible. But every society will at some point face serious problems such as war, racism, or economic crisis. A community that confronts extraordinary hardship or threat cannot meet its difficulties if its citizens behave as separate individuals in pursuit of their own interests. When society is no longer affluent and secure the widespread assumption that people are separate, isolated individuals will only lead to cynical, alienated citizens, dispirited because their interests cannot be satisfied. If political philosophy makes such assumptions about human nature it cannot address the crises that societies will face when economic expansion and class or sectional harmony can no longer be taken for granted.

The highest value to both Rawls and Nozick is the individual's freedom to choose and pursue his own private life plan. Nozick is consistent in basing this value on individualistic assumptions about man. Rawls' two approaches to human nature do not consistently support this value. His discussion of the social process of moral development implies that the individual's pursuit of his own life plan is subordinate to the needs of others, but Rawls does not push his remarks to these lengths. The core of his book, the derivation of the two principles of justice, proceeds in an opposite direction. Because individual self-interest is the foundation for choice of the two principles, the duty of individuals is to the two principles and to institutions which embody and uphold them. For Rawls, like Nozick, positive obligation to others is merely a byproduct of the rational calculation of self-interest. But enlightened self-interest is still self-interest. As Nozick clearly acknowledges, Lockean individualism leads to a "no-harm" morality. What individuals owe one another is mutual respect for the pursuit of their divergent private interests.

A morality larger than the "no-harm" principle is impossible unless the self is defined as part of a larger whole. Caring is more than tolerating; it transcends the maxim, "Thou shalt not interfere." If the person is viewed as a social being who develops in a web of interdependence, he will have an obligation to meet the real needs of others, or in cases of conflict to balance them against his own. The orientation to the self thus structures the concept of duty that is permissible in a moral theory. A moral theory that is built on unexplored or inconsistent assumptions about human nature is questionable moral philosophy.

In summary, a moral theory that does not carefully examine human nature and politics is not an adequate basis for political philosophy. Nozick sees that his theory rests on his assumptions about human nature, but he is not aware that his book cannot be taken seriously if these assumptions are left undefended. Rawls' work contains two contradictory, mutually destructive approaches to human nature. Moreover, both writers basically ignore politics. Thus neither Rawls nor Nozick can offer a diagnosis of the problems of the political order. They therefore do not present an acceptable model for contemporary political philosophy.