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# INTERPERSONAL DISTRUST IN THE MODIFIED RAWLSIAN SOCIETY

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JOHN RAWLS, the author of the widely acclaimed *A Theory of Justice*,<sup>1</sup> has modified and supplemented his theory of the just society in his new book *Political Liberalism*. Rawls's theory of justice, which he calls "justice as fairness," continues to consist essentially of two principles: a liberty principle under which each person is entitled to the maximum possible liberty consistent with equal liberty for others, and a difference principle, under which social and economic inequalities are justified only to the extent that they contribute to raising the absolute level of well being of the least advantaged class over the long run.<sup>2</sup> These two principles are slightly modified in Rawls's new book,<sup>3</sup> but these modifications are not the reason behind the revision of the *Theory* in *Political Liberalism*.

The revision is necessary, Rawls says, because of a critical inconsistency in Part III of the *Theory*, the part dealing with social stability.<sup>4</sup> Rawls now believes that he has remedied this inconsistency by limiting the conception of justice he developed in the *Theory* to the realm of the political. As I explain below, Rawls's modification has dealt with one aspect of political stability, but it has exacerbated another. Under his revision, the stability of Rawlsian society is threatened by heightened levels of interpersonal distrust.

## 1. *The Limitation of the Theory to the Political Realm*

In his new book, Rawls explains that the *Theory* was critically flawed; it was flawed because, in the *Theory*, "a moral doctrine of justice general in

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1. JOHN RAWLS, *A THEORY OF JUSTICE* (1971) [hereinafter the *THEORY*].

2. In his exposition of the two principles in the *THEORY*, Rawls suggested that under the difference principle, social and economic inequalities are justified only to the extent that they further the long-term prospects of the least advantaged class. *Id.* at 78. Although the difference principle, accordingly, is designed to improve the long-term well-being of the least advantaged class, it is not designed to further the well-being of the least advantaged class over an inter-generational time span. Inter-generational obligations are established by a savings principle. *Id.* at 291-93; see *infra* note 18.

3. See *infra* text accompanying note 19.

4. JOHN RAWLS, *POLITICAL LIBERALISM* xvi-xvii (1993).

scope is not distinguished from a strictly political conception of justice.”<sup>5</sup> The problem, Rawls explains, arises from the fact that modern democratic societies are characterized by “a pluralism of incompatible yet reasonable”<sup>6</sup> religious, philosophical, and moral ways of viewing life and the world, ways which Rawls refers to as “comprehensive doctrines.” Moreover, this pluralism of reasonable comprehensive doctrines is not just accidental; it is the natural response of human beings using their practical reason in an environment of free institutions and thus is “a permanent feature of the public culture of democracy.”<sup>7</sup> Thus the question needing resolution is how adherents of incompatible (but reasonable) comprehensive doctrines can all accept a common conception of justice as the core of society’s basic structure.

Rawls attempts to meet this newly identified challenge by identifying “justice as fairness” as a political rather than a general conception. By limiting “justice as fairness” to the political,<sup>8</sup> Rawls hopes that it can be supported by adherents of each of the many divergent and conflicting (but reasonable) comprehensive doctrines found in free societies.

Rawls has thus identified a major way that the essentials of the *Theory* can be strengthened in his new book and has improved the intellectual framework supporting the two principles. As I point out below, however, Rawls has unnecessarily confused his new framework and alienated many of his potential supporters by imbuing the definition of reasonableness with his own political preferences, an approach which appears to run counter to his own prescriptions of how political philosophy can potentially serve as a means to overcome deep political conflicts.<sup>9</sup>

The reader will observe that Rawls has both widened the challenge before him by postulating a pluralist composition of society and carefully limited that challenge by insisting that the comprehensive doctrines from which “justice as fairness” draws its support are only those which are reasonable ones. Rawls admits that “a society may also contain unreasonable and irrational, and even mad, comprehensive doctrines.”<sup>10</sup> In their case, he says, “the problem is to contain them so that they do not undermine the unity and justice of society.”<sup>11</sup> Restated, Rawls would seek support for the two principles from comprehensive doctrines that are reasonable, but would seek to contain comprehensive doctrines that are unreasonable.

When is a comprehensive doctrine unreasonable? Rawls uses the question of abortion to illustrate the unreasonable as applied to comprehensive doctrines. He deems unreasonable any comprehensive doctrine that would use the political process to deny a pregnant woman a right to ter-

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5. *Id.* at xv.

6. *Id.* at xvi.

7. *Id.* at 36.

8. *Id.* at 38.

9. *Id.* at 44-46.

10. *Id.* at xvi-xvii.

11. *Id.* at xvii.

minate a pregnancy within the first trimester,<sup>12</sup> thus equating the unreasonable with the position of those who would overturn *Roe v. Wade*.<sup>13</sup> This reviewer agrees with Rawls that the law should not constrain a woman's right to an abortion within the limits set out in *Roe v. Wade*, but he does not believe that persons taking the other position are unreasonable. With this stroke, Rawls has unnecessarily identified large, albeit minority, sectors of the public and the comprehensive doctrines to which they adhere as unreasonable when they deal with this question. Rawls, of course, realizes that the potential of his conception of justice to play the unifying role for which it was designed is seriously undermined if it excludes large sections of the public. He therefore accepts a comprehensive doctrine as reasonable overall, even though it leads to an unreasonable conclusion in one or even in several cases.<sup>14</sup> Whether or not this concession will undo the alienating effects that his example is bound to have on those who differ with him on the abortion question is problematic.<sup>15</sup>

The difficulty of differentiating the correct from the incorrect application of the principles of justice also arises in other situations, especially in connection with the difference principle. Contrary to his confident conclusion that the liberty principle requires the *Roe v. Wade* result, Rawls concedes that the proper application of the difference principle is often indeterminate.<sup>16</sup> Indeed, Rawls is not prepared to conclude that either the liberty principle or the difference principle (which seeks to structure society's basic institutions to improve the long-term well-being of the least advantaged class) precludes public ownership of the basic means of

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12. *Id.* at 243 n.32. Rawls uses the abortion question (as it relates to the decisions of mature adult women) to illustrate the difference between a reasonable and an unreasonable position as follows:

[W]e [should first] consider the question in terms of these three important political values: the due respect for human life, the ordered reproduction of political society over time, including the family in some form, and finally the equality of women as equal citizens. (There are, of course, other important political values besides these.) Now I believe any reasonable balance of these three values will give a woman a duly qualified right to decide whether or not to end her pregnancy during the first trimester. The reason for this is that at this early stage of pregnancy the political value of the equality of women is overriding, and this right is required to give it substance and force. Other political values, if tallied in, would not, I think, affect this conclusion.

*Id.* The controversy over the abortion question arises from the differing weights that the disputants accord to the developing human life in the womb. Rawls does not address this question of weight except by implication.

13. 410 U.S. 113, 149-50 (1973).

14. POLITICAL LIBERALISM, *supra* note 4, at 244 n.32.

15. Rawls might have taken an alternative approach suggested by his own discussion of abstract conceptions. We use abstract conceptions and political philosophy when "shared understandings of lesser generality have broken down." *Id.* at 46. Both Rawls and his abortion opponents could probably adhere to the two principles; it is in their application that disagreement arises. As with other controversial questions (as Rawls himself observes), attempts to overcome intense political disagreement may bring the two sides to political discourse at higher levels of abstraction where they can agree.

16. *Id.* at 229.

production.<sup>17</sup> In Rawls's view, public (or social) ownership is as reasonable as private ownership. One would have thought that human experience has finally demonstrated that government ownership of the means of production is an inefficient means of creating wealth, and therefore an economic structure that reduces the well-being of the least advantaged class over what it would be under a private-property alternative, even over the course of a single generation.<sup>18</sup> In fairness to Rawls, it should be noted that in the *Theory* (where he elaborated his position in greater detail) he assumes that even a socialist regime "can avail itself of the advantages of" a free-market system, whose efficiencies he explicitly recognizes.<sup>19</sup> Regardless of Rawls's position on ownership of the means of production, he is surely correct that the application of the difference principle is frequently indeterminate. I contend below that this indeterminacy contributes to the instability of Rawlsian society.

## 2. *The Relation Between the Two Principles and the Just Society*

The two principles of justice are slightly modified from the earlier versions that appeared in the *Theory*. In their present form they are:

Each person has an equal claim to a fully adequate scheme of equal basic rights and liberties, which scheme is compatible with the same scheme for all; and in this scheme the equal political liberties, and only those liberties, are to be guaranteed their fair value.

Social and economic inequalities are to satisfy two conditions: first, they are to be attached to positions and offices open to all under conditions of fair equality of opportunity; and second, they are to be to the greatest benefit of the least advantaged members of society.<sup>20</sup>

As in the *Theory*, the two principles are agreed upon in the original position under a veil of ignorance, imagery standing for an identification of principles of justice that is based upon highly abstract and general knowledge about the world and its inhabitants and which, therefore, is not warped by self-seeking motivations or motives that seek to further the interests of any particular individual or set of individuals. These princi-

17. Rawls says that "The two principles of justice by themselves do not settle the question" of private versus public ownership of the means of production. *Id.* at 298; *see also id.* at 338-39.

18. Rawls would not apply the difference principle in such a way as to require inter-generational economic growth for the benefit of the least advantaged class. He states that the difference principle is compatible with a society "where [real] capital accumulation is zero." *Id.* at 7 n.5. Although this statement is an accurate rendering of the view he took in the *THEORY*, it is somewhat misleading because it omits mention of the savings principle.

In the *THEORY* Rawls contended that the parties in the original position would adopt a "savings principle," under which "[e]ach generation must not only preserve the gains of culture and civilization, and maintain intact those just institutions that have been established, but it must also put aside in each period of time a suitable amount of real capital accumulation." *THEORY, supra* note 1, at 285. The savings rate would vary with the conditions of society, smaller amounts being saved when society was poor and larger amounts when society was wealthier. *Id.* at 287. When just institutions are firmly established and the fair value of liberty is realized, the savings rate falls to zero. *Id.* at 287, 290.

19. *THEORY, supra* note 1, at 271.

20. *POLITICAL LIBERALISM, supra* note 4, at 5-6.

ples are the foundation for the basic structure of society. Rawls defines the basic structure as follows: "By the basic structure I mean a society's main political, social, and economic institutions, and how they fit together into one unified system of social cooperation from one generation to the next."<sup>21</sup> The basic structure provides the background justice against which individual social interaction takes place. Individuals and private associations are not bound by the difference principle. When individuals pursue their own ends, they may seek those ends vigorously, relying on the institutions of background justice to account for the dislocations that might otherwise result from the aggregate effects of individual transactions.<sup>22</sup>

The institutions composing the basic structure require definition, and Rawls supplied that definition in the *Theory*. In dealing with the basic structure in the *Theory*, Rawls defined institution as: "a public system of rules which defines offices and positions with their rights and duties, powers and immunities, and the like. . . . As examples of institutions, or more generally social practices, we may think of games and rituals, trials and parliaments, markets and systems of property."<sup>23</sup> Even though "justice as fairness" is now limited to the political realm, the institutions of the basic structure to which the two principles apply are not limited merely to political institutions. Rawls quite properly includes economic and social institutions as part of the basic structure to which the two principles apply. The basic structure must extend beyond the merely political for the two principles—especially the difference principle—to work as intended. Indeed, that is the function of the political: to make rules governing the nonpolitical. Thus, for example, legislation designed to implement the difference principle by redistributing income through a progressive income tax necessarily must apply to individuals. Such legislation helps to define the economic structure in which work takes place and in which wage bargaining transpires.

All institutions that control the context in which social cooperation occurs are part of the basic structure. In addition to rules like the tax laws, which accomplish income redistribution, economic components of the basic structure also include organizations like the central bank, which controls the money supply. Social (as opposed to economic and political) institutions that form part of the basic structure are somewhat more difficult to identify. Imbedded social customs like hiring and promotion practices preferring or disfavoring identifiable minority groups would meet the criteria for inclusion in the basic structure. Clearly, social customs such as these are proper subjects of legislation designed to implement the difference principle.

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21. *Id.* at 11.

22. *Id.* at 268-69. See also *THEORY*, *supra* note 1, at 57 (noting that "the strategies and tactics followed by individuals, while essential to the assessment of institutions, are not part of the public system of rules which define them").

23. *THEORY*, *supra* note 1, at 55.

Continuing to follow the *Theory*, the governing mechanisms of society are elaborated in four stages. After the two principles are adopted in the original position, several stages of government activity follow: the constitution is adopted, then legislation is enacted, and finally judges adjudicate cases. In the *Theory*, Rawls had included government administration in this final stage,<sup>24</sup> but he does not mention administration in his new book. Perhaps this omission is because Rawls believes that he dealt adequately with administration in the *Theory* and the current revision raises no new problems peculiar to the administrative stage. Yet administration in the format of the *Theory* raised substantial problems connected with the inevitably discretionary and largely political nature of much bureaucratic decisionmaking, problems which would likely affect the level of interpersonal trust in Rawlsian society.<sup>25</sup> Rawls's decisions not to address these problems of administration but also to completely ignore the process of administration in his revision are mistakes.

Accompanying the four stages are changes in the veil of ignorance: it is thickest in the original position, thinner at the stage of the adoption of the constitution and enactment of legislation, and thinnest at the judicial stage.<sup>26</sup> In other words, the information appropriate to take into account becomes more inclusive, incorporating increasingly less abstract and more particular factual premises as decisionmaking proceeds from the selection of principles of justice into constitutional, legislative, and judicial stages.

Although the two principles of justice are the foundation for the basic structure, the constitution incorporates only the first principle.<sup>27</sup> This schema follows and extends the basic design of the *Theory*, where the first principle was the primary standard for the constitutional convention.<sup>28</sup> Rawls conceives of the constitution primarily "as specifying a just and workable political procedure," a position reflecting an important strain in contemporary American constitutional law scholarship.<sup>29</sup> Accordingly, the first principle, the liberty principle, especially the now expanded provision governing political liberty, fits this largely procedural constitution. The second principle, governing distributive issues, is more substantive. For that reason, Rawls believes that the second principle does not belong in the constitution. In his words, "principles to regulate economic and social inequalities, and other distributive principles, are

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24. *Id.* at 199.

25. See Daniel J. Gifford, *The Relevance of the Complexity of Social Arrangements to the Attainment of Rawlsian Justice*, 51 TUL. L. REV. 510, 527-46 (1977).

26. POLITICAL LIBERALISM, *supra* note 4, at 340. This is a slight shift from the model in the THEORY where the veil of ignorance is completely dissolved at the judicial stage. THEORY, *supra* note 1, at 199-200.

27. POLITICAL LIBERALISM, *supra* note 4, at 337 ("the second principle of justice . . . is not incorporated into the constitution itself").

28. THEORY, *supra* note 1, at 199.

29. See, e.g., JOHN HART ELY, DEMOCRACY AND DISTRUST 87 (1980).

generally not suitable as constitutional restrictions.”<sup>30</sup>

Some readers may wonder how the two principles can permeate the basic structure if the second principle is left out of the constitution. Rawls thinks that, by assuring fairness in representation, the constitution plays its role in furthering just legislation; as a result of fair representation in the legislature “and by other constitutional devices,” “just legislation” will be forthcoming.<sup>31</sup> Legislation is clearly governed by both principles: “any laws they [the legislators] enact must accord both with the constitution and the two principles of justice.”<sup>32</sup>

We must keep in mind that Rawls’s use of the original position and the constitutional, legislative, and judicial stages is a conceptual device for identifying criteria for making a variety of moral political judgments. Thus a just legislator would follow the two principles, not because the constitution required it, but because a just legislator would have internalized the two principles as the criteria governing decisions about the basic structure of society. In the ideal just society most citizens would have internalized the two principles by entering the original position, i.e., by considering the terms upon which reasonable persons would agree as a basis for social cooperation, ignoring as irrelevant information particular to themselves or their ends. In the actual world, some of us—those who follow the Rawlsian logic—will have adopted the two principles and, as just persons, we follow them when they apply. Since the two principles are applicable to legislation, a just legislator will apply them.

The connection between the principles of justice and the application of these principles in the just society is, nonetheless, a source of potential confusion. Perhaps it would have been better for Rawls to have limited himself to the articulation of principles of justice, and left it to his readers to apply them. By leading us through the constitutional convention, to legislation, and thence to adjudication, Rawls provides us with a vision of a just society. But the very articulation of this vision suggests the existence of a causal relationship among the parts in a stronger sense than Rawls wishes to imply. The just constitution is only weakly connected to the just laws that legislators enact. Legislators enact just laws in the context provided by the constitution, but the primary reason they enact just laws is because they have internalized the two principles of justice. The constitution incorporates only the first of the two principles of justice, and therefore cannot compel just legislation. For that reason, the validity of legislation cannot be challenged before the supreme court on the ground that the legislation violates the difference principle.<sup>33</sup> The just society, in short, is what a society would look like if most of its members

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30. POLITICAL LIBERALISM, *supra* note 4, at 337. Rawls here takes a different approach from that taken by Professor Michelman. See Frank I. Michelman, *In Pursuit of Constitutional Welfare Rights: One View of Rawls’ Theory of Justice*, 121 U. PA. L. REV. 962, 1001 (1973).

31. POLITICAL LIBERALISM, *supra* note 4, at 337, 339.

32. *Id.* at 340.

33. *Id.* at 237 n.23.



internalized the two principles of justice. Each of its features is traceable to the behavior of citizens, each individually responding to the two principles that he or she has internalized. Each of the political components—the constitution, the laws, the court decisions—is primarily the result of this internalization of the principles of justice by citizens (including officials) rather than the cause or effect of other just official acts. The constitution does not mandate just legislation and just judicial decisions; just legislation and just judicial decisions reflect the internalization of the two principles by officials.

### 3. *The Reasonable and the Rational*

Rawls provides us with an additional perspective from which to think about the decisions to select principles of justice, to adopt a constitution, to legislate, and to adjudicate. In thinking about these several types of decision-making, we can use the concepts of the “reasonable” and the rational. Some readers may find that these concepts are a helpful supplement to the abstract imagery of the veil of ignorance. In the original position, the parties are merely rational.<sup>34</sup> At subsequent stages, Rawls sees the reasonable as framing the rational in different ways: “As the stages follow one another and as the task changes and becomes less general and more specific, the constraints of the reasonable become stronger and the veil of ignorance becomes thinner.”<sup>35</sup> As Rawls uses these terms, the reasonable involves that which facilitates and accepts fair terms of social cooperation and which recognizes the independent validity of the claims of others; but the reasonable by itself does not embrace the ends that would be furthered by this cooperation. The selection of ends is a function of rational activity. Rawls defines the rational as applying “to a single, unified agent (either an individual or a corporate person) with the powers of judgment and deliberation in seeking ends and interests peculiarly its own.”<sup>36</sup> Rational agents engage in means-ends reasoning and may balance final ends against one another for their overall significance to the actor.

Because of the focus of the reasonable on social cooperation, it becomes stronger as the political stage—in moving from the original position to the adoption of a constitution to the enactment of legislation and finally to the adjudication of cases—becomes increasingly less general and more particularistic, i.e., closer to actual social interaction. As the political stage moves closer to this final stage, the information needed for political decisionmaking expands, embracing the less abstract and more particularistic.

Instead of focusing upon an increased potential for abuse as official decisionmaking becomes less general, Rawls describes the progression of official decisionmaking towards this final stage as involving greater con-

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34. *Id.* at 104.

35. *Id.* at 340.

36. *Id.* at 50.

straints of the rational by the reasonable. Here his terminology tends to obscure. Rawls has identified a proper concern: the furtherance of social cooperation and the need of officials consciously to use particularistic information to further that goal. But his rhetoric deflects attention from the accompanying problem: how to ensure that decisions are not skewed in favor of particular interest groups to the disadvantage of society. A partial answer might be provided by checking mechanisms. As I point out below, checking mechanisms would also alleviate the pervasive distrust likely to affect relations among citizens of Rawlsian society and between those citizens and their government.

#### 4. *Stability in the Just Society*

Rawls's original vision was susceptible to the criticism that the just society was vulnerable to instability, precisely because the sense of trust which he deems crucial to a just society would likely be lacking. Rawls concedes that justice as fairness must meet a threshold level of stability; otherwise "it is not a satisfactory political conception of justice and it must be in some way revised."<sup>37</sup> Justice as fairness meets this threshold of stability, Rawls believes, because (i) citizens are socialized into accepting the two principles by growing up in a society in which the two principles are widely accepted;<sup>38</sup> (ii) it is inherently reasonable (as the argument from the original position demonstrates);<sup>39</sup> and (iii) it is supported by an overlapping consensus of various reasonable comprehensive doctrines that endure in the society regulated by it.<sup>40</sup>

Not only do most citizens accept the two principles of justice; they are confident that their fellow citizens also accept the two principles. High levels of trust are maintained in the just society because of this confidence. Indeed, citizens trust their government to a high degree, because they are confident that their officials (as citizens) have internalized and are following the two principles of justice in performing their official tasks.

Rawlsian society is thus different from American society. It is different not only because American society has not yet fully internalized the Rawlsian principles,<sup>41</sup> but because the relation between American citizens and their government is fundamentally different from the Rawlsian vision: Americans, by and large, do not trust their government officials. Indeed, they have been socialized not to trust them. This lack of trust is pervasive and traditional; its origins lie in the vision of the Framers of the U.S. Constitution. The Framers believed that human nature was suscepti-

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37. *Id.* at 141.

38. *Id.* at 142.

39. *Id.* at 143.

40. *Id.* at 144-45.

41. Referring to Kurt Baier, *Justice and the Aims of Political Philosophy*, 99 *ETHICS* 771-90 (1989), Rawls suggests that the United States has achieved a consensus on the principles and rules of a workable political constitution but not on an underlying conception of justice. *POLITICAL LIBERALISM*, *supra* note 4, at 149 n.15.

ble to corruption and excesses of ambition. As a result, they drafted a Constitution that has incorporated a number of devices designed to harness the private ambitions of officials into checking the private ambitions of others.<sup>42</sup>

Even in Rawlsian society, however, the socialization of citizens into a circumstance of continuing trust in their officials appears to be problematic. Rawls himself admits that the difference principle does not provide determinate answers to most issues of economics and redistribution.<sup>43</sup> Indeed, it does not even answer the fundamental question of whether society should own the basic means of production or whether society should be structured on a free-market basis.

Members of disadvantaged classes may, over time, develop a growing skepticism that the difference principle is being administered for their benefit. *A priori*, it seems likely that the judgments by members of the disadvantaged classes about how the difference principle should be administered will reflect (and be skewed by) their own class biases. Similarly, the perceptions of the more advantaged classes about how the difference principle applies to varying circumstances will likely be affected by their own social and economic circumstances. Therefore, it is likely that the classes will repeatedly reach different conclusions about the proper application of the difference principle. Thus, there will develop a cleavage between the classes on their views of how the difference principle should be applied. And this cleavage will foster distrust.<sup>44</sup>

Moreover, those who lose in the legislature are likely to develop a cynicism about their representatives' respect for and judgments about the difference principle. Although this time Rawls does not deal with administration, those citizens who believe that the government bureaucrats are wrongly applying the difference principle are likely to develop a mistrust of administrators. In short, Rawlsian society is prone to develop pervasive mistrust between groups of citizens, especially between the classes, as well as pervasive mistrust between citizens and government officials.

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42. See, e.g., THE FEDERALIST No. 51 (James Madison) ("Ambition must be made to counteract ambition.").

43.

[W]hether the aims of the principles covering social and economic inequalities are realized is far more difficult to ascertain. These matters are nearly always open to wide differences of reasonable opinion; they rest on complicated inferences and intuitive judgments that require us to assess complex social and economic information about topics poorly understood. Thus, although questions of both kinds are to be discussed in terms of political values, we can expect more agreement about whether the principles for the basic rights and liberties are realized than about whether the principles for social and economic justice are realized. This is not a difference about what are the correct principles but simply a difference in the difficulty of seeing whether the principles are achieved.

POLITICAL LIBERALISM, *supra* note 4, at 229-30.

44. See Gifford, *supra* note 25, at 539-43.

Some of the consequences of the mistrust by citizens of their government are bad; some are good. Mistrust can generate a sense of alienation and powerlessness. Mistrust can also produce positive effects when it engenders checking mechanisms which detect and prevent wrongdoing and arbitrary use of power. The multitude of checking devices in American government turns a widespread citizen mistrust of officials into a system of effective protection against misuses of authority. Citizen mistrust is then allayed temporarily, so long as citizens have confidence in the effectiveness of the checking devices and so long as those devices are providing reassurance that officials are not abusing their positions.

Rawls does not adequately discuss the role of checking devices in Rawlsian society. He hints that he recognizes the need for checking institutions to control government misconduct but relies almost entirely upon free political speech as the needed checking mechanism.<sup>45</sup> He refers obliquely to “the three branches” of government, thus perhaps endorsing a separation-of-powers principle, but he leaves this matter undeveloped.<sup>46</sup> Rawls does insist upon a Supreme Court with power of reviewing legislation for conformity with the constitution.<sup>47</sup> He says nothing, however, about bicameralism or federalism or any of a host of other ways that American officials are checked by each other. Perhaps he is relying primarily upon the good faith of officials and their adherence to the two principles as reasons why authority will not be abused and citizens will not suspect their officials of abuse.

The modifications of the original *Theory* in *Political Liberalism* tend to exacerbate the problems of trust and stability in Rawlsian society. If the seeds of discontent are discernable in the original Rawlsian society, they are even more discernable when society is composed, in a pluralist pattern, of numerous groups, the members of which adhere to comprehensive doctrines each of which is, in various ways, inconsistent with the others. By calling our attention to the pluralist composition of society, Rawls also directs our attention to the various lenses (religious, philosophical, moral) through which citizens tend to view life and the world, including the work of government. These various lenses are apt to add to the wide variety of ways in which people believe the difference principle should be applied. Perceptions of how the difference principle should apply are likely to be affected by religious, philosophical, and moral differences as well as by class differences.

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45. POLITICAL LIBERALISM, *supra* note 4, at 335 n.45.

46. *Id.* at 232.

47. *Id.* at 233. Rawls's recognition of a need for a supreme court is necessarily based upon a belief that the legislators—despite their internalization of the two principles—will occasionally deviate even from the liberty principle, a principle whose requirements are more determinate than those of the difference principle. *Id.* at 229. It follows that deviations from the difference principle (which are less easily detected) are more probable than deviations from the liberty principle. Yet deviations from the difference principle are unreviewable by the supreme court.

Rawls's newer and more complex model of society thus appears, *a priori*, to be more prone to pervasive distrust and instability than was his earlier and more simple model. His newer model (even more urgently than the older one) requires a frank recognition of the manifold possibilities for distrust and misunderstandings among citizens of each other and of their officials. And it calls for a vastly more extensive discussion of checking institutions than Rawls has so far provided.

# **Comments**

