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LIBERTARIANISM AT TWIN HARVARD*

By Loren E. Lomasky

I. Introduction

On Twin Earth, where soaring elms and beeches are nourished by the gentle rain of XYZ, there is a town called Cambridge, Massachusetts, in which can be found one of the planet's premiere universities, Harvard by name. The institution was favored during the final quarter of the twentieth century by the presence of a pair of innovative philosophers who, between them, revived what had become the rather stiff and staid discipline of political philosophy. Coincidentally, they went by the names John Rawls and Robert Nozick. Rawls was renowned for his model of a veil of ignorance behind which are chosen fundamental principles of justice for a well-ordered society's basic structure. Nozick was less inclined to plumb foundations, but with dazzling ingenuity and craftsmanship he explored implications of the assumption that individuals are inviolate self-owners who are at liberty to transact with willing others so as to advance the various ends to which they are drawn.

Attentive readers will have noticed a striking parallel to the Rawls and Nozick of our own planet. At this point, however, the parallels end. For (Twin) Rawls, despite some inclinations to the contrary, came to espouse a robust libertarianism and ended up reviving a classical liberalism that the advanced thinkers of Twin Earth had, for the preceding century, declared defunct. (Twin) Nozick, however, although taking off from a vantage point that appeared even more rigorously libertarian than that of his colleague, established the permissibility of sweeping redistribution under state aegis in the name of justice.

The question I pose in this essay is: Which of the philosopher-pairs has landed on more suitable ground—the familiar Harvard pair or their counterparts at Twin Harvard? I come down in favor of the latter duo, not only because the contrary assessment would make for an exceedingly flat conclusion, but also because there are prominent themes running through the arguments of our familiar Rawls and Nozick that push them in the direction of their Twin Harvard counterparts. Most of the succeeding discussion will concern itself with Rawls. That is because there are several

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strands running through his writings that need to be untangled and then brought together again to weave the libertarian fabric worn by his Twin Harvard counterpart. Nozick's anti-libertarianism is simpler, and is essentially confined to one aspect of his entitlement theory of justice in property holdings. Once that is set out, alternatives become clear-cut: either bite the bullet and join forces with Twin Nozick's intrusive state or else redesign the entitlement theory so as to domesticate it for cohabitation with a minimal state.

Section II finds in both Rawls and Twin Rawls three motifs strongly supportive of libertarianism. Of course, only Twin Rawls actually takes that route, so Section III examines Rawls's explicit arguments against libertarianism. What may be most revealing about these critiques is how uncharacteristically lame they are. Section IV introduces the entitlement theory of Twin Nozick and its striking divergence from libertarianism. Section V is given over to speculation and summing up.

II. Three Libertarian Motifs

A. The priority of liberty

Any examination of Rawls's central political views must commence with *A Theory of Justice* (1971),[1] and at the center of that center are his two principles of justice. The second principle and, especially, its subsidiary component, the difference principle, has received disproportionate attention in the literature, not least by Rawls himself. However, it bears emphasizing that throughout the development of Rawlsian justice, an unvarying feature is the lexical priority of individual liberty. The initial statement of this principle (and its priority) is:

> First: each person is to have an equal right to the most extensive basic liberty compatible with a similar liberty for others. (*TJ*, 60)

It is followed by the second principle, in which economic inequalities are countenanced just so long as they work to the advantage of all.

Noteworthy is the *maximalism* of the initial statement of the first principle along the three dimensions of person, quantity, and kind. To the question, For which citizens is liberty to be secured? the answer is: *All of them*. To the question, How much liberty are they to enjoy? the answer is:

[1] John Rawls, *A Theory of Justice* (Cambridge, MA: Harvard University Press, 1971); hereafter cited as *TJ*. Citations to other books by Rawls will be abbreviated as follows: *TJ2* for *A Theory of Justice: Revised Edition* (Cambridge, MA: Harvard University Press, 1999); *PL* for *Political Liberalism* (New York: Columbia University Press, 1993); and *LP* for *The Law of Peoples* (Cambridge, MA: Harvard University Press, 1999). Further below I shall use the abbreviation *ASU* for Robert Nozick, *Anarchy, State, and Utopia* (New York: Basic Books, 1974).

As much as can be achieved. And to the question, Which liberties matter? the suggested answer is: *They all do*. These maximalisms display Rawls as the legitimate heir to the classical liberal tradition running from John Locke and, especially, Immanuel Kant,[2] for which the defining feature is the primacy of liberty among political goods. Rawls observes at the outset of his book that "Justice is the first virtue of social institutions" (*TJ,* 3); here he seems to indicate that the first virtue of justice is commitment to the overriding importance of liberty. Is it possible to deny the fundamentally libertarian flavor of a theory in which this principle enjoys lexical priority?

It cannot be denied on Twin Earth, where, as will be exhibited below, the first principle serves as the centerpiece of Twin Rawls's libertarianism.[3] On our planet, though, things are different. Almost immediately Rawls inserts qualifiers to limit the scope of the principle, and then in *A Theory of Justice* and follow-up works, he continually backs away from giving full force to a liberty requirement. It is not possible in this context to offer a detailed tour of the unwinding of the first principle, but a few selected highlights will indicate the direction of the process. Almost immediately after stating the first principle, Rawls offers an initial specification:

> The basic liberties of citizens are, roughly speaking, political liberty (the right to vote and be eligible for public office) together with freedom of speech and assembly; liberty of conscience and freedom of thought; freedom of the person along with the right to hold (personal) property; and freedom from arbitrary arrest and seizure as defined by the concept of the rule of law. (*TJ,* 61)

Conspicuously absent from this catalog are economic liberties, including freedom of contract to buy and sell, to employ and be employed, or to accumulate and invest.[4] A right to hold property is included, but it is

[2] Ancestral to the first principle of justice is Kant's formulation of the categorical imperative as applied to the basic structure of civil society: "The universal law of right is as follows: let your external actions be such that the free application of your will can co-exist with the freedom of everyone in accordance with a universal law." Immanauel Kant, "Introduction to the Theory of Right," *The Metaphysics of Morals,* in Hans Reiss, ed., *Kant's Political Writings* (Cambridge: Cambridge University Press, 1970), 133. In the *Critique of Pure Reason* he maintains, "A constitution providing for the *greatest human freedom* according to laws that permit *the freedom of each to exist together with that of others* . . . is at least a necessary idea, which one must make the ground not merely of the primary plan of a state's constitution but of all the laws too." Immanuel Kant, *Critique of Pure Reason,* ed. and trans. Paul Guyer and Allen W. Wood (Cambridge: Cambridge University Press, 1998), 397 (A316/B373), emphases in the original.

[3] A complementary argument along lines that Twin Rawls would approve is offered by James M. Buchanan and Loren E. Lomasky, "The Matrix of Contractarian Justice," *Social Philosophy and Policy* 2, no. 1 (1984): 12–32.

[4] It is not only liberties favored by would-be capitalists that are absent. Rights to educate one's children in a preferred manner, to engage in sexual relations with members of whichever sex one favors, to participate in risky recreational activities, to shut one's door to census takers, and a hundred other liberties great and small also are omitted.

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explicitly limited to personal property, although no explication of what this includes/excludes is supplied.

When Rawls turns (in Section 42 of *A Theory of Justice*) to comparison of economic systems, he observes that market-based economies possess several advantages over command systems. Markets are less administratively cumbersome for distribution of consumption goods, and they more efficiently respond to the preferences of households (*TJ,* 270). Markets afford scope for individuals to move between jobs in response to changes in relative wage levels; they also decentralize economic power (*TJ,* 272). But if this should seem to provide a strong rationale for endorsing private property regimes, Rawls demurs. "It is evident . . . that there is no essential tie between the use of free markets and private ownership of the instruments of production" (*TJ,* 271), he affirms, adding that "[w]hich of these systems and the many intermediate forms most fully answers to the requirements of justice cannot, I think, be determined in advance" (*TJ,* 274). That is because the appropriateness for a given society of a set of economic institutions will depend on particular facts about its history and circumstances. The theory of justice is neutral between socialist and individual ownership of productive resources.

When some two decades later Rawls rethinks these matters for the revised edition of *A Theory of Justice* (1999), the conclusion is unchanged:

> [J]ustice as fairness leaves open the question whether its principles are best realized by some form of property-owning democracy or by a liberal socialist regime. This question is left to be settled by historical conditions and the traditions, institutions, and social forces of each country. As a political conception, then, justice as fairness includes no natural right of private property in the means of production. (*TJ2,* xv–xvi)

In another respect, though, Rawls's ideas about the priority of liberty have shifted significantly. Under the influence of H. L. A. Hart's critique,[5] he concedes Hart's point that the notion of a "most extensive total system of equal basic liberties" is not well-defined; whether one set of liberties is more extensive than another will often depend on prior contestable judgments concerning which among competing activities is more or less valuable.[6] Thus, the first principle is either without content or question-begging. To avoid this dilemma, Rawls abandons the maximization of basic liberties, instead redrafting the first principle to read:

[5] H. L. A. Hart, "Rawls on Liberty and Its Priority," *University of Chicago Law Review* 40 (1973): 534–55.

[6] If one set of liberties is a superset of another, then it is the more extensive. This seems uncontroversial. Whether there are similarly uncontroversial comparisons to be made among systems neither of which is a subset of the other is a further and more difficult issue.

> Each person has an equal right to a *fully adequate* scheme of equal basic liberties which is compatible with a similar scheme of liberties for all. (*PL,* 291, emphasis added)

These liberties are specified by a list that is then defended against the charge of being makeshift via an argument attempting to show that these are the sort of things that contractors in the original position might opt for so as to give full effect to their two moral powers of cleaving to a conception of the good and exercising a sense of justice.[7] The retreat from maximization is presented as a virtue of the new formulation,[8] and Rawls notes that this reformulated first principle, like its predecessors, is neutral between private ownership of capital goods and socialist production.[9]

Throughout the evolution of the theory of justice as fairness, Rawls maintains the priority of a liberty principle, yet, as the preceding sketch indicates, the content of protected liberties becomes increasingly modest in successive iterations. Rawls deems this a theoretical improvement, but Twin Rawls draws the opposite conclusion. To understand the crux of their disagreement it will be useful to turn to the rationales given for the priority of liberty (either in a maximalist sense or through a list of specified liberties) over other goods that can be advanced via political means.

One rationale is the importance to individuals of standing one to another in a relationship of equal citizenship. In a well-ordered society, self-respect endures disparities in wealth because these are justified by reference to the position of the least well-off member. To be subordinate to others as a participating member of a social union is, however, demeaning. It is to possess less than a full share of the social bases of self-respect. That is why inequality of basic liberties, as opposed to inequalities of wealth, would be rejected by contractors in the original position.[10] Under this interpretation of the priority of liberty, it is clear that what is required above all is *equality* of basic liberties with one's fellows so as to be able to look them in the eye from a position of parity. Moreover, the liberties that

[7] The list reads as follows: "[F]reedom of thought and liberty of conscience; the political liberties and freedom of association, as well as the freedoms specified by the liberty and integrity of the person; and finally, the rights and liberties covered by the rule of law" (*PL,* 291). Much of the remainder of this lecture, "The Basic Liberties and Their Priority," is given over to rendering this itemization less vague.

[8] Rawls writes, "It is wise, I think, to limit the basic liberties to those that are truly essential in the expectation that the liberties which are not basic are satisfactorily allowed for by the general presumption when the discharge of the burden of proof is decided by the other requirements of the two principles of justice" (*PL,* 296). The point of this difficult statement seems to be that nonbasic liberties will be afforded recognition at a lower level when and only when they do not interfere either with the application of these list-specified basic liberties or with the melioration of social and economic inequalities via the second principle.

[9] See *PL,* 298.

[10] See *TJ,* 546–47.

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are most crucial to citizenly self-respect are those requisite for full participation in the political activities of the country, as opposed to those liberties that take as their object essentially private activities, of which wealth creation and accumulation are paradigmatic. Taking account of this rationale alone, Rawls has judged well to distance himself from a rhetoric of maximizing a generalized stock of liberty and instead to privilege a delimited collection of politically salient liberties.

There is, however, a second rationale for the priority of liberty, one directly responsive to persons' capacity to formulate and pursue particular conceptions of the good. What citizens can be presumed to possess in common is a commitment to acting justly toward each other, where the duties of justice bear alike on everyone. But no such commonality characterizes the ends to which they direct themselves, the advancement of which confers meaning on their lives and which contribute no less importantly than does equal citizenship to their enjoyment of self-respect. A just order is one in which individuals, motivated by goods that they take to be of compelling, even transcendent value, nonetheless respect the rights of others to show themselves indifferent to these goods while instead pursuing other ends that may seem to be of negligible worth.[11]

Rawls observes that under favorable conditions in which necessities of survival are reliably satisfied, "the obstacles to the exercise of the equal liberties decline and a growing insistence upon the right to pursue our spiritual and cultural interests asserts itself. Increasingly it becomes more important to secure the free internal life of the various communities of interests in which persons and groups seek to achieve, in modes of social union consistent with equal liberty, the ends and excellences to which they are drawn" (*TJ,* 543). With regard to these ends and excellences, the specifically political liberties enjoy no distinctive pride of place—or, rather, they do not for those individuals whose pursuit of the good life is primarily conducted in venues outside the public arena. What those individuals need from others is generalized noninterference, and because in the original position they do not know which particular ends will command their allegiance, they have reason to value a wider rather than narrower scope of liberty. Thus, they will regard the latter versions of the first principle as insufficiently responsive to whatever interests they will find themselves to have that lie beyond the practice of citizenship as such. Instead, they will resist shrinkage of the original guarantee of maximal equal liberty. They will understand this liberty in a wide sense, even if they do not arrive at one definitive account of where it is at its most expansive. That is, Hart's critique may lead them to agree that no maximizing function for liberties is derivable a priori. They will, however,

[11] See the example of the grass counter (*TJ,* 432). Its point is, among other things, that even bizarrely idiosyncratic pursuits are to be afforded due deference. The counting of blades of grass lacks, if anything does, defining political features. It is a fundamentally private undertaking that, despite its oddity, is to be afforded full protection in a free society.

nonetheless insist that we often have good reason between competing alternatives to judge that one is more favorable than the other to the exercise of unimpeded self-determination. In particular, they are very likely to hold that both theory and historical practice amply demonstrate that liberty is enhanced by an order of private ownership of productive assets rather than collective control by state bureaucracies. If so, they will be in accord with Twin Rawls, who shares with our Rawls a commitment to the priority of liberty, but who understands that principle to commend an order of generalized noninterference rather than one in which political freedoms are privileged.

B. Strains of commitment

Deliberators in the original position decline to adopt the principle of (maximizing expected) average utility, preferring instead the maximin strategy (of securing the best possible minimum) incorporated in the difference principle. The choice is overdetermined. It is stimulated in part by difficulties of ascertaining behind the veil of ignorance any probabilities concerning which social position they will occupy, and in part by an aversion to gambles that put them at risk of falling below a satisfactory minimum. Both of these prongs of the Rawlsian argument are controversial and have generated numerous responses. They will not be examined further here.

There is, however, a third prong of the argument that is substantially independent of the other two and that carries considerable conviction in its own right. Unless individuals will be regularly and reliably motivated to act in accord with chosen principles, at least under favorable conditions, those principles are unsatisfactory as the framework for a society's basic structure. The problem with utilitarianism is, simply put, that it demands too much of individuals. It requires them to acquiesce in the sacrifice of much, perhaps all, of that which they value for the sake of maximizing a putative social good. One who assents to a utilitarian strategy because it holds forth the prospect of a greater expected return for self than does any of its competitors is apt to find himself unable or unwilling to accede to its demands should he turn out to be unfortunate in the lottery of life's events. And even if one should prove to be among the fortunate beneficiaries of the utility principle, this good luck could be undone by the defections of less fortunate others. Thus, a rational individual alive to the risks of instability will be dissuaded from endorsing in the original position the principle of average utility. The integrity of society is unnecessarily imperiled by erecting its institutions on foundations from which individuals will predictably tend to defect. By way of contrast, justice as fairness rejects extreme sacrifice. It guarantees to each a decent minimum, indeed the most favorable minimum that can be secured

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by any social design. For that reason, invoking the Rawlsian idiom, it is burdened by lesser "strains of commitment" than is utilitarianism.[12]

Although Rawls does not explicitly draw the connection, concern for keeping the strains of commitment low for all parties supports the priority of the liberty principle. To be left alone to serve those ends that hold out surpassing value for oneself, rather than being required to drop them for the sake of what is proclaimed to be a superior social product, is mandatory for those whose personal projects hold out great significance. Such individuals could not rationally accede to a system in which it is likely that they will be forcibly separated from that which they hold dear. The strains of commitment counsel against endorsement of such potentially onerous demands.

One must ask, though, *which* liberty principle will find favor with contractors intent to specify a basic structure that they will subsequently find congenial to their moral powers? The Rawlsian "fully adequate scheme" of civil freedoms answers in some measure to the concern that one will not be involuntarily divorced from one's ends. To be in possession of a full range of political freedoms renders one well-provisioned in a democratic environment to campaign actively on their behalf. However, the assurance thereby provided is slim. One's potential opponents are equally graced with democratic freedoms, and if at the end of the contest they should command a majority, then it will not necessarily be much consolation to have had one's day at the polls. If the subjectively measured costs of the required sacrifice are high, then even those who possess a firm sense of justice may find themselves reluctant to go along. So the same considerations that lead Rawls to endorse the two principles over average utilitarianism support construing the liberty principle broadly, as broadly as it presents itself in its initial maximizing formulation.

There are further reasons to believe that strains of commitment cut against the official Rawlsian statement of justice as fairness. Rawls has argued that the difference principle meliorates those strains (against the utilitarian alternative) by rendering the losers in life's lottery as well-off as they can be. That may be true, but it leaves open questions about the impact of those strains on other strata of the population. Because individuals are represented as not only rational but also reasonable, they are motivated by a concern for reciprocity (see *PL,* 17–18). They are prepared to forgo some measure of advantage in order to ensure gains for their fellows. They are not, then, purely rational egoists. Neither, though, are they perfect impartialists. Between their own preferred ends and those of others, they are not neutral. The more they are required to forgo the former so as to advance the latter, the greater the strains of commitment under which they labor. It would seem, then, that the same sort of concern for social stability that spoke against utilitarianism will also pronounce

[12] See the discussions in *TJ,* 176–78 and *PL,* 17.

against unchecked requirements of redistribution. A theorist has done only half the job by ascertaining the view from the bottom; it is requisite also to see how things present themselves from a top-down perspective. From that vantage, the nature of the impositions potentially placed on the more well-off are arguably more than they will be prepared to bear.

The strict logic of the difference principle entails that for the sake of even very small enhancements to the least well-off, their better-advantaged fellows must be prepared to bear enormous costs, limited only by the crossover point at which they would themselves assume the position of society's least well-off. "[I]t seems extraordinary that the justice of increasing the expectations of the better placed by a billion dollars, say, should turn on whether the prospects of the least favored increase or decrease by a penny" (*TJ,* 57). Can the demands of justice impose so stringently on the more advantaged, and if they do, will not the rigor of the system generate strains of commitment that only moral saints and heroes will find themselves able to abide?

Rawls's immediate answer is that "the difference principle is not intended to apply to such abstract possibilities" (*TJ,* 157). Rather, it is incorporated in a basic structure designed for the most part to create a tide that raises and lowers boats together.[13] But even if that response suffices to rule out the most extreme imagined counterexamples, it nonetheless remains true that the elevation of the craft in which the better-off sail is strictly constrained by the course of the other boat. There is no presumption that the degree of interconnection is minimal. Rather, the presumption goes in the other direction. Rawlsian egalitarianism is limited only by a Paretian criterion of mutual advantage. For all that can be said in advance, that might dictate a high degree of equality and concomitantly great sacrifices on the part of the more favored groups. It is not clear why those who are required to earn and keep less will rationally accede to that demand.

Rawls's most revealing and candid response to this worry is supplied in Section 17, "The Tendency to Equality." In response to the fact that people come into society with vastly different abilities and vastly different prospects flowing therefrom, he observes:

> The natural distribution is neither just nor unjust; nor is it unjust that persons are born into society at some particular position. These are simply natural facts. What is just and unjust is the way that institutions deal with these facts. . . . The social system is not an unchangeable order beyond human control but a pattern of human action. In justice as fairness men agree to share one another's fate. (*TJ,* 102)

To this the indicated response is: *Exactly!* Bonds uniting citizens in the Rawlsian conception reveal themselves to be extraordinarily tight. It is no

[13] See Rawls's discussion of "chain connection" and "close-knitness" in *TJ,* 81–83.

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small thing to agree to share one's fate with another. That is the sort of undertaking embarked on within a family, by friends or lovers determined to pursue the good life together, partners in a far-reaching enterprise, a platoon's soldiers guarding each other's backs, congregants joined in common worship, or devotees of a mutually adored good. In such settings, the success of one constitutes in no small measure the success of all, and an individual who is not prepared to sacrifice some of her own quota of the good, indeed sacrifice liberally, is an anomalous partner in the pursuit. And of course it is not uncommon for the strains of commitment inherent in such intimate relations to rupture the bonds that formerly held the parties close.[14]

It is quite otherwise when the tie among persons is nothing more than a citizenship held in common. Here intimacy is very much the exception rather than the rule. The comprehensive theories of one's compatriots will often incorporate commitments and ideas of the good that leave one unmoved—or worse. In such cases one is obliged to respect their liberty to follow their own fervid musings or strange gods, but it is to demand too much to add to the standing order of noninterference the further requirement that positive assistance be afforded—that, in a word, one join one's fate to theirs. The two principles of justice are seen in such instances to be in direct tension with each other. The liberty principle allows individuals to devote themselves to their own preferred conceptions of the good and thus to distance themselves from others who acknowledge ends that are indifferent or antithetical to their own. (Or rather, such permission is afforded by a liberty principle that extends beyond a basketful of privileges confined to the political arena.) The difference principle binds individuals together. Something has to give.

And so it does. Rawls has second thoughts concerning the intensity of social bonds under a justice as fairness regime. In the revised edition of *A Theory of Justice,* the striking passage about individuals sharing each other's fate disappears.[15] Most likely, during the interval between the two editions Rawls had come to believe that he had expressed himself more forcefully than was felicitous. Perhaps some friendly critics had asked him whether he really wished to hitch to the theoretical structure of *A*

[14] Daniel McDermott suggested in conversation that Rawls may mean by the sharing of fate simply the fact that generation of the cooperative surplus depends on the adherence by each to society's rules and procedures. I do not think that this can be what Rawls intended here. Under any cooperative scheme, the output will be a function of the various inputs, but Rawls explicitly says that the willingness to share one another's fate is distinctive of justice as fairness. Indeed, if he is not making such a claim, then the character of this section of *TJ* as a defense of the difference principle evaporates.

[15] The corresponding passage reads, "The social system is not an unchangeable order beyond human control but a pattern of human action. In justice as fairness men agree to avail themselves of the accidents of nature and social circumstance only when doing so is for the common benefit. The two principles are a fair way of meeting the arbitrariness of fortune; and while no doubt imperfect in other ways, the institutions which satisfy these principles are just" (*TJ2,* 88).

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Theory of Justice so weighty a wagon of social solidarity. Whatever the impetus behind the revision, the text of the second edition has become anodyne. Citizens are still to share in society's assets but not each other's fates.

It is not clear that such revision by omission is satisfactory. The reader may suspect that it camouflages rather than eliminates a fundamental problem with the project. The Rawls of 1971 must have believed that the bonds of social solidarity to be imputed to citizens in a well-ordered regime based on the two principles of justice are substantial enough to make it sensible, if perhaps edging toward the far end of the metaphorically appropriate, to use the language of sharing one another's fate. Either he had misjudged then concerning how much can legitimately be spun out from contractors' posited sense of justice, or by the time he prepared the revised edition he had devised a different strategy to explain why the strains of commitment embedded in the difference principle are not too onerous for individuals reliably to bear. Unfortunately, no explanation of the transition is offered in the 1999 edition. An author may, of course, admit to prior missteps. Such frankness is commendable. Indeed, in this spirit of generosity Rawls has often acknowledged the force of his critics' remarks and revised accordingly. The problem here, however, is that the withdrawn passage is, arguably, no misstatement at all. Rather, it serves to explain an otherwise puzzling feature of the Rawlsian account. There is no mystery why the *least well-off* individuals find justice as fairness agreeable; under no alternative basic structure for society will they do better. The more recalcitrant problem is to explain why the *more well-off* accede to a system in which they demonstrably are less well-served than they would be under other social arrangements. Will they not be inclined to regard themselves as unjustifiably exploited? The answer that immediately suggests itself is this: Not if they take themselves in some very strong sense to be implicated in the fate of their less favored brethren. Absent this understanding, it is doubtful that justice as fairness can survive the strains of commitment.

Exactly this line of reasoning can be seen in the celebrated works of Twin Rawls. He, too, determines that the difference principle expresses a profound depth of social solidarity. But for Twin Rawls, this amounts to an utterly convincing reductio ad absurdum of the so-called second principle of justice. In large and diverse liberal societies where persons are spatially spread out from each other, espouse markedly different religious and philosophical comprehensive theories, and differ no less substantially with regard to their personal affections than in their various conceptions of the good, it is outlandish to suppose that they can regard their own success or failure as tightly bound up with the achievements of distant others. Because they have a sense of justice, they will forswear aggressive interference against others for whom friendly regard may be limited or altogether lacking. And because they are prudent, they will

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insist on reciprocal noninterference from others. That is not quite all that Twin Rawls includes in his theory of justice (see Section III below), but it is the dominant strand. It is what makes him Twin Harvard's most illustrious libertarian.

That Twin Rawls zigs where Rawls zags does not constitute disproof of the latter's theory. Perhaps it is our Rawls who has gotten things (more nearly) right. It is impossible decisively to defend one Rawls over the other without performing a more thorough excavation of the theory of justice than is possible here. Instead, I offer an ad hominem argument against our Rawls's understanding. Although arguments ad hominem normally carry a somewhat unsavory flavor, in this case that may be mitigated by the fact that the one arguing against Rawls's understanding is Rawls himself. That argument is initiated in *Political Liberalism* (1993), where he does not abandon his support of the difference principle but concedes that it is one among several ways of reasonably distributing the benefits and burdens of social cooperation. But in *The Law of Peoples* (1999), Rawls distances himself further from the difference principle by denying, against the urging of his own disciples,[16] that it is a suitable basis for interaction among the world's peoples.[17] The reasoning and illustrative examples Rawls provides in the latter book are somewhat opaque, but the upshot is that there is no general requirement of economic redistribution from the world's wealthier countries to those less well-off. Only for peoples in considerable distress, what Rawls calls "burdened societies" (meaning thereby essentially the same as the more familiar locution "failed states"), is there a duty of positive assistance, and then only to the "point at which a people's basic needs (estimated in primary goods) are fulfilled and a people can stand on its own" (*LP,* 119). This is because the world's peoples have reason primarily to value their own autonomy and preferred national culture rather than subscription to an egalitarian cosmopolitanism. Beyond contingent temporary provision to address episodes of distress, duties owed by the wealthy to the less well-off are modes of noninterference (e.g., observance of treaties, nonintervention, and adherence to human rights and rules of war; see *LP,* 37), and they are returned in kind: one is struck by the sweepingness on the international level of an equal liberty principle, and by the rejection of egalitarianism as inconsistent with each society's overriding interest in devoting its energies to its own distinctive interests. Although Rawls does not quite put it this way, a fair reading of his text is that attention to diminishing strains of commitment commends a system of global justice in which each people is only minimally implicated in the doings of others.

[16] Especially Charles Beitz, *Political Theory and International Relations* (Princeton, NJ: Princeton University Press, 1979); and Thomas W. Pogge, *Realizing Rawls* (Ithaca, NY; Cornell University Press, 1989).

[17] For reasons that need not be explored here, Rawls prefers to speak of the benefits and requirements of international justice as primarily attaching to *peoples* rather than *states*.

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If the argument is persuasive—Twin Rawls finds it so—then it is no less persuasive when recast as an argument safeguarding the nonimplication of individuals within a given society in the projects of others.

C. Choice behind the veil of ignorance

Perhaps the most distinctive aspect of Rawls's methodology is his casting the problem of eliciting basic principles of justice as a choice-theoretic determination behind a suitably specified veil of ignorance. People are stripped of individuating knowledge that would allow them to tailor principles to suit their own particular situations. Deprived of such data, they rationally direct themselves toward principles under which they will do comparatively well, regardless of who they turn out to be or how favorable the circumstances they confront. Thus, they legislate to safeguard their basic liberties—the first principle—and to ensure an economic status that is at least minimally satisfactory for enabling them to live as ends-pursuers—the second principle. I argued in Section IIA that Rawls backs away from a rendering of the liberty principle that adequately serves the former aim. To that result can now be added equally cogent reasons to maintain that the second principle's invitation to engineer a massively redistributivist welfare apparatus will be declined in the original position. Rather, strong property rights, including robust freedom of contract, will be endorsed, modified only by guaranteed provision of a minimally decent floor beneath which individuals will not be allowed to fall: a "social safety net."[18]

Although contractors in the original position are screened from individuating knowledge, they have access to general facts, including those of social theory (*TJ,* 142). That theory is not, of course, a completed science: oases of relative clarity are surrounded by expanses of obscurity, and despite a generally progressive course, the theory dead-ends into occasional cul-de-sacs and regressions. Nonetheless, intelligent design of social institutions, not least a society's basic structure, entails judicious use of the best approximations to knowledge that we have while simultaneously guarding against being impaled on unacknowledged spikes of ignorance. So, for example, any tolerably fair and efficient design will build in a recognition that "the point of the institution of property is that, unless a definite agent is given responsibility for maintaining an asset and bears the loss for not doing so, that asset tends to deteriorate." This was well known already by the contemporaries of Adam Smith, although this statement in fact comes from Rawls (*LP,* 39). I believe that by the time of the original drafting of *A Theory of Justice,* enough was known about the equity and efficiency properties of collective ownership of the means of

[18] As noted below in the text, allowance is also to be made for political provision of public goods, but insofar as these are truly public, only incidental redistribution is thereby occasioned.

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production to decisively rule out socialism as a feature of a society's basic structure. Three decades on and counting, this is beyond serious dispute. Any contemporary invocation of the original position will, therefore, make quick work of dispatching Marxist fancies to the dustbin of defunct social theories.

Are there other propositions about the working of economic/political systems that were not brought behind Rawls's original veil of ignorance but that now are well-attested presumptions without which the practice of intelligent social design cannot be conducted? One plausible candidate is this: There is no amount of self-seeking battening on the public fisc, of blithely robbing Peter to pay Paul, that cannot be given a semi-plausible justification suitable for thirty-second sound bites. Or, to phrase it more soberly, "[W]hether the aims of the principles covering social and economic inequalities are realized is . . . 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" (*PL,* 229). If the rules of the political game allow for taking and then redistributing property just so long as a majority can be assembled to testify that they are acting for the sake of some lofty ideal of social justice—perhaps one that goes by the name of "justice as fairness"—then it is predictable that those rules will be frequently and extravagantly bent in the service of interests that are neither impartial nor likely to advance the positions of the least well-off. Knowing this, contractors in the original position will be loath to afford carte blanche to the proliferation of allegedly welfarist measures. They will realize that the point of the institution of property as noted above will be imperiled by such a loosening of rights to the continued possession of that which has been acquired through voluntary transactions. It is eminently knowable behind the veil of ignorance that rent-seeking, the investment of resources in the attempt to secure windfall returns through political subventions, is a negative-sum game. Moreover, it is a game that society's already well-advantaged are likely to be especially good at. The upshot is that even if the veiled deliberators are motivated by a strong concern for the least well-off (make that *especially* if they are motivated by a strong concern for the least well-off), the deliberators will erect constraints on the ability of political actors to redefine property rights in the service of some ostensible ideal.

Suppose that we judge it a good thing, all else being equal, that resources flow to their most economically valued use. One way this desideratum could be pursued is via a process of hearings and speeches by all parties who take an interest in the subject, followed by votes in the legislature on competing allocative proposals. Another way in which the desideratum can be pursued is to allow trades of rights assignments until an outcome is reached in which no parties are willing to exchange their holdings for some other set on offer (i.e., they have landed on some point on the Pareto

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frontier). It is a simplification but not an oversimplification to say that the most important conclusion of the first century of post–Adam Smith economics is that the second strategy pays off better than the first. Indirection triumphs over direct pursuit of the desideratum. The most important finding of its second century may be that the aims of social justice also are better pursued by an indirect strategy. This remains true even if one believes that how the upper strata of society fares is irrelevant to concerns of justice and that exclusive focus is to be directed to the least well-off. It is not paradoxical hyperbole to maintain that the prospects of the poor are enhanced by disallowing all special pleading in legislatures and regulatory bodies on behalf of the poor. Impartial enforcement of a regime of strong property rights and binding contracts almost certainly will better serve them.[19]

Admittedly, this is a first approximation. Before pulling back the veil and entering into the full light of political day, allowance will be made for collective provision of genuinely public goods, those for which features of nonexcludability and nonrivalry of consumption render market provision awkward. Additionally, it is appropriate to legislate a safety net for those who find themselves in exigent straits and who are unable to extricate themselves therefrom, either through their own actions or through the voluntary subventions of others. This latter condition is responsive to strains of commitment that otherwise might render the precepts of justice too onerous for the poor to embrace, while the positive-sum character of the remainder of economic transacting will lessen those strains on all. Twin Rawls, who enjoyed the benefits of a thorough grounding in the central insights of twentieth-century social theory, drew precisely this conclusion. It was not beyond the reach of the other Rawls. Therefore, it is worth considering why he, too, did not gravitate toward libertarianism.

III. Rawls on Libertarianism

A. Moral arbitrariness

Rawls uses the term "system of natural liberty" to characterize a social order in which individuals enjoy full and equal liberty, and in which they are free to capitalize on their talents and fortune so far as they are able (*TJ*, 59–60). This interpretation of the second principle of justice's requirement of mutual advantage treats all persons impartially by ensuring their rights to transact with willing others in their pursuit of advancement. It does not, however, take notice of their various starting points. But because those who have been well-favored by a lucky turn of the natural lottery's

[19] Richard A. Epstein offers a substantially identical construal of the original position in "Rawls Remembered," available online at http://nationalreview.com/comment/comment-epstein112702.asp [posted November 27, 2002; accessed April 14, 2004].

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wheel (or in subsequent social engagements) will tend to capture more of society's goods than do those who have been less well-favored, consequent shares of the good things of life will not accurately reflect any antecedent merit. "Intuitively, the most obvious injustice of the system of natural liberty is that it permits distributive shares to be improperly influenced by these factors so arbitrary from a moral point of view" (*TJ,* 72).

This essentially completes the critique of libertarianism in *A Theory of Justice*. Little more could have been expected. The term "libertarian" was then barely recognizable in a political context, and the classical liberalism from which contemporary libertarianism springs had been sharply out of favor for more than a century. In an already very large book, it may have seemed excessive to devote more ink to what seemed a mere historical footnote. Accordingly, Rawls turns forthwith to other, more viable interpretations of the second principle of justice. Had he been conversant with the writings of Twin Rawls, however, he would have realized that this is to give too short shrift to the libertarian alternative. Even if it is granted that one's place in the natural lottery of talents and initial social position is morally arbitrary, it does not follow that a structure mostly dedicated to safeguarding the rights of individuals to act from those starting places is also morally arbitrary. The point from which one begins is neither here nor there, morally speaking, but that one proceeds therefrom to freely exercise one's two moral powers so as to advance favored ends while simultaneously affording due recognition and respect to other agents is laden with moral significance. Recall Rawls's remark: "The natural distribution is neither just nor unjust. . . . What is just and unjust is the way that institutions deal with these facts" (*TJ,* 102). There are two broadly contrasting ways in which the political institutions of a society can deal with these facts. One is through the adoption of policies and procedures contrived so as directly to bring about some favored distributive configuration. The other is through a system of law that reinforces the capacity of self-directing individuals to generate valued outcomes.[20] The first of these is exemplified by the Rawlsian difference principle, the second by the Twin Rawlsian maximum equal liberty principle. Neither of these represents a simple surrender to moral arbitrariness. If there is a case to be made in favor of the first against the second, it must be *made,* not simply assumed by default.

B. Libertarianism is not political

In lecture 7 of *Political Liberalism,* "The Basic Structure as Subject," Rawls contrasts justice as fairness with Robert Nozick's libertarianism.

[20] This is to invoke Nozick's distinction between "patterned" principles of distribution and those, such as his entitlement theory, that are historical or otherwise unpatterned. See *ASU,* 155–60.

There is, Rawls claims, no special role for the basic structure within libertarian theory. The state is on a par with private associations insofar as it emerges from a historical series of voluntary transactions with willing clients who are at liberty either to purchase the package of services the state offers at its stipulated selling price or to decline to deal. "By viewing the state as a private association the libertarian doctrine rejects the fundamental ideas of the contract theory, and so quite naturally it has no place for a special theory of justice for the basic structure" (*PL*, 265).

This critique is multiply problematic. First, it's not clear that it is a critique, rather than simply a characterization. What's wrong with applying principles of justice that hold for private transactions to the evolution of a minimal state? Isn't that a gain from the point of view of theoretical parsimony? Does it not make the birth of political structures seem a bit less ad hoc? Even if Nozickian transactors are removed from social contract understood as deliberation behind a suitably defined veil of ignorance, why should we take that to be a theoretical defect? It is not obvious that the *actually* agreeable carries less weight than the hypothetically agreeable.

Second, even if Rawls does nail Nozick dead to rights, that is not equivalent to having dispatched libertarianism. Perhaps the flaws exhibited in Nozick's theory—assuming that they are in fact flaws—are idiosyncratic. If something more than victory in a one-on-one skirmish is to be achieved, then Rawls must train his sights more broadly on the gamut of exponents of the "system of natural liberty."

Third, Rawls grossly mischaracterizes Nozick's argument. Contra Rawls, it is not Nozick's view of the transition to the minimal state that "[n]o one can be compelled to enter into such an agreement and everyone always has the option of becoming an independent" (*PL*, 265). This is a remarkable inversion of the extended Nozickian argument for the permissibility of *disallowing independent status* and instead compelling individuals to enter into a civil order.[21] Whether or not that argument carries plausibility,[22] any useful critique/characterization of the progression of Nozick's *Anarchy, State, and Utopia* must minimally get it straight.

C. Libertarianism is illiberal

Rawls maintains that reasonably just constitutional democratic societies assure "sufficient all-purpose means to enable all citizens to make

[21] "An independent might be prohibited from privately exacting justice because his procedure is known to be too risky and dangerous" (*ASU*, 88). So begins the first sentence of chapter 5, "The State," in which Nozick argues for a transition to a minimal state such that all inhabitants of a territory are mandatorily enrolled as citizens subject to and protected by its structure of law. It is preceded by the chapter "Prohibition, Compensation, and Risk," in which the theoretical machinery for justifiable prohibitions and associated compensations is developed. A reading of Nozick in which this protracted argument is omitted, indeed reversed, is very much a *Hamlet* minus the Prince of Denmark.

[22] My own view is that it misfires. See Loren E. Lomasky, *Persons, Rights, and the Moral Community* (New York: Oxford University Press, 1987), 143.

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intelligent and effective use of their freedoms." Otherwise impeccable systems of formal liberties that fail to incorporate such a guarantee, he adds, "are an impoverished form of liberalism—indeed not liberalism at all but libertarianism. The latter does not combine liberty and equality in the way liberalism does; it lacks the criterion of reciprocity and allows excessive social and economic inequalities" (*LP,* 49).

It is not immediately evident why Rawls says that libertarianism fails the criterion of reciprocity. A libertarian order more than any other rejects forced transactions and the exploitation consequent thereon. Instead, it privileges voluntary exchange, the paradigm instance of mutual benefit and reciprocity. To make sense of Rawls's denial of libertarian reciprocity, he must be understood as maintaining that the freedom of transactors separated by large disparities of wealth and power is not genuine. Someone perched on the edge of exigency is obliged to take whatever bargains she can get, no matter how hard, no matter how divorced from her conception of the good life.

So interpreted, this becomes a variation on the strains-of-commitment theme. The least well-off individuals in a libertarian order will find the meager share they receive from the cooperative surplus scant return for their adherence to the rules of that order. They will regard its formal equality as imposing on them a far greater burdens-to-benefits ratio than is borne by the more well-off. Unlike the high-flyers of laissez faire, the least well-off have scant rational stake in the order's sustenance. It will be unreasonable to expect them to agree to adhere to a regime of rights in which their own rights are of little value.[23] Thus, compliance will have to be secured more by threat of *force majeure* than through the proper functioning of a sense of justice. This appears to be what Rawls means when he says, "A libertarian regime would not have stability for the right reasons, which is always lacking in a purely formal constitutional regime" (*LP,* 49–50).

If strains-of-commitment arguments are to be taken seriously—as Section IIB above argues they must be—then this is Rawls's most formidable anti-libertarian thrust. A libertarian order that allows individuals to fall through the cracks is not one to which all can reasonably commit their allegiance. But rather than constituting a decisive objection to libertarianism, this argument instead amounts to a criterion for choosing among libertarian programs. The decided majority of prominent libertarian proponents have maintained that the central principle of maximum equal liberty is to be accompanied by a contingent and secondary principle of publicly provided subventions for those who are unable through their own voluntary undertakings or the assistance of willing others to elevate

[23] Rawls returns repeatedly in his writings to issues surrounding the *value* of liberty. See, for example, *TJ,* 204–5 and 224–27; and *PL,* 324–31.

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themselves above the floor of exigency.[24] Among those who fall into this camp are Locke, Kant, Mill, Hayek, and, of course, Twin Rawls;[25] Nozick is the most conspicuous holdout.[26] The presence of a social safety net, albeit one that will only infrequently be invoked in a society in which the state is not an active encroacher on people's freedom to advance their own interests,[27] ensures that a vigorous reciprocity will be preserved. For reasons previously adduced while discussing the scope of the liberty principle, such a regime will lessen strains of commitment by affording maximum scope for the pursuit of those ends that really matter to individuals. There do not, therefore, seem to be any compelling reasons why Rawls need have rejected libertarianism. He could have marched shoulder to philosophical shoulder with his Twin Harvard counterpart.

IV. Nozickian Redistribution

I now turn briefly to the curious case of Twin Nozick. This discussion is included because symmetry is aesthetically engaging. One reason for brevity is because no journey to Twin Harvard is needed to discover a Nozick who arguably has rejected libertarianism.[28] Another is that once it is first set out, the idea unfolds itself.

[24] I decline to enter into a debate here concerning whether the term "libertarian" ought to be reserved only for those who disallow all claims to positive provision that issue in welfare rights. Those who feel the need for more scrupulosity in this regard may read these passages as a characterization of *classical liberals* or proponents of a *system of natural liberty*.

[25] I also have supported this position. See, for example, Lomasky, *Persons, Rights, and the Moral Community,* 125–29.

[26] Assuming that his invocation of the Lockean proviso does not indeed join him with these predecessors. See *ASU,* 175–82. Nozick suggests there that the need for forced redistribution to achieve a decent welfare floor would, in the absence of prior illegitimate state actions, be academic.

[27] Examples of state encroachment include occupational licensure, minimum wage laws, restrictive zoning ordinances, cartelization of an education industry that disastrously underserves the poor, victimless crime laws, etc.

[28] Nozick's so-called recantation from libertarianism has occasioned more excited reactions, especially from libertarians who had been inspired and energized by *Anarchy, State, and Utopia,* than its meager dimensions can support:

> The libertarian position I once propounded now seems to me seriously inadequate, in part because it did not knit the humane considerations and joint cooperative activities it left room for more closely into its fabric. It neglected the symbolic importance of an official political concern with issues or problems, as a way of marking their importance or urgency, and hence of expressing, intensifying, channeling, encouraging, and validating our private actions and concerns toward them. . . . There are some things we choose to do together through government in solemn marking of our human solidarity, served by the fact that we do them together in this official fashion.

Robert Nozick, *The Examined Life: Philosophical Meditations* (New York: Simon and Schuster, 1989), 286–87. An even more cursory statement along these lines is repeated in Robert Nozick, *The Nature of Rationality* (Princeton, NJ: Princeton University Press, 1993), 32. For what it may be worth, my view is that Nozick never seriously challenged the libertarianism of *Anarchy, State, and Utopia*. (Had he desired to do so, the result certainly would have been a good bit more impressive than the negligible reflection offered above!) Rather, he simply wished to move on with his philosophical life, and so he offered a modest gesture by way of unhitching himself from a yoke of libertarian political theory.

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Twin Nozick embarks from a (Twin?) Lockean foundation of basic rights to life, liberty, and property, arriving at what he dubs the "entitlement theory" (of justice in holdings). According to the entitlement theory, one has justifiable title to some item so long as one has come to possess it either through just original acquisition, just voluntary transfer, or just compensation by way of rectifying a prior injustice. No other criteria are needed. (See *ASU,* 150–53.)

It is important to observe that a situation is not rendered just because it could have been produced via justice-observing means. "The fact that a thief's victims voluntarily *could* have presented him with gifts does not entitle the thief to his ill-gotten gains. Justice in holdings is historical; it depends upon what actually has happened" (*ASU,* 151–52; emphasis in the original). All I need to know to establish that the landed property or chattel in my possession is rightfully owned by me is that I have acquired it from a party who has rightfully acquired it from someone who has rightfully acquired it from someone who has . . . rightfully appropriated it from an unowned condition. That, however, is the rub. Even very new things are mostly made from not-so-new things that were in turn made from yet older things. The chain goes back a very long way, and land goes back further still. How often will one be able to determine with any assurance that a chain of title is unsullied by any episode of injustice? The question is not a merely theoretical one; history is awash with episodes of rapine, murder, enslavement, plunder, and dispossession. The hope for achieving pristine title is a will-o'-the-wisp.[29]

Twin Nozick begins and ends by espousing libertarianism—for a world of perfect compliance. That, most assuredly, is not our actual world. (Nor is the history of Twin Earth a much cheerier tale.) There can be no hope of unraveling the tangled skein of injustices so as to place things in the hands where they properly belong. Not only do we lack an adequate historical knowledge taking us back with no gaps to Adam and Eve/Lucy, but even if the record were complete we would not know what to do. Those who suffered wrongs in the distant past are beyond human ability to render whole; those who suffer contemporary rights violations would not even exist had their conception not been brought about through causal sequences involving yet other rights violations. In so convoluted a moral realm there is nothing for the entitlement theorist to do other than throw up her hands and admit that Humpty Dumpty is not to be put back together again. Instead, the best that can be achieved is to start over from a Day One in which people will be allowed to transact howsoever they choose from a starting point of equality. That requires in turn a Day Zero given over to radically equalizing holdings and other natural assets so that all will be equally placed on the social starting line.

[29] Even if some previously undiscovered object is extracted from the state of nature, its acquirer was in a position to lay hands on it because of a causal chain along which at least some of the links incorporate rights violations.

Twin Earth critics objected that this prior equalization was unjustified because there can be no presumption that, in the absence of prior injustices, all would be equally situated. Twin Nozick agreed with the premise, but he argued that if there is absolutely no reason to hold that A deserves more than B, and no reason to hold that B deserves more than A, then the only morally nonarbitrary conclusion to draw is that neither is to have more than the other. Equality wins by default. Thus Twin Nozick regretfully concluded that the libertarian consummation, although devoutly to be wished, will have to be preceded by redistributive shock treatment. First the time of Tribulations, and only then the Millennium.

This planet's Nozick draws no such conclusion. Neither, though, does he reject it. Instead, he hedges:

> How, if at all, do things change if the beneficiaries and those made worse off are not the direct parties in the act of injustice, but, for example, their descendants? Is an injustice done to someone whose holding was itself based upon an unrectified injustice? How far back must one go in wiping clean the historical slate of injustices? What may victims of injustice permissibly do in order to rectify the injustices being done to them, including the many injustices done by persons acting through their government? I do not know of a thorough or theoretically sophisticated treatment of such issues. (*ASU,* 152).[30]

Could it be that Nozick's inability to come up with a thoroughly satisfying account of how to understand entitlements in a morally checkered world contributed to leading him away from political philosophy in general and libertarianism in particular? Possibly. To be sure, he does not react with the extreme pendulum swings of Twin Nozick. But neither does he avail himself of the insights of Twin Rawls so as to spell out a plausible libertarianism for a world of very imperfect compliance.

V. Conclusion

It is time to sum up—or rather, to "fess up." There is no such institution as Twin Harvard. However, there could be. More importantly, there is a possible world in which the Rawls and Nozick of the actual Harvard theorize very much as do their Twin Harvard counterparts. The interesting question to consider is how distant that possible world might be. My hunch is that it is rather far. No small modal alterations would be likely to thrust Rawls into the libertarian camp of Twin Rawls. However, that is not because Rawls's theoretical underpinnings are fundamentally hostile

[30] I make a start at addressing some of these issues from a libertarian vantage point in Lomasky, *Persons, Rights, and the Moral Community,* 141–46.

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to libertarian propositions. The bulk of this essay has been given over to showing that they are in fact hardly more than a hair's breadth away from yielding a recognizably libertarian position. Rather, the reason Rawls is not libertarian in any close-in possible world is because he is more committed to his egalitarian redistributionist conclusions than he is to the premises that generate those results. Whenever he enters into wide reflective equilibrium, opposition to libertarianism is one of those relatively fixed points unlikely to be dislodged.

This assessment does not stem from amateur psychophilosophy but rather from the plain evidence of the texts. What I mean is this: Rawls is one of the most gifted moral philosophers of our time, perhaps any time. Yet whenever he verges into a territory that might prove congenial to libertarian conclusions, he conducts himself awkwardly. The devolution of the first principle of justice from a stirringly Kantian clarion call to a restricted listing of an assortment of political freedoms does not display Rawls at his most impressive. The first-you-see-it-now-you-don't assessment of justice as fairness as a willingness to share one another's fate is similarly unprepossessing. Strains of commitment are exacerbated by Rawls's defenses of the difference principle, and he fails to take adequate account of the sorts of social science precepts that deliberators behind a veil of ignorance will invoke in order to make an intelligent choice among competing institutional structures. Finally, when he explicitly undertakes to criticize libertarianism, his remarks are perfunctory and ill aimed, sometimes embarrassingly so. I do not mean in any way to demean Rawls when I suggest that his continued inability to come to terms successfully with libertarianism is due to an internal tension between his methodology and his convictions. One or the other has to give; invariably it is the former. It is too late to attempt to convince him to go over to the other side (the dark side?), but it remains timely to suggest that libertarian theorists regard Rawls not so much as an antagonist but rather as a potential ally.

As for Twin Nozick, he reminds us that the entitlement theory retains lots of untapped potential, some for pushing further along in a libertarian direction, some for speeding off in reverse. The final quarter of the twentieth century was graced by two political philosophers of exceptional power and ingenuity. Whatever else it may prove to feature, philosophy in the twenty-first century will continue to draw on their extraordinary legacies.

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