
Phil Smith Lecture

A SKETCH OF POLITICALLY LIBERAL PRINCIPLES OF
SOCIAL JUSTICE IN HIGHER EDUCATION

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John Rawls was probably the world's most influential political philosopher during the last half of the 20th century. In 1971, he published *A Theory of Justice*,¹ in which he attempted to revitalize the tradition of social contract theory that was first used by Thomas Hobbes and John Locke in the 17th century. The basic idea of this tradition was that the only legitimate form of government was one to which all citizens had good reason to consent, and Locke argued that the social contract would necessarily provide protections for basic personal and political liberties of citizens. In the Declaration of Independence, Thomas Jefferson charged that the English King George III had violated these liberties of the American colonists, and therefore the colonies were justified in revolting against English rule. Moreover, the Bill of Rights of the Constitution of the United States can be understood as protecting certain basic liberties—freedom of religion and expression, for example—on the grounds that they are elements of the social contract that place legitimate constraints on the power of any justifiable government.

During the late 18th and 19th centuries, however, the social contract approach became the object of serious philosophical criticism, especially because the existence of an original agreement among all citizens was historically implausible and because such an agreement failed to acknowledge the fundamentally social, rather than individual, nature of human decision making, especially about political affairs. In light of this criticism, British philosophers, in particular Jeremy Bentham and John Stuart Mill, suggested that the legitimate justification of government lay not with whether citizens actually consented to it but with whether it and its policies were designed to maximize the happiness of its citizens and actually had that effect. This approach to political theory was, of course, utilitarianism, and it came to dominate Anglo-American political philosophy in the late 19th and early 20th centuries, providing the moral foundation of, for example, economic criteria for choosing and judging government action on the grounds that expanding economic productivity is a means to maximizing happiness.

Despite the efforts of John Stuart Mill to argue that utilitarianism is compatible with a wide range of individual liberties because individuals are

¹ John Rawls, *A Theory of Justice* (Cambridge, MA: Belknap, 1971). A revised edition was published in 1999.

often the best judges of what makes them happy and thus that government policies should enable them to make their own determinations of the particular personal and social arrangements that are appropriate. Anglo-American philosophers became troubled about the potential of this doctrine to override and sometimes to neglect altogether individual liberties in the interests of increasing total happiness, especially given the early 20th-century experience with a variety of totalitarian regimes. Beginning in the mid-20th century, John Rawls attempted to construct a version of political theory that placed a priority on individual personhood as opposed to collective happiness, a doctrine that he labeled Justice as Fairness. This doctrine drew upon the social contract tradition, but it represented the social contract not as an actual historical pact but as a hypothetical agreement developed in a fair decision-making situation into which citizens could enter in their imaginations at any time to determine the principles that would regulate their political relationships.

Although the details of Rawls's social contract argument are beyond the scope of this essay, he concluded that the parties to the agreement would select principles of justice that would guarantee basic personal and political liberties, equal opportunities to compete for the society's various positions on the basis of citizens' qualifications for those positions, and a distribution of the society's material resources that would maximize the income of the society's least advantaged citizens.² Only once these principles were satisfied could a society consider the efficiency of its social arrangements, as would be required under utilitarianism, and, even then, it did not have a moral obligation based on social justice to choose the most efficient arrangements.

Now, Rawls's specific theory of justice is important (and controversial) in itself, but it will not be the focus of this essay. Instead, I will focus on Rawls's later characterization of the kind of society that could adopt either his specific theory or one of several alternative theories, all of which he came to label politically liberal societies.³ These societies' citizens develop an agreement on political principles that does not require them to concur in their comprehensive conceptions of the good, which involve their commitments about the most worthwhile and fulfilling lives for themselves, including perhaps beliefs about the religious or metaphysical nature of the universe and humans' place in it. Thus, politically liberal societies develop an agreement about justice that citizens who hold many different reasonable conceptions of the good can accept. According to Rawls, such reasonable citizens have a desire to cooperate fairly for mutual advantage when others do so. They also recognize the burdens and limitations of judgment, which imply that reason alone cannot definitively determine the ultimate truth or falsity of all matters that may enter into one's conception of the good so that, although they are committed to their own conceptions of the good, they can recognize many

² Ibid.

³ John Rawls, *Political Liberalism* (New York: Columbia University Press, 1993).

others' conceptions as reasonable. Thus, according to Rawls, citizens potentially can agree on basic principles of justice for regulating relationships among themselves that will enable them and others with such reasonable conceptions, despite their differences in belief, to embrace and pursue their aspirations to live a life guided by their own specific conceptions of the good.

On Rawls's view, such an agreement is both political and liberal. It is political in that it is a pragmatic agreement for cooperation among those with varying comprehensive views of what ultimately makes life worth living, views that lead the parties to the agreement to hold different final ends and thus different fundamental justifications for the agreement. Thus, one party might justify the agreement as being consistent with the fulfillment of her religious duties, and another as being consistent with the wholly secular obligations to others implied by her conception of the good, for example. Thus, these justifications are based on very different ultimate personal commitments, but the agreement does not require all to accept the same ultimate commitments. In this way, the agreement is also liberal in that it is consistent with many different specific configurations of belief. It thus leaves to citizens, acting either individually or in groups of the likeminded, the final determination of their own conceptions of the good. It therefore is predicated on a wide freedom of conscience about the particular conceptions of the good that citizens find worthy.

For this reason, Rawls characterizes the agreement about the principles of justice in a politically liberal society as in the end an overlapping consensus among reasonable citizens with different comprehensive conceptions of the good. That is, some citizens' conception of the good allows them to accept the same political principles of justice accepted by others who justify their acceptance by means of different conceptions of the good. In this way, citizens' conceptions of the good, even though they are different, can be understood as overlapping one another sufficiently to generate a society-wide agreement about political justice. Thus, citizens in such a society reach a moral agreement about the appropriate political arrangements of their society, even though they disagree about the non-political moral goods they pursue in their individual lives or their private associations. However, Rawls came to recognize that the principles he argued for in *A Theory of Justice* were not the only ones that could provide for this overlapping consensus. To be sure, liberty of conscience, basic political liberties, and equal recognition of the personhood of all seem to be necessary for such a consensus, but the precise principles and priorities laid out in his earlier work do not seem to be the only possible way to achieve those political necessities. Rawls continued to argue that the conception of justice provided in *A Theory of Justice* was the most egalitarian of the politically liberal schemes, but it was not the only one. Thus, political

liberalism can be understood as embracing a family of related but not identical conceptions of justice.⁴

To make the emergence of politically liberal societies realistically possible, Rawls recognizes that he must acknowledge certain moral characteristics of human beings. In particular, he recognizes that people have two moral powers—namely, the capacities for a conception of the good and a sense of justice. The capacity for a conception of the good implies that people have the ability to establish moral ends for their lives and to arrange their activities to achieve those ends. The capacity for a sense of justice implies that people have the ability to establish and follow moral rules for their political relationships with others that they themselves accept as regulative of their own activities, particularly when others agree to and follow the same rules. Now, these two powers do not automatically guarantee the emergence of a politically liberal regime. For, first, it is possible for one's conception of the good to be determined by the collective or despotic authority of others—families, churches, or governments, for example—rather than by the exercise of the conscience and judgment of each citizen. Second, the specific content of one's sense of justice can also be determined by sources entirely external to the individual. Thus, these two powers are just as compatible with some authoritarian regimes as they are with politically liberal regimes. Moreover, these two powers are not necessarily consistent with each other in that it is possible for one's personal ends to conflict with the rules dictated by one's sense of justice. Despite these possibilities, these two moral powers do make the emergence of a politically liberal regime feasible when individual conscience is free to determine the content of both the good and the just. In this way, political liberalism can be understood as a form of reflective equilibrium, to use Rawls's term, between citizens' self-determined conceptions of the good and their sense of justice. Of course, others can and undoubtedly do have an important role in citizens' thinking about the good and the just. For example, others can provide a range of alternative possibilities for developing one's conception of the good. And others' self-defined interests and their circumstances form an important context for judging the rules of justice that would secure their cooperation. However, what political liberalism forbids is that these social contributors to citizens' thinking about these matters are the final arbiters, regardless of individuals' own judgments about them. Thus, the specific formulation of one's conception of the good and one's sense of justice is simultaneously a social and individual enterprise in a politically liberal society.

POLITICAL LIBERALISM AND CHILDREN'S EDUCATION

It should be clear from this general characterization of political liberalism that education plays a central role in the emergence and sustenance

⁴ Ibid.

of such a political regime. On the one hand, a society's educational institutions seem necessary to enable individuals to develop their conceptions of the good and their sense of justice in ways that are consistent with political liberalism. On the other hand, educational institutions can protect individuals in the process of developing their moral powers from the authoritarian tendencies of other social institutions—ranging from the family to the associations of civil society and the government itself—to enforce conceptions of the good and of justice upon a society's citizens. At no other time during citizens' lives do these developmental and protective functions of education seem particularly crucial than during childhood. For, first, children are especially vulnerable to the exercise of authority, and, second, the exercise of adult authority seems not only inevitable but also valuable during childhood. After all, in the absence of such authority, it seems improbable that children would develop both fulfilling conceptions of the good and the abilities to pursue them and that they would develop conceptions of justice that enable cooperative social arrangements to arise and flourish, arrangements that not only foster the realization of individuals' conceptions of the good but also do so in ways that are fair to all.

In light of the importance and the potential danger of education during childhood for politically liberal societies, I have devoted much of my professional career to thinking about and formulating the moral principles that should govern such a society's educational institutions. However, this task cannot be accomplished for all such societies in the abstract because, as Rawls reminds us, there are many different configurations of politically liberal societies. Therefore, I have focused on developing moral principles for the United States and possibly for societies that share many similarities to this country. The starting place for such principles is the most frequent considerations that Americans think relevant to their schools—liberty, democracy, equal opportunity, and economic growth. From these considerations, I have attempted in *Social Justice in Education: An Introduction* to articulate the overlapping consensus that seems consistent with this way of thinking about schooling. This overlapping consensus consists of four principles for the conduct of public schooling during childhood:

Personal Liberty

Conduct public schooling in a way that allows children to develop both as their own persons—that is, to come to hold personally meaningful conceptions of the good and to acquire the reasonable capacities to pursue them—and as responsible members of their families and communities who respect and support others' politically significant personal liberties and the other political commitments of their society.

Democracy

Conduct public schooling in a way that fosters children's ability and willingness to participate in public decision-making processes so that they acknowledge and respect the other political commitments of their society and so that they make constructive contributions to, learn from, and act on the results of those processes in both their own and others' communities.

Equality of Opportunity

Conduct public schooling so that children have an equal chance to develop the differential abilities required for success under their emerging individual and collective conceptions of the good.

Economic Growth

Conduct public schooling in a way that allows children to understand the role that economically valued capabilities may have in formulating and pursuing their emerging personal and social conceptions of the good and that helps them develop the economic capabilities included in their life plans.⁵

It is not my intention here to duplicate the arguments that justify these principles or to explain how these principles imply specific policies for schools. However, I do want to indicate three important features of these principles. First, they do not depend on a complete theory of justice for all of America's institutions because, in my judgment, a comprehensive overlapping consensus does not currently exist in the United States. Second, among the institutions that are not addressed specifically by these principles are institutions of higher education. Third, however, these principles appropriately modified might provide at least a partial basis for an overlapping consensus about higher education in that the general issues with which they deal figure prominently in Americans' conceptions of the purposes of colleges and universities in addition to schools. The real focus of this essay, then, is to consider whether it is possible to begin formulating an overlapping consensus for higher education based in part on the overlapping consensus about schools and in part on the distinctive ways that Americans think about those institutions and on the distinctive functions that they have in Americans' lives.

⁵ Barry L. Bull, *Social Justice in Education: An Introduction* (New York: Palgrave Macmillan, 2008), 60-61.

ISSUES FOR POLITICAL LIBERALISM
IN HIGHER EDUCATION

Before attempting an initial version of principles of an overlapping consensus that might apply to higher education in a politically liberal society, it is important to acknowledge a wide variety of issues that arise from the morally relevant characteristics of the population to whom those principles apply and from the roles that higher education institutions have come to serve in American society that may contrast to those of schools. Issues of the first kind have obvious relevance to social justice in that they are inherently moral in character, but issues of the second kind may be relevant if they encompass social functions that are morally necessary or at least morally permissible in politically liberal regimes.

The most obvious difference lies in the students served by schools and universities. First, the adult students of universities have a full-fledged moral independence that children do not. As a result, the case for the exercise of authority over school-age students mentioned previously is certainly less applicable to higher education students and is perhaps altogether irrelevant. However, we should be clear about the precise nature of the moral independence of adults in a politically liberal society. Such independence can be understood in terms of the two moral powers that Rawls ascribes to human beings, their capacities for a conception of the good and for a sense of justice. With regard to conceptions of the good, politically liberal societies must provide and protect considerable personal liberty in order that the societies may embrace a wide range of such conceptions that are adapted to the judgments, circumstances, talents, and proclivities of their citizens. Children are, however, especially vulnerable to the efforts of adults—their parents, community members, and the larger public—to determine their conceptions for them. As a result, it is necessary to protect children to an extent that allows their own judgments to be effectively implicated in determining the conceptions that they eventually embrace. Even then, the protection cannot be so complete that children are isolated from the adult conceptions that may provide alternatives for lives that the children judge worthy for themselves. Moreover, children should not be isolated from the conceptions that they do not judge appropriate for themselves because exposure to those conceptions seems necessary so that children can come to respect the liberty of those who hold those conceptions. For young adults with reduced vulnerability, the enforcement of others' conceptions of the good becomes less a threat to their being their own persons, and thus protection from others becomes less important, although, even for them, some protection against the most severe forms of enforcement, such as the official establishment of a particular religion, does remain appropriate. But beyond this, continuing respectful exposure to the existing and possible conceptions of others remains important for the equal personal liberty of all as young adults' conceptions of the good evolve and as they encounter those who

hold a wider range of conceptions. In the transition to adulthood, then, the protection from and exposure to others' conceptions that is appropriate for maintaining equal personal liberty in the entire society shift gradually.

Most important, it becomes appropriate to enable emerging adults to enjoy a greater degree of control over this combination of protection and exposure so that it is sensitive to their current conceptions of the good. Although thoughtfully and carefully implemented government protection from and control of exposure are necessary in light of children's vulnerability to others, this arrangement cannot be permanent because in a politically liberal society adult citizens themselves must ultimately take full responsibility for their own conceptions of the good.

Now, formal education beyond schooling is one powerful resource for the continuing development and realization of such conceptions and for the expansion of the reasonable mutual respect for others' conceptions that personal liberty requires. However, young adults who have been educated in politically liberal schools have developed basic abilities for determining the nature and desirability of this continuing education in that their personal judgments of the good have begun to take shape under conditions of reasonable guidance by and freedom from others. Moreover, the conceptions that they are developing are reasonably consistent with the conceptions of others as a result of their exposure to a reasonable diversity of alternative conceptions in school. Therefore, in almost all cases it is appropriate for such adults to determine whether, to what extent, and in what form further education is required by their emerging conceptions of the good.⁶ Thus, the ultimate determination of the relevance to personal liberty of formal education beyond schooling reasonably lies with young citizens themselves. In other words, the case for compulsory education in general ends in young adulthood.

Even though government authority over education does not take the form of compelling the education of adults in a politically liberal society, such a government cannot, however, simply abandon all responsibility with regard to adult education for at least four reasons. First, politically liberal citizens are not merely to be free in their determination and pursuit of their conceptions of the good, but they are to be equally free in this regard. Thus, citizens whose emerging conceptions involve higher education are to have roughly equal access to such education regardless of the nature of their conceptions as long as those conceptions are reasonable,⁷ for otherwise the society as a whole and not citizens themselves would determine the substance and fulfillment of its citizens' conceptions of the good. Therefore, the government must provide for

⁶ There may, for example, be cases of disability, neglect, or abuse in which continuing government authority over education should properly extend into adulthood.

⁷ Here I am relying on Rawls's definition of reasonable conceptions of the good as those that are not demonstrably inconsistent with public reason and thus the requirements of justice in a politically liberal society. See Rawls, *Political Liberalism*, 1993.

access to higher education that is neutral to the reasonable conceptions of the good that citizens hold. If, for example, a small minority of citizens seek advanced study of a particularly unpopular but reasonable religion or occupation, it would be socially unjust for the society to outlaw such study, and it is appropriate for the government to protect that minority's right to engage in it. Second, if the social or economic circumstances in which young adults find themselves make it extraordinarily improbable that on their own they will be able to take advantage of the opportunities for advanced study required by their emerging and reasonable conceptions of the good, the morally legitimate differentiation of citizens' conceptions of the good required by the principle of equal opportunity would be restricted for those young adults. Social justice requires, then, government protection of opportunities for higher education for young adults in such constrained circumstances. For example, if a family is unable to support their young adult children's aspirations for the higher education that their reasonable conceptions require, it would be appropriate for the society as a whole to enable these young adults to gain access to such higher education so that the range of conceptions of the good developed and pursued in the society are determined by those who hold them rather than by their families' circumstances. Third, community and family social and cultural preferences may make them unwilling to support young adults' development and pursuit of reasonable conceptions that require higher education even if they are able to do so. The constraints imposed by these preferences also contradict the requirements of equal opportunity in that they determine young adults' opportunities to develop the abilities consistent with their conceptions. And the previous argument applied to this case also implies government action to protect and provide these opportunities. Fourth, both economic and preferential constraints impose limitations on the pursuit of morally legitimate economic growth in a politically liberal society. To be sure, this economic growth is not the unconstrained form demanded by utilitarian theory, but the morally legitimate constraints upon it derive from the freely chosen conceptions of the good held by the society's citizens and not from the unequal economic circumstances of some citizens or the cultural preferences of a political majority. Thus, the effects of those circumstances or those preferences on higher education can illegitimately hinder the kind of economic growth that supports the development and pursuit of citizens' reasonable conceptions of the good.

Thus far, there are reasons based on three of the four considerations of justice included in the overlapping consensus about education in the United States for the government to take a degree of responsibility for the education of adults as well as of children—liberty, equal opportunity, and economic growth. However, a satisfactory formulation of the principles for adults is not precisely the same as that appropriate for children because, as we have noted, the morally relevant characteristics of those two populations differ in important ways.

Considerations relevant to democracy also apply to adult education. Democracy under political liberalism reflects citizens' willingness and ability to take seriously and to participate in the evolving overlapping consensus in the society, and it thus depends on its citizens' continuing development of a sense of justice. Many of the basic skills and attitudes required for this purpose are developed in schools, but the need to be intelligently involved in the evolution of the consensus implies current knowledge of the effects of the policies by which that consensus is implemented and of the consequences of those policies for the various and changing conceptions of the good embraced in the society. To enable the consensus to evolve meaningfully, then, the adults of the society need to become and to remain informed about the state of the society's public policies and its citizens' ever-shifting configuration of private moral and cultural beliefs. Although a wide variety of institutions, including the public media, contribute to this information, higher education institutions because of their systematic approach to social research are likely to be especially important for this purpose both in their students' lives and in the lives of citizens more generally. As noted before, given the importance of these institutions for the growth and realization of citizens' conceptions of the good and the foundation provided by schools to their participation in the overlapping consensus, however, democracy cannot provide a rationale in a politically liberal society for compulsory participation in this adult education or for heavy-handed government regulation of it. Nevertheless, there is an important role for government here, namely in maintaining the freedom of inquiry and publication that enables individuals and social institutions to contribute meaningfully to the ongoing evolution of the consensus.

Before developing an initial formulation of the principles of justice for higher education, it is also necessary to consider whether the roles that higher education institutions have come to serve in our society also have a morally relevant function in that formulation. At least two of those roles seem particularly relevant to this investigation. First, many higher education institutions are themselves socially important voluntary associations, places where those who are like-minded in their commitment to particular conceptions of the good gather to learn and to think systematically about those conceptions and to pursue them conscientiously.⁸ The most obvious examples are religious seminaries, but also included are specialized institutions of scientific research and of philosophical or social inquiry. Even within more comprehensive institutions, particular programs and departments often serve this function. In other words, higher education institutions or their components often behave as private associations of civil society. Now as long as these institutions' conceptions are reasonable, they deserve the same sort of protection as other civil society organizations. However, their function in adult education gives

⁸ Cf. Amy Gutmann, *Democratic Education*, rev ed., (Princeton, NJ: Princeton University Press, 1999), 185-193.

them a special status in two ways. As noted earlier, some of these institutions may represent unpopular beliefs, and as such their protection is a special concern of government in a society committed to preserving freedom in developing and realizing its citizens' access to satisfying, diverse, and reasonable conceptions of the good. In addition, however, some of them may maintain significant control of access to particularly valued and sought-after ways of life in the society. As such, these institutions pose a potential source of problems in a society concerned with equal opportunity because they may distribute the access to those ways of life in a manner that is not consistent with that purpose, for example, by preferring students with particular beliefs or from particular races, ethnicities, or genders. Thus, it is incumbent on government to ameliorate these problems by requiring such institutions to maintain entrance qualifications that are neutral to students' backgrounds. However, in rare cases such requirements may actually contradict the institutions' reasonable conceptions of the good, in which cases, the requirements would effectively prohibit or at least severely constrain access to those conceptions. When this occurs, it is necessary that government ensure that alternative institutions are available in sufficient number to provide access to those ways of life that is sufficient to meet the demand from those barred from exclusionary institutions.

A second characteristic of many higher education institutions in the United States is their and their faculties' commitment to research and publication that leads to the general improvement and application of knowledge in the society. As already mentioned, aspects of this role are important in the meaningful evolution of the overlapping public consensus about social justice, but it is also important in the emergence of new private conceptions of the good and the refinement and realization of existing ones. On account of both of these consequences of knowledge generation and dissemination, it is important that activities for these purposes in a politically liberal society occur robustly and freely. For the adequacy of the development of citizens' two moral powers depends significantly on those activities. Of course, colleges and universities are not the only institutions that undertake those activities; the public media, private industry, and other civil society organizations, for example, do so as well. However, higher education institutions can be to an extent free from the public and private constraints that affect these other institutions, such as the biases that may arise from self-interest, the proprietary nature of the knowledge generated, or the political unpopularity of some ideas. As a result, it is appropriate that politically liberal governments encourage and protect freedom of inquiry and openness of communication in higher education institutions. Of course, such government action does not rest on the assumptions that knowledge in general or some particular kinds of knowledge are inherently valuable, for such assumptions reflect in effect a commitment to particular conceptions of the good, which citizens' and not the political regimes under which they live, are to determine for themselves. Rather this protection and encouragement of inquiry and communication rest on the instrumental value of

knowledge for achieving the social justice purposes of education that are included in the overlapping consensus—personal liberty, democracy, equal opportunity, and economic growth. As a result, the government’s stance toward knowledge and its dissemination in many cases, perhaps typically, differs from the attitudes of faculty members, their students, and members of the general public, who, as a result of their personal conceptions of the good, often regard the knowledge they acquire, convey, and produce as inherently valuable. Therefore, the government interest in knowledge is often partially at odds with the interests of those involved in and affected by the academic enterprise.

A FIRST APPROXIMATION OF PRINCIPLES OF JUSTICE FOR HIGHER EDUCATION

Against the background of these considerations about the differences between adults and children and about the functions of higher education in American society, the principles of justice for higher education are both similar to and distinct from the principles for schooling. They are similar in that they reflect the same general purposes of education included in the overlapping consensus for schools, but they are distinct in that they apply to adults and to the higher education institutions within which that education occurs.

Personal Liberty

Conduct higher education in a way that expands social and individual knowledge about new conceptions of the good and the refinement of current conceptions and that allows adults themselves to determine whether, when, and how such education is relevant to the continuing development of their personally meaningful and reasonable conceptions of the good and their capacities to pursue those conceptions.

Democracy

Conduct higher education in a way that expands social and individual knowledge about public policies and their consequences and about the configurations of citizens’ conceptions of the good so that adults continue to develop and exercise their ability and willingness to participate in the evolving overlapping consensus about justice in the society.

Equality of Opportunity

Conduct higher education so that adults have a reasonably equal chance to develop the differential abilities required for the pursuit and realization of their own reasonable conceptions of the good.

Economic Growth

Conduct higher education in a way that allows adults to develop and exercise the capabilities implicated in their evolving and reasonable conceptions of the good that are economically valued in their society.
