John Rawls on Mill’s Principle of Liberty

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I

For many years John Rawls gave lectures at Harvard on the history of political philosophy. John Stuart Mill was regularly discussed in them. The version of the lectures that was eventually published as Rawls’s *Lectures on the History of Political Philosophy* contains four lectures and an appendix on Mill, along with lectures on Hobbes, Locke, Hume, Rousseau and Marx. One of the lectures on Mill (13 out of 68 pages) is on Mill’s Principle of Liberty – the principle expressed and defended in the essay *On Liberty*.

As one would expect, given the time at his disposal, Rawls’ discussion of the Principle is selective. But what he says is generous, perceptive and grounded on very careful reading and reflection. It is, in its own right, an important contribution to studies of *On Liberty*. Beyond that, and equally interestingly, it tells us something about what one great liberal philosopher thought about another.

It also reflects an explicit and admirable conception of how the history of philosophy should be done, which we can well begin by considering. One of the places in which Rawls spells out this conception is a note called “Some Remarks About My Teaching”:2

I always tried to do two things especially. One thing was to pose their [the philosophers he discussed] philosophical problems as they saw them, given what their understanding of the state of moral and political philosophy then was. So I tried to discern what they thought their main problems were…

Another thing I tried to do was to present each writer’s thought in what I took to be its strongest form. I took to heart Mill’s remark in his review of [Alfred] Sedgwick: “A doctrine is not judged at all until it is judged in its best form” (CW: X, p. 52). Yet I didn’t say, not intentionally anyway, what to my mind they should have said, but what they did say, supported by what I viewed as the most reasonable interpretation of their text. The text had to be known and respected, and the doctrine presented in its best form. Leaving aside the text seemed offensive, a kind of pretending.
To appreciate that this is good advice is not difficult, to apply it is not easy. In fact it takes exceptional patience, care, impartiality and open-mindedness to apply it fully. Rawls had these qualities to a high degree. We see them at work in his discussion of Mill’s Principle of Liberty. Nonetheless we can still ask how far, perhaps without intending to, he tells us what Mill should have said, had he been a Rawlsian, as against what he actually did say. We shall come to this question, but let me first summarise the main outline of Rawls’s interpretation.

II

In line with his remarks about method, Rawls begins by considering Mill’s aims and the way these affect his choice of topic, his argument, and its virtues and defects. As he rightly emphasises, Mill saw himself as an educator of enlightened and advanced opinion. His aim was to explain and defend what he took to be the appropriate fundamental philosophical, moral and political principles in accordance with which modern society should be organised … Mill thought modern society would be democratic and industrial and secular, that is, one without a state religion, a non-confessional state.

… He hoped to formulate the fundamental principles for such a society so they would be intelligible to the enlightened opinion of those who had influence in political and social life.

Mill’s aim then, in Rawls’s view, was to formulate principles that would not only be normatively appropriate in their guidance for modern politics, but also be likely to find general acceptance. This, Rawls thinks, is what he saw as the function of the Liberty Principle –

He is presenting his Principle of Liberty as a principle of public reason in the coming democratic age: he views it as a principle to guide the public’s political decisions on those questions. For he fears that the sway of prevailing and unreasoned opinion could be far worse in the new democratic society to come than it has been in the past.3 Clearly Rawls sympathises with Mill’s general aim. He might well see his own work as having the same aim. We shall have to come back to what he means by “public reason”, and whether such a concept can be ascribed to Mill. But one thing we can immediately see is that
this reading of Mill’s aims helps Rawls to explain sympathetically the relation between the Liberty Principle and Mill’s underlying utilitarianism.

Mill, he says, intends the Liberty Principle to guide public policy by ruling out as inadmissible three kinds of reasons for compulsory (in any sense) interventions in people’s actions: (i) paternalistic reasons (ii) perfectionist reasons (iii) “reasons of dislike or disgust, or of preference, where the disliking disgust, or preference cannot be supported by reasons of right or wrong, as defined in Utilitarianism, V.” This nicely captures at least the core of the Principle. Mill says that the Principle should apply “absolutely;” Rawls takes him to mean that it should be applied without exception, on the grounds that it better serves the progressive development of human beings, and thus their good, that “the public political conception of the coming democratic society” should adhere to this self-restraining principle unconditionally. Here again Rawls’s reading is perceptive and unfussy.

Overall, Rawls takes Mill at his word when the latter says that the underlying philosophical ground for the Liberty Principle is utilitarianism, rather than any theory of natural rights. Nor does he dismiss this as implausible, though he points out that it is something for which a case has to be made. His general discussion of Mill’s utilitarian strategy can be found in his fourth lecture on Mill (“His doctrine as a whole”), and in the Appendix to the lectures on Mill. In the second lecture (“His Account of Justice”, pp. 266 – 283) he gives a similar ‘indirect utilitarian’ reading of Mill’s account of justice, basing it on Mill’s complex discussion in chapter V of Utilitarianism. There Mill characterises justice in terms of rights, gives a definition of rights in terms of obligations on the part of society to its individual members, and claims that the ground of any such obligations is utility. He proceeds to argue, substantively, that we are collectively obliged to safeguard to everyone certain “essentials of human well-being” which are necessary to “the very groundwork of our existence”. These are primary utilities that in a modern society should be guaranteed to each individual as a matter of right. Rawls takes him to be advocating a ‘social minimum’ conception of justice.

Thus Rawls’s overall picture of Mill’s strategy – as liberal educator of the public – takes him to argue indirectly from an underlying ethical principle, the principle of utility, to two explicit principles “of public reason in the coming democratic age” – namely, the Principle of Liberty and the Principle of Justice. These respectively guarantee the liberties and the minimal welfare of all citizens of a modern democracy. Mill’s reason for advocating them, on Rawls view of his aims, is that they stand a good chance of securing general acceptance, and that such general acceptance will best promote what Mill famously conceives
of as “utility in the largest sense, grounded on the permanent interests of man as a progressive
being”.” I believe this overall picture of Mill is accurate and insightful.

Not surprisingly, moreover, Rawls thinks it brings out some important ways in which
Mill’s strategy for liberalism is close to his own. In the rest of this essay I want to consider
how far this is true.

III

We can begin by asking how closely Mill’s ideas about liberty and justice resemble Rawls’s
conception of ‘justice as fairness,’ which comprises first, principles that guarantee to
individuals adequate equal liberties and second, the well-known difference principle, the
former taking precedence over the latter. Rawls sees them as very close. Indeed he says they
are so close “that, for our present purposes, we may regard their substantive content as
roughly the same”.

This last remark goes too far, whatever present purposes may be. It has some
plausibility as regards the Liberty Principle – but even there it is unhistorical. One very
important difference is that for Mill the Liberty Principle is not part of a larger view which
holds that the liberal state must be ‘ethically neutral’ – whereas that requirement is a central
feature of Rawls’s liberalism. We shall come to this.

More immediately striking, however, is the difference between Mill’s principles of
justice, so far as they can be reconstructed, and Rawls’s Difference Principle. Here a first
thing to note is that Mill has many things to say about justice, scattered across all his moral
and political writings. They have been very well surveyed by Fred Berger. All the same, in
the way that there certainly is a Millian Principle of Liberty, there is no Millian Principle of
Justice. This is in itself noteworthy. Although Mill could be very passionate indeed about
what he saw as injustice, and had, for example, radical views about inheritance, he did not
formulate a principle or principles of justice in the way that he formulates and defends a
Principle of Liberty – in a long philosophical essay specifically devoted to the subject. His
philosophical attention, as against his frequent and intensely moral attention to specific
injustices, was directed much more to the notion of liberty than to principles of justice.

Still, what Rawls is specifically concerned with in his lectures is Mill’s discussion in
chapter V of Utilitarianism. In so far as a principle can be drawn from Mill’s discussion of
justice in this chapter, it can indeed reasonably be seen as a social minimum principle – one that guarantees to everyone the “essentials of human well-being.” But Rawls’s difference principle is different and stronger. As he formulates it in the lectures on Mill and elsewhere, it states that “social and economic equalities” can be justified only if they “are to be to the greatest benefit of the least-advantaged members of society.”

This is much more demanding than a principle which simply requires universal provision of “essentials of human well-being” and otherwise leaves open the question of what and how inequalities can be justified. No clear view of political actualities could regard “their substantive content as roughly the same.”

The idea of a guaranteed social minimum, unlike the difference principle, is part of real-life democratic politics. That there should be some sort of social minimum is not much questioned. People differ widely about where it should lie, and about various other questions, for example, about whether different levels of support should be provided to the deserving and the undeserving – but they do not, on the whole, deny that some sort of social minimum should be guaranteed by society. (I should note, perhaps, that I am writing this from Europe.) In contrast, there is much evidence that when the Difference Principle is put to people they reject it. So the idea of a social minimum of collective support is close to common moral sense as found in many liberal democracies, whereas the Difference Principle is not.

It is hard to see why a utilitarian should seek, as a matter of strategy, to shift moral common sense in the direction of the Difference Principle. This is by no means to deny that there are strong utilitarian arguments for more equality than is actually found in modern democracies. But it is not obvious, from a utilitarian standpoint, that the best way to pursue greater equality is by promoting a public principle that gives absolute priority to making the worst off better off, however slightly, and at whatever cost.

In contrast the idea of a social minimum principle has some real leverage as a publicly accepted principle of democratic politics – and it is plausible that something like the Principle of Liberty has some real leverage too. The three kinds of reason for intervention that – as Rawls says – it disallows are indeed widely treated with suspicion; although public reluctance to allowing intervention based on such reasons is far from the “absolute” ban prescribed by Mill. Still, it is not unreasonable to hold first, that Mill’s principles of justice and liberty, as characterised by Rawls, can be defended on utilitarian grounds (whether or not that is the best way to defend them), and second, that they have considerable acceptability in modern democracies: a base of acceptance from which one might argue for principles of a Millian kind, if not exactly Mill’s.
The issue of public acceptance is important for Rawls because of the philosophical weight he puts on what he calls “overlapping consensus.” Rawls believes his principles of justice as fairness can be justified from a variety of reasonable ethical positions, of which utilitarianism is one, though only one. This, if true, would greatly add to their stability. Rawls accepts that utilitarianism is a ‘reasonable’ ethical position, though he does not endorse it, and he accepts that utilitarianism could form part of an overlapping consensus on Mill’s principles of justice and liberty. However, even if Mill is right in thinking that utilitarianism can be part of an overlapping consensus on his principles of liberty and justice, that does not show that it could be part of an overlapping consensus on Rawls’s – unless Rawls sets his difference principle aside.

It is interesting to note, then, that Rawls holds that a social minimum principle, but not the Difference Principle, should be seen as a “constitutional essential” in a democratic and liberal state. One of his reasons is that some form of social minimum has a greater chance of widespread acceptance than the difference principle; he maintains, however, that the philosophical case for the Difference Principle remains. Of course overlapping consensus and public acceptance are not the same thing. They are nonetheless connected, the more so the more one thinks that people’s ethical positions (in a liberal democracy) are by and large reasonable, and that they are not confused about what follows from them. In that way, and to that extent, an argument seeking to show that the Difference Principle would feature in a thought-out overlapping consensus is weakened if, in fact, settled moral common sense in a liberal democracy rejects it in favour of a social minimum principle.

IV

I shall not pursue further these interesting questions about the difference principle and the social minimum, since our main concern is Mill’s Principle of Liberty. Here the most significant issue is how Mill’s overall conception of the content and aim of a public principle of liberty in a democratic state differs from that of Rawls. It is the heart of the difference between Millian and Rawlsian liberalism. But since both authors have extensive and complex things to say about it, we can only scratch the surface.

Rawls’s strong and evident inclination to bring Mill’s ideas about liberty and justice close to his own does not, I believe, arise simply from a strategic interest in finding an overlapping consensus. At a deep level he feels affinity with Mill and thinks of him as belonging to his kind of liberal tradition. Somewhat surprising evidence for this can be found
in Rawls’s lectures on the history of moral philosophy. There he refers at several points to what he calls the “liberalism of freedom.” He characterises it as the view that civic and political freedoms are ends in themselves, and not merely means to something else, such as happiness – and he classes Mill, along with Rousseau, Kant, Hegel and himself as a liberal of this kind. “Rousseau and Mill thought that the institutions of freedom were good for their own sake, and not only as a means to happiness or welfare” – in contrast

The liberalism of the (classical) utilitarians – Bentham, James Mill, and Sidgwick – is distinct from the liberalism of freedom. Its first principle is that of the greatest happiness summed over all individuals. If it confirms the liberal freedoms, it is a liberalism of happiness; yet if it doesn’t confirm these freedoms, it is not a liberalism at all. Since its basic ideal is that of maximizing happiness, it is a contingent matter whether doing this will secure the basic freedoms.

Note the difference between this reading of Mill and that offered in the lectures on the history of political philosophy. There, as we have seen, Rawls attributes to him a strategy of working out principles of justice and liberty that are consistent with utilitarianism and will also secure general consent. Why isn’t that the liberalism of happiness?

The situation is somewhat complicated by a distinction Mill makes in *Utilitarianism*, between means to and parts of happiness. It is highly important to his form of utilitarianism, but would have been rejected by Bentham, James Mill and Sidgwick. He applies it to virtue in *Utilitarianism*, and to individuality in *On Liberty*, arguing in the former that virtue can become a “part” of happiness, and in the latter that individuality can become an “element” of well-being. When virtue and individuality are so incorporated, through individual self-culture, they give access to higher forms of happiness, though they also open up possibilities of disappointment and discontent. The point of Mill’s distinction, obviously, is to deny that virtue and individuality are simply means to happiness. For a developed human being they become ends in themselves – but as parts of happiness, not in contradistinction to it. Whether or not this line of thought can be defended, it is crucial to Mill’s liberal politics. It is an aspect of the “Aristotelian principle” that Rawls rightly attributes to Mill, according to which the most valuable forms of happiness are achieved through development of one’s potentialities – the Millian assumption being that both virtue and individual spontaneity of character are such developments.

To that extent, then, Rawls is right to place Mill apart from the other utilitarians, and I would not in any way diminish the importance of this difference. However, to approach what Rawls calls the liberalism of freedom, Mill would have to argue not just that the virtues of
spontaneity and moral freedom can become parts of happiness, but that living in a society
that has the “institutions of freedom” is itself a part of happiness. He does not say that, and it
does not seem a plausible thing to say. Those institutions are, rather, means to cultivation of a
character that has access to the higher forms of happiness. For Mill, as for the classical
utilitarians, it is a contingent matter that they are the best means. Crucially, for Mill, utility
should be understood in the large sense that takes full stock of the Aristotelian principle.
Nonetheless, if a despotism, or a paternalist meritocracy, can best secure the achievement for
many of utility in that large sense, fine. Mill’s basic claim for democracy is that that is not
possible once human beings “have become capable of being improved by free and equal
discussion.” He thinks this claim is founded on very deep facts about human nature. They
are however, still empirical facts about human nature. His is a liberalism of happiness, not a
liberalism of freedom.

V

In Rawls’s lectures on the history of political philosophy the discussion of Mill is realistic
and careful, and the distinction between ‘liberalism of freedom’ and ‘liberalism of happiness’
disappears. We should follow Rawls’s own principle of historical method by noting how he
saw the aim of these lectures:

I shall try to identify the more central features of liberalism as expressing a political
conception of justice when liberalism is viewed from within the tradition of
democratic constitutionalism. This is a somewhat contorted formulation, because so much of Rawls’s background thinking
is packed into it. He sees liberalism as a political doctrine about justice, a doctrine to be
understood and assessed ab initio from within the framework of democratic
constitutionalism. This way of seeing liberalism would surprise a classical liberal, say like
Benjamin Constant or Madame de Staël, whose commitment is to the value of personal
liberty, who does not see the vital question of personal liberty as having much to do with
separate questions about social justice or political participation, and who does not think that
personal liberty is something to be evaluated from within a framework that takes democracy
as a given, but thinks, rather, that it is the prime value by which democracy itself should be
evaluated – cautiously.

As a framework for the history of political philosophy, Rawls’s aim could not
illuminate the priorities of such liberals. Their liberalism is, indeed, the liberalism of
freedom, though a different kind of freedom to that of Rousseau, whom they opposed. However, Rawls’s framework may seem to fit Mill better. As he says, Mill’s adherence to the Liberty Principle is strongly strategic: Mill sees it as a vital safeguard for “utility in the largest sense” under the coming conditions of democracy, where he expects strong currents of conformism to flow. Mill makes no secret of this in the essay on Liberty (and is even clearer in his letters about it). At the same time he is eager to persuade as many people as possible, whether or not their ethical premises are utilitarian. That of course is what one expects, given that his aim is in the best sense political, and not just philosophical. To that extent a Rawlsian conception of Mill, as someone seeking to achieve consensus on institutions of liberty “from within the tradition of democratic constitutionalism” seems quite plausible.

But it obscures crucial differences between Mill and Rawls. A basic theme in Rawls’s political philosophy is that democratic states must be neutral between rival conceptions of the good. This underlies the distinction he makes between “political” and “comprehensive” liberalism. Comprehensive liberalism derives the institutions of freedom from a fully worked-out conception of the good (or indeed the right, as in Kant). Political liberalism, in Rawls’s special sense, refrains from endorsing any such comprehensive doctrine. It recognises that in a democratic society there will be a variety of conflicting comprehensive doctrines. In view of this fact it seeks to establish institutions of freedom on the common ground of an overlapping consensus among reasonable ones. It proposes that these institutions should be entrenched in the constitution of the democratic state, and not left vulnerable to the vagaries of its legislature.

What is it then, for an institution or a doctrine to be so entrenched? Here Rawls has a surprisingly strong view, encapsulated in his doctrine of “public reason.” It requires us “to make our case for legislation and public policies we support in terms of public reasons,” that is, reasons that do not go beyond the entrenched principles of political liberalism. The ethical neutrality of the state is a corollary, in that reasons derived from a conception of the good that goes beyond those principles are not in Rawls’s sense public, and so cannot be used to support a case for legislation or public policy. Somewhat implausibly, Rawls thinks his doctrine of public reason can be derived from the political virtue of civility between citizens. And he interprets Mill’s Liberty Principle in this way – see for example the passage I quoted in section II. How plausible is this interpretation?

Let us first consider policies that prohibit or forbid. Obviously Mill would reject arguments for such policies that are inconsistent with the Liberty Principle. But does that
mean that he would rule them out of democratic discussion in a political forum, as violations, in that context, of a duty of civility? Suppose a democratic legislature is considering whether to legalise assisted suicide in cases of terminal illness. One of the legislators expresses his intention to vote against the motion, on the conscientious ground that our lives are not ours but God’s. According to the Liberty Principle, that would not be an acceptable reason to prohibit assisted suicide in cases which involve only adults who give free and informed consent. Should his argument therefore be disallowed from the debate? Should he be restricted to arguing that legalising assisted suicide might injure the interests of non-consenters? Does he infringe a duty of civility if he is honest about the case he really believes in? To my mind it is quite evident that Mill would not want to stop him from arguing as he does, although he would disagree with him. He does not envisage the Liberty Principle as a meta-principle of discourse, restricting what arguments can be put in public democratic debate. He would see that as an illegitimate restriction on liberty of thought and discussion.

Let us turn next to policies of state support based on comprehensive conceptions of the good. Here the gap between Mill and Rawls widens.

For Rawls, the state has no role in perfecting its citizens, since ideas about what constitutes perfection belong to wider conceptions of the good. In Mill’s view, we have a strong obligation of education to others through council and assistance: “Human beings owe to each other help to distinguish the better from the worse, and encouragement to choose the former and avoid the latter.” This obligation can be described as paternalist and, so far as it includes education for excellence, perfectionist. Nor are we talking here merely about civic virtues that are instrumental to responsible citizenship, but about virtue, excellence, and prudence in the full and complete sense. Inevitably, then, in discharging our obligation we are expressing our conception of the good.

Unlike Rawls, however, Mill has no principle of state neutrality that would forbid us from pursuing this obligation collectively, through action by the state. Forbidding the state from promoting any conception of the good is no part of his liberalism. On the contrary, he takes it as evident that the state has a duty to promote the well-being of its citizens, where that includes making them better people:

the most important point of excellence which any form of government can possess is to promote the virtue and intelligence of the people themselves. The first question in respect to any political institutions is, how far they tend to foster in the members of the community the various desirable qualities, … moral, intellectual and active.
This contrast goes very deep: Mill thinks the ultimate aim both of liberty and representative government is raising the excellence of the people, and he thinks that is the aim because it gives people access to the highest forms of happiness. The significance for politics of his ideas about higher forms of happiness is the great theme of his moral and political writings. In thinking about government he is not thinking, so to speak, from within democratic assumptions. He does not think the vote is a right in the way that liberty is. Famously, he thinks the franchise should favour the educated by giving them more votes. In short, he is not concerned to tailor the liberal ethos to the democratic ethos, but rather the other way round.  

VI

Conclusion

Our conclusion about Rawls’s reflections on Mill must be mixed. In the Lectures on the History of Political Philosophy his approach to Mill, in particular to Mill’s conception of the relation between utility and liberty, is informed, thoughtful, and sympathetic. Yet at the same time, and perhaps in part because he is so sympathetic, he tends to see Mill as much more in agreement with him than Mill really is.

We have noticed various aspects of this. Easily the most important, however, is the attitude of the two thinkers to democracy. Mill is prepared for restrictions on the franchise that favour the educated, while insisting on liberty of discussion; Rawls, while taking universal democratic rights for granted, wants to regulate democratic discourse by principles of ‘public reason’ – which Mill would most likely see as dangerous restraints on full liberty of discussion.

To some extent, this may be explained historically, by the fact that Rawls wrote at a time, and in a polity, in which the assumption that a right to vote is fundamental is simply taken for granted. Mill did not. To some extent it may be explained by the fact that they anticipated different dangers: for Mill the danger was a tyranny of conformist mediocrity, for Rawls it was that of democratic debate falling into division, acrimony, and eventually violent conflict. Beyond that is a basic point: Mill’s political philosophy is thoroughly teleological. For him, as he said, the philosophical criterion of policy was not the will of the people but the good of the people.
If Rawls’s presentation of Mill obscures these momentous differences, it prevents us from learning lessons from them. We can ask whether the difference arises from a development in which, to put it for sure very crudely, democracy and equality rather than liberty and personal excellence come to be the basic values held by “enlightened opinion”. If we share Mill’s commitment to liberty and excellence, and his worries about the conformist effects of democracy, we can ask whether this development, if that is what it is, is a good one. And we can ask whether Rawls’s political liberalism does not lead us further towards it, instead of counteracting it – as Mill’s Principle of Liberty, including his passionate defence of liberty of thought and discussion, was meant to do.

References


2 Rawls, History of Political Philosophy, xiii.