



Righting Rawls
Guest: Gary Chartier
April 1, 2014

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WOODS: Let's start off by having you explain not your thesis about Rawls but why it's important, why he's somebody to reckon with.

CHARTIER: John Rawls is by far the most influential political philosopher in the post-World War II world writing in English, and maybe writing in any language. He's educated a tremendous number of other philosophers, and his ideas have proved very fruitful and sources of both insight and controversy across the philosophy and political theory professions.

WOODS: Your book on Rawls is trying to make the overall Rawlsian presentation both more coherent and more market-friendly. And I want to know, before we get into how you do that, are you doing it because you see some value in Rawls's project and you want to make it more market-friendly because you see that there's much that's attractive in it, or is it because Rawls is here to stay, so you might as well put a market spin on it? Which of these two motivations is your primary one?

CHARTIER: Both of those motives are really in play. On the one hand, I find some things about Rawls fruitful and worth engaging with for their own sake. On the other hand, there are some other aspects of his work that I find pretty infuriating. Nonetheless, as you suggest, he's here to stay. He's been tremendously influential; we really have to come to terms with that.

WOODS: Now a lot of my listeners I think are reasonably, if I may borrow a term, cosmopolitan in their knowledge—they know a little bit about this, a little bit about that. And I bet a lot of them have a basic understanding of what Rawls is doing, but surely not everybody. As influential as he is, the audience for a book like *A Theory of Justice* or *The Law of Peoples* is still pretty small. So maybe, again, before we get into your approach, maybe you might explain to us: what is the Rawlsian project? What's he trying to do, and, in brief, how is he doing it?

CHARTIER: Rawls is interested in laying out an account of just institutions, and he seems to do that, it seems to me, by trying to spell out what he takes to be the implications of widespread convictions about justice in contemporary Western liberal societies. At least in his later work, he seems pretty clearly to want to emphasize that what he's doing is helping us to systematize and think clearly about what he thinks are the existing convictions about justice that we have. He does this in two stages. He's interested first of all in

domestic justice; he assumes a world full of states, and so he lays out an account of justice in an individual state. There the idea is that people are engaged in a cooperative venture for mutual advantage which is creating economic value; their cooperation generates a large fraction of that value—it's not simply the product of isolated individual efforts. So we need to come up with some mechanism for ensuring that they're all willing to buy in and support the end result, and he thinks a way to do that is to frame the distribution of the product of that cooperative venture in just ways.

What would count as justice, he thinks? Well, whatever would be consistent with the principles that might emerge from deliberation behind what he calls the veil of ignorance. And the veil of ignorance ensures that we're all unaware of our respective places in society; we deliberate formulating rules that we all accept given that we don't know where in the actual society we'll end up. Famously, he suggests that what we would end up endorsing would be, on the one hand, a set of basic liberties, and, on the other hand, a set of distributional rules, notably the so-called difference principle, which holds that whatever inequalities there are in the distribution of wealth in society need to be justifiable to the people who turn out worst in the society. Not necessarily the very worst, but roughly speaking, the working poor. For them to continue being willing to invest in the society, they need to be convinced that they're getting the best possible deal. So for Rawls that means ultimately embracing a set of welfare state and other policies; of course, some other Rawlsians have suggested that those basic principles could lead us in other directions.

At the global level, Rawls envisions something similar, but instead of people deliberating behind the veil of ignorance, we've got representatives of states, or as he prefers, peoples, deliberating behind the veil of ignorance crafting rules of international law and international justice. And there, not surprisingly, we get some rules that keep the existing state system in place but impose some limits on it.

WOODS: That's where we're ultimately going to want to take this. But for now, what do you mean by the phrase "the two moral powers" that Rawls appeals to? Because I think that helps to understand how you frame your argument.

CHARTIER: In Rawls's first and still best-known book, *A Theory of Justice*, he doesn't so much focus, as he does in the later work, on spelling out the presuppositions of Western liberal political morality. Instead, he sees himself, it seems, as offering a more foundational, historic argument about how politics ought to proceed. So he's got to figure out who participates in this deliberation behind the veil of ignorance. And he suggests that people who have the so-called two moral powers, which have to do roughly with the ability to understand and make sense of and critique moral arguments, that that minimum capacity is what's required for participation in the debate behind the veil of ignorance. And so everybody with some fairly minimal capacities for reflection and judgment gets included.

WOODS: When we shift from the original position, the veil of ignorance that Rawls is referring to when he's conceiving of domestic justice—how peoples within a society will devise rules that they would find satisfactory—to global justice in a world of states, and he just takes for granted that there will be a world of states....

CHARTIER: Right.

WOODS: ...things seem to change. For example, the difference principle either doesn't seem to apply in dealing with global justice or it applies much less robustly. And there are of course a lot of other problems when you conceive of these questions solely in terms of states interacting with one another rather than as individuals who just happen to be within arbitrary political boundaries interacting with one another. This

seems to be the heart of the problem.

CHARTIER: That's absolutely right, Tom. You've stated it very elegantly and very precisely. And what's been very fascinating to observe is the degree to which Rawls's approach to international justice, though it's one he lays out early on in *A Theory of Justice*, it really doesn't get sustained attention until the last book that he actually completed as an author, a book called *The Law of Peoples*, it's just been fascinating to see how that approach has led to a really quite vigorous debate among people who embrace the broad Rawlsian program. So some people have rushed to defend his approach: it really makes sense that states have the primacy that they do at the global level; by contrast, many other Rawlsians have said, look, it's inconsistent with Rawls's own approach. If having the two moral powers gets you into the debate behind the veil of ignorance at the domestic level, why doesn't that get you equal moral standing, equal moral consideration at the global level? And Rawls's own explicit answers to that have been sufficiently weak that Rawlsians who are unconvinced have really rushed to press for a quite different conception of global justice.

WOODS: Now I assure readers that in your book you go through very systematically and consider all of Rawls's defenses of this approach and all conceivable additional arguments—you're very Thomistic in this approach; you even come up with arguments he might not have thought of, and you respond to those. But tell us, though, are there any dangers in the type of analysis Rawls is engaged in? In other words, is there a greater likelihood of an illiberal result when you treat people as "peoples" rather than as persons?

CHARTIER: Well, this has been one of the most troubling features of Rawls's approach at the global level, because he has apparently been interested in making a move kind of like the one he makes at the domestic level and asking, in effect, what rules could be framed that would ensure that as many different participants would be willing to come on board with the global system he envisions? He's really operating, I think, often in a kind of lowest common denominator fashion. He's not willing to accept as members in good standing of the global system dictators and warlike powers; but he's very much open to treating as legitimate some fairly illiberal regimes, regimes that might embrace pretty constrained conceptions of human rights, both economic rights of the kinds that might be pretty interesting to libertarians but also just civil liberties of various sorts. So it's one thing to say that this might have some pragmatic bent; we might have a more peaceful global order given a world of states if we don't turn various enemies into pariahs. That might well be right. But what Rawls takes himself to be doing is framing requirements of *justice*, and it really seems as if, by giving up on treating various pretty important human rights as aspects of justice, he's abandoned the really kind of inspiring quality of his project at the domestic level.

WOODS: Now let's shift to the part of the book that I think for most listeners will be the most interesting, which is the part at which you make a sustained argument that a system that perhaps Rawls may not even have been aware of—I don't know if he knew about the work of Rothbard and work in that tradition—but you make a sustained argument that market anarchism seems to satisfy the requirements that Rawls lays down for a system of justice.

CHARTIER: That's right. I want to be very clear that I'm building here on the very interesting recent work of John Tomasi, a philosopher of political science at Brown argues in a book called *Free Market Fairness* that Rawlsian domestic justice can with some fairly minor adjustments be pushed in a strongly libertarian direction, providing a bit more recognition at the foundational level to property rights and then acknowledging just how central market exchange is to enhancing people's well-being is arguably enough, Tomasi thinks, to provide reasons for Rawlsians to opt for much more market-friendly standards of justice than Rawls himself does.

What I suggest simply is that if we get rid of this notion that states ought to be treated as foundational at the global level and focus instead on particular persons who are morally equal—whether or not of course they're equal in other respects, but they enjoy equal moral consideration—once we suppose that that's true not just at the domestic level but at the global level, then it seems as if we ought to be able to employ at the global level just the same approach to understanding justice that Rawlsians would think would be justifiable domestically; there's no difference. And if we can justify an approach that is market-friendly at the domestic level, there's no reason we can't do so globally. There's no reason we can't see market-friendly requirements across the globe.

So then the question is, can you push Tomasi's own approach in an even more radical direction? Tomasi wants to argue for a kind of small-government libertarianism as consistent with these Rawlsian requirements, but I suggest that if the basic idea is addressing economic inequities and insecurities, if that's the driving force that leaves John to conclude that really we still need a small government rather than Rawls's big government, but perhaps still a government of some kind, I want to argue that, no, market anarchy can, in a genuinely unfettered economic environment, produce economic well-being that is remarkable, profound, widely shared, and of a sort that ought to be widely embraced by those whose concern is not the existence of some redistributive state, but actually just the well-being of the economically vulnerable.

WOODS: I want to look at some of the arguments that you address in part D of your final, pre-conclusion chapter. I think the argument that most people would be familiar with, because I think when the average libertarian thinks of Rawls, he thinks not so much of the law of equal—what's the name of it, not the difference principle; what's the other one?

CHARTIER: He talks about the equal basic liberties.

WOODS: Okay, that. So most of us think in terms of the other principle that he's talking about, which is the difference principle, and you argue here that even the difference principle can be more effectively secured and robustly lived out under market anarchism. Now, the difference principle—I want to make sure that everybody understands what that means. In other words, there is for Rawls a kind of presumption of equality. If we're behind the veil of ignorance, and I don't know if I'm going to be a man or a woman, or black or white, or rich or poor, or talented or untalented, I would want a society that with a presumption in favor of equality, so that if I did wind up being totally untalented or I wound up belonging to a despised group or turned out to be in roughly the worst position, it wouldn't be so bad because at least there'd be a rough equality. But then he has this caveat that says, well, if there's absolute equality then people who are very talented won't bother sharing their talents with us. Why bother, if they just get an equal share? So we can have inequality, but that inequality has to be justified on the grounds that it helps the less well off, it makes the guy want to be a doctor and provide medical services to the poor. So we can allow some inequality. That is my understanding of the difference principle. If I'm wrong I want you to correct me. If I'm right, I want you to explain how, in a market anarchist system, is that realized?

CHARTIER: I think that certainly captures the heart of what I take Rawls to be up to. Just a couple of qualifiers there before I talk about the market-anarchist response. So, first of all, as I emphasized, Rawls is interested in trying to articulate an account of justice as inspiring solidarity, so he's not interested particularly in articulating a view that's going to be good for perhaps what Marx would call the lumpenproletariat. He's not interested in just anyone and everyone at the bottom of the economic ladder. He's interested in people who are actually actively working, the working poor, and he wants to ask what set of social arrangements would be needed for people in that group to stay invested in the society, to keep

supporting its institutions given that they're not doing as well as other people? So it is important that he's not interested in the absolutely worst person in the society as the one to whom justification has to be given but to the group of people who are making a contribution to the society.

WOODS: Right, okay.

CHARTIER: So I think that's one qualifier. And the other important qualifier is that he does think—some of the time, it's not clear that he's consistent on this front at all—but part of his official theory at least is that we have to satisfy the equal basic liberties first before we start asking these distributional questions. So there's a priority that's given to these equal basic liberties that we have to attend to before we start getting into the question of how distribution works.

The approach that I take, then, which is one in which I happily build, as I say, on Tomasi's work, is to first of all note that we really could articulate some good reasons for including in that cluster of equal basic liberties some protection for not just personal property—Rawls does think that we need that because it safeguards personal autonomy—but also productive property. That productive property ought to be justified not just with respect to its contribution to increasing societal wealth and thus the well-being of the worst off, but also in particular because there are going to be reasons for treating those rights as basic. As Tomasi notes, they're important to self-expression, and indeed I argue that really as Rawls does in his earliest work, we ought to think not so much about a narrowly justified list of basic liberties but a presumption of liberty. It's kind of ironic, actually, that in that early work Rawls talks about the maximal possible set of basic liberties in a way that sounds very much, ironically, like Herbert Spencer's law of equal freedom. And H.L.A. Hart notes this in his review of Rawls; Rawls himself doesn't explicitly note the connection with Spencer, but it seems to me worth highlighting that there is this similarity.

So I think you start out with a somewhat more expansive conception of bedrock liberty before you even get into the issue of distribution. But going on from there, then, it seems that we can reasonably argue that an anarchist society in which there's not the kind of top-down control that would interfere with economic productivity and people's ability to distribute resources through market processes—the absence of that kind of control frees up people simultaneously to be immensely productive in ways that vastly enhance societal wealth and are creative in responding to a variety of social problems. We don't need I think institutions of top-down control to respond sensitively and carefully to the needs of the economically vulnerable and the economic benefit that's yielded by widespread, unfettered market exchange clearly can spread throughout the society. And if we grant that the basic liberties constrain our ability to put in place some kind of mechanism of top-down control and at the same time that market exchange generates enormous well-being for those at the bottom, and if we stress at the same time that the real economic losses suffered in our society by those in the bottom as a class—obviously individuals have different experiences—really result from state-secured privilege, then we can see that getting rid of state-secured privilege and freeing up the markets can have a dramatically positive effect throughout the society that would give people, including those in the working poor, enthusiastic reason to embrace those market-anarchist institutions.

WOODS: Gary, one more point I to raise with you, and this is also from part D of your more or less final chapter. Of course we all know that the state is non-consensual. We're all adults here; I think we can dispense with the tacit consent argument—you just happen to be standing there, so that just proves that you like the state, and you like its laws, whatever—I think we can just throw that out. But you say here, as one of the arguments you want to defend: non-consensual authority should be rejected in Rawls's original position. I'd like you to elaborate on that a little bit, because that's good stuff.

CHARTIER: Yeah, sure. So we imagine ourselves deliberating in the original position. We don't know what position we're going to be in in the actual society, so we're trying to frame rules that we'll all be willing to embrace. It seems as if we're going to have some reason, at any rate, to be deeply suspicious of being subject to rules that we ourselves don't embrace and subject to authority structures to which we don't consent. Rawls wants to operate, I think, with a notion of not quite tacit or hypothetical consent, but he seems to want to have the view that we can be subjected to rules to which we would consent under the right circumstances, rules that we couldn't reasonably reject. That's certainly better than subjecting us to rules that have no connection with our preferences and with our understanding, but it seems like at least many of us are not going to want to find ourselves subjected to arbitrary authority, and we're going to want to build in safeguards. I certainly would want to do that; I think many of your listeners would as well. And that, I think, suggests that behind the veil of ignorance people are going to find themselves wanting to reject the kind of authority that real-world states actually exercise, that is, authority that's exercised without regard to the consent of the governed.

WOODS: Gary, you note in your book that author royalties will be donated to Antiwar.com, which you also did for the book we had you on for last time, *The Conscience of an Anarchist*. Of course, Antiwar.com is a highly worthy recipient of your funds. I had Justin Raimondo on a couple weeks ago and I told him that I think the only website I make a recurring donation to is Antiwar.com. We need it around even when there aren't so many hot wars going on and foreign policy's on the back burner. So that's a noble thing for you to do. Is there anything you want to say that might wrap up the argument or give it some finality here, or are you satisfied with the presentation, or have I left anything major component of it out?

CHARTIER: Well, I guess one thing I'd want to note is that's directly related to this interest in Antiwar.com is that the state-based approach that Rawls endorses makes it easier for him to be more war-friendly than he really wants to be. Rawls was not a militarist at all. Indeed, as a soldier during the Second World War, he was quite horrified to learn about the bombing of Hiroshima. And he clearly wants to frame rules of international justice in a way that will preclude the kind of widespread attacks on non-combatants that have flouted just-war norms and been very much a part of recent international conflict. And yet at the same time he also seems to think that preserving states, at least preserving liberal states, is so important that that could justify wholesale attacks on non-combatants when no other option turned out to be possible. I think it's much harder to make that case if you've got individuals at the bedrock at your scheme of global justice than if states really are the basic actors there. I think war is the worst thing the state does, and I think framing the rules of international justice in ways that undermine the legitimacy, make clear the illegitimacy of war, is about as important a thing as a scheme of justice could do. So that's one way in which my proposed modification of Rawls seems to be fairly important.