

# DEBATE: The Survival of Egalitarian Justice in John Rawls's *Political Liberalism*<sup>1</sup>

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In John Rawls's second book, *Political Liberalism*,<sup>2</sup> the doctrines of his historic book, *A Theory of Justice*,<sup>3</sup> are placed in a new light. It is not, however, the new book's primary purpose to reflect upon and "rethink" the theory of the first book.<sup>4</sup> It is no exaggeration to say that the two books are not about the same subject. The first is primarily about justice; the second is primarily about political legitimacy, a topic essentially ignored in *TJ*. The requirements of legitimacy (roughly, the permissibility of using coercive public powers), are different from the requirements of justice, and if this change in topic is ignored many of the distinctive contributions of the second volume will be mistaken for revisions in the original theory of justice. In this short comment I hope to illustrate this danger by arguing, contrary to the suggestions of some commentators,<sup>5</sup> that there is no retreat from the egalitarianism of the original theory of justice. Rather than defending or criticizing Rawls in any significant respect, I confine myself to the interpretive question. Nevertheless, this will count as a

defense of his own claim<sup>6</sup> that the doctrines of *TJ*, including the egalitarian “difference principle,” and the arguments for them, ought to be seen as presupposed rather than as revised in the new book.<sup>7</sup> This is also a defense inasmuch as those who have purported to see such a change have lamented it. The important question is not whether Rawls can be convicted of changing his mind. Rather, if his view has not changed on this matter, it will be impossible to understand and appreciate the theory in *PL* as if it were a further and corrective reflection on the question of what social justice requires. And if *PL* is not about justice, what is it about? It is about a liberal conception of political legitimacy.

In *TJ*, social justice is said to require a basic social structure that conforms to two principles, with the first having absolute priority over the second. The first requires a system of equal basic political and civil liberties. Once this is met, a second principle comes into play, requiring that primary social goods be equally distributed except where inequality would benefit even the very worst off (“The Difference Principle”), and that offices and positions attached to these goods be open to all in certain ways (“Fair Equality of Opportunity”).<sup>8</sup> The priority of the first over the second means that no compromise of the required system of basic political liberties could be justified as a way of better meeting the imperative of the second principle. However, once the first principle is met, the second principle presses in a strongly egalitarian direction, permitting deviations from equality only on the narrowest of grounds: the unequal system’s capacity to provide more primary goods for the least well off than they would have under perfect equality, or under other feasible unequal schemes.<sup>9</sup>

The question is whether this specific egalitarian doctrine of the second principle is revised into a weaker view, or given a less demanding status in *PL* than in *TJ*. It may clarify things to present the strongest case I can devise for interpreting *PL* in this way, before advancing the contrary interpretation - that there is no such change. It might be argued that,

It is a basic shift from *TJ* to *PL* to now regard it as a necessary condition for the appropriateness of a conception of justice that it be acceptable to an overlapping consensus of reasonable comprehensive conceptions of life and value. Rawls admits that this new requirement of consensus is, at the very least, more difficult for the second, egalitarian principle of *TJ* to meet than it is for the first principle guaranteeing only equal and extensive civil and political liberties. While Rawls still holds to both principles as his preferred conception of justice, only the first principle is required by his new political conception of justice. He now admits that there are many political liberalisms, his “justice as fairness” being only one, and says that others may prefer some criterion other than his second principle, although any political liberalism must come very close to the first principle. Furthermore, he explicitly denies that the second principle is a “constitutional essential,” primarily because principles serving that sort of distributive role are less amenable to political consensus. Apparently, then, any “political liberalism” is as just as any other, including those that include the difference principle and

those that reject it. This marks a fundamental move away from the egalitarian claim in TJ that social justice requires compliance with the difference principle.

It is impossible to deny that Rawls holds in *PL* that there are many political liberalisms, justice as fairness being but one;<sup>10</sup> or that the difference principle is not a constitutional essential;<sup>11</sup> or that this fact is connected with the inherently greater controversy surrounding such principles;<sup>12</sup> or that the central theme in *PL* is a certain requirement that a political conception of justice be acceptable to all reasonable comprehensive views.<sup>13</sup>

There are at least three ways of accommodating all of these points in which Rawls can still be read as endorsing the difference principle as a requirement of justice. The first is included in the indented view, and weakens this endorsement enormously: Rawls endorses the difference principle from within a comprehensive conception, but not as a requirement of justice within a political liberalism. This has little to be said for it. It is entirely clear that the two principles of justice are held to comprise one admissible political liberalism, and that all political liberalisms are conceptions of justice.

The second has Rawls endorsing the two principles together as one among many acceptable political liberalisms, all equally just.

The third has Rawls staying closer to *TJ*, endorsing both principles as comprising a political liberalism *and* as requirements of justice, but allegedly departing from TJ in removing the difference principle from the status of a constitutional essential.

The fourth interpretation, which I shall defend, is like the third except that it claims that

it is no departure from *TJ* at all to treat the first principle as a constitutional essential but not the second principle.

The second interpretation accepts this, but supposes that many or all political liberalisms and their conceptions of justice present equally reasonable conceptions *of* justice. This would imply that whether a conception includes the difference principle or not does not bear on the reasonableness of the conception or on the justice of the society it envisages. On this reading, Rawls must believe that justice, as conceived within a political liberalism, does not demand conformity to the difference principle.

This reading takes Rawls's claim that "there are many political liberalisms" to imply that, from a political point of view, all such conceptions are on a normative par. On this interpretation, Rawls must be seen to advance justice as fairness as only one reasonable conception of justice, not necessarily any more reasonable than a conception that substituted some other principle for the difference principle. This is difficult to square with the fact that Rawls gives reasons in *TJ*,<sup>14</sup> and reaffirms them in *PL*,<sup>15</sup> in favor of the difference principle over the major alternatives. The question is how to reconcile the doctrine of many political liberalisms with the thesis that justice as fairness is superior to other conceptions of justice.

Rawls says,

Keep in mind that political liberalism is a kind of view. It has many forms [all of which] have in common substantive principles of justice that are

liberal and an idea of public reason ... Accepting the idea of public reason and its principle of legitimacy emphatically does not mean, then, accepting a particular liberal conception of justice down to the last details... We agree that citizens share in political power as free and equal, and that as reasonable and rational they have a duty of civility to appeal to public reason, yet we differ as to which principles are the most reasonable basis of public justification. The view I have called “justice as fairness” is but one example of a liberal political conception; its specific content is not definitive of such a view.” (PL 226)

What do the partisans of different political liberalisms agree about, and what do they disagree about? They agree that citizens share in political power as free and equal, and that they have a duty to appeal to public reason in deliberations about constitutional matters and matters of basic justice. They differ “as to which principles are the most reasonable basis of public justification.” A partisan of justice as fairness, for example, believes that Rawls’s two principles of justice are “the most reasonable basis of public justification,” more reasonable than the principles preferred by other political liberalisms. In short, partisans of different political liberalisms disagree about what counts as just within a liberal framework.

If different political liberalisms disagree about justice, what is it that they agree about? What is their shared political liberalism about? It is primarily about legitimacy.

[P]olitical liberalism says: our exercise of political power is fully proper only when it is exercised in accordance with a constitution the essentials of which all citizens as free and equal may reasonably be expected to endorse in the light of principles and ideals acceptable to their common human reason. This is the liberal principle of legitimacy. To this it adds that all questions arising in the legislature that concern or border on constitutional essentials, or basic questions of justice, should also be settled, so far as possible, by principles and ideals that can be similarly endorsed. Only a political conception of justice that all citizens might be reasonably expected to endorse can serve as a basis of public reason and justification. (PL 137)

The liberal principle of legitimacy is the core of political liberalism, and is accompanied by the closely related idea of public reason. (“The liberal principle of legitimacy makes this the most appropriate, if not the only, way to specify the guidelines of public inquiry.” (PL 224))<sup>16</sup> What defines a conception of justice as a version of political liberalism is that it meets this standard of legitimacy and the additional idea of public reason that it “makes . . . appropriate.”

Political legitimacy, on this reckoning, does not require conformity to one single complete conception of justice, since it does not specify the terms of equality beyond what is essential to a political constitution. The use of collective political power is justified so long as the constitution guarantees a list of equal civil and political liberties to each citizen; these

are the “constitutional essentials,” and they “can be specified in but one way, *modulo* relatively small variations. Liberty of conscience and freedom of association, and the political rights of freedom of speech, voting and running for office are characterized in more or less the same manner in all free regimes.” (PL 228) Beyond this, the government can be constitutionally structured in various ways (PL 228), and the “principles covering social and economic inequalities” can vary to some extent without violating the liberal criterion of legitimacy.<sup>17</sup> These further matters do bear on justice: justice as fairness is put forward as the most reasonable of the liberal conceptions of justice, as a better conception of justice within a liberal framework. Nevertheless, what the other views lack as conceptions of justice does not detract from the legitimacy of the regimes they endorse, so long as they include the constitutionally essential civil and political liberties. Justice as fairness disagrees with these other conceptions, and the disagreement is about what justice requires, but political liberalism regards justice as fairness and many of its competitors alike as each sufficient to justify the use of public coercive political power. In short, legitimacy does not require justice.<sup>18</sup>

### *Same As It Ever Was*

Even if not all political liberalisms are regarded as equally just, all must include the formal rights and liberties of the first principle of justice. In this way, the first principle (minus the fair value guarantee)<sup>19</sup> is given a special role, even beyond its lexical priority within the theory of justice. The formal rights of the first of Rawls’s two principles are not

only a requirement of justice but also a requirement of the more basic property: legitimacy. The difference principle is not. Is this asymmetry with regard to legitimacy a change from *TJ*, reducing the clout of the egalitarian difference principle?<sup>20</sup> If so, *PL* could fairly be regarded as less egalitarian than *TJ*, even if there is no change as to what justice requires.

The answer, however, is that there is no such change. The topic of legitimacy is not taken up directly in *TJ*, and so it could be argued, with some sterility, that there is no view there with which to conflict. Fortunately, however, there is some attention in *TJ* to the question of which among the requirements of justice as fairness are constitutional matters and which are not. If *TJ* treated both alike as constitutional requirements then there would be a change from *TJ* to *PL*, since matters of social and economic inequality are not regarded as necessarily constitutional in *PL*. In *PL*, we are told that,

The distinction between the principles covering the basic freedoms and those covering social and economic inequalities is ... that the basic structure of society has two coordinate roles, the [former] specifying the first role, the [latter] covering the second. (PL 229)

In *TJ*, we find the same asymmetry, and the same general reasons:

I imagine then a division of labor between stages in which each deals with different questions of social justice. This division roughly corresponds to the two parts of the

basic structure. The first principle [] is the primary standard for the constitutional convention. [] The second principle comes into play at the stage of the legislature. [] Thus the priority of the first principle of justice to the second is reflected in the priority of the constitutional convention to the legislative stage. (TJ 199)

Furthermore, in both volumes, the greater weight given to the basic liberties is explained by the greater tendency to reasonable disagreement about matters of social and economic inequality. In *TJ*, “The application of the difference principle in a precise way normally requires more information than we can expect to have and, in any case, more than the application of the first principle. It is often perfectly plain and evident when the equal liberties are violated.” (TJ 199) In *PL*, the account is the same:

There are four grounds for distinguishing the constitutional essentials specified by the basic freedoms from the principles governing social and economic inequalities.

- a. The two kinds of principles specify different roles for the basic structure.
- b. It is more urgent to settle the essentials dealing with the basic freedoms.
- c. It is far easier to tell whether those essentials are realized.
- d. It [is] much easier to gain agreement about what the basic rights and liberties should be, not in every detail of course, but about the main outlines. (PL 230)

In both books, (c) is presented as a reason for the asymmetry: it is easier to tell when

principles governing the basic liberties are met. This is used to explain why matters of the second principle are not constitutional essentials. The issue of legitimacy only arises explicitly in the second book. Thus, Rawls adds a consideration explaining why the division between the constitutional essentials and matters of justice not constitutionally essential is also appropriate as the division between requirements of legitimacy and other requirements of basic justice *not* required for legitimacy. This further reason, (d), is that in the case of the constitutional essentials it is easier to agree about what the principle should *be*—easier than agreeing on a principle for matters of distributive justice. This further difference bears on legitimacy, while the case of determining when certain *given* principles are *met* determines only what ought to be fixed in a constitution. Matters of social and economic inequality are more subject to controversy in both respects. The criterion of legitimacy in *PL* is in harmony, then, with TJ's division between constitutional essentials and other matters of basic justice.

Are principles of distributive justice excluded from the requirements of legitimacy because no principle is beyond reasonable objection? Is the overlapping consensus test conceded to be too hard for the difference principle to meet? Is that what is meant by saying that it is harder to get agreement on distributive principles than on basic rights and liberties? If so, this would make hash of the theory, since it would concede that no principle of distributive justice could properly guide political actors (including voters). Political liberalism requires that matters of basic justice be settled by principles and ideals that all reasonable citizens could endorse. If no principle of distributive justice could meet this

standard, then none can “serve as a basis of public reason and justification.” (PL 8)

However, saying that agreement about distributive matters is more *difficult* is compatible with holding that there is a principle that can be accepted from all reasonable points of view. Together these two positions merely entail that where citizens who are otherwise reasonable claim that the difference principle violates important aspects of their world view, they are *mistaken*. This, of course, needs to be shown, and the argumentative edifice built around the original position attempts to show it.<sup>21</sup> Showing that the hold-out is in error is possible even if the hold-out fails to recognize the error.

Rawls’s claim is that the questions about the best distributive principle are difficult. You don’t have to be *as unreasonable* to reject the difference principle as you have to be to reject the list of basic rights and liberties. That is why it is inappropriate to suppose that a regime has to get this *right* in order to be legitimate. Nevertheless, the claim continues, these difficult matters have answers, and the difference principle can be shown to be acceptable from all reasonable points of view. It is thus an appropriate basis for public reason and justification and may properly be pursued in legislation and voting. The “no reasonable objection” requirement and the closely related standard of “overlapping consensus” are not the obstacles that keep distributive matters off the list of requirements of legitimacy. According to Rawls, the difference principle clears these hurdles, even if less easily than the basic liberties clear them.

Rawls writes at one point that owing to the Supreme Court’s duty to stay within “the political values covered by the public political conception of justice,” . . . “an appeal cannot be

made to the difference principle unless it appears as a guideline in a statute.<sup>22</sup> This may seem to imply the view that the difference principle is not within the public political conception of justice, contrary to the interpretation I have been advancing. However, this passage is easily brought into line when it is noticed that justices may appeal to the difference principle when it is “a guideline in a statute.” Rawls is unequivocal in requiring legislation to conform to public reason at least where it bears on “constitutional essentials” and “matters of basic justice.” The present passage refers the reader to an earlier passage in which he says explicitly that the issues addressed by the difference principle, “although they are not constitutional essentials, fall under questions of basic justice and so are to be decided by the political values of public reason. The court may not appeal to the difference principle because it is not a constitutional essential, that being the limit of their purview. But it is a matter of basic justice subject to the requirement of public reason even in the case of legislation, a standard he plainly implies that it can meet.

The idea of overlapping consensus is often misunderstood as a standard of *de facto* stability or social concord. The fact that the difference principle is controversial is then taken to show that it does not lie within an overlapping consensus. In fact, all it shows is that it is controversial. Rawls uses the term “stability” in connection with the idea of overlapping consensus, and this has misled many. The question about overlapping consensus is, however, always only whether a conception of justice would be acceptable to the *reasonable* comprehensive views that would be likely to arise in a society governed by it.<sup>23</sup> Widespread controversy certainly raises the question whether any of the objections is fully reasonable and defensible. But the answer may be no, and so controversy itself does not

violate political liberalism's standard of legitimacy. Therefore, even intractable disagreement about such matters as the permissible limits of social and economic inequality is compatible with the difference principle lying within an overlapping consensus of reasonable comprehensive doctrines.

This is not the place to evaluate Rawls's argument for this claim. My aim throughout is to clarify *PL's* ambitions as I understand them. They are higher than has been widely thought.

#### *Legitimacy And The Law of Peoples*

Rawls's recent treatment of "The Law of Peoples" might tempt similar misunderstandings. Rawls argues that his political liberalism can be extended to account for the tolerance owed to some other societies that are unjust and illiberal.<sup>24</sup> I have argued that it is a mistake to assume that, for Rawls, any society justified in its use of political power must, as the basis for this judgment, be counted as just; it may, on Rawls's account, be legitimate without being just. Similarly, it would be a mistake to assume that any society deserving of recognition in a reasonable society of societies could only deserve this as a result of being counted as legitimate. Rawls's view is apparently that a state's legitimacy—its being warranted in the use of coercive political power—is not necessary to its being appropriately recognized within a reasonable law of peoples. Constructivism tailors its principles to the subject at hand, and, "whenever the scope of toleration is extended [] the criteria of reasonableness are relaxed."<sup>25</sup> It takes less to count as a reasonable party to the

society of peoples than it takes to count as a reasonable member of a single political society. Nevertheless, Rawls argues that one criterion of a reasonable society in the international context is that the society be “legitimate in the eyes of its own people.” This may not require that it be legitimate in the eyes of Rawls or of any outsiders.<sup>26</sup>

It is unclear whether Rawls believes a form of society that would be illegitimate for an advanced pluralistic society can nevertheless be legitimate for other societies. It is clear that no society needs to meet the demands of Justice As Fairness in order to be legitimate. If I am right, however, the first principle of that conception<sup>27</sup> is a requirement of legitimacy for an advanced pluralistic society. Now, is it also a requirement of legitimacy for *any* society? That is, even apart from whether a society meets the more relaxed standards for admission into a reasonable community of nations, can any society deviating severely and formally from the first principle be justified in enforcing internal compliance to its laws and commands? In other words, is the “liberal principle of legitimacy” itself of universal application? Is it *the* principle of legitimacy, or only the *liberal* principle, one among other principles of legitimacy each applying in its own appropriate setting?<sup>28</sup> Rawls’s text seems to be silent on this question. Widespread concerns that Rawls’s theory is “relativistic” will not be allayed by an account of the law of peoples. The question is whether Rawls’s theory of justice and legitimacy have critical force against illiberal regimes in very different societies. The theory of the law of peoples does not address this question.

The point for present purposes is that Rawls’s willingness to include certain illiberal societies within a reasonable moral community of nations is no evidence that he regards

them as just or even legitimate. It is not a revision of the central doctrines of either *TJ* or *PL*.

### *Conclusion*

There is no dilution of the role and weight of the egalitarian difference principle from *TJ* to *PL*. It was, and is, held to be one of two principles of justice which together comprise the most reasonable public conception of justice for an advanced pluralistic society. It was, and is, held to be subordinate to the first principle guaranteeing equal basic liberties. It was, and is, held to be subject to more reasonable controversy than the basic liberties of the first principle. This was, and is, held to give the basic liberties the special role of being placed in the political constitution. *PL* takes a further step: owing to greater controversy about what would be an appropriate principle of social and economic inequality, these matters are allowed to vary more within the bounds of legitimacy. The “constitutional essentials,” on the other hand, are relatively rigid requirements of legitimacy.

*PL* is a second book, not merely an extended reflection on a first book. As such, it has its own subject matter: the liberal principle of legitimacy. The claim that legitimacy can exist without the justice of the difference principle simply does not imply or suggest that the requirements of social justice have been adjusted downward, made less demanding. Rawls’s enormous influence on philosophical debates about the requirements of social justice may lead many to hear his recent views as contributions to that continuing discussion. Perhaps it was in anticipation of this reaction that Rawls sought to dispel this misunderstanding right at the beginning:

All [the elements of justice as fairness] are still in place, as they were in *Theory*; and so is the basis of the argument for them. Hence I presuppose throughout these lectures the same egalitarian conception of justice as before; and though I mention revisions from time to time, none of them affect this feature of it. [footnote:] I make this comment since some have thought that my working out the ideas of political liberalism meant giving up the egalitarian conception of *Theory*. I am not aware of any revisions that imply such a change and think the surmise has no basis. (PL 7)

It is well understood that Rawls's recent views propose a certain relationship between comprehensive moral and philosophical world-views and the idea of a public liberal conception of justice. What has been less well appreciated is that with his second book Rawls also begins another new conversation, about how best to conceive the relation between the requirements of (a public conception of) social justice and the requirements of political legitimacy. His thesis that justice is not necessary for legitimacy goes unnoticed from within a conversation about the demands of justice alone.

Notes:

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1. I am grateful to Liam Murphy, Thomas Pogge, and Lewis Yelin for helpful comments.
  2. Columbia University Press 1993, hereafter *PL*.
  3. Harvard University Press, 1971. Hereafter, *TJ*.
  4. Columbia University Press advertises *PL* with the slogan "Rawls Rethinks Rawls." This is true in many respects, as Bernard Williams also says in his review (*London Review of Books*, May 13, 1993). However, the "rethinking" is secondary to Rawls's pursuit of a new project, which the slogan encourages us to neglect. The fact that Rawls recognizes many political liberalisms, a fact exploited by some who think the requirements of justice have been weakened, suggests that many of the most important ideas in *PL* could have been conceived independently of *TJ*, such as the liberal principle of legitimacy itself, the idea of public reason, overlapping consensus, and even political constructivism
  5. Bernard Williams, in his review of *PL* writes that "Now that it has taken on its new aspect of a political theory of the tolerant liberal state, the Difference Principle has come to play a distinctly secondary role compared to the elements that help to define a constitutional structure within which the debates of politics can go on." *Op. cit.*, p. 8) In her own review of *PL*, Susan Moller Okin echoes Williams: "Rawls's focus on the liberties that constitute the

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conditions for toleration... virtually drowns out the redistributive part of his original theory....

The priority of liberty that Rawls has always argued for has become a virtual monopoly.

("Book Review," *American Political Science Review*, December 1993, p. 1010.) Brian Barry claims

that, unlike the first principle, "the second principle is abandoned at the second [overlapping consensus] stage. . . . The implication is surely that the second principle has to be sacrificed."

"John Rawls and the Search for Stability," *ETHICS*, July 1995, p. 913.

6. My thesis is not merely that Rawls *makes* this claim. That is settled beyond dispute by the quotation at the end of this essay. I attempt to *defend* his claim about the implications of his view.
7. See *PL*, p. 7 including note 6.(Quoted below, p.20)
8. *TJ*, p. 302.
9. For statements of the two principles see *TJ*, p. 302, and *PL*, pp. 5-6, where Rawls adds, "much expositions would be needed to clarify the meaning and application of these principles. Since in these lectures *such matters are not our concern*, I make only a few comments." (emphasis added)
10. *PL* 6, 223, 226. This point is neglected in Williams's review, which speaks throughout as if the perspective in *PL* is that of "Justice as Fairness." (This is most striking where he describes Rawls's remarks on abortion, in the lecture on "The Idea of Public Reason," as an

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answer delivered by justice as fairness. (See Williams, *op. cit.*, p. 7) It is, rather an application of the idea of public reason, which is one criterion of a political liberalism. It is not distinctive of justice as fairness, which is only one variant of political liberalism. That lecture mentions justice as fairness only to say it is not implied by the requirements of liberal legitimacy or public reason.) This misconstrual of the structure of Rawls's view in *PL* leads immediately to Williams's assumption that *PL* is a "rethinking" of *TJ*'s view, Justice as Fairness, and this will naturally lead to Williams's view that the importance of the difference principle has been diminished in *PL*.

11. *PL* 228-29.
12. *PL* 229-30.
13. *PL* *passim*.
14. See esp. *TJ*, sections 26-30, pp. 150-193.
15. *PL*, p. 7, including note 6, and 281-82.
16. They are also treated as related but distinct at *PL*, p. 225.
17. There is an important detail about Rawls's guarantee of the "fair value of the political liberties." It stems from a passage in Lecture VIII, "The Basic Liberties And Their Priority:"

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...those with relatively greater means can combine together and exclude [from the political process] those who have less in the absence of the guarantee of fair value of the political liberties. We cannot be sure that the inequalities permitted by the difference principle will be sufficiently small to prevent this. Certainly, in the absence of the second principle of justice, the outcome is a foregone conclusion. (*PL 328*)

The demands of the difference principle are apparently necessary but not sufficient to satisfy the guarantee of the "fair value of the political liberties" which is explicitly included in the first principle (*PL 327*). In that case, the demands of the second principle are no more egalitarian than those of the first. (As Thomas Pogge has pointed out to me, where they conflict, the difference principle would apparently sacrifice the absolute position of the least well off for the sake of greater equality and political fairness.) This suggests that while the first principle in Justice as Fairness includes the fair value guarantee, this guarantee is not part of the required content of a liberally legitimate conception. For if it were, there would be no possibility of the other legitimate yet less egalitarian liberalisms that Rawls seems to allow. What liberal legitimacy requires, then, is only the guarantees of the first principle *minus* the fair value guarantee - merely formal equal political liberties. This reading seems to accord with all the text. It is technically wrong then to say that legitimacy requires meeting the demands of Rawls's first principle, since his principle includes the fair value guarantee. This interpretation

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has the consequence that the first principle of Justice as Fairness already entails at least as much social and economic equality as the Difference Principle (though I see no obvious problem in this).

18. Rawls has recently stated this relationship between legitimacy and justice explicitly, acknowledging an earlier version of the present essay. (See "Reply to Habermas," *The Journal of Philosophy*, ...1995, pp. 175-76.) It should be noted, however, that his discussion there is not limited, as mine is here, to liberal legitimacy, but understands the concept in a broader way.
19. See note 16.
20. Okin asserts such a change explicitly: "[B]oth the difference principle and fair equality of opportunity - arrived at in TJ through the "original position" - are no longer "constitutional essentials" and are relegated to the legislative stage of the theory" (*op. cit.*, p. 1010).
21. See the edifying footnote on the relation between reasonable pluralism, overlapping consensus, and the veil of ignorance: *PL 24*, note 27.
22. *PL* p. 236-26, note 23.
23. *PL 15*.
24. "The Law of Peoples," Amnesty Lectures 1993, Oxford University Press, 1993.
25. *Op. cit.*, p. 78.

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26. There are, in any case, other substantial requirements. The view is far from amoral. See, eg., “The Law of Peoples,” *op. cit.*, pp. 60-65.
27. *Minus* the guarantee of the fair value of the political liberties. See note 16.
28. In “Reply to Habermas,” (*op. cit.*, p. 175) Rawls is plainly willing to speak of legitimacy of non-liberal regimes. He says that legitimacy always requires some measure of justice, though not complete. Still, it is not clear whether he thinks that even illiberal kinds of legitimacy morally warrant coercive enforcement and duties of compliance to law.