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Reconsidering the Connection between John Stuart Mill and John Rawls

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Abstract

The liberalism of John Rawls is usually understood as grounded in a Kantian framework while the liberalism of John Stuart Mill is seen as grounded in utilitarian theory. These traditional readings of Rawls and Mill render their otherwise similar liberal projects to be ideologically opposed at their foundation. I argue that in his later work, Rawls moves significantly far from his original Kantian framework, as he comes to accept a historicized justificatory framework for his conception of justice. Furthermore, I argue for a reading of Mill's *On Liberty* and *Utilitarianism* such that the principles articulated in the former are not grounded in the commitments of the latter, thus allowing us to understand Mill's liberalism as not comprehensively utilitarian. This re-narration of the liberal tradition allows us to appreciate Rawls' close relationship with Mill, and lets us reclaim a thoroughly historicist liberalism without the comprehensive foundationalisms of either Kantianism or utilitarianism.

Introduction: Breaking the Rawls-Kant alliance

With the publication of *A Theory of Justice* in 1971, John Rawls helped to revive normative political theory and rekindle a discussion about the basic principles of liberalism. Notably, Rawls' project took aim at the dominant moral and political doctrine of his day: utilitarianism. Because utilitarianism was the main foil for Rawls in *Theory*, his liberalism aligned itself with the deontological commitments of Immanuel Kant and set itself against all of the major figures identified with the utilitarian tradition, including the influential liberal political theorist John Stuart Mill. In the preface to *Theory*, Rawls identifies his aim as an attempt to challenge the utilitarianism of 'Hume and Adam Smith, Bentham and Mill,'[1] and provide 'justice as fairness' as an alternative, which he characterizes as 'highly Kantian in nature.'[2] In Rawls' own words, then, his version of liberalism as 'justice as fairness' is a continuation of the Kantian tradition, and a break from the Millian tradition.

Until Rawls' *Theory* came on the scene, Mill's *On Liberty* stood as one of the cornerstones of liberal thought, and much of the discussion of liberalism took place on

the discursive terrain that Mill had helped to define. Since the contributions of Rawls, however, Mill has largely been set aside and Kantianism has reformulated the discursive terrain upon which contemporary discussions of liberalism now take place. William Galston nicely summarized this shift in 1982:

> The past generation has witnessed a much-discussed revival of normative political theory. It has been less frequently remarked that this revival has rested to an extraordinary degree on Kantian foundations. From Robert Nozick on the libertarian right to Jürgen Habermas on the participatory left have come appeals to Kantian concepts and premises, variously interpreted. John Rawls is of course the chief representative of this tendency within contemporary Anglo-American liberal thought. Largely as a consequence of his efforts, *present-day liberals are far more likely to invoke Kant, as opposed to (say) John Stuart Mill, than they were only two decades ago*.[3]

Because of this shift toward 'Kantian foundations' (even more marked today three decades after Galston's review), and because Mill has been firmly placed in the utilitarian tradition, the relationship between Rawls and Mill has gone largely under-explored.

I shall argue that Rawls' alliance with Kant and disavowal of Mill is striking insofar as the content of Rawls' later political liberalism seems to so closely resemble the liberalism of Mill's *On Liberty*. In fact, by the time Rawls publishes *Political Liberalism* in 1993, both the justificatory framework and the content of his liberalism seem to have drifted far away from Kant, and come much closer to Mill. More specifically, as I will argue, the Rawls of *Political Liberalism* and the Mill of *On Liberty* share two important features: (1) a *historicist orientation* and (2) a focus on *responding legitimately to reasonable pluralism*. Both of these elements are notably absent (or peripheral at best) in the moral and political writings of Kant. Thus, later Rawls should be viewed as closely aligned with liberal Mill.

To make this case, I will follow standard accounts of a split between the early Rawls of *Theory*, who is in fact (largely) Kantian, and the later Rawls of *Political Liberalism*, who is (largely) historicist. Rawls' historicist turn is first evident in his 1980 Dewey Lectures entitled 'Kantian Constructivism in Moral Theory' and his 1985 article 'Justice as Fairness: Political not Metaphysical.' The qualifier 'largely' is important to note, because there are certainly Kantian elements in later Rawls and historicist elements in early Rawls, but I claim that the shift is serious enough to warrant a split between 'early' and 'later.' I will then argue for a distinction between a 'utilitarian Mill,' which comes from a certain reading of *On Liberty* as being strictly *justified* by the principles of *Utilitarianism*, and a 'liberal Mill,' which comes from a reading of *On Liberty* as only minimally (and not necessarily) *endorsed* by the principles of *Utilitarianism*. It is clear that to Rawls and most of his commentators, the utilitarian Mill is the *only* Mill, which allows them to disavow Mill's liberalism. However, once we peel away the utilitarian foundation from *On Liberty*, we can agree with another historicist liberal, namely Richard Rorty, that the differences between Mill and Rawls 'no longer seem very important.'[4] In fact, in his 2007 *Lectures on the History of Political Philosophy*, Rawls admits, 'Now I believe that the content of Mill's principles of political and social justice is very close to the content of the two principles of justice as fairness. The content is, I assume, close enough so that, for our present purposes, we may regard their substantive content as roughly the same.'[5] I hope to corroborate, and further explore, this otherwise puzzling admission of later Rawls.

These readings will help to bring together Rawls and Mill in a way that should give us better insight into both of these important liberal thinkers. I will frame my readings of both Rawls and Mill by first discussing one of the important splits within the tradition of liberal thought – the split between *Enlightenment liberalism* and *historicist liberalism*. This distinction will help me to situate later Rawls and liberal Mill as historicist liberals engaged in similar, historically situated projects. For later Rawls, the project is to articulate a workable regime of liberty and equality in the historical context of reasonable pluralism. For liberal Mill, the project is to articulate a proper

balance between personal liberty and state authority in the historical context of reasonable pluralism. These readings will demonstrate that Mill, not Kant, should be viewed as Rawls' predecessor in the liberal tradition. This insight will help resolve the otherwise intractable tension in later Rawls' thought between historicism and foundationalism in favor of historicism.

Enlightenment liberalism vs. Historicist liberalism

One of the most important projects of classical Enlightenment-inspired political philosophy is to offer a justification for the principles of liberal democracy – specifically, to place liberalism on a firm foundation. The hope is that this justification will have the authority of Reason itself, and that all rational persons in reflective equilibrium will realize the correctness of these principles, which are thought to be self-evident when properly expressed. Thus could liberalism be justified not only to rational persons in *our* culture but also to rational persons in *any* culture. Certainly philosophers have disagreed about the nature of this timeless foundation upon which to erect liberalism. Two prominent candidates have been Kantian deontology and utilitarianism. Historicist liberals, on the other hand, reject this project of discovering a timeless foundation for liberalism, and instead take up the task of articulating the liberal values already embedded in their cultures – articulating (or rearticulating) them so as to resolve contemporary problems. While Enlightenment liberalism is best exemplified by Kant, the Mill of *Utilitarianism*, the Rawls of *Theory*, and the Jürgen Habermas of *The Theory of Communicative Action*, historicist liberalism is best exemplified by thinkers like Isaiah Berlin, Bernard Williams, (most) John Dewey, Richard Rorty and others. A discussion of Enlightenment liberalism and historicist liberalism will put me in a good position to make the case that later Rawls and the Mill of *On Liberty* are both what I will call historicist liberals.

The Enlightenment is a complex historical event, but thinkers involved in the Enlightenment project share a common sentiment: that it is conceivable to liberate reason from tradition, custom, culture and all other historically contingent artifacts,

and thus theorize about morality and politics (and any other aspect of human life) with the unchained, universally shared faculty of reason. An important figure for this tradition is Kant, who famously held that 'the moral law is imposed by reason itself,' and this law 'must apply universally and permit no exceptions within its domain.'[6] Galston notes that for liberals in this tradition, 'reason is understood as the prime source of authority,'[7] and moral and political norms are 'immanently derived from the fact and form of moral rationality itself.'[8] What is thus incumbent upon thinkers in this tradition is a clear explanation of how our rationality works, such that our moral personality, and thus our normative principles, can be deduced from rationality itself.

This universalistic Enlightenment project is called into question on a number of fronts. One prominent strand of critique of Enlightenment liberalism has been offered up under the moniker of 'Reformation liberalism.' Galston refers to Reformation liberalism as 'the effort to deal with the political consequences of religious differences in the wake of divisions within Christendom'[9] and thus *pluralism* is its central problem. Reformation liberalism is 'about the protection of diversity, not the valorization of choice.'[10] However, I take *historicist liberalism* to be the true opposite of Enlightenment liberalism. It is certainly the case that following the Reformation and the Wars of Religion, pluralism comes to be understood as a phenomenon to be accommodated, not a problem to be overcome, and this had a major role in shaping liberal political thought. The label 'Reformation liberals' is, however, too narrowly focused:[11] it suggests that the Reformation (and surrounding events) simply brought to focus the *problem of pluralism* for liberals to deal with, but I claim that the Reformation and the ensuing pluralism brought about a more radical shift in western consciousness: the need to *historicize theory itself*, no matter what particular problem we are facing, whether the issue be pluralism or the balance of liberty and authority. Historicist liberals are in the Hegelian, not Kantian, tradition, and they take seriously the inescapable *historicity of rationality*, and therefore the inevitable *historicity of justice*. The historicist liberal is attentive to the particular problems of the day, and willing to use the shared cultural resources at hand to (attempt to) solve them – without invoking ahistorical foundations.

This, then, represents one of the important splits in liberal political theory: those Enlightenment theorists who search for an ahistorical foundation for liberalism, and those historicist theorists who have given up this dream and instead hope to deal with particular historical impasses using the values and norms already implicit in a particular historical situation. For historicist liberals, the Enlightenment project is philosophically misguided and politically dangerous because it assumes (or at least requires) an ahistorical definition or criterion of 'reasonableness,' which leads to a troubling marginalization of 'unreasonable' views.[12] Although the universalistic pretensions of the Enlightenment project seem noble, the history of the project has demonstrated a decided failure to give a non-circular definition of 'reasonableness.' Thus, for the historicist thinkers, instead of appealing to universal reason itself and its 'self-evident first principles'[13] for our political principles of justice, it is both philosophically more sound and politically more legitimate that we should justify our political principles to each other based on the values and norms that *we already happen to share*. Thus, justification does not unfold from human reason as such, but requires an appeal to the particular communities in which we find ourselves. Rorty nicely summarizes this approach: 'The Kantian identification with a central transcultural and ahistorical self is thus replaced by a quasi-Hegelian identification with our own community, thought of as a historical product.'[14] Because of this orientation, the liberal values held by historicist liberals are not backed up by an appeal to rationality itself, and yet this need not detract from being fully committed to them as footholds for critique. However, this move to historicize the justificatory framework of liberalism may (but need not) alter the content or application of those liberal principles themselves as time goes on and culture changes.

Enlightenment-inspired critics of this metaphilosophical position are afraid that to historicize theory is to collapse the 'is' and the 'ought,' forcing us to merely rationalize and justify the *status quo* instead of finding secure principles with which to criticize it. Robert Taylor argues in this vein that a departure from the Kantian-Enlightenment project risks reducing liberalism from a critical and normative project to a 'descriptive politico-sociological one.'[15] For Joshua Cohen, a commitment to

historicism entails an 'accommodation' to the present situation with all of its entrenched privileges and power structures, while giving up the hope of ever laying out the 'fundamental principles of justice themselves.'[16] Taylor is quite right that historicism 'has no *independent* criterion of reasonableness,' but is he also right that it thereby forces us into 'a form of cultural relativism'?[17] Is it the case that to historicize theory is to give up looking for a foothold with which to criticize the present configuration of political power?

The important distinction I want to make (in defense of the idea of historicist normative critique) is between the metaphors of 'foothold' and 'Archimedean point.' For the historicist, there is no ahistorical *Archimedean point* outside of culture from which we can criticize the present, but there do exist historically located *footholds* that have developed within a culture (within the terrain of our shared valued and norms), that we can use as leverage on behalf of critique. The hope is that *we may not share a universal truth-tracking faculty of reason, but we do share (some) common values and norms that we similarly regard as binding*. These shared values and norms constitute the leverage that we have over each other. Instead of trying to ground our convictions in timeless principles or christening them with the term 'reasonable,' Rorty suggests that one should 'remind his interlocutor of the position they both are in, the contingent starting points they both share, the floating, ungrounded conversations of which they are both members.'[18] This suggests that principles of justice that can legitimately govern a community are *whatever* principles emerge out of reflective equilibrium, as practiced under fair conditions characterized by reciprocity. Instead of the Kantian project of grounding our political views in some extrapolitical, transcultural foundation, the historicist follows the Hegelian strategy of *making explicit* those values and norms that we *implicitly share*,[19] and re-narrating them such we can move past a particular impasse. This process of re-narration requires not only being reasonable, but also being creative, inspirational, and persuasive. This is the preferred method for bringing about social change and catalyzing moral progress for the historicist liberal.

Given this discussion, I turn now to Rawls and Mill. My claim is that early Rawls and utilitarian Mill are indeed Enlightenment liberals – and *qua* Enlightenment liberals, are at odds with one another, since they are committed to the incommensurable foundations of Kantianism and utilitarianism, respectively. But my more important claim is that later Rawls and liberal Mill are historicist liberals – and *qua* historicists, are more closely related than is commonly acknowledged.

Kantian foundationalism in early Rawls

The exact nature of the differences between early and later Rawls is contested in the scholarly literature. Rawls himself downplayed the differences. A common stance across much of the scholarship is that Rawls remains a Kantian liberal throughout his intellectual development. It is notable to see contemporary Rawlsians object to the ways in which Rawls' Kantianism is moderated in his later work. In his 2011 book *Reconstructing Rawls: The Kantian Foundations of Justice as Fairness*, Taylor laments the extent to which Rawls moderates his Kantianism, and in response 'has one overarching goal: to reclaim Rawls for the Enlightenment.'[20] Contrary to Taylor's project, an aim of this paper is to celebrate the decoupling of Rawls and Kant that takes place in Rawls' later work, and claim Rawls for historicism. First, then, I will describe the extreme Kantianism that runs throughout early Rawls, most notably in *Theory*.

There is much evidence throughout *Theory* that Rawls' project is a continuation of the Kantian-Enlightenment project of justifying liberalism based on transcultural first principles accessible to all rational persons. The deliberative framework of the 'original position' seems, at points, to be inhabited by a rational being liberated from all traces of tradition, custom, culture and all other historically contingent artifacts,[21] thus allowing Rawls to simply deduce the principles of justice through what he calls a kind of 'moral geometry.'[22] This moral geometry from within the original position produces the two principles of justice: (1) 'each person is to have an equal right to the most extensive basic liberty compatible with a similar liberty for others,' and (2)

'social and economic inequalities are to be arranged so that they are both (a) reasonably expected to be to everyone's advantage, and (b) attached to positions and offices open to all.'[23] The first principle, concerning liberty, is to be *lexically prioritized* over the second principle, concerning equality, such that 'a departure from the institutions of equal liberty required by the first principle cannot be justified by, or compensated for, by greater social and economic advantages.'[24] The promise of the original position is to give us principles of justice that proceed from the very nature of our rational personhood. This promise is more than hinted at when Rawls suggests that 'we think of the original position as the *point of view from which noumenal selves see the world*.'[25] This noumenal self represents reason as a *pure faculty* independent of 'natural contingencies and social accident,'[26] thereby ensuring that the principles of justice are not contaminated by traces of history, culture, etc. If the principles of justice come to us from the noumenal realm, then their status would be (as with Kant's moral law) necessary and universal, for all times and places. The principles of justice, in *Theory*, are thus wrapped up in the *nature of reason itself*.

For Joshua Cohen, justice must be deduced from the faculty of reason in order for us to make a meaningful distinction between 'acknowledging the scope of practical reason'[27] and 'accommodating … the reality of power.'[28] The Enlightenment project promises to determine for us exactly what 'the scope of practical reason' encompasses (by giving a non-circular definition of reasonableness), with which we can then erect a high wall around our conception of justice in order to defend it from forms of irrationality. If the principles of justice are determined by historically located, culture-laden individuals, then we will be 'accommodating power.' Andrew Altman aptly notes that this 'methodology appears to be one designed to discover fundamental ethical truths about justice that exist prior to, and independent of, the particular ethical traditions that are found in the culture of any society.'[29] This deliberation of pure rationality represents the Enlightenment dream of escaping our historical locatedness and finding an ahistorical 'Archimedean point' from which can criticize the present political configuration. In fact, Rawls himself makes reference to this search for an

Archimedean point that would give him a view from above history and culture. Consider the following:

> The upshot of these considerations is that justice as fairness is not at the mercy, so to speak, of existing wants and interests. *It sets up an Archimedean point for assessing the social system without invoking a priori considerations*. The long range aim of society is settled in its main lines irrespective of the particular desires and needs of its present members.[30]

There is, it seems, a tension throughout *Theory* between the Enlightenment impulse and the historicist impulse, a tension that we find even in these passages. It is unclear whether Rawls hopes to locate an ahistorical Archimedean point, or a historically located and culturally embedded foothold, for the basis of his principles of justice. What does it mean to have an Archimedean point without any *a priori* principles? What is a 'perspective of eternity' that remains grounded in our worldly experience? The contradictory desire to have it both ways – to find a quasi-ahistorical Archimedean point embedded in (every?) culture – will stay with Rawls throughout his philosophical development, even after his historicist turn.

It is thus unsurprising that Rawls explicitly articulates some vaguely historicist elements in *Theory* – such as the brief discussion of reflective equilibrium in the section 'The Original Position and Justification.'[31] The justificatory framework of 'reflective equilibrium' is clearly historicist, quasi-coherentist and anti-foundationalist. Robert Talisse correctly notes that reflective equilibrium gives us a 'mode of justification that is neither classically foundationalist nor baldly coherentist, and yet not relativist or skeptical.'[32] The justificatory framework of reflective equilibrium is quite distinct from Kant's insistence that our principles are to be 'sought not in the nature of man nor in the circumstances of the world in which man is placed, but must be sought a priori solely in the concepts of pure reason.'[33] Instead, reflective equilibrium allows for the co-legislation of political principles of justice by the interplay of our *particular intuitions* and *general principles*. Clearly, however,

these intuitions are socialized into persons and communities through historically contingent forces. Thus, the output of reflective equilibrium will not be the same throughout time and across cultures, but will change as our provisionally fixed intuitions change. This forces Rawls to half heartedly concede that 'as established beliefs change, it is possible that the principles of justice which it seems rational to choose may likewise change.'[34] To incorporate into the constraints of the original position our 'commonly shared presumptions'[35] is to historicize our deliberation – the very thing that Kant (and his Enlightenment-inspired fellow travelers) warned us against. Here we see *Theory* divided against itself, caught between two justificatory frameworks that do not quite mesh with one another: the historicist framework of reflective equilibrium, and the ahistoricist Kantian framework of the original position. While *Theory* is dominated by the latter framework, the brief discussion of reflective equilibrium represents a historicist seed planted in early Rawls that would take a decade to bloom.

Thus, the dominant tendency of early Rawls is the promise that we can become virtual noumenal selves behind the veil of ignorance and legislate objective political principles free from the contamination of history and culture – without somehow doing violence to our historical situatedness. However, later Rawls will take more seriously the consequences of our historical situatedness, which requires us to historicize our deliberative framework. He will not, I argue, take these consequences seriously enough.

The historicist turn in later Rawls

Some important shifts mark Rawls' thought in the 1980s, leading up to the publication of *Political Liberalism* in 1993. These most notably include his articles 'Kantian Constructivism in Moral Theory' (1980) and 'Justice and Fairness: Political not Metaphysical' (1985). Compare the above quotes from *Theory* with the following conviction of later Rawls: 'What justifies a conception of justice is not its being true to an order antecedent to and given to us, but its congruence with our deeper

understanding of ourselves and our aspirations, and our realization that, given our history and the traditions embedded in our public life, *it is the most reasonable doctrine for us*.'[36] The key transformation from early to later Rawls is the notion that what is 'reasonable' is not the thinking of the noumenal self, liberated from all empirical, historically contingent forces, but rather depends on the history and traditions 'embedded in *our* public life' – what is 'most reasonable for *us*.' Bargaining in the original position is no longer to take place between the 'noumenal selves' of *Theory*, but between historically located and culture-laden selves (situated symmetrically and reciprocally). In the giving-and-receiving of reasons in our public life, we must draw on the 'basic intuitive ideas that are embedded in the political institutions of a constitutional democratic regime and the public traditions of their interpretation.'[37] That is, deliberation and justification 'must always proceed from some consensus, that is, from premises that we and others publicly recognize as true,'[38] from our 'shared fund of implicitly recognized basic ideas and principles.'[39] Rawls hopes to '*uncover*, and to help to *articulate*, a shared basis of consensus on a political conception of justice drawing upon citizens' fundamental intuitive ideas about their society and their place in it.'[40] This two-stage process of *uncovering* and *articulating* is a thoroughly Hegelian-historicist program, and is quite far from the Kantian-Enlightenment project of *Theory*.

The historicist turn of later Rawls represents an acceptance that principles of justice are not to be justified *universally*, but instead are justified to historically contingent communities with contingently formed intuitions. Rawls has definitively given up 'trying to find a conception of justice suitable for all societies regardless of their particular society or historical circumstances'[41] and instead has accepted the role of working up principles of justice suitable for *us*. The historicist theorist is concerned to help us navigate through particular conflicts that we happen to be facing at the moment. For Rawls, historicist political theorists who find themselves in liberal democracies at the end of the twentieth century should be 'focused on the apparent conflict between freedom and equality in a democratic society' under the condition of pluralism.[42] To sum up the historicist liberal project in later Rawls: justification

occurs *to* our particular community, *with* the fund of shared values and norms, *concerning* particular problems we are facing, with the hope of forging a consensus such that we can move forward.

To fully accept the implications of historicism would require Rawls to drop one further commitment of *Theory* that he retains in his later work: the assumption of a Kantian conception of moral personhood. And yet, later Rawls is unwilling to make this leap. In 'Kantian Constructivism' and 'Justice as Fairness: Political not Metaphysical,' Rawls both pledges allegiance to historicism *and* doubles down on the Kantian conception of moral personhood underlying his theory of justice. How are these moves compatible? The implicit assumption is that a Kantian conception of moral personhood and rationality is implicit in our culture and history. Indeed, in 'The Idea of an Overlapping Consensus,' Rawls argues, 'when it is said that citizens are regarded as free and equal persons, their freedom and equality are to be understood in ways congenial to the public political culture and explicable in terms of the design and requirements of its basic institutions.'[43] In 'Justice as Fairness: Political not Metaphysical,' Rawls argues that 'the conception of the person is a moral conception, one that *begins from our everyday conception of persons*.'[44] However, the problem with this assumption is that it is an empirical, contestable claim about the particular configuration of our current cultural assumptions and commitments. Critics such as Taylor are highly critical of Rawls' attempt to combine his later historicist 'political liberalism' with his earlier Kantian assumptions for exactly this reason. Taylor inquires, 'is such a conception [the Kantian conception of the self and rationality] really 'latent' or 'embedded' in the 'common sense' of democratic citizens, including especially adherents of [reasonable comprehensive doctrines]?'[45] Bernard Yack similarly quips that perhaps Rawls 'simply writes his conception of moral personality into democratic public culture, rather than discovers it there.'[46] Galston likewise notes, 'The problem with Rawls' revised Kantian doctrine is … that it prescribes, as valid for all, a single, substantive, eminently debatable ideal of moral personality'[47] while at the same time insisting that he is appealing only to 'the principles latent in the common sense'[48] of our culture.

These critics are all pointing to a clear tension in the work of later Rawls. But to which of these commitments is Rawls more committed? If he fully accepts the consequences of historicism, he has to agree with Galston that his 'conception of free and equal moral personality diverges radically from this American understanding of freedom and equality and leads to principles of justice significantly different from those most Americans embrace.'[49] If he is more committed to his Kantian framework, then he either needs: (1) to assume *a priori* that citizens in reflective equilibrium will arrive at suitable principles of justice for his overlapping consensus, thus not taking seriously our historically locatedness, or (2) not take seriously the pluralism of comprehensive doctrines that, even in reflective equilibrium, will endorse different conceptions of personhood and rationality. Taylor mentions many such reasonable alternatives to Rawls' Kantian subject, such as the 'bourgeois, competitive-individualist' subject that interprets 'free and equal' as 'free to compete and formally equal before the law' – resulting in principles of justice (probably) rather different than those of Rawls (and probably falling outside of his overlapping consensus).[50] Galson observes, 'Rawls's reconstructed theory is divided against itself. It is explicitly Kantian, but implicitly Hegelian.'[51] If Rawls is going to accept the implications of historicism, he must embrace the Hegelian project of articulating our 'implicit principles into a coherent structure,' and fully renounce the Kantian project of finding an Archimedean 'standpoint above history and culture.'[52] He needs to forgo the dream of an Archimedean point and content himself with searching for footholds as the leverage for his critique. And much of the work of later Rawls embraces this stance.

Later Rawls very often embraces the role of a *situated critic*, identifying and working on the major impasse facing western liberal democracies: the proper and legitimate way to preserve liberty and achieve equality in the face of reasonable pluralism. His principles of justice should, in this reading, be viewed as a re-narration of our political culture and history, a re-narration to be offered to (our collective) reflective equilibrium in the hopes of transforming consciousness and forging new 'provisional fixed points' that allow us to move beyond our current impasse. This historicist later Rawls is freed from the major commitments of his earlier Kantianism, although not

entirely. In order to help resolve the tension that I have diagnosed in later Rawls – the tension between Kantian foundationalism and historicism – I now turn to the work of Mill. I hope to show that Mill, as a historicist liberal, should be viewed as Rawls' predecessor in the liberal political tradition. This understanding of the Mill-Rawls relationship allows us to *affirm* Rawls' movement away from Kant (a movement that Rawls recognized in his work but did not fully grapple with), and appreciate the historical commitment of (a certain strand of) liberalism to *historicist* normative critique.

Mill's unstable mixture: *On Liberty* and *Utilitarianism*

As quoted above, in his *Lectures on the History of Political Philosophy*, Rawls notes that Mill's liberalism closely approximates his own. However, Rawls, in his major public writings both early and late, aligns his liberalism with the deontology of Kant, and distances it from Mill. The reason for this is clear: Rawls viewed Mill as first and foremost a utilitarian liberal, and always (quite reasonably) understood utilitarianism to be a problematic foundation for liberalism, especially a liberalism that lexically prioritizes basic individual rights and liberties over aggregate utility or social equality. In this section, I want to agree with Rawls that utilitarianism is a problematic foundation for liberalism, but I will disagree that we need to read Mill's liberalism (especially the first chapter of *On Liberty*) as fundamentally utilitarian. In the same way that I argued that Rawls' liberalism can (and largely did) dispense with Kantian deontological foundations, I will argue that Mill's liberalism can renounce utilitarian foundations. In offering these readings, I am attempting to be faithful to certain anti-foundationalist sentiments that each author seems to hold despite occasionally violating them. Through these re-readings, Rawls and Mill can be properly compared and understood alongside one another, instead of simplistically contrasted as alternatively 'Kantian' and 'utilitarian.' I will begin by laying out the traditional reading of Mill as a utilitarian liberal and note the ways in which this would rightfully concern Rawls. I shall then offer an alternative reading of Mill as a (non-utilitarian) historicist liberal.

On Liberty is Mill's most influential contribution to political philosophy, where he lays out a defense of individual rights based on the 'harm principle,' or 'Liberty Principle,' which states, 'the only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others.'[53] This principle is supposed to help us distinguish between those areas of life that are legitimately exposed to public control and regulation, and those areas of life that are to be respected as private. Based on this principle, Mill lays out a defense of a series of liberties, such as liberty of conscience, thought, opinion, speech, press, occupation, and association. These opening pages of *On Liberty* sound similar to those arguments for individual liberty that are rights-based, or that rely on some notion of human dignity. However, two paragraphs after introducing the harm principle, Mill proclaims

> It is proper to state that I forgo any advantage which could be derived to my argument from the idea of abstract right as a thing independent of utility. I regard utility as the ultimate appeal on all ethical questions; but it must be utility in the largest sense, grounded on the permanent interests of man as a progressive being.[54]

This statement seems unambiguous enough: Mill's liberalism is grounded in and justified by utilitarianism. Gerald Gaus reports, 'Of course there are widely divergent views as to just how utilitarian is Mill's argument for liberty, but it is reasonable (if not uncontentious) to interpret his case for liberty as being connected to his utilitarianism.'[55] If this is the case, then Rawls is right to distance himself from Mill – not because Mill's principles of justice differ significantly from his own, but because the *foundation* upon which those principles are said to rest is so objectionable.

The objection is rather straightforward. If the ultimate aim of utilitarianism is to increase aggregate utility, then the protection of personal rights and liberties *may or may not* be conducive to this purpose. If the protection of these rights happens to obstruct the achievement of aggregate utility, then the utilitarian will, as a matter of

principle, support a suspension of these rights. For Rawls, 'there appears to be no assurance that restricting or suppressing the basic liberties of some may not the best way to maximize the total (or average) social welfare.'[56] Rawls asks, 'On what basis is Mill so confident that everyone should have the same equal rights, which are to be secured equally?'[57] And he worries that 'we don't see how, from what has been said, we could know that in general, enforcing equal rights for all maximizes utility as Mill understands utility.'[58] This critique of utilitarian liberalism seems damning, and there is much in Mill's *Utilitarianism* that fuels it. In *Utilitarianism*, Mill insists, 'I dispute the pretensions of any theory which sets up an imaginary standard of justice not grounded in utility,'[59] corroborating Rawls' worry that for Mill 'the Principle of Liberty is not a first or supreme principle: it is subordinate to the Principle of Utility and to be justified in terms of it.'[60] Armed with the doctrine of utilitarianism, Mill sees himself as having transcended history and culture and coming into contact with first principles – such that there is no need to work with the contingent intuitions of one's community, drawing out the values and norms from within a situation in order to solve the problems within that situation. This is a version of Enlightenment liberalism if ever there was one. But is this the only way to read *On Liberty*?

Everything depends on how we interpret Mill's phrase (in *On Liberty*) 'utility in the largest sense, grounded on the permanent interests of man as a progressive being.' How closely does this match up with classical utilitarianism, and how objectionable need it be to the Rawlsian liberal? In his discussion of Mill in *Lectures on the History of Political Philosophy*, Rawls speculates about what could be meant exactly by our 'permanent interests,' but concludes, 'Mill does not discuss these questions.'[61] In fact, aside from the mention of 'utility in the largest sense,' Mill hardly mentions 'utility' again in *On Liberty*, and commits himself to positions that seem to flatly contradict the commitments of utilitarianism, as laid out in *Utilitarianism*. I concur with Y.N. Chopra that instead of trying to connect up *On Liberty* with *Utilitarianism*, we should follow Mill's insistence that *On Liberty* be read as 'a self-contained work,' not an appendix to *Utilitarianism*.[62] Once we read *On Liberty* free from the interpretive

framework developed in *Utilitarianism*, the contradictory nature of *On Liberty* will be largely resolved.

If the Principle of Utility is indeed lexically prioritized over the Liberty Principle, then individual rights and liberties should be respected only so long as they favor aggregate utility. However, as Rawls notes, Mill is clear that the Liberty Principle is to 'govern absolutely,' admitting of 'no exceptions.'[63] This exception-less nature of the Liberty Principle is clearly in tension with the classical utilitarian conception of individual rights and liberties (recall Bentham's infamous remark that rights are 'nonsense upon stilts'[64]). We could say that *On Liberty* lexically prioritizes the Liberty Principle over the Utility Principle. As Rawls remarks, 'In specifying the rights of justice there is no apparent reference to aggregate social well-being. When Mill identifies the essentials of human well-being, or the elements of the groundwork of our existence, he does *not do so via the idea of maximizing total utility*. He looks to individuals' basic needs and to what constitutes the very framework of their existence.'[65] This shows that Mill does not conceive of individuals as did the classical utilitarians – as 'equally fruitful lines for the allocation of benefits.'[66]

If Mill can thus be read as lexically prioritizing the Liberty Principle over the Utility Principle, this would parallel Rawls' argument for lexically prioritizing the first principle of justice (concerning liberty) over the second (concerning equality). Mill is clearly aware that if the Utility Principle were given absolute priority, the Liberty Principle would be in constant jeopardy. Indeed even in *Utilitarianism* itself, Mill argues that social policy should be guided by utilitarian considerations, but then acknowledges that, regarding the public enforcement of utilitarian norms, 'the danger is, not that it should be insufficient, but that it should be so excessive as to interfere unduly with human freedom and individuality.'[67] This quick admission is quite telling of which principle should be beyond compromise. The *danger* of the Utility Principle is the threat that it poses to the Liberty Principle, and this infringement is unacceptable for Mill.

This reading of Mill raises the following question: if the Liberty Principle is not rooted in the Utility Principle, then what is its justification? Here, I think we should read Mill as we typically read later Rawls: his conception of justice should be viewed as a historically located attempt to resolve a particularly entrenched impasse in his culture. While later Rawls faced (and responded to) the impasse of achieving liberty and equality in the context of reasonable pluralism, liberal Mill faced (and responded to) the impasse of balancing personal liberty and state authority in the context of reasonable pluralism. Both should be properly understood as historicist liberals motivated not primarily by the Enlightenment, but by the spirit of the Reformation. It is no coincidence that Rawls' *Political Liberalism* and Mill's *On Liberty* both open by referencing the Reformation,[68] and the new obligation this event puts on political philosophers to take pluralism seriously.

Consider how we can read Mill's *On Liberty* as a historicist liberal text. The first chapter of *On Liberty* begins with a brief political history of the West, leading up to the present. Mill argues that there has always been, at least since ancient Greece, an understanding that one of the central political problems is preventing the abuse of political power. However, this problem takes on a different inflection with the historical emergence of the democratic state. With the democratization of state power, it seems tempting to remove any and all limits to state power (since the state is, after all, now *us*). However, our political communities are characterized by a *plurality* of interests, ways of life, worldviews, etc., all of which need to be respected – and the only way to respect the pluralism that characterizes our political communities is to limit state power such that private activities and associations are allowed to pursue their own aims. Mill wants to respond to 'the practical question where to place the limit—how to make the fitting adjustment between individual independence and social control.'[69] This problem emerged in Mill's time because of widening enfranchisement and the growing recognition and acceptance of pluralism. The problem of the tyranny of the majority (both regarding its official electoral power and its unofficial coercion of opinions and norms) arises 'under the new conditions of the immanent democratic society in which the newly enfranchised laboring class—the

most numerous class—will have the vote.'[70] The Liberty Principle, according to Rawls, is offered by Mill as a kind of 'principle of public reason in the coming democratic age … a public political principle framed to regulate free public discussion concerning the appropriate adjustment between individual independence and social control.'[71] Mill is recommending that legitimate public reasons are those framed in terms of 'harm,' which is sufficiently *thin* such that reasonable pluralism is respected while also sufficiently substantive so as to authorize interference when necessary. Using the currency of 'harm' in public to justify the use of state power will certainly be more respectful of pluralism than the traditional reasons that centered on paternalism, excellence, personal preference or religious authority.[72]

Conclusion: Towards a Mill-Rawls historicist liberalism

Having concluded my discussions of Rawls and Mill, I will end with some remarks about how we should think about a Mill-Rawls historicist liberalism. Mill and early Rawls are frequently read as Enlightenment liberals in search of a timeless foundation for their liberal conceptions of justice. This Enlightenment-inspired foundationalism has come under attack from a number of philosophical camps, from Hegel through Rorty, and we currently face a new imperative to think through political justice and its justification independently of the deeply problematic Enlightenment assumptions concerning rationality, truth, personhood, etc. Later Rawls harbors a tension between the Enlightenment demand for an ahistorical, foundationalist Archimedean point and the historicist commitment to use critical footholds for political justification and transformation. For liberals like Taylor, any departure from the Enlightenment project is a lamentable backsliding into a weaker, more relativistic form of liberalism. Thus, Taylor urges liberals to return to the Kantian tradition of Enlightenment liberalism. However, reading Mill as a historicist shows us another strand of liberal thought in which later Rawls is very much at home. While there are some *substantive differences* between Millian and Rawlsian conceptions of justice, there is a strong *procedural resonance* between the two thinkers that has been largely under-explored. They can

both be read as historicist thinkers who have successfully provided us with liberal conceptions of justice without recourse to foundationalism.

One interesting case of this procedural resonance is the concept of *reciprocity* that Mill and Rawls seem to share. Once Rawls abandons the Kantian version of the original position as the procedure of political justification, he argues that all just political bargaining ought to take place between free and equal persons that are reciprocally positioned. The legitimate principles of justice are those that emerge from this exchange of free and equal (and historically located) persons. Rawls identifies two passages in *Utilitarianism* in which Mill echoes his concern for this form of just political bargaining. Mill writes that persons should be socialized and educated so as to understand their own interests as wrapped up in the interests of others, such that no one would ever 'think of, or desire, any beneficial condition for himself, in the benefits of which [one's fellow citizens] are not included.'[73] Furthermore, modern society is 'manifestly impossible on any other footing than that the interests of all are to be consulted. Society between equals can only exist on the understanding that the interests of all are to be regarded equally.'[74] Mill's reference to reciprocity and his commitment to the inviolability of personal rights and liberties exempts him from Rawls' most fundamental critique of utilitarianism: that it *violates* the principle of reciprocity by allowing for 'the justification of inequalities on the grounds that the disadvantages of those in one position are outweighed by the greater advantages of those in another position.'[75] For both Mill and Rawls, justice is not something to be articulated once and for all. Instead, it is to be continually contested between free and equal persons reciprocally positioned.

However, we should not overlook the substantive differences between Rawls and Mill. In his *Lectures on the History of Political Philosophy*, Rawls tries to identify what Mill's conception of justice demands of our 'modern social institutions,' and provides the following list from his reading of Mill: (1) the principle of equal justice and equality of (basic) rights, (2) the principle of liberty, (3) principles of open society and free choice of occupation and mode of life, (4) equality of opportunity, (5) the

principle of free and fair competition, economic and social, (6) the principle of (social) cooperation as among equals, (7) principle of modern marriage as equality between husband and wife, (8) true principle of public charity: to help people to help themselves.[76] When we compare Mill's substantive conception of justice with Rawls', there is indeed much overlap. However, Mill does not foreground egalitarian concerns in the way that Rawls does with his 'difference principle' in his second principle of justice. Clearly Rawls and Mill were dealing with different historical-cultural impasses. Mill wanted to theorize *liberty* and *authority* in the context of pluralism, and Rawls wanted to theorize *liberty* and *equality* in the context of pluralism. They were both attempting to 'mediate society's deepest conflicts' – which Rawls identifies as the role of political philosophy.[77] The central political problem of Mill's time was to articulate the bounds of legitimate state authority in the democratic age, because for the first time in the history of the West, a majority of citizens were allowed to vote and thus wield state power. The central political problem of Rawls' time was to articulate how liberty could be respected while achieving a desirable level of equality. The issue of equality was not politicized in the same way for Mill. Demands for equality were certainly present at Mill's time, and indeed had been since at least the French Revolution, but it was not the foremost issue. Mill's views on material equality, as articulated in *Socialism*, show that he was aware that the enfranchisement of the working class would eventually lead to serious and unavoidable demands for material equality, but he was on the scene too soon to realize the force of these demands. Elizabeth Rapaport notes that Mill's greatest limitation was 'his failure to appreciate the salience that economic issues would have in democratic politics and his failure to appreciate the role that the state would have in economic life. Mill clung to the hope that what he called 'class legislation' … could be avoided. Yet class legislation has proved to be much of the substance of modern politics.'[78] Rawls, however, lived at a time when the socialist critiques of liberalism could not be ignored, and thus his major concern (living in the wake of the New Deal and during the rise of the New Left and the Great Society) was to articulate an egalitarian liberalism.

The liberalisms of Mill and Rawls intersect in a great number of ways, many of which have been discussed. In their differences, they provide us with the political terrain upon which politics is fought over today: between liberal tolerance and liberal equality. With Mill and Rawls, we get the four liberal *desiderata*: (1) the state must exercise legitimate power over its citizens, (2) reasonable pluralism must be respected, (3) personal rights and liberties must be respected and protected, and (4) a desirable level of material equality must be achieved. And while Mill and Rawls help us prioritize these *desiderata* in ways consistent with our liberal intuitions, not all political questions are thereby solved – instead, the conceptual terrain is simply laid out. If it is deemed desirable to widen the scope of the overlapping consensus (expand tolerance), then our egalitarian goals will likely be harder to achieve. Narrowing the overlapping consensus and restricting pluralism in our public debates may help achieve egalitarian aims, but it also 'sows the seeds of long-term discontent, alienation, and withdrawal'[79] for those excluded. These are the tragic choices that characterize our political lives today. Mill and Rawls, as I have read them, also demonstrate to us that these *desiderata* can (and should) be articulated and debated without recourse to the foundationalisms of Kantian deontology or utilitarianism, but instead by finding footholds from within the shared values and norms of one's culture from which to level critique.

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NOTES

[1] Rawls 1971, p. vii.

[2] *Ibid.*, p. viii.

[3] Galston 1982, p. 492; my italics.

[4] Rorty 2010b, p. 507. In fact, my arguments closely resemble Rorty's discussions of Rawls, Mill, and liberalism in Rorty 1989, Rorty 1991 and Rorty 1997.

[5] Rawls 2007, p. 267.

[6] Kant 1983, p. vi.

[7] Galston 1995, p. 525.

[8] Galston 1982, p. 492.

[9] Galston 1995, p. 525.

[10] *Ibid*., p. 523.

[11] *Ibid*., p. 525. While Galston makes the distinction between 'Enlightenment' liberalism and 'Reformation' liberalism, Charles Larmore makes a similar distinction between 'Kantian' liberalism and 'modus vivendi' liberalism (1987), and Donald Moon refers to 'traditional' liberalism and 'political' liberalism (1993). My distinction between Enlightenment liberalism and historicist liberalism is similar, though distinct, from each of these.

[12] See Mouffe 1993, p. 142

[13] Taylor 2011, p. 249.

[14] Rorty 1991, p. 177.

[15] Taylor 2011, p. 258.

[16] Cohen 1993, p. 271.

[17] Taylor 2011, p. xxii.

[18] Rorty 1982, p. 173-74.

[19] For a discussion about this process, see Brandom 1994.

[20] Taylor 2011, p. ix.

[21] See Sandel 1982.

[22] Rawls 1971, p. 121.

[23] *Ibid*., p. 60.

[24] *Ibid*., p. 61.

[25] *Ibid*., p. 255; my italics.

[26] *Ibid*., p. 255.

[27] Cohen 1993, p. 272.

[28] *Ibid*., p. 288.

[29] Altman 1983, p. 8.

[30] Rawls 1971, p. 261; my italics.

[31] Rawls 1971, p. 17-22.

[32] Talisse 2010, p. 24.

[33] Kant 1983, p. 2.

[34] Rawls 1971, p. 548.

[35] *Ibid*., p. 18.

[36] Rawls 1980, p. 519; my italics.

[37] Rawls 1999c, p. 390.

[38] *Ibid*., p. 394.

[39] *Ibid*., p. 393.

[40] Rawls 1999a, p. 448; my italics.

[41] Rawls 1980, p. 518.

[42] *Ibid*., p. 518.

[43] Rawls 1999a, p. 438.

[44] Rawls 1999c, p. 232, ftn. 15; my italics.

[45] Taylor 2011, p. 251.

[46] Yack 1993, p. 232-34.

[47] Galston 1982, p. 504.

[48] *Ibid*., p. 511.

[49] *Ibid*., p. 516.

[50] Taylor 2011, p. 254.

[51] Galston 1982, p. 512.

[52] *Ibid*., p. 512.

[53] Mill 1978, p. 9.

[54] *Ibid*., p. 10.

[55] Gaus 1981, p. 71, fn 30.

[56] Rawls 1999a, p. 433.

[57] Rawls 2007, p. 278.

[58] *Ibid*., p. 279.

[59] Mill 1957, p. 73.

[60] Rawls 2007, p. 289.

[61] Rawls 2007, p. 301.

[62] Chopra 1994, p. 417.

[63] Rawls 2007, p. 294.

[64] Bentham 1843, p. 269.

[65] Rawls 2007, p. 277; my italics.

[66] John Rawls 1999d, p. 222.

[67] Mill 1957, p 42.

[68] Rawls 1993, p. xxii. Mill 1978, p. 7.

[69] Mill 1978, p. 5.

[70] Rawls 2007, p. 285.

[71] *Ibid*., p. 286-87.

[72] *Ibid*., p. 292.

[73] Mill 1957, p. 41-42.

[74] *Ibid*.,p. 40.

[75] Rawls 1999d, p. 195.

[76] Rawls 2007, p. 297-98. Rawls derives these from *On Liberty*, *Utilitarianism*, and *The Subjection of Women*.

[77] Rawls 1999a, p. 448.

[78] Rapaport 1978, p. xiii.

[79] Taylor 2011, p. 263.

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