

Doing Rawls justice

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The Edge of Social Science

PAUL STARR

*Can a Student Sue the Schools
for Educational Malpractice?*

DAVID ABEL

Why Special Education Isn't Special

CARL D. MILOFSKY

Essay Review



Doing Rawls Justice

WILLIAM R. TORBERT

Book Reviews

CARL F. KAESTLE

MAURICE DEG. FORI

LAURA NADER

Essay Review

Doing Rawls Justice

A THEORY OF JUSTICE.

by John Rawls.

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In *A Theory of Justice* political philosopher John Rawls constructs a complex rationale for a more just and a more equal society. While his effort goes several steps beyond the work of Locke, Rousseau and the utilitarians, Rawls's effort to describe an attainable just society is thwarted by an inability to transcend his own rational perspective. In the first part of this review I describe the elements of his theory. In the second, using a paradigm of just action which both parallels and contrasts with Rawls's ideas, I critique and move beyond Rawls. I stress the limits of rationality and the importance of intuition and action in creating a just society. Only by understanding the interaction of these qualities in everyday life can we really begin to do Rawls justice.

A Discussion of Rawls

Rawls maintains that his theory of justice reflects our own deeper intuitions of what is just. Yet immediate self-interest, narrowly conceived, may prevent an individual from acknowledging and acting upon Rawls's principles of justice. Rawls circumvents this dilemma by introducing a methodology through which we can discover our own hidden intuitions of what is right. This methodology uses the concept of the "original position."

First, he argues: "[J]ustice as fairness is a theory of our moral sentiments as manifested by our considered judgments in reflective equilibrium" (p. 120). Considered judgments are "those judgments in which our moral capacities are most likely to be displayed without distortion" (p. 47). "From the standpoint of moral philosophy, the best accounts of a person's sense of justice is not the one which fits his judgments prior to his examining any conception of justice, but rather the one which matches his judgments in reflective

equilibrium" (pp. 48-49). Rawls names this state of reflective equilibrium the "original position."

The concept of the original position is analogous to the more concrete but dubious notion in Hobbes, Locke and Rousseau of the social contract. Unlike his predecessors, however, Rawls does not regard the original position as historically prior to society. Rather the original position represents the metaphysical and epistemological foundation which our daily re-creation of society presupposes, but which particular individuals may never understand and which their ordinary conceptual categories and behavior may contradict. In his words:

[The] original position is understood as a purely hypothetical situation characterized so as to lead to a certain conception of justice. . . . The principles of justice are chosen behind a veil of ignorance. This assures that no one is advantaged or disadvantaged in the choice of principles by the outcome of natural chance or the contingency of social circumstances. (p. 12)

The veil of ignorance prevents one from "seeing" and thus favoring one's own social position. It is a way of thinking grounded in principle rather than biased by one's accidental or historical attributes. Likewise, the original position can be conceptualized as a social situation structured along certain lines:

We can . . . imagine that the parties are required to communicate with each other through a referee as intermediary, and that he is to announce which alternatives have been suggested and the reasons offered in their support. He forbids the attempt to form coalitions, and he informs the parties when they have come to an understanding. (p. 139) . . . It seems reasonable to suppose that the parties in the original position are equal. That is, all have the same rights in the procedure for choosing principles; each can make proposals, submit reasons for their acceptance, and so on. (p. 19)

Rawls believes the above conditions will lead to fair and rational decisions about principles of justice. In fact, he argues these conditions will lead to the following two principles of justice:

First Principle

Each person is to have an equal right to the most extensive total system of equal basic liberties compatible with a similar system of liberty for all.

Second Principle

Social and economic inequalities are to be arranged so that they are both: (a) to the greatest benefit of the least advantaged . . . and (b) attached to offices and positions open to all under conditions of fair equality of opportunity. (p. 302)

But Rawls says these principles are a formal exposition of a more general conception of justice that can be expressed as follows: "All social values—liberty and opportunity, income and wealth, and the bases of self-respect—are to be distributed equally unless an

unequal distribution of any, or all, of these values is to everyone's advantage" (p. 62).

Rawls believes the values of self-respect, liberty, opportunity, and wealth and income are all "primary goods," i.e., basic things a rational person wants, whatever else he or she may want. Primary goods are central, then, because they are important to the individual's overall good.

An individual's good is determined, in turn, "by what is for him the most rational long-term plan of life given reasonably favorable circumstances. . . . [T]he good is the satisfaction of rational desire" (pp. 92-93). This emphasis on rationality and on a long-term life plan does not mean life should be programmed with no room for surprise. Rather:

A plan will . . . make some provision for even the most distant future and for our death, but it becomes relatively less specific for later periods. Indeed, one principle of rational choice is that of postponement: if in the future we may want to do one of several things but are unsure which, then other things being equal, we are to plan now so that these alternatives are both kept open. (p. 410)

To understand Rawls's ideas about what rational persons want, we must begin with the notion of self-respect. Although Rawls does not initially include self-respect among the primary goods, he mentions it with increasing frequency throughout the book until, toward the end, he claims:

Perhaps the most important primary good is that of self-respect. . . . [Self-respect] includes a person's sense of his own value, his secure conviction that his conception of his good, his plan of life, is worth carrying out. And second, self-respect implies a confidence in one's own ability, so far as it is within one's power, to fulfill intentions. . . . It is clear then why self-respect is a primary good. Without it nothing may seem worth doing, or if some things have value for us, we lack the will to strive for them. (p. 400)

People increase their self-respect by what Rawls calls the Aristotelian Principle, namely that "other things being equal, human beings enjoy the exercise of their realized capacities (their innate or trained abilities), and this enjoyment increases the more the capacity is realized, or the greater its complexity" (p. 426).

This definition of self-respect and the Aristotelian Principle anchor the status of liberty and opportunity as primary goods. The definition of self-respect implies the ability to choose, but to exercise this ability we require liberty. But liberty also remains relatively abstract unless there are specific opportunities to exercise abilities in everyday affairs:

The reasons for requiring open positions are not solely, or even primarily, those of efficiency. . . . If some places were not open on a basis fair to all, those kept out would be right in feeling unjustly treated even though they benefited from the greater effort of those who were allowed to hold them . . . because they were debarred from experiencing the realization of self which comes from a skillful and devoted exercise of social duties. (p. 84)

It is less clear how enhancing self-respect anchors the status of income and wealth as primary goods. Indeed, McBride pointed out that Rousseau took the opposite stance on wealth, regarding "ignorance, innocence, and poverty" as the only goods conducive to happiness.¹ Nevertheless, lack of wealth may prevent one from being able "to fulfill one's intentions" (p. 40) by decreasing one's ability to obtain material goods, services or educational opportunities.

Even if this vision of justice is persuasive in the abstract, Rawls must show that, once established, a polity based on his principles would be reinforced rather than eroded by its people's interests. Were this not the case, it could easily be argued that Rawls's theory of justice is unrealistic because it contradicts human nature. Rawls's belief that such a society can be established and maintained rests on his conception of human nature as it relates to social justice.

Overall, Rawls attempts to derive relatively "strong" principles of social justice from relatively "weak" assumptions about human nature and society. He repeatedly contrasts his approach to that of classical utilitarians, such as Bentham and Mill. Rather, Rawls follows social contract theorists, like Rousseau, Locke and Kant, in emphasizing the natural rights of individuals. Yet he differs from Locke in his concern with the "total system" and his decision rule of "the greatest benefit to the least advantaged." These formulations make it clear that the rights of individuals are subordinate to the two principles of common good.

According to Rawls's argument, persons ultimately commit themselves to the two principles of justice because of self-interest. Since no one has complete sympathy with or knowledge of others' desires, since one's own interests are likely to conflict with those of others, and since all people may at times find themselves disadvantaged in one way or another, an individual's first priority will be to safeguard his or her most fundamental goods against erosion (p. 176). At first glance utilitarianism might seem to make similar and even less controversial assumptions about human nature and society, namely that each person will weigh pleasure against pain and choose whatever pleases him or her most. But Rawls shows that to base social decisions on utilitarian principles, individuals' utilities must be commensurate with one another and thus balanceable. This requires two additional assumptions that Rawls believes implausible: first, that different persons' sense of good be reconcilable within one superordinate system (pp. 167-175); and second, that an impartial, sympathetic decision-maker, possessing all relevant knowledge about everyone, make social decisions (p. 187).

According to Rawls's theory:

An individual who finds that he enjoys seeing others in positions of lesser liberty understands that he has no claim whatever to this enjoyment. . . . The principles of . . . justice put limits on which satisfactions have value; they impose restrictions on what are

¹William McBride, "Social Theory Sub-Specie Aeternitatis: A New Perspective," *Yale Law Journal*, 81 (April 1972), pp. 980-1003.

reasonable conceptions of one's good. . . . A just social system defines the scope within which individuals must develop their aims. (p. 131)

By contrast, in utilitarianism the relatively strong assumptions about the omniscient decision-maker lead to no conclusions whatsoever about social conduct:

In calculating the greatest balance of satisfaction it does not matter, except indirectly, what the desires are for. . . . Thus, if men take a certain pleasure in discriminating against one another . . . then the satisfaction of these desires must be weighed in our deliberations according to their intensity . . . along with others. (pp. 130-31)

Rawls convinces me his approach is more realistic and more useful than the utilitarian approach. At the same time, he clarifies and strengthens the position of the social contract theorists by making explicit the priority of a total system of liberties over narrowly-conceived desires of individuals.

A Paradigm of Just Action

Let us step back from the internal logic of Rawls's theory and ask how it applies to individuals and society. To do this, I will use a paradigm of just action which seems to emerge from Rawls's own concepts. I would probably not have recognized this paradigm were it not consistent with previous thought of my own.² This paradigm holds that just action reflects a continuous journey by the individual back and forth among four discrete but interacting qualities of experience—intuition, rational thought, behavior, and experience of the external world—in search of clarity and congruity among principles, reasons, deeds, and effects.

Rawls's process in preparing his book can exemplify this paradigm of just action. During its twenty-year preparation, Rawls presumably attempted to don the veil of ignorance and look at the world from the intuitive posture he calls the original position. He then rationally elaborated and systematized his intuitions and attempted to express his conclusions in writing hopefully congruent with his original intuitions. Rawls's writings were passed among colleagues and published in various professional journals. His ideas affected the outside world and provoked responses which sometimes influenced him to rewrite or rethink or reintuit what he was trying to say. In this way he journeyed back and forth between intuitions and effects, through thought and behavior.

Rawls's discussion of child rearing provides another example of this paradigm of just action. His line of reasoning generally follows Kohlberg's stages of moral development.³ Rawls writes:

The conditions favoring [the learning of morality of authority] by the child are these.

² William Torbert, *Learning From Experience: Toward Consciousness* (New York: Columbia University Press, 1972).

³ Lawrence Kohlberg and Elliot Turiel, eds., *Recent Research in Moral Development* (New York: Holt, Rinehart and Winston, 1973).

First, the parents must love the child and be worthy objects of his admiration. In this way they arouse in him a sense of his own value and the desire to become the sort of person that they are. Secondly, they must enunciate clear and intelligible (and of course, justifiable) rules adapted to the child's level of comprehension. In addition they should set out the reasons for these injunctions so far as these can be understood, and they must also follow these precepts insofar as they apply to them as well. The parents should exemplify the morality which they enjoin, and make explicit its underlying principles as times goes on. Doing this is required not only to arouse the child's inclination to accept these principles at a later time, but also to convey how they are to be interpreted in particular cases. (pp. 465-466)

The child's morality of authority is temporary. As the child grows older and begins to develop relationships of his or her choice, the quality of moral decision changes:

Someone attaining . . . the morality of association . . . is concerned to win acceptance for his conduct and aims. . . . While the individual understands the principles of justice, his motive for complying with them, for the time at least, springs largely from his ties of friendship and fellow feeling for others, and his concern for the approbation of the wider society. (pp. 472-473)

Gradually, however, the adolescent realizes that his or her most rewarding friendships are guided by principles of justice, which deserve allegiance in their own right.

Once the attitudes of love and trust, and of friendly feelings and mutual confidence have been generated in accordance with the two preceding psychological laws, then the recognition that we and those for whom we care are the beneficiaries of an established and enduring just institution tends to engender in us the corresponding sense of justice. We develop a desire to act on the principles of justice once we realize how social arrangements based on them have promoted our good and that of our friends. In due course we come to appreciate the ideal of just human cooperation. (pp. 473-474)

To raise children who will preserve a just society, parents must formulate rules comprehensible to their children, exemplify the morality they enjoin, and gradually make the underlying principles explicit. If the child is to learn the proper morality of authority, the parents must be capable of effectively communicating their ideas, of behaving consistently with what they think, and of thinking in ways consistent with their ultimate principles. Thus, in a just society, not only political philosophers but also parents must journey back and forth between intuitions and effects, developing as much congruity as possible, for the sake of their children's moral development.

Applying the Paradigm to Rawls's Theory

Even though the paradigm of just action is consistent with parts of his theory, Rawls has not, in general, sufficiently appreciated the existence, much less the interplay, of the four qualities of experience. This failure results in three serious defects in his theory. First,

Rawls minimizes the role of intuition in life and develops an anemic, over-rationalized vision of the original position. Second, he misconceives two terms central to his theory, "liberty" and "opportunity"; and third, he virtually omits the role of action in life and consequently offers no insight about how to achieve a just society.

Of the four qualities of experience—intuition, rational thought, action, and our experience of the institutional social world—Rawls is clearly most comfortable in the realm of reason. For example, he focuses on principles of rational choice in his discussion of life plans (pp. 407-424), and minimizes the role of intuition in developing principles of justice (pp. 34-36).

Intuition need not, however, be conceived as hostile to reason. Reason begins to formulate and discriminate among aspects of experience and devises measures of relative weight only within the scope of one's attention. Intuition can be conceived as the ground of attention, as the source from which one "pays" attention, or as the basic (and usually implicit) axiom framing a given moment or a given life.⁴

Rawls seems to acknowledge the importance of intuition when he speaks of the original position as "an intuitive notion that suggests its own elaboration. . . . A conception that enables us to view our objective from afar" (pp. 21-22). But even when Rawls acknowledges a role for intuition, he does so only briefly and grudgingly (pp. 522, 416), treating intuition as an occasional but regrettable lapse from rationality, rather than as a continuous process along with reason. In his effort to extend the realm of rationality, he neglects the important role intuition must play. For example, he says "rational deliberation is itself an activity like any other and the extent to which one should engage in it is subject to rational decision" (p. 418). This is true only in the trivial case when one knows the costs and benefits of the choice: shall I continue thinking rationally about this article now or shall I break briefly for lunch? The dilemma of how much to reason arises in situations of uncertainty where one does not know how to weigh or even how to name all the options. Continued deliberation may yield something new and vital, it may be a waste of time, or it may result in missing an opportunity which appears only for a moment. One cannot know rationally in advance, for reasoning is itself only one of the options and one has not

⁴ Intuition is a transrational process. How we experience it depends upon our cognitive-emotional-sensory posture of the moment. Hence it is not easy to define. I have referred to intuition as "grounding" or "framing" experience; Martin Heidegger, in his *Discourse on Thinking* (Harper Torch Books, 1966), called it an "enchanted region." Intuition can have personal or collective content, or a mixture of the two. It can be timely, time-bound, or timeless. It can be full of content, as in dreams, or empty of content, as in an aim or a negation. A case of the latter appears in Edith Hamilton and Huntington Cairns, eds., *The Collected Dialogues of Plato* (New York: Pantheon Books, 1961), when Socrates reports: "I am subject to a divine or supernatural experience . . . a sort of voice which comes to me, and when it comes it always dissuades me from what I am proposing to do, and never urges me on." To complicate matters, intuitive movements are difficult to distinguish from cultural or emotional reactions. See Edmund Husserl, *Ideas* (New York: Collier, 1962) and Josef Kockelmans, *Phenomenology: The Philosophy of Edmund Husserl and its Interpretation* (Garden City, N.Y.: Doubleday, 1967) for insight into one philosopher who devoted his career to developing a method for making this distinction.

yet decided whether to pursue it. Thus, whether to reason is fundamentally an intuitive decision.

Rawls's preoccupation with the rational results in a curious vision of hypothetical social conditions which he believes would assure fair decisions in the original position. In Rawls's hypothetical ideal people are purely rational, unaware of their individual attributes, and unrelated except through a referee. In short, he envisions a society without community, an asocial society. We might expect such an ideal from a sincere intellectual who wishes to reason yet lives in an unjust society where communal relationships rarely reinforce one's efforts to think and act rationally. Nevertheless, it is hardly an inspiring social vision. Nor does Rawls's overall description of the original position provide a methodology for coming to appreciate intuitions and for minimizing distortion when translating them into reason.

Liberty and Opportunity

Rawls's conceptions of liberty and opportunity are flawed by his failure to appreciate fully the ambiguity of the notion of primary goods. In our society a "good" usually refers to a material thing rather than to a moral state. Material things are quantifiable and can be distributed according to some external system. By contrast, moral states are internal relationships among the qualities of an individual's experience: one *does* something that has a bad *effect* on someone else; or one *says* something at variance with what one *thinks* or *feels*. Moral goods cannot be physically distributed.

Political goods are ambiguous because they are structures based on moral goods which affect the allocation of material goods. The danger is that this mediation between the moral and the material may be forgotten and political goods may be discussed as if they were capable of being distributed among passive recipients. Such is the plight of economics, which has largely forgotten its emergence from moral philosophy as political economy.

Rawls's primary goods—self-respect, liberty, opportunity, and wealth—each correspond to one of the four qualities of experience: self-respect to intuition of one's own value, liberty to one's potential for free choice of a rational life plan, opportunity to one's chance to act out various roles, and wealth to the possibility of effecting changes in the social world. Rawls treats all of these qualities as quantifiable things ("primary goods are things . . . a rational man . . . would prefer more of rather than less" (p. 92). In the case of wealth, this approach is justifiable; but wealth is the good whose moral primacy is most dubious. On the other hand, this treatment does most violence to self-respect. Rawls's definition of self-respect, quoted earlier, shows his appreciation of its moral nature, at least at the moment of defining it. Translated into the language of the paradigm of just action, self-respect increases with increasing congruence among one's intuitive sense of self, one's rational plan of life, and one's ability to act out that plan. Clearly, it is contradictory to speak of *giving* a person a strong *sense of self*.

Liberty and opportunity are the most political and the most ambiguous of the primary goods, mediating between the moral and the material spheres. Liberty can be given only in the sense of preventing societal obstructions to the fulfillment of rational desires. But liberty is only exercised when an individual actively pursues an intuitively inspired rational plan. Opportunity can be given to an individual in the form of education and jobs, yet at the same time opportunity is a negative good, a kind of vacuum which the individual must make good. In a truly just society, more of these primary goods would continuously be created by human interaction. To conceive of the problem of justice as merely one of rationally "distributing" existing supplies of these goods is to misconceive the nature of self-esteem, liberty and opportunity.

No social structure, no matter how just in the distributive sense, can of itself create or preserve a just society. Indeed, the Constitution, with the Bill of Rights and the 14th Amendment, in no way contradicts Rawls's two principles of justice and may be the fullest formal articulation of social rights ever enacted. Yet few would argue that the United States today is a fully just society. Indeed, social scientists inform us of the prevalence of social and organizational experiences which reinforce low self-esteem despite our system of political rights.⁵ I would argue that injustices derive less from an unjust political structure than from the myth, which Rawls reinforces, that liberty and opportunity are simply goods which can be distributed by a government structure. Without continuing creative actions by individuals to expand their common realm of liberty and opportunity, a just society will not be created.

Action—Educating Ourselves to Realize Ideals

Rawls pays virtually no attention to acting, to praxis, to the movement between the actual and the ideal. Not surprisingly, his theory provides no guide to the social action necessary to create a just society. This omission is particularly strange because Rawls explains how others can share his vision of justice and how a just society can be preserved once it is established. His theory would be stronger if it explained not only how to imagine and how to preserve a just society, but how to create one as well.

The dilemmas of education and childrearing dramatize the difficulty of creating a just society. In a relatively unjust society, education constricts awareness and prevents the integration of intuitions, thoughts, behaviors and effects on others; individuals become increasingly alienated from their own experience. But parents can instill the proper morality of authority in their children only if they can achieve congruity across all four qualities of experience as they raise their children. If they cannot, incongruities will increase and children will experience arbitrary authority as opposed to moral authority.

⁵ Chris Argyris, *Personality and Organization* (New York: Harper & Row, 1957), and *Integrating the Individual and the Organization* (New York: John Wiley, 1964); Richard Sennett and Jonathan Cobb, *The Hidden Injuries of Class* (New York: Alfred A. Knopf, 1972); William Torbert, *Being for the Most Part Puppets: Interaction Among Men's Labor, Leisure, and Politics* (Cambridge: Schenkman, 1972).

Rawls does not indicate how this vicious cycle can be broken. His just society may be self-reinforcing, but unjust societies will also be self-reinforcing.

To develop a just society, people initially mis-educated would have to pass through transitional structures based on proper versions of the moralities of authority and association before they could congruently enact the morality of principle. In this process they would have to be willing to observe, accept, and overcome blocks and incongruities among the four qualities of their experience, which life in a relatively unjust society inevitably generates. This journey, if it is possible at all, is perilous, for witnessing incongruities is unpleasant and disorienting until one develops a taste for it. Moreover, this journey requires making the subtle and unfamiliar distinction between liberating transitional structures and merely manipulative ones.

What could motivate such a journey? Rational self-interest, the ultimate motive in Rawls's just society, cannot motivate individuals to search for incongruities among qualities of experience. When awareness is initially limited to thought and self-awareness to self-concept, then it is not in one's rational self-interest to mortify oneself by willingly observing behavior incongruent with self-concept. Self-observation requires love for an intuitive self beyond our present self-concept. The paradox of this love is that it seems to require one to behave as if one experiences what one does not yet fully experience. But the real demand is to develop a taste for our own intuition and behavior, to live out of our mind as well as in it, to intuit our stature as beings whose awareness could permeate all four qualities of experience and gradually resolve incongruities. Otherwise total immersion in one quality of experience, be it thought, action or the TV set, will seem more pleasurable. To affirm a relationship between two or more qualities as yet not fully known, whether these be different persons or different qualities of experience within oneself, is to love.

Just as love, not rational self-interest, is necessary if we are to observe incongruities, so love, not self-interest, is necessary for transitional structures based on proper versions of the moralities of authority and association. Rawls acknowledges this when he argues that parental love provides the primary motivation for learning the morality of authority.

Rawls treats love as a "second-order notion" peripheral to the operation of his just society, a "supererogatory action" (p. 117) too demanding to require as a duty of citizenship. Yet in the transition from a relatively unjust society to one more just, love is utterly essential. But if the capacity to love increases with self-esteem and if unjust social structures reduce self-esteem, then loving educational action appears to be most necessary just when it is least possible.

Rawls does not help us to envision what intuitive movements, organizational structures, and kinds of behavior loving educational action would require. The dilemma, in short, is that Rawls provides us with no vehicle for *doing* Rawls justice, an omission which casts suspicion on the ideal itself. If an ideal cannot be *realized*, then to dwell upon it is merely to divert oneself from the ongoing interplay among intuitions, thoughts, actions and effects—that is, to become increasingly alienated and ineffectual.

A theory of political philosophy can emerge from examining Rawls's work. It would encourage the realization of a just society by:

(1) respecting and celebrating, in oneself and in others, the intuitive source of ideals and self-esteem;

(2) systematically clarifying an ideal of social justice and a personal life-plan;

(3) determining what institutional patterns and what actual behaviors realize or do not realize the ideal, and thus how far a given society or individual is from the ideal;

(4) educating oneself and others to realize the ideal by observing and lovingly confronting incongruities between actual behavior and ideals.

Few political philosophers provide models for this ideal. Some of the most renowned—St. Augustine, Machiavelli, Hobbes—regarded justice and the common good as unattainable in earthly affairs. Others—Aquinas, Locke, Rousseau, Hegel, Marx—enunciated ideals of justice against which existing social systems might be measured, but neglected the educational tasks implicit in implementing their philosophies. Even Marx, who stressed changing the world rather than merely understanding it and participated in several episodes of political action, provided little guidance for the transitional period to a more just society.

Only the most ancient and the most recent of political philosophers—Socrates and Confucius, Dewey and Mao—have exemplified the ultimate integrity of thought and action by striving to develop disciplines of educational action applicable to their own lives. Of these, only Socrates explicitly respected and celebrated an intuitive source, an inner voice, to which he resorted for clarity of vision and strength in action.

Rawls's theory of justice effectively refutes utilitarian notions and simultaneously strengthens the Lockean emphasis on individual liberties by making explicit the systemic principles to which citizens must obligate themselves if individual liberties are to be preserved. He helps us step beyond the conceptions of justice prevalent today and, more importantly, develops categories and a terminology that permit us to see beyond his conclusions about the nature of a just society, back to an intuitive source and the source of Western political philosophy, with renewed appreciation. This movement awakens feelings of gratitude and vigor, and these feelings in turn can enable us to inaugurate loving educational action—action respectful of the mystery of its origins.

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