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JUSTICE AND MULTI-PARTY POLITICS

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Abstract: JUSTICE AND MULTI-PARTY POLITICS

In the thesis entitled “Justice and Multi-Party Politics” I argue that minor-party candidates in the United States cannot fairly compete in elections with major-party candidates. In an attempt to understand their situation I turn to the theory of justice advanced by John Rawls. But Rawls’s approach runs into difficulties when suggesting ways in which we might improve the situation for minor-party candidates. I therefore suggest that we also utilize the concept of the *public sphere*, as elucidated by Jürgen Habermas, to see our way clear of the difficulties. But Habermas, while providing a better account of the problem, still fails to give a satisfactory proposal for improving the situation. I therefore enlist the theoretical insights of Nancy Fraser and Iris Young, who suggest that the public sphere will operate most fairly when it is actually made up of multiple heterogeneous publics. Political parties are examples of publics, so I consider whether adopting reforms that would encourage a multi-party system would result in a more just political process. Additional parties might help some groups, especially those that have historically lacked political voice, a greater role in government. But additional parties could also serve to fragment social movements or even to allocate additional resources to hate groups. After considering some of the problems that a multi-party American political system might face, I argue that the potential benefits of such a system outweigh the risks if certain reforms are adopted and party building begins at the local level and builds upward.

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Contents

Introduction	2
Rawlsian Theory	4
Money	10
Access	12
Framing Ability	13
Inadequacies of Rawlsian Theory	15
The Public Sphere	20
Heterogeneous Publics	26
Conclusion	33
Bibliography	36

Introduction

The 2000 Presidential Election was disappointing in many ways. Voter turnout was just barely above 50%; allegations of systematic disenfranchisement were rampant. The turmoil surrounding the contested Florida votes provided some drama, but neither George Bush (the eventual winner) nor Al Gore demonstrated a commitment to a fair count of votes.

As a theorist interested in democracy, I watched with mixed feelings as the campaign and election played out. On one hand, I grew pessimistic about the possibilities of improving democracy in the United States with so many apparent problems. On the other, I have hopes that the debacle in Florida and the concern since with modernizing voting equipment may spill over into new concern for revitalizing the U.S. democratic system.

In particular, I wonder if one thing that might improve the prospects for democratic participation and representation might be the emergence of another political party as a major political player. This possibility seems more likely with the surprise showing of Ross Perot in gaining 19% of the popular vote in 1992, though since that year no minor-party candidate for President has had nearly as much success. Public opinion is swinging in the direction of dissatisfaction with the Democrats and Republicans, and a majority of Americans also support the emergence of a new political party.¹

Regardless of the attitudes of American voters, the 2000 Presidential Election was a disappointing one for minor-party candidates. Not only did no minor-party candidate receive the 5% of the vote needed to qualify for Federal funding in the next election, the total amount of

¹ For a review of some of the recent polling data on American attitudes toward the two major parties and the potential emergence of a new party, see Collet, Christian. "Trends: Third Parties and the Two-Party System". *Public Opinion Quarterly*. Volume 60, Issue 3 (Autumn 1996), 431-449.

votes received by *all* minor-party Candidates didn't even total 5%.² Not one minor-party candidate was invited to participate in the Presidential debates, and because no minor-party candidate received 5% or more of the vote, no parties other than the Democratic and Republican parties will receive matching Federal funds in the 2004 election. During the campaign it was common to hear criticism of the Federal Debate Commission for setting the standard of participation for the debates at a 10% rating in the polls. But since the election, the uproar over the exclusion by the Commission has grown significantly quieter. Of course, the decreasing visibility of this issue is not an isolated phenomenon. Election reform proposals, while rampant immediately after Election Day, have become much less common. The recent stalling of the McCain-Feingold campaign finance reform bill in the House of Representatives makes it unlikely that even this, the most publicly known and supported bill, will find its way into law.

One response to these events is simply to say that reforms to the U.S. electoral process aren't needed. True public concern would lead to reform, one might say, and the fact that public agitation is dying down is evidence that people are satisfied with the electoral system in the U.S. and don't feel any need for any changes. The two-party system serves us well, and no doctoring is necessary.

This is a response that I – and many other Americans – find difficult to swallow. But even if a situation appears patently unjust it is not always obvious where justice is lacking, especially when all actions are legal, or procedurally sound. I thought that minor-party candidates were unfairly excluded from participating in the electoral process – most obviously in their exclusion from the debates – but I had a difficult time explaining why, for example, a lack of media coverage for minor-party candidates was a significant *injustice*. “What’s unfair about

² In fact, the total was 3.4% for all minor-party candidates. <http://www.agora.stm.it/elections/unitedstates.htm> See also <http://www.uselectionatlas.org/USPRESIDENT/frametextj.html>

how they are being covered?” people would ask. “If anyone wanted to hear what they had to say, the media would cover them.” Or, “people aren’t interested because none of them has a chance of winning. If I’m going to vote, I want my vote to count toward deciding who wins. I don’t want to just throw it away!”

Some answers to these questions immediately jump to mind. Lack of coverage of a candidate makes it hard to find out anything about a candidate, and whatever one thinks about the level of political knowledge in the American public, it would be ludicrous to expect votes for an unknown candidate. And a candidate’s chance of winning will increase with more news coverage, thereby making people less nervous about a minor-party candidate being only a “spoiler”, rather than a real contender.

It seems that there are barriers to the emergence of an additional politically significant party, but I was left wondering just what the barriers are that prevent additional parties from participating in the political process. What (if anything) is unjust about the exclusion of third-party candidates, and if their exclusion is unjust, how could things be changed to be more equitable?

Rawlsian Theory

An obvious place to turn was to John Rawls’s highly influential work. Since his 1971 book *A Theory of Justice*, Rawls’s work has spawned a rebirth of work in political theory, and his theory in particular has garnered a large following. In *Theory*, as well as in his later work, Rawls is concerned with explicating a conception of justice that assesses the “distributive aspects of the basic structure of society” (8).

For us the primary subject of justice is the basic structure of society, or more exactly, the way in which the major social institutions distribute fundamental

rights and duties and determine the division of advantages from social cooperation. (6)

Note here that for Rawls, a society's institutions define the basic structure of society. An institution, for Rawls, is:

a public system of rules which defines offices and positions with their rights and duties, powers and immunities, and the like. These rules specify certain forms of action as permissible, others as forbidden; and they provide for certain penalties and defenses, and so on, when violations occur. (47-48)

Institutions, then, are many things that we normally think of as institutions: a state government or the federal judicial system. But institutions also include things that we may not normally think of as rule-bound associations, such as market relations, a system of private property, etc. What Rawls is more explicit about in his later work is that the institutions he considers are those of "the basic structure" of a modern constitutional democracy" (JFPM 224). Rawls sees himself as explicating principles that we can use to evaluate systems of government that include the U.S. government, and that is another reason – besides his ubiquitous influence – to turn to his analysis.

In *A Theory of Justice*, Rawls asks us to consider the rules that guide social, political, and economic relations from a perspective called "the original position". The original position defines a hypothetical equal bargaining situation in which citizens come together to arrive at principles of justice (Theory 10). Rawls argues that the principles chosen by these hypothetical self-interested persons would be just ones, since the parties who come together to choose these principles operate behind a "veil of ignorance". Behind this veil, no one knows her own social or economic status, natural abilities and assets, or her own particular conception of the good (Theory 11). Since every person behind the veil wishes to successfully pursue her own good she will prefer a distribution of what Rawls terms primary goods – those things like rights, liberties,

opportunities, and self-respect that have a use whatever a person's plan of life – that makes her more likely to be able to successfully pursue her ends (Theory 54). But from behind the veil she does not know what position in society she will hold, so she has an interest in choosing principles of justice that will be to the benefit of anyone. She might, in reality, be quite literally *anyone*, and so she (and everyone else involved in this thought experiment) has a stake in choosing principles that will result in the best possible situation for every person. She will choose so that she has the greatest likelihood of being able to fully pursue her own conception of the good, and this means that her choice will secure the maximal amount of rights and goods for every person.

Rawls argues that in this hypothetical situation, persons would choose two principles. As laid out in his later article “Justice as Fairness: Political not Metaphysical”, these are:

- 1) Each person has an equal right to a fully adequate scheme of equal basic rights and liberties, which scheme is compatible with a similar scheme for all.
- 2) Social and economic inequalities are to satisfy two conditions: first, they must be attached to offices and positions open to all under conditions of fair equality of opportunity; and second, they must be to the greatest benefit of the least advantaged members of society. (227)

The first principle states that every person has a specific set of rights laid out by the theory of justice. Among these are the right to hold personal property, liberty of conscience and freedom of thought, freedom of speech and assembly, and, most important for our analysis, political liberty: the right to vote and hold public office (Theory 53). Now, the condition of minor-party candidates is interesting on this analysis, because it seems that they (and every citizen of the United States) explicitly possesses these rights. Of course, mistakes happen and people are disqualified to vote when they ought to be permitted, and there are almost certainly cases where larger groups face barriers to their political participation. Allegations of systematic

disenfranchisement of Black voters in some Florida precincts after the recent election are only the most recent example.

But minor-party candidates cannot appeal to the first principle of justice to arbitrate in their case. When a person is disenfranchised unfairly they are unable to exercise one of the basic rights that they share with all other members of their society. This person has a claim on justice. The laws that define the right to vote are supposed to apply equally to all, and in this case they do not – someone whose right should have been preserved has been stripped of it. But minor-party candidates are not unequally treated. There is no obvious infringement, as there is in the case of the person who is disenfranchised. The rules of participation apply to their case just as they do to the major-party candidates. The 5% qualification for federal funding applies equally to all candidates, regardless of party, as does the 10% polling measure for a candidate to get a space in the debates. It is not as if Ralph Nader and Pat Buchanan fulfilled the criteria for receiving federal funds but were then not given these funds because of government corruption or human error. They simply did not meet the requisite polling number, a criterion that both George Bush and Al Gore met. So if we are to find an understanding of their exclusion from the political process we must turn to the second principle.

The second principle states that any office that is tied to a social and/or economic inequality must be open – under fair equality of opportunity – to all. In the case of the Presidency and other political offices, the inequalities that are tied to the office are inequalities in power. Now, since offices allow some people to have more decision-making power, the ability of all people to hold office must not be tied to contingencies of fortune. This is one of the ideas latent in Rawl’s general conception of justice as fairness. For Rawls, the idea of justice is an idea of “society as a fair system of cooperation between free and equal persons” (JFPM 231). Citizens

in a just society are free because their basic rights and liberties are as extensive as possible. They are equal because the vagaries of fortune have minimal impact on their ability to achieve higher social or political standing. Behind the veil of ignorance, citizens are completely equal, for none of them knows any of the characteristics of themselves (economic class, race, gender, level of education, etc.) that would give any of them a bargaining advantage when drawing up principles of justice.

Cooperation, in the original position, is always fair as long as each party accepts the terms of an agreement. Since no party has bargaining power, every agreement that is adopted will be binding, because coercion will be impossible. Now, no one behind the veil of ignorance will accept an agreement that is not to her benefit, so every social agreement will necessarily imply some amount of reciprocity or mutuality. As long as each person does her part in the agreement, all will profit. And to ensure this benefit (since the subject of justice is the basic structure of society), parties will adopt principles that both specify basic rights and duties, and also regulate “the institutions of background justice so that over time the benefits produced by everyone’s efforts are fairly acquired and divided from one generation to the next” (JFPM 232).

No one in the original position would adopt principles that would allow only certain candidates for political office great advantages in their quest for these offices. Since everyone has an interest in not being systematically excluded from office – whether actually holding office is ultimately in their interest or not – principles would not be chosen that would allow some candidates to have such advantages over their competitors. The two principles specify this, and other, requirements that must be met if a system of institutions is to be a just one. As I argued above, the second principle is more immediately relevant to the situation of minor-party

candidates. So we should be able to understand the injustices that minor-party candidates face by applying the second principle to their situation.

This is the project I begin in the next section. But before beginning, I should take a moment to clarify why the second principle is apposite to the situation of minor-party candidates. It might be objected that minor-party candidates are not disadvantaged because they are free to compete for the two major parties' (Democrat and Republican) nominations. Because every person may join either party, one might think that the same argument I used to dismiss the applicability of Rawls' first principle – that minor-party candidates have no claim to justice because standards apply equally in their case and the case of major-party candidates – applies to the second principle as well.

The response to this objection draws on the specific concept of justice Rawls is attempting to work out. As mentioned above, the subject of justice for the Rawlsian framework is the basic structure of a constitutional democratic state. The social and historical changes that led to the development of such a state resulted from the Reformation and the subsequent Wars of Religion, and led to the eventual development of the principle of toleration. Rawls notes that the conception of justice for this state

must allow for a diversity of doctrines and the plurality of conflicting, and indeed incommensurable, conceptions of the good affirmed by the members of existing democratic societies. (JFPM 225)

Not only must a diversity of doctrines be allowed, no particular doctrine may be privileged. Rawls's desire to have offices open under fair conditions of equal opportunity stems from his desire to rule out the inheritance of offices in constitutional democracies. But if holding office were predicated upon a candidate's profession of either a Republican or Democratic political doctrine offices would simply be inherited along political lines instead of bloodlines. This

situation, which I will argue below is the actual situation in the United States today, is therefore unfair according to the second principle.

There are at least three important things that, if distributed more equitably – in accordance with the two principles – would do much to improve the fairness of campaigns for political office. I will argue that these three factors are quite clearly distributed unequally according to the second principle. These three things are often intimately related in practice, and this is certainly true in the United States. But they prove to be analytically distinct, and this fact will help to elucidate why the theoretical framework that Rawls proposes is unable to completely address the current problems.

Money

The first, and perhaps most obvious, of these three factors is money. Minor-party candidates lack the huge campaign coffers that major-party candidates possess. In the 2000 Presidential Election, for example, George Bush's campaign spending totaled \$185,920,855 and Al Gore's was \$120,371,857. Compare these figures with those of Pat Buchanan and Ralph Nader (\$39,162,976 and \$7,771,117, respectively), or even Harry Browne, \$2,156,862.³ Now, it might be argued that the huge sums of money acquired by Bush and Gore were a result of the greater resonance of their messages with voter's concerns. No doubt, this is at least part of the explanation. But what the money enabled them to do was run many more political commercials and make campaign visits in many more areas. This in turn increased the visibility of their campaigns, and made it more likely that people would become captivated by their message and eventually vote for them.

³ Numbers from the Center for Responsive Politics: <http://www.opensecrets.org/2000elect/index/AllCands.htm>

Most minor-party candidates, and indeed most Presidential candidates in general, put little, if any, of their own money into their campaigns. Even if they did, the costs of running a national campaign are prohibitive unless a candidate is very wealthy, or able to raise extremely large sums of money, or both. The Democratic and Republican parties have well-developed mechanisms of soliciting large campaign contributions and many donors (including many large corporations, as well as unions, professional interest groups and the like) that habitually donate large sums of money. Minor-party candidates lack these resources, and are thus far less likely than major-party candidates to raise the necessary funds to mount a successful campaign for national office. This systematic economic disadvantage makes it nearly impossible for a minor-party candidate to possess fair equality of opportunity (as specified by the second principle) when competing in an election with major-party candidates.

For an example of what might occur if a minor-party candidate had much greater monetary resources, we can consider the example of Ross Perot's campaigns. Perot spent a great deal of his own fortune on his campaigns, and this had a direct impact on how available his message was to the general public. Though his campaigns did not result in victory, he polled at a high enough percentage to be invited to participate in the Presidential debates, something no minor-party candidate was allowed to do in the 2000 campaign. The case of Perot shows that greater monetary resources almost inevitably lead to greater access, the second thing that minor-party candidates lack.

Access

Access refers to the ability of candidates to disseminate their views to the general public and to appear to be members of political arenas. It should be clear from the above discussion

that access is often tied to money, as when candidates with large coffers are able to purchase more TV airtime for their campaign messages than those without. But not all aspects of access to the political arena are reducible to the amount of money a candidate has to spend. Consider debate access. The criterion set by the presidential debate commission is that a Presidential candidate must be polling at 10% or higher to be included in the debate. A candidate's financial backing has only an indirect influence on this polling number. And since even a candidate with a huge treasury might have a very unpopular message, or very disorganized campaign, they might still fail to reach the 10% polling number.⁴

Using polling data to decide which candidates are allowed to participate in public debate clearly violates the aim of having offices open under fair equality of opportunity. Clearly, if voters are to fairly judge candidates in this way they must know *at least* the positions of candidates on the issues and how the candidates perform under pressure. Debates can be an excellent source of information about these factors, and only allowing those candidates to participate that have a certain level of support in the polls privileges those candidates that the public already knows quite a bit about, thus excluding by default those who are unknown.

Minor-party candidates also have decreased access and therefore are less able to compete fairly with major-party candidates because they are the subjects of far less news coverage than either Democrats or Republicans. Editorial decisions about how much coverage to give a candidate are at least in part driven by concerns about ratings. With the increasing corporatization of the media, questions about equal access are more likely to be swamped by economic concerns. Economic considerations will generally favor of coverage of the major-party candidates, as they will already have the most name recognition, and viewers will be more

⁴ Note that the relationship between increased spending and larger polling numbers can come apart, as shown by the case of Pat Buchanan and Ralph Nader in the 2000 election. Buchanan spent over five times as much on his campaign, but Nader received four times as many votes.

likely to watch if they think the news they are watching is important relevant to deciding who to vote for. Minor-party candidates are not expected to win, and so coverage of their campaigns will receive lower ratings since voters will generally be less interested.

Framing Ability

Finally, candidates lack what I will call framing ability: the means to disseminate observations and opinions and to have these messages seriously considered by the citizenry at large. I won't develop an extensive analysis here of what it might mean for a candidate's views to be adequately considered, but I do want to note that access to the political arena (in the form of media access, for example) does not guarantee that candidates will actually be heard by, and have their opinions considered by, the public. Consider what issues were salient in the media coverage of the 2000 presidential campaign. The appropriate amount of military spending, how to save Social Security, and the budget plans of both Gore and Bush were widely discussed and debated. These were issues that were at the heart of both the Democratic and Republican platforms. Little was said about the most important issue for minor-party candidates: the influence of money in campaigns and politics in general.

At least part of the reason the debates played out in this way was the positioning of the candidates. In contemporary campaigns every possible aspect of the candidates' public appearances are carefully controlled. This allows public "debate" to go exactly according to plan. When candidates are asked only scripted questions there are no chances for surprises.⁵

Minor-party candidates cannot afford to be so particular about their media appearances. Since

⁵ My younger brother Phil had personal experience with this when George Bush came to his high school for broadcast one evening during the Republican National Convention. Phil was led to believe that students would get a chance to ask Bush questions on national television. On the night of the broadcast he and the rest of the students in his AP government class sat in the back of a classroom and provided a backdrop for Bush to make a short speech. They were not allowed to interact with the candidate until the cameras were turned off.

they already suffer from decreased media attention they have to grab whatever opportunities they can get and they therefore have decreased control over what hard questions they may get asked.

Another significant reason that major-party candidates have an unfair advantage when it comes to framing ability is that the two major parties are historically positioned to specify much of the debate. For example, the issue of the role of government in people's lives is often framed in terms of "more government – less government" with the Democrats seen as the adherents of the "big government" approach and the Republicans the champions of "small government". The presence of this way of framing certain discussions often means that the implications of specific policy decision are not considered. The issue becomes polarized around party allegiance, not the potential good or ill of the policy decision.

Minor-party candidates lack a party identification that gives voters an "automatic" understanding of their stance on the issues. Of course, this is not to claim that party identification provides an infallible means of knowing a candidate's stance on an issue. It does not. But it provides a general rubric voters use to organize information. Since the positions of third parties are less frequently known, the positions of minor-party candidates are less likely to be considered when evaluating what should be the approach to an issue.

Finally, it is important to note that money and access do not always guarantee the ability to frame issues to one's advantage. Consider again the case of Ross Perot. Perot had plenty of money to guarantee him access, but was unable to translate his media access into gaining political office. This was due, at least in part, to the failure of the general public to take him seriously as a viable candidate. And part of the reason that he (and other minor-party candidates) had this problem is that they are not members of the two major parties. "Republican" and

“Democrat” are brands that people use to help them fit candidates into categories when thinking about political decisions, and any “off-brand” candidate has a disadvantage from the start.

Inadequacies of Rawlsian Theory

Now that I have briefly explicated these three areas where minor-party candidates are lacking in relation to major-party candidates, I want to turn to a consideration of whether the Rawlsian framework can provide an adequate analysis of these factors. Rawls states in “Justice as Fairness” that

Any offices having special benefits must be won in a fair competition in which contestants are judged on their merits. If some offices were not open, those excluded would normally be justified in feeling unjustly treated, even if they benefited from the greater efforts of those who were allowed to compete for them. (169)

So the question we should keep in mind is, “can the Rawlsian framework provide a satisfactory account of how offices are not open to minor-party candidates?”

The distribution of resources is an area where the usefulness of Rawls’s theory of justice is especially noticeable, and the case of money is no exception. Rawls recognizes that in a society where the means of production are privately owned and there is no government intervention, wealth will tend to accumulate in the hands of a wealthy few. And if persons with greater monetary means are allowed to use their larger pool of resources to influence the topics of public debate they are likely to have a greater say in resolving social issues. Rawls therefore recommends that steps be taken to preserve the equal value of political liberties. Among his suggestions are providing government money to encourage public discussions, and the financing of political parties by tax revenues.⁶

⁶ For Rawls’s support of this proposal, see Theory 198.

Rawls's goal here is to make political life autonomous with regard to public concerns. As noted above, if political participation is contingent on the possession of private resources, those with greater amounts of these goods will be better situated to have their concerns addressed. In order to try and successfully enact this suggestion it would seem that sweeping campaign finance reforms are in order. One approach to such reforms would severely limit or eliminate donations from corporations or other private interest groups and put caps on the amount of money that individuals can donate to campaigns. Candidates would also receive adequate public funding for their campaigns, and it might also be stipulated that only this money may be used in purchasing airtime.

But these suggestions are not entirely satisfactory. There is no guarantee that candidates will not use their own monetary resources to supplement public election money, and there is also no guarantee that private citizens will not use their own resources on behalf of a candidate or group of candidates. Even a total moratorium on private money in campaigns – besides presenting a conflict with the right to free speech – would not eliminate the problem. Ever since “Labor ‘96” – the coordination of many of the Democratic National Committee’s electoral efforts with the political arm of the AFL-CIO in an attempt to regain Democratic control of Congress – coordination between political parties and interest groups has been increasingly common. What political actions like Labor ’96 allow is increased campaigning outside the jurisdiction of the Federal Election Commission. Regulating these activities has proved to be quite complex, because a legal decision must be made about what level of coordination represents direct campaign contribution. Proliferations of “issue-ads” that promote a certain viewpoint on a political issue (and also usually implicitly criticize or favor certain candidates) have also presented a problem. Regulating these ads directly conflicts with free speech

considerations, since these ads are run by groups of private citizens (and so are not constrained by campaign financing laws). Since interest groups run these ads in supposed absence of any cooperation with a candidate's campaign there are no grounds for regulating them (unlike the case of coordinated party and private campaigns). Since there are important reasons to not limit political speech, limitations on monetary spending on campaigns will present a difficulty, as long as having money is an important prerequisite for having the ability to speak.

But even assuming that public financing of campaigns would eliminate concerns about the influence of money in politics, the issues of access and framing ability still loom large, and the Rawlsian framework is not as well equipped to address these considerations. Money is the easiest factor for Rawls to tackle because it is distributed in material terms. Things become more problematic when things like access and framing ability are addressed within the distributive framework.

Recall that Rawls conceptualizes the scope of considerations of justice as laying out the basic structure of political and societal institutions. This structure is specified by rules and procedures that are publicly recognized by everyone as regulations that will guide their conduct (JFPM 232). But as long as material inequality persists rules will never be able to ensure equity in access and framing ability unless free expression is muted. Persons with greater resources will have a greater ability to give voice to their opinions, and so limits must be placed on their speech. But this is not an option in the Rawlsian framework because the right of free expression is one of the rights guaranteed by the first principle, and so cannot be bargained with for shares of another social good (Theory 197).

If a candidate lacks the ability to access the political arena and have policies seriously considered Rawls's recourse is to change the rules of political engagement. But as long as

political engagement happens outside the jurisdiction of the state it is not explicitly subject to the rules of the institutional framework. Rather, the arena in which most political engagement occurs is an area defined by the explicit absence of state intrusion, and so state intervention occurs in only subtle and slippery ways. In the United States, for example, most political engagement happens in the media. The average American voter does not get an opportunity to sit down and talk with Presidential candidates; a voter's views of a candidate are a result of what they see about that candidate in the media. But if some candidates have an advantage in media access or in their ability to advocate for their own agenda the state cannot step in to regulate media coverage without infringing on freedom of the press. To enact principles stating who has access to the political arena or how participants are to engage in this arena would be to actually limit freedom, rather than preserve it. Room should be left in campaigning for free expression and imagination of presentation, and if all candidates were required to present themselves in a certain way for a certain amount of time the right to free expression would be stifled.

One of the virtues of the modern constitutional democracy is its specification of arenas where the state has no institutional control. This allows for at least the potential election of candidates who are sharply critical of the state (thereby preserving the possibility of non-violent ideological change), since in principle these candidates can have their views disseminated to the same degree as pro-establishment candidates. But what Rawls fails to adequately address is that what happens in the areas outside the control of the state also affects what goes on in institutions.⁷ Nancy Fraser presents an argument in her book *Justice Interruptus* that will help to further elucidate the problem with this omission. Fraser notes that one of the solutions advanced by theorists such as Rawls to deal with an unfair distribution of, say, economic goods, is to

⁷ Susan Moller Okin makes a similar point in regard to Rawls's exemption of the family from the scope of justice vs. his emphasis on the family's role in early moral education. See her "Political Liberalism, Justice, and Gender". *Ethics*, 105, Issue I (Oct. 1994), pp 23-43.

suggest income transfers of the kind often associated with public assistance programs: the strategy of the modern welfare state. But, rather than help abolish class differences, this strategy often serves to reinforce them. In practice these strategies do provide needed material assistance, but they also often result in even more antagonistic group differentiations, a result she terms the “practical recognition effect” of welfare-state redistribution (Fraser 25). Fraser’s insight is that when redistribution is pursued to increase the economic share of disadvantaged groups, and the system through which the inequality is produced is not addressed, the practical recognition effect can swamp the potential for change that such strategies initially promised. Not only that, but since redistribution generally presupposes the equal moral worth of all persons, but can actually help to stigmatize groups who are the target of redistributive strategies, distribution can produce a social dynamic that is explicitly at odds with the official theoretical commitment to the equal moral worth of all people. Redistribution can thus recreate or reinforce the social dynamics that made the need for distribution arise in the first place.

A similar observation holds for the situation of minor-party candidates. Any strategy that attempts to increase access and framing ability of minor-party candidates must work indirectly to avoid limiting freedom of speech. Once we acknowledge that at the practical level access and framing ability are tied to monetary resources we might try to enact policies to redistribute political wealth. For example, we could require that major-party candidates give some percentage of their campaign contributions to fund the campaigns of minor-party candidates. But this is likely to result in a backlash against candidates who receive money through these mechanisms. People are unlikely to take seriously a candidate who benefits from money taken from the candidates that the majority of Americans support.

Another possibility would be to try to allow for the full public funding of campaigns. But without further regulation that keeps other money out of the political arena, candidates with ties to corporations, unions, and other social entities with large pecuniary resources will continue to be advantaged. If we were to enact regulations that have the practical effect of restricting the arena of political expression these regulations will serve to limit freedom rather than preserve political liberty. This is because the successful exercise of political liberties is contingent on the possession of the basic liberties that Rawls enumerated, including freedom of expression. This fact, coupled with the above observation that there is no easy distinction to make between public and private political action means that further regulation on the use of some campaign money will have little effect on the status quo. Finally, we should also be wary of new regulations adopted by the current political elite. The interests of Republicans and Democrats do not lie in enacting laws that will encourage the development of new parties, and those currently holding office have reached the offices they have by working with the two-party system. Since people who gained from the current system will be the ones passing regulations, any new laws will be unlikely to disrupt the current arrangement.

The Public Sphere

To navigate the predicament we face here we need to broaden our conceptual repertoire. Fortunately for my analysis, recent social theory has developed an invaluable concept for understanding these very relations: the concept of *the public sphere*, as elucidated by Jürgen Habermas in his essay by the same title, and drawn upon in the work of many contemporary social theorists, including Nancy Fraser and Iris Young. By public sphere, Habermas means the social domain where citizens interact to formulate public opinion. This opinion is enacted

through spoken and/or written words, in newspapers, public forums, public debates, TV news, etc. The role of the written and electronic press in disseminating this opinion is of special importance. The domain of the public sphere is, in principle, open to all citizens, though in practice there are often inequalities. The public sphere is a particularly important arena, because it is where the citizenry informally criticizes and controls state authority, as well as formally controls such authority during elections (Habermas 55).

The concept of the public sphere is a useful tool, for it allows us to keep separate state apparatuses, economic markets, and democratic association in order to understand how the relations in one can influence what occurs in another (Fraser 70). While these arenas are conceptually distinct, in practice, modes of interaction and norms of thought mutually reinforce one another to help those in power create an even more thoroughly controlled system (be it economic, political, etc.). It is for that reason in particular that the public sphere is especially suited to theorizing injustice. Note, for example, how the exclusion of Nader and Buchanan from the Presidential debates denied them important access to the public through the media, and contributed to their being marked as unworthy participants in the election. How can a public – a collection of citizens engaged in opinion formation – become interested in candidates they know little about except their potential role as spoilers? Of course, it was Nader and Buchanan's failure to achieve the mysterious 10% polling figure set by the debate commission that excluded them from the debates in the first place. Their exclusion from the political sphere contributed to their exclusion from the public sphere, and vice versa.

The public sphere is also a useful concept because not only can we examine how candidates are explicitly excluded from it, we can also attempt to understand how the character of the public sphere influences which candidates get to speak and be heard. The media's role in

the formation of public opinion is especially important. Shanto Iyengar and Donald Kinder's 1987 book, *News that Matters*, continues to shape further research into this area. Iyengar and Kinder found that

Television news powerfully influences which problems viewers regard as the nation's most serious. Rising prices, unemployment, energy shortages, arms control – all these (and more) became high priority political issues for the public only if they first become high priority news items for the networks. (4, italics in original)

News stories therefore set the agenda for public discussion and deliberation. But they also influence the citizenry by “priming” people with certain issues. As Iyengar and Kinder note, even if people wanted to take all the information available into account when evaluating a political candidate they cannot do so due to cognitive limitations. They have to consider what “pops” into mind and use whatever bits of political memory are accessible to them. Television news is an insidiously powerful force in the creation of these items.

By priming certain aspects of national life while ignoring others, television news sets the terms by which political judgments are rendered and political choices made. (4, italics in original)

Of course, all this influence the media exerts does not go on independently of voter's predispositions. Voter biases help to filter the information that the media presents. For example, voters generally think that Democrats are better able to deal with issues like unemployment and civil rights, and Republicans better address crime and national defense.⁸ When the public thinks that crime and national defense are the most important issues at hand they will tend to favor Republican candidates.

Minor-party candidates often advance a platform that highlights issues that are either ignored or only nominally considered by the major-party candidates – issues that are only faintly

⁸ Ansolabehere, Stephen; Iyengar, Shanto. “Riding the Wave and Claiming Ownership Over Issues: The Joint Effects of Advertising and News Coverage in Campaigns.” *Public Opinion Quarterly*, Vol. 58, No. 3. (Autumn, 1994), pp. 335-357.

covered by the national media. For example, both Nader and Buchanan were extremely critical of the influence of corporate money in politics and both called for sweeping campaign finance reform. This was an issue largely ignored by Bush and Gore, who concentrated on issues such as whether the budget plan of the other would be able to sustain Social Security. Since Bush and Gore were the major-party candidates they were *the* story for major news outlets. Their policy messages were front and center in the public sphere, and candidates who tried to present an alternative message were lost in the massive coverage of the two major-party candidates. And when minor-party candidates were covered, it was often not with an ear for their specific issues, but rather to speculate on whether they might prove to be a spoiler for one of the major-party candidates. This was especially true for Nader's campaign, which had to continually advance new reasons why a vote for Nader was not a vote taken away from Gore that would help elect Bush. Note how the homogeneous nature of the public sphere operates even in this debate. The major-party candidates are positioned as the only acceptable candidates capable of winning the election, and so, for example, the vote of a liberal person (who, it is assumed, would vote for Gore if Nader wasn't in the race) should go by default to Gore. If it does not, then it is in effect a vote for Bush. Such logic has behind it the assumption that the only reason to vote is to choose between the two major-party candidates for president, and ignores the potential of voting for alternative candidates to send political messages to government officials and to help build political movements. The news outlets continually reinforced this logic; almost every time Nader was fortunate enough to be in the news he was asked how he felt about taking votes away from Gore.

So when voters went to the booths on November 20, they were primed with massive bits of information about the major-party candidates. The info they had, such as it was, about minor-

party candidates largely had to do with how voting for a minor-party candidate might contribute to the loss of the major-party candidate they preferred. And with evidence that the last-minute concerns of television news powerfully shape voters concerns when they go to the polls⁹, is it any wonder that the votes for all minor-party candidates amounted to less than 5% of the national total?

The above observations present an argument that what happens outside of institutions – especially what goes on in the public sphere – exerts a powerful (if indirect) influence on what happens inside institutions. Once we acknowledge that fact, we can begin to consider how the public sphere might operate more justly, and hence contribute to more just institutions. One such attempt has been the liberal-egalitarian model. Recognizing that explicit socio-economic and cultural differences disadvantage some interlocutors when they engage in public discourse, the liberal ideal of the public sphere calls for open access to everyone. To enact this proposal, liberals (such as Habermas) suggest that participants “bracket” their differences from one another, thus allowing them to deliberate as equals. Bracketing differences is supposed to remove the influence of power differences between discussants, ignore differences in status, exclude private interests, and encourage deliberation as peers (Fraser 76).

What Habermas fails to realize is that this mode of discourse can itself be repressive. Even if citizens deliberate as though they are equals, particularities of their situations will still operate in the actual context of their relations. Pretending that differences, such as cultural or economic status, don't exist doesn't make these differences disappear. Asking that participants in public and political life “bracket their differences” amounts to a continued privileging of the dominant culture. Bracketing one's difference means, in practice, that one adopts the “normal”

⁹ See chapter 11 of *News That Matters*.

standard: the experiences and concerns of the dominant groups. The liberal model thus obscures differences relevant to deliberation about public goods, such as different modes of presentation and interaction evident in different social groupings, such as women, Blacks, and Native Americans. Iris Young notes that this model also conceals the way “particular perspectives of dominant groups claim universality, and helps justify hierarchical decision making structures” (Justice 97). This concealing of the control that dominant groups exercise over official public discourse has resulted in a new mode of political domination: instead of explicit repression, political control now operates with this more subtle method (Fraser 76).

The liberal-egalitarian model thus has problems at the practical level. In a socio-economically and culturally stratified society, deliberative processes operate to the advantage of people with economic and/or social power. The character of the public sphere is therefore intimately tied to the reinforcement of inequalities that exist in a given society. For example, the mode of spoken discourse of the dominant culture is that of English with little or no identifiable regional accent. Since this manner of speech is almost overwhelmingly dominant, other ways of speaking are immediately noticeable for their deviation. People who use these forms of discourse are often seen as unintelligent and backward as, for example, in stereotypes of Southerners and Blacks. In many contexts the situation is even worse for those who do not speak and/or write English: to them the common American public sphere is almost totally closed.

The public sphere is also complicit in continued inequality because it serves to fix discourse within the sphere of the current political and economic system, restricting suggestions to modifications of the existing unjust structure. Since dominant groups overwhelmingly control media outlets, and thus most of the significant means of opinion formation and dissemination, policies that would “shake up” the system that privileges these persons receive little discussion.

This is especially true of discourse regarding the political process; consider, for example, recent discussion regarding purchasing new voting machines and implementing new registration methods. These are the suggestions that are the focus of the post-election agitation, not suggestions regarding a deeper restructuring of methods of election. The possibility of wholesale electoral change is therefore concealed. The liberal public sphere thus works not to eliminate injustice, but to perpetuate it by disabling the deliberative processes of non-dominant groups (Fraser 81).

Minor-party candidates are often excluded from the public sphere because the content of their message is different from the “normal” topics of consideration. And because they present a platform noticeably opposed to that of either of the major parties, they are unable to join the major parties (even if they wanted to), and so are unable to reap the financial benefits that go with membership in these organizations. Their lack of monetary resources and oppositional message makes disseminating their message through the corporate media difficult, and they tend to suffer from inadequate media coverage and distortions of their agenda, which in turn makes their message inaudible to most Americans.

Heterogeneous Publics

If the existing public sphere is exclusionary, and the liberal model suggested by Habermas doesn't promise to improve the situation, how might we re-envision the public sphere to allow equal access? It is time to consider Fraser and Young's suggestion for reconceptualizing the public sphere. Both theorists believe we should restructure the public sphere in terms of multiple heterogeneous publics. In their model, these publics consist of members of dominated and oppressed groups and serve a dual purpose. They function as bases of withdrawal and

regrouping: places to interrogate and understand oppressive structures. They also function as arenas where plans are made for politics that shake-up and contest assumptions and modes of discourse of wider publics (Fraser 82). It is here that their emancipatory function is realized. In so far as these publics exist outside the unity politics of the public sphere, they provide a 'safe-space' for deliberation and strategizing. But in so far as they are publics, the members of these publics aspire to have their views disseminated into the larger public sphere. Neither of these prospects would be a possibility in a unified public sphere. Contrary to liberal doctrine, public spheres are not just areas of opinion formation, they are also spaces where social identities are formed and articulated. Multiple publics allow for the construction of identities that oppose the dominant cultural identities. They allow groups to deliberate on their own terms, "simultaneously constructing and expressing one's cultural identity through idiom and style" (Fraser 83).

But while this may be an appropriate strategy for addressing the situation of people who are members of oppressed groups, it is worth considering whether these insights can be applied to the case of minor-party candidates. Minor-party candidates are not historically oppressed in the sense that Young and Fraser speak of, so the question is not, "how can we fight the oppression of minor-party candidates", but rather, "*how can we open up public discourse to a multiplicity of views and modes of expression?*" One possibility that immediately occurs is to consider whether we should consider the creation of a political arena more accepting of other party affiliations to be a step towards creating a heterogeneous public sphere. In other words, does a call for creating a multi-public sphere of discursive interaction call for a multi-party political system?

There is reason to think that it might. In a socially and economically stratified society like our own, encouraging multiple party development might be a good tool to encourage participation and enable historically oppressed people to have more of a voice in policy decision. If candidates with views and ideas in opposition to the platforms of the major parties become more visible citizens who share these views may become energized to increasingly involve themselves in political life. And with voting levels in the United States hovering around 50% for the Presidential election (the election with the greatest turnout), anything that might encourage increased political participation seems like a good suggestion.

Alternative parties could also function as one of the 'safe-spaces' for deliberation and strategizing alluded to above by Young and Fraser. For example, a Black-nationalist party might attract the allegiances and votes of many American Blacks who have felt dissatisfied with the willingness of the major parties to address the injustices they face. Here explicit discussion might take place regarding the suggestion of new anti-racist policies and plans might be made for disseminating these proposals into the larger public sphere. A Feminist party might adopt similar politics and strategies for opposing the subjugation of women, and a party specifically geared toward representing older Americans might advance policies aimed at improving the lot of elderly Americans.

But would this result in fragmenting the already too disconnected movements for social justice in the United States? If a Black party, a Women's party, a Gay and Lesbian party, an Older Americans party, and so on were all created and were agitating for justice for their own constituencies they would risk losing the critical mass of diverse, interested people that has marked the success of social movements in the United States in the 20th century. Further, this degeneration into interest-group pluralism risks reifying a public sphere where those groups

(such as businesses) that possess greater resources and access to the media are already better able to agitate for their own interests.

Another potential problem arises in regard to the creation of a multiple-party political sphere. This is the danger that a proliferation of parties may actually prove to de-politicize life even further than it already is. While candidates are explicitly accountable to the publics that vote them into office, many of the most important decisions affecting people today are made in relative secret in concert with representatives of private interests (Justice 73). As Young points out,

Most active policies enacted by the government in the welfare capitalist society are not laws, however, but regulations established by agency department heads, often without any public discussion. Of course, legislative action is necessary to create many agencies, and their continued existence as well as the extent of their activity is decided by budgetary action in legislatures. Proposals for new agencies and programs, as well as funding proposals, however, are worked out in negotiations between agencies and their private constituencies. (Justice 74)

A similar observation holds for the relations between parties and special interests. Party platforms are worked out in consultation with private interests – usually those that have donated the most money to the party. And party decisions about which candidates run for office, on what issues, are made outside the purview of the public at large, even though these decisions will have great impact on the character of public debate and which candidates are in the final running in campaigns for public office. Even when the candidates for an office are chosen by a primary system it is unusual that non-party affiliates are allowed to vote in primaries, and they are almost never allowed to vote in multiple primaries. This helps to further restrict each voter's potential ability to affect the character of the political sphere.

Most political parties are opaque to public analysis and discussion except at certain carefully chosen moments such as political conventions. Even the Green Party, with its explicit

commitment to social justice and improving the situation of oppressed members of society, only solicits the participation of party members at conventions and platform discussions. This serves to continue to put earlier decisions out of the hands of the general public and constrain what possibilities will be presented in the future. The best space for action then, may not be within parties. As Young notes,

Because in welfare capitalist society the state is largely depoliticized, insurgent movements can best create and nurture autonomous publics in the space of civil society. These movements repoliticize social life, treating many given and unquestioned institutions and practices as alterable, subject to choice. They generate discussions about how these institutions might be best organized and those practices best conducted. (Justice 88)

The evidence thus seems mixed, at best. Additional parties promise to inject additional candidates and opinions into American political life, but might thereby break up social movements into warring factions.

Of course, the manner in which additional parties and candidates enter political life will matter much when it comes to evaluating whether they will benefit democracy. What I want to suggest is that the potential gains outweigh the risks if the introduction of new parties is done carefully. Consider the problem of fragmentation. This was a real problem for those candidates whose ideology in 2000 was left of center. Many voters on the left believed Ralph Nader took votes away from Al Gore, and ultimately cost Gore the Presidency. While the actual demographics of Nader's constituency is a bit in doubt, the only thing that matters for a potential left-leaning political movement is the perception that the Green Party helped cause the Democratic Party's loss. In 2000 voters on the left faced the same dilemma that voters on the right faced in 1992, when Perot's 19% was perceived to cut into George H.W. Bush's vote total.

A relatively simple election reform will put an end to this persistent problem. If elections used an instant run-off voting procedure the potential for division among potential political allies

would be quite a bit lower. In instant run-off voting citizens rank the candidates in order (1,2,3, etc). Then if no first-place candidate has a clear majority a run-off occurs. In the run-off, the candidate with the least first-place votes is eliminated, and the votes for the second choice candidates on her ballots are added to the previous totals of the front-runners. This process continues until a candidate has had enough votes added to her total to claim a majority.¹⁰ This procedure allows citizens to vote for candidates they think may not win without the fear that their vote will contribute to a more favorable candidate losing out to a less favored one.

If instant run-off voting had been the norm in 1992 and 2000, George H.W. Bush and Al Gore would have respectively won, assuming that the second-place votes of Perot supporters would have gone to Bush, and the second-place votes of Nader supporters would have gone to Gore. Thus accusations of creating a rift on the left or right as a result of voting for a minor-party candidate would be eliminated. Voters could choose who they most wanted to vote for rather than thinking they would have to vote strategically to prevent the victory of an unacceptable candidate.

Instant run-off voting will make the emergence of more politically viable parties more likely. But in order to also increase participation and broaden the scope of public discourse I think a particular strategy for multi-party development is necessary. What is the most salient characteristic of the most visible minor-party candidates of the past three elections: Ross Perot and Ralph Nader? Both had “star-power” of one kind or another. Perot is a self-made billionaire who was able to use his money to quickly forge a political image as a reformer, and Nader is a life-long consumer advocate with wide name recognition. But neither candidate had a loyal constituency upon which to draw during their efforts to be elected. This is because neither the

¹⁰ For a simple explanation of instant run-off voting using the Muppets, see <http://www.fairvote.org/irv/muppets/>

Reform nor Green Parties has been building at the local level. Party activists are going about party building at least half-wrong. High-visibility Presidential campaigns must be combined with low-visibility local campaigns for optimal effect.

It is certainly true that well-timed and run Presidential campaigns can significantly increase awareness of the existence of alternative parties. But what happens when the “stars” are no longer willing or able to run? In 2000, with Perot no longer the candidate, the Reform Party’s Pat Buchanan received less than one-half of one percent of the popular vote. A similar decimation of support for the Greens is likely to follow in 2004 if Nader is not on the ballot. The simple reason is that without candidates from these parties consistently on the ballot in the other elections that take place throughout the year the potential for party growth is significantly reduced. And without candidates who build on local success and move to the state and national level, minor parties are not only losing the chance to develop additional “stars”, they miss the chance to begin to claim issues as their own.

As noted previously, Democrats are usually seen as better able to deal with issues like unemployment and civil rights, and Republicans better address crime and national defense. So, for example, when unemployment and civil rights are particularly important to the electorate Democratic candidates will generally perform better. While both the Reform and Green parties have attempted to claim certain issues as their own, their failure to maintain interest in their respective parties by running local candidates during the four years between Presidential elections has prevented them from keeping these issues in the mind of the electorate and strengthening the association of these issues with their parties. If the Green party is to begin to bring environmental issues to the fore and the Reform party to push a platform of government transformation, it is imperative that candidates running on these issues are visible at all levels of

government. Doing so will not only help build constituencies, but will help create a more heterogeneous public sphere as these issues become important to more Americans.

In summary, I am optimistic about the potential of a multi-party system to help politically mobilize Americans and broaden the themes of public and political discussion. But we should not rush head-long into advocating such a system, for some ways of instituting it are sure to be better than others. A multi-party system is just one part of a larger effort to revitalize democracy in the United States, and it must prove its worth in concert with other measures aiming at the same goal. The alternative is to risk harming, rather than serving, democracy.

Conclusion

In this paper I have tried to show that while the current political climate is an unjust one that systematically disadvantages minor-party candidates, the highly influential Rawlsian perspective falls somewhat short in its ability to understand this situation. Rawlsian theory needs to be supplemented by the introduction of a new arena that is also a subject of the considerations of justice. Of course, it may not be completely accurate to say that the addition of the public sphere is supplemental to Rawlsian theory, for once we are outside the bounds of institutions we are considering a major revision of Rawlsian theory altogether.

I want to close by drawing out some implications of the above discussion for future work in political theory concerned with revitalizing democracy. In his work Rawls draws upon the ideals of justice he claims to find latent in the public culture of a particular constitutional democratic state (JFPM 225). But if the ideals from the public culture that Rawls draws upon are problematic the strength and usefulness of the theory that results are likely to be compromised. Because the public culture that allows the existence of unjust social relations is the one from

which Rawls looks for his intuitive ideas regarding justice it comes as no surprise that problems arise when trying to use his theoretical framework to suggest ways to modify these relations.

Also, as Habermas notes, the two-stage character of Rawlsian theory (embodied in the two principles initially chosen in the original position) prioritizes liberal rights over the democratic process. The second principle, which stipulates how offices and positions with inequalities attached to them, only comes into play *after* the first principle (stipulating basic rights) is satisfied. This makes it difficult for citizens to conceive of their constitution and democracy as an on-going process, and their participation in political discourse “does not actually have the significance of a present exercise of political autonomy but merely promotes the nonviolent *preservation of political stability*” (Reconciliation 128).

But Habermas himself is not immune to a similar criticism. His suggestion that public deliberators “bracket” their differences to ensure equal access to the public sphere simply serves to reify power relations that already work to the systematic disadvantage of some groups. Without disrupting the socio-economic forces that make it necessary for citizens to engage in this compartmentalizing of some aspects of their lives little real progress will be made, since the “non-public” matters are often exactly the ones that prevent equal access in the first place. Consider only the most obvious example: money. According to liberal doctrine, monetary means should not be a prerequisite for speech, and so claims that one cannot speak because of insufficient funds tend to fall on unsympathetic ears. This undergirds the logic behind the common observation regarding minor-party candidates: “If anyone wanted to hear what they had to say, the media would cover them.” But as we have seen, the relation also works the other way around. What the media covers influences what people want to hear about.

What is the lesson for democratic theory? Perhaps it is that the barriers to political access and participation are rarely explicit, at least in the 21st Century United States. If we are to make substantive recommendations for improving democracy we must use theoretical perspectives that easily understand these slippery and diaphanous relations. Because Young and Fraser's approaches to justice were developed by looking closely at the experiences of those who have been the subjects of injustice – people who have had first-hand experience with implicit barriers – their approaches are more easily used to interrogate further subtle exclusionary relations. As we look to revitalize democracy in the new century it would be wise to consider utilizing such approaches to frame both the problems and the solutions.

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