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## Durkheimian Thoughts on *In the Shadow of Justice*

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**Abstract:** This paper uses Durkheim’s distinction between cause and function to explore the aims and implications of Forrester’s critique of liberal egalitarianism in *In the Shadow of Justice*. I suggest that there is an interesting tension in Forrester’s argument between the portrayal of Rawlsian justice theory as a vestigial institution—a ‘survival’—left over from 1950s liberalism, and its continuing presence in political theory as a doctrine that has a strong function in policing the bounds of permissible philosophical discourse on politics. I then suggest that liberals are, in their nature, functionalists about politics, and that this may mean that they cannot easily countenance the kind of realism for which Forrester advocates at the end of her book.

**Keywords:** Durkheim, Rawls, Rawlsianism, functionalism, liberalism, differential judgment

Katrina Forrester’s *In the Shadow of Justice* provokes many thoughts, as all outstanding books do. One of the most important, to my mind, concerns the French sociologist Émile Durkheim. Forrester has written a very Durkheimian book. In his *Rules of Sociological Method*, Durkheim famously insisted on a sharp distinction between cause and function. “To demonstrate the utility of a fact”, Durkheim wrote “does not explain its origins, nor how it is what it is”. To cite the “efficient cause” of an institution is not to explain its function or purpose, since it can lose its function yet persist “merely through force of custom”. This is the doctrine of survivals, beloved of the evolutionary anthropologists. Equally, Durkheim continued, the function of an institution can change depending on the circumstances. “The religious dogmas of Christianity have not changed for centuries, but the role they play in our modern societies is no longer the same as in the Middle Ages”. In general, Durkheim concluded, “it is a proposition true in sociology as in biology, that the organ is independent of the function, i.e., while staying the same

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it can serve different ends. Thus the causes which give rise to its existence are independent of the ends it serves". This observation gave rise to one of Durkheim's rules for the explanation of 'social facts', or what we may as well call institutions: "*when one undertakes to explain a social phenomenon the efficient cause which produces it and the function it fulfills must be investigated separately.*" (Durkheim 2013, 78–9, 81, italics added).

John Bordley Rawls is Forrester's social fact. Of course, as a social fact in Durkheim's sense, John Rawls is not merely the living and breathing John Rawls: the kindly, courteous scion of a well-to-do Baltimore family, who most experts agree was the most important Anglophone political philosopher of his generation. John Rawls as a social fact means the ascent of liberal egalitarianism in political philosophy. It means the wider triumph of what Forrester calls "the liberal philosophy of 'public affairs,'" (Forrester 2019, xi) during the 1970s and beyond. Explanations of this social fact have hitherto fallen foul of Durkheim's strictures. Philosophers, when they think about history at all, tend to infer the aims of Rawls's work from its ostensible purpose: namely, to defend the form of constitutional democracy and the welfare state then characteristic of the United States and its NATO allies. Figures as politically different as Samuel Freeman and John Tomasi have hewn to this story, portraying Rawls as something like an updated version of the British New Liberals, to be contrasted with the anti-state classical liberals of the age of Mill and Tocqueville. On the other hand, some recent historical critics of Rawlsianism, most notably Sam Moyn, have suggested that cause is all: Rawls's philosophy, as presented in *A Theory of Justice*, was the product of a relatively brief moment of postwar welfarism, which sought to balance the ideals of sufficiency and equality, but which was soon to be superseded by the revived market ideology of neoliberalism. Created with a particular function in mind, Rawls's philosophy was robbed of its basic purpose almost immediately, as the NIEO was rebuffed, Keynesianism hit the skids, and redistribution was pushed off the political agenda in the wealthy, paranoid states of the global north (Moyn 2018, 39–40).

As a good Durkheimian, Forrester departs from both of these readings. By inferring intentions from effects, she argues, the philosophers who write about Rawls have completely missed the fact that Rawls was no apostle of the welfare state; instead of a 'high' liberal, Rawls came of age as a pluralist, anti-state-leaning liberal whose aims were more in the direction of a general social theory than of becoming a politically engaged heir to John Dewey. When Rawls eventually did move left, it was to the Laborite meliorism of Crossland, which he encountered in the United Kingdom during his time at Oxford in the early 1950s. These were the materials out of which Rawls's liberal theory of social justice was constructed, which led to various tensions and ideological limitations when that theory was

scaled up for the politics of the 1970s and 1980s. Conversely, however, the owl-of-Minerva-taking-wing reading of Rawls as the avatar of a dying postwar welfarism is also, in Forrester's view, misleading, since by assuming an identity of cause and function it wrongly concludes that, stripped of purpose at the moment of its birth, Rawlsianism failed. But this misses the paradox, which stands at the core of Forrester's book, that, as Durkheim had insisted, institutions can persist despite losing the function or purpose that propelled them into being. If Moyn is right, *A Theory of Justice* should have fallen stillborn from the presses. But we know it did not. The paradox here, which Forrester brings out so well, is that Rawls's liberal egalitarianism truly was made for a different world, the political world of the 1950s, and yet, despite that, it became, among political and moral philosophers, a paradigm for how to think about the roiling political battles of the 1960s and 1970s, and even lived on to contend with political radicalisms of the left and right during up to the 1990s. Here we glimpse the classical Durkheimian insight: the organ is independent of the function. An institution design for one world may persist and even thrive in the very different circumstances of the next. How Rawls's liberal egalitarianism did so is the subject of Forrester's book.

Such, at any rate, is how I have come to think about Forrester's aims. In the remainder of my comment, I'd like to press these thoughts about cause and function a little further. Durkheim gives us two options for how to think about the relations between these two ideas. Some institutions, he says, are simply survivals, the sociological equivalents of vestigial organs in the human body such as the appendix. But other institutions acquire new functions in new contexts. So what is Rawls's liberal egalitarianism? A survival or a function? I cannot help but think of the title of Forrester's book: in the *shadow* of justice. Forrester refers to her study as "a ghost story, in which Rawls's theory lived on as a spectral presence long after the conditions it described are gone" (Forrester 2019, xi). This language of shadowings and hauntings suggests the doctrine of survivals: an institution that outlived its time now constraining us in the present. But in the rest of the book, Forrester seems to be telling us that Rawls's justice theory was an organ that was repurposed and became efficacious in all *sorts* of ways by those who read it. The functionalism in which *A Theory of Justice* was involved was perhaps more Malinowskian than Durkheimian in that, because it was so capacious and multi-sided as a text, it served a multitude of functions at the same time.<sup>1</sup> It was a balm to liberal intellectuals exhausted by the 1960s; it effected a shift from questions of interpersonal morality to institutional morality and the ethics of distribution; and so on. On this reading, what makes Rawls's theory constraining what that it was

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<sup>1</sup> On the looseness of Malinowski's functionalism, for which he himself was unapologetic, see Stocking (1995, 364–66).

able to absorb almost *any* argument for equality and justice and thereby exclude or marginalize alternative political views. Justice is not so much a shadow as a blob, making more careful, critical thought virtually impossible.

If there is an equivocation in this idea of the *shadow* of justice, it may be the product of a still deeper conundrum, which lies below the cause/function distinction. There is something ominous about a shadow. Forrester's title implies critique, but the heart of the book is, as I have been suggesting, a very delicately orchestrated Durkheimian narrative in which the independence of cause and function in intellectual history is laid out with great skill. But of course, her story about the repurposing of Rawls's justice theory *does* have a critical edge. Her central critical claim is that liberal egalitarianism has not—yet—descended from the realm of abstraction and ideal theory to grapple with the rough realities of our, more activist age. Forrester laments the “philosophical tendency” to identify “puzzles” in politics by noting anomalies that emerge from *within* a taken-for-granted paradigm. This is what liberal egalitarians have done from within a paradigm that takes cooperation, rationality, and the desire for consensus more or less for granted. “Ideological divisions”, she writes, “thus become puzzles to be solved rather than assumptions to be worked with, which makes it hard to make sense of politically divisive moments—especially when the liberal reframing of individual or group intuitions as representing the values of an entire community may itself be part of the problem” (Forrester 2019, 277). And there, I think, is the rub. Forrester's main worry, as I understand it, is twofold.

First, philosophical liberalism has become so obsessed with operating within a paradigm—with having a full-dress ‘theory’ to call its own—that it has come to mistake the model for the world. Instead of finding in Rawls's liberal egalitarianism one among many fruitful ways of thinking about politics, it has inflated this theory, or some version of it, into a unified theory of politics. The result is that it finds any deviations from theory to be puzzles to be worked through conceptual structures, rather than *situations* demanding political judgment. Second, what, for Forrester, this liberalism is missing—but I take it, could have, if suitably deflated or demythologized—is the capacity for the kinds of *differential* judgments that are the stuff of real politics. Forrester gestures at this point in her remarks about non-ideal theory, which is all about what I am calling differential or relative judgments. These judgments are relative in that they address sociologically relevant distinctions between actually existing groups and values, such as “interest, collective action, control, class, crisis” (277); and they are differential in that they seek, not the best of all possible worlds, but simply a world better than this one. One of the most powerful advocates of non-ideal theory in political philosophy, Amartya Sen, has stressed the importance of these relative

judgments of better or worse, collective decisions on which are for him what the theory of social choice is all about (see especially Sen 2009). Forrester's point is more general than this: models rooted in consensus and cooperation must have less purchase in an era that is ever more conscious of concrete economic and social realities, from inequality and climate change to dynamic and critical new accounts of race and gender. Forrester agrees that liberal egalitarians have tackled at least some of these issues, and indeed may do so in new ways in the future, but she insists that in order to have real purchase is must no longer seek always to work these issues through the degenerate quasi-mathematics of ideal theory.

I end with a thought about the matter of differential judgment and liberalism. I think Forrester is right that liberal egalitarianism has struggled with the problem of political judgment. But I am less confident than her that liberalism ever *could* or indeed *should* don the mantle of differential judgment. My view is that, for better or worse, liberals are—to return, for the final time, to Durkheim—functionalists. To explain what I mean, I want to turn to a book by Eric Nelson, *The Theology of Liberalism* (Nelson 2019).

Nelson argues that liberal-egalitarian ideas of distributive justice unwittingly trespass onto deep theological and metaphysical terrain. How so? Egalitarians, Nelson observes, have recognized that strict equality of resources or opportunities is unattractive as a principle of distributive justice, since this allows for the possibility of equal destitution; more positively, egalitarians accept that *some* inequalities may generate better outcomes for everyone, including the least advantaged. So egalitarians allow for differences in the distribution of resources *so long as they operate to the maximum benefit of the least well off*. At the core of this kind of thinking is the so-called Pareto principle, according to which a distribution of goods is optimal if no one can be made better off without someone else being made worse off. Although a weak criterion on its own, it implies the powerful corollary that, where a society is *not* already at the Pareto frontier, moves toward it are either good or indifferent for *everyone*. Rawls's famous difference principle is a version of this kind of Paretian thinking: it says that the only permissible inequalities, from the perspective of justice, are those that are of the greatest benefit to the least well-off members of society. But here is the problem that Nelson has spotted with this kind of thinking: how do we *know* when the least well-off have been 'maximally benefitted' by an unequal distribution? To recommend, as a matter of justice, a different distribution to the present one is to imply that there can be *no* justification of present circumstances as the best of all possible worlds. In other words, to say that we know that the current distribution of advantages is unjust is to say that no justification of that the current world is possible. What this

means—and here Nelson is plumbing the deep religious roots of liberalism—is that theodicy is impossible.

Nelson connects this claim to two broader arguments. First, how on Earth can we *know* that this is not, after all, the best of all possible worlds, especially when our criterion of ‘greatest benefit to the least well off’ depends on an infinite cavalcade of counterfactual assumptions? I cannot here go in to the technicalities of Nelson’s argument, which are quite complex, but his basic point is that, if it is possible to calculate the value to each person of the goods (‘natural endowments and advantages’) to be distributed, then it is at least plausible that highly *unequal* distributions—even more unequal than in our world—can be justified in the name of the ‘greatest benefit to the least well off’; conversely, if we cannot ‘price’ the value of these goods to each person, then we cannot ever *know* that one distribution is better than another, and therefore theodicy—the justification of the apparent injustice of this world—is in fact possible. Nelson’s second argument is simply that liberalism is itself rooted in the *acceptance* of theodicy: specifically, the notorious Pelagian view that God gave humankind freedom over their choices, and that, if they failed the trials that a fallen world would throw at them, then they were *responsible* for their sins, and God was therefore justified in punishing them. We confront an intrinsically unfair world, but it can be justified because it is the stage for the expression of our moral agency. Such was the view of the Pelagian founders of modern liberalism: Milton, Locke, Kant, even Rousseau. For Nelson, liberalism is a theodicy, so that our liberal egalitarianism, with its difference principles and rejection of moral desert, represents a radical and unwarranted revision of the intellectual foundations of liberalism.

In a review of Nelson’s book, Sam Moyn makes a case for the importance of differential judgment even in the face of Nelson’s metaphysical quandaries. “However difficult it might be to show that it is false”, he writes,

the notion that our history of crimes and misfortunes has led to the best imaginable society [i.e. that theodicy is *always* possible] is simply too incredible for us to allow it to get in the way of a zeal for just reform. Nelson surely wouldn’t have required of the abolitionists that they prove to dominant skeptics that a better world without chattel slavery was possible before they resolved to achieve it. Why is the case of fair distribution any different in the alarmingly unequal situation of the present. (Moyn 2019)

Moyn’s observation here is much like Forrester’s in respect of the liberal egalitarians: if we think, like Nelson, of political judgment in terms of puzzles to be worked through the meat grinder of a ‘theory’, we will miss the basic point that the revelation of political inequality (or, in the case of the abolitionists, moral evil) is *not* a cue for a debate about the grounds of justification but a premise for intervention. But this of course is a very specific way of thinking about politics:

it say there is no need for a general ('theoretical') justification for action but, instead, that one must use one's private judgment, and take matters into one's own hands if necessary. It is to say, in other words, that action always pre-empts the search for what Rawls called reflective equilibrium. It suggests that private judgment ought, in matters of politics, to come before the careful choreography of public justification, and perhaps is even the necessary precondition for more justified forms of public reasoning.

For good or ill, liberals, so it seems to me, have always put the matter the other way: before we can expect (if ever) good private judgment in politics we need good institutional structures that will, as a by-product, promote the controlled private use of reason.<sup>2</sup> This is what makes liberals in some sense functionalists rather than champions of the moral priority of political agency. The key feature of the functionalist explanation of institutions is its rejection of intention: when we say of an institution that its *function* is *X*, what we mean is that the institution creates beneficial effects which are unintended by those who participate in it. Those participants also do not recognize that there is a causal relationship between the beneficial effects and the institution in question. This lack of recognition is crucial, because only if agents do not recognize the beneficial effects of what they are doing can those effects reinforce, by way of a feedback loop, the institution in question (Elster 1984, 28–35). Liberals, from Smith to Hayek, have been fascinated with functional institutions of this sort. Markets are of course the paradigm case: participants in markets do not aim at the increase of national wealth and the cultivation of civic values: they are out for themselves. But the latter, self-interested aims, at least according to Smith, produce the former, national opulence, as an unintended by-product. In turn, as the market grows, so too does the division of labour, which creates various mutual dependencies and forms of representation that, at least for figures like Kant or Sieyès, create new, enlightened attitudes among persons, which leads to better private political judgment.

Many liberals, including Rawls I would say, have suggested that the way to get to a better politics is to run one's argument through individual self-interested choice—Rawls's thin theory of rationality, which underpins his account of the original position—and see how a morally attractive politics falls out from that procedure. Perhaps this remark fits also with Nelson's point about the absolute priority in liberalism of the Pelagian notion that human beings can earn their salvation, and so are morally responsible for their actions. If any of this is plausible, then I would suggest that, despite Forrester's admirable exhortation for a course-correction toward differential judgment among liberal egalitarians, this

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<sup>2</sup> On debates about the proper sequencing of private and public reasoning in eighteenth-century debates about the prospects for reform, see Sonenscher (2020).

is not something liberals can do, for that very move is foreign to their view that good institutions must precede—because it may produce as an unintended consequence—good political judgment. In which case, the shadow of justice truly is ominous, and Forrester’s call for a deflation of philosophical liberalism is in fact a call for its abolition.

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