

**JUSTICE AND SOCIETY**

by

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**ABSTRACT**

In real life people disagree on moral principles because they have conflicting interests and that questions of justice arise in precisely these circumstances. If there were perfect coincidence of interest there would be no disputes requiring adjudication and therefore no call to have principles of justice. So, if ever they are placed in a situation where these conflicting interests cannot influence them, they can reach agreement. There is no disputing the fact that it is a hypothetical rather than an historical condition. This is precisely what Rawls does. Rawls' notion of an original position may be interpreted simply as a way of asking what principles of distribution it would be reasonable for men to adopt if they were not biased by special interests arising from their actual positions in society.

**INTRODUCTION:**

The original position with which Rawls begins his discourse, and on which he focusses in developing his major thesis, plays a role analogous to the "state of nature" in earlier social contract theory. We are to imagine a hypothetical choice situation wherein a group of people gather to agree upon a set of principles of justice that will design the basic institutions of their society.

The correct principles, according to Rawls, are the ones that will be chosen under certain conditions bearing specifically on knowledge and on motivation. The conditions on knowledge, to be sure, are to guarantee fairness, these hypothetical choosers are assumed to know general scientific principles and to know that conflicting interests and moderate scarcity obtain but they are shielded by a "veil of ignorance" from a knowledge of their own conception of the good, their own talents, their own social position and the stage of development of their particular society. In short, the parties to the decision do not know the contingencies that would be the source of prejudice and would put them in opposition.

Apart from these conditions on knowledge, Rawls employs certain motivational postulates too. When we say so, we are drawing attention to his insistence on the denial of substantive moral sentiments or principles (for example he mentions and rules out altruism) to the actors in the original position. (Since the situation is dramatic, we use the metaphor "actor"). The hypothetical choosers are construed as mutually disinterested and characterized by no substantive moral sentiments at all. The reason why Rawls adopts the motivational postulates he does is actually very simple, that without them there can be no "moral geometry". Once we allow the actors in the original position to have substantive moral notions, we have to say that in the absence of self-interested biased people would agree on this or that principle, which is not deduction but assertion. So the reason for doing so is methodological. The conditions on motivation are to guarantee, as it is clear now, the fruitfulness of the derivation. If the choosers were characterized as altruistic or as having other specific moral sentiments, the "deduction" of the principles of justice would have considerably less impact for it would be rationally compelling only on antecedently moral men. As it stands, however, if the education is sound, the principles would be compelling on all who met the minimal conditions of prudential rationality.

The conditions of the "original position", as we have seen, can be divided into two kinds: those which concern knowledge and those which concern motivation. The limits on knowledge, summarily stated, are that the actors do not know their social position, their particular talents or bents, or their conception of the good", which includes such things as their particular sources of pleasure, their ambitions and their religion or other beliefs. As a further refinement, to deal with certain problem with "just savings rate", Rawls adds that they do not know what stage of economic development their society has reached. The limitations on knowledge Rawls refer to as a "veil of ignorance"; The motivational postulates are first that the actors :in the original position are rational and secondly that they are not altruistic. More precisely, the second condition means that each of them wishes to further his own "conception of the good" though he does not - under the limitations of knowledge-know what content this conception will have. A man's conception of the good' may include in it the welfare of certain other people for whom he feels affection or special responsibility. But, for the purpose of the original position, it does not Include a substantive sense of justice. That is to say, a man cannot, in the original position, take as his end the idea that everyone's welfare should be :increased as much as possible, or, say, that he would like a certain distribution of goods or utilities for its own sake.

So much so for the ignorance of our hypothetical contractees. Now for the knowledge they are allowed to possess. The parties in the original position have available to them a body of "psychological generalizations" and some elements of social and economic theory. This information enables them to predict (in certain respects) the implications of choosing one principle rather than another. Thus, for example, they will know about the need for providing incentives to get people in the right jobs and get them to work hard at them, and they will be willing to permit inequalities of this kind. But they will also know that racial discrimination can never in real life be optional for a society and will therefore rule it out.

We need assume no great wisdom for our group of contractees. We need only assume that they accept the possibility and necessity of human co-operation, that they are capable of rational choice that they desire certain general goods, that they are capable of at least enough morality to seek universal Principles and be willing to adhere to them once consensus has been achieved. While they are expected to operate as rational egoists, alert to their own interests, they do have a sense of justice and feel that it is a worthwhile goal of social life. We may also add that they are not anarchists; they believe that the power of government may be used to enforce their principles in society as a whole. "Together with the veil of ignorance", writes Rawls, "these conditions define the principles of justice as those which rational persons concerned to advance their interests would consent to as equals when none are known to be advantaged or disadvantaged by social and natural contingencies". One conception of justice is more reasonable than another if such a group would choose its principles over those of the other. It is by such an exercise of thought that justice can be explained and justified. Rawls is therefore committed to the view that when the choice to be made is of the principles for judging the basic institutions and laws of a society the choices made in the original position will coincide with the requirements of justice. But, as Brian Barry points out, why there should be such a coincidence between the choices that would be made in the original position and our intuitive notions of justice as to enable the two to be brought into reflective equilibrium, remains to be explained.

The criterion of potential stability, also sets limits on the range of principles that can be chosen by the parties in the original position. (A society is stable, in the relevant sense here, if there are adequate motives in human nature, supported by appropriate methods of childhood socialization, to enable people to live up to the publicly

recognized standards of justice without requiring a great deal of coercion). They cannot enter into agreements that may have consequences they cannot accept. They will avoid those that they can adhere to only with great difficulty. Therefore they will want the rules to be such that they would not themselves be victimized- even if their places in society were assigned by their worst enemy.

Rawls suggests two principles that are most likely to be chosen by these in the original position. These provide, roughly, that every person must have the largest political liberty compatible with a like liberty for all, and that inequalities in power, wealth, income, and other resources must not exist except in so far as they work to the absolute benefit of the worst off members of society. Many of Rawls' critics disagree that men and women in the original position would inevitably choose these two principles. The principles are conservative, and the critics believe they would be chosen only by men who were conservative by temperament and not by men who were natural gamblers.

Let us see what are these Principles. The first principle of those chosen in the original position is this: "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".

The contractee will choose this Principle because he or she will want to have as much liberty as anyone else. If the basic liberties were unequal he or she would run the risk of being at a disadvantage in the actual society. The basic liberties of citizens are, roughly speaking, political liberty (the right to vote and to be eligible for public office) together with freedom of speech and assembly; liberty of conscience and freedom of thought; freedom of the person along with the right to hold (personal) property; and freedom from arbitrary arrest and seizure as defined by the concept of the rule of law.

The first principle will thus be adopted: each person is to have maximum equal liberty. But further reflection will lead to an acknowledgement that actions engaged in by one person may will restrict the liberty of another. The principle of liberty thus cannot reasonably require the unqualified granting of total liberty to everyone; rather the liberty of each must be constrained by the need to protect the liberty of each. A more refined principle of liberty is thus adopted: 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.

Having thus established that the distribution of liberty is to be equitable, the negotiators will turn to the question of the distribution of other primary goods. If the world were such that each person could have as much as he pleased of each commodity, questions of distribution would not arise. Instead., each person would simply partake as he pleased of whatever commodity he desired. But the world is not like that, and the negotiators know that scarcity-of material goods and social advantages-prevails. In a context of scarcity, some principles governing distribution are an essential part of a conception of justice as a virtue of social institutions. Again, the negotiators will consider a variety of principles. They will reject systems of distribution that discriminate against selected segments of the populace, no matter what the basis for selection. Each will reject a utilitarian principle, since it does not rule out the possibility that an unequal distribution of goods will leave him relatively disadvantaged or exploited in order to maximize the general welfare. The negotiators may consider a principle that mandates a thoroughly equal distribution of goods, so that no person need worry about receiving less of any good, material or otherwise, than any other person. But they will soon come to realise that they stand to benefit by the introduction of certain inequalities in the distribution of advantages. For example, giving a rural physician a car would make him relatively advantaged, but even and perhaps, especially-the least advantaged among the rural populace stand to benefit as a result,

and thus should sanction the inequality. The negotiators will want to allow for such inequalities. But other inequalities, such as tax loopholes favouring the very rich at the expense of others, must be prohibited. If there are to be relatively advantaged positions in society, with the resulting inequalities justified on the ground that even the least advantaged individual is better off in virtue of them, each negotiator will realize that in the real world he may aspire to such positions. But the veil of ignorance will prevent him from selecting principles that will favour his own chances of acquiring them. He must instead provide that such positions be equally open to all, lest he be disadvantaged with respect to them. Thus the second principle of justice emerges:

"Social and economic inequalities are to be arranged so that they are both (a) to the greatest benefit of the least advantaged, consistent with the just savings principle, and (b) attached to offices and positions open to all under the conditions of fair equality of opportunity".

If contractees do not know whether they will have anything more than anyone else, they will want to protect themselves. They will want to leave open the possibility that they will be in a position of advantage (they are lucky), but if there is a possibility of advantage they do not want it to be at their expense (should they be unlucky). They are willing to give up the hope of a greater total at wealth in society in favour of a guarantee that no one's higher wealth is at the expense of the least well off. Fairness requires that the greater shares possessed by A and B tend to increase the lesser shares of Y and Z. In a laissez-faire society, the contractees cannot be sure that they will possess the inheritance, the education, the social class, the religion, the sex, the race and the plain good fortune to succeed in competition with others for wealth, prestige or political power. Even if government should mitigate these factors by programs of heavy inheritance taxes, free education, and anti-discrimination laws, it has still not guaranteed equal opportunity. Some people will be more gifted, have more market-able talents, be more intelligent, have more emotional stability and be more industrious than others. If contractees do not know what their endowments will be in the real world, they may find "equality of opportunity" a mixed blessing. They will favour equality of opportunity only after the advantages that such equality may give rise to have been shown to work to the advantage also of the least advantaged.

Rawls does, in the course of his long book, provide examples of inequalities that are acceptable and inequalities that are not. His central conviction is that society is a collective of various human assets, and, since no one has really merited the assets one has, one cannot rise above others unless one brings them up a bit too. Rawls is reluctant to specify particular rights (beyond the general right to basic equality in the first principle), because these rights change as newer possibilities emerge. Individuals apparently have only two other rights : (i) the right to have more (if this contributes to increments for those below them in the scale), (ii) the right to have as much (unless this would mark a decrease in what they would otherwise have). These are two sides of the same coin.

As the negotiators consider the two principles of justice, they will realise that conflict is possible between them. That is, it possible that a restriction of the liberty of some individuals may constitute an inequality that satisfies the second principle; it may result in an increase of goods that benefits everyone. But Rawls rules out such inequalities, arguing that the negotiators will give the first principle an absolute priority over the second. Thus even an improvement in the welfare of everyone is insufficient justification for illequitable abridgment of liberty. Rather, a person's liberty may be abridged only in so far as that abridgment constitutes an essential part of a system of liberties that maximizes liberty for all.

The argument that Rawls offers to support his claim that rational deliberators in the

original position would give the first principle absolute priority is an especially good example of the subtlety of reasoning that permeates A Theory of Justice. Crucial to the argument is Rawls' conviction that among the primary goods self-respect is central and that a fundamental characteristic of human beings is their desire to express their nature in a free social union with others. He then argues that "the basis for self-esteem in a just society" is "the publicly affirmed distribution of fundamental rights and liberties". If self-esteem is the most valuable of primary goods, and if it is dependent on an equitable distribution of liberties, then no negotiator will risk being in a position that is disadvantaged with respect to liberties, lest he be impeded in pursuit of associations and activities through which to express his nature and thereby to achieve self-esteem.

The first principle is thus an absolute constraint on the formation of social institutions and practices. Within the limits of that constraint, the second principle, called the "difference principle", allows for inequalities, so long as they benefit the least advantaged. There is some reason to believe, Rawls claims, that inequalities that satisfy the difference principle will be of general benefit. He writes: "when the contributions of the more favoured positions spread generally throughout society and are not confined to particular sectors, it seems plausible that if the least advantaged benefit so do others in between". But this condition, called "chain-connectedness", is not essential, since what induces negotiators in the original position to adopt the difference principle is not that it assures that everyone will benefit from allowable inequalities, but that the least advantaged will benefit from them.

Rawls is frequently criticized for insisting that his two principles be satisfied in "serial" order. Is it always just to satisfy the first principle first? In an undeveloped country, should the basic equalities be won and firmly in place before it, turns to the problems of improving production? Where this is possible at all, it could be short-sighted. Rawls would answer by compromising his ordering rule:-

"The supposition is that if the persons in the original position assume that their basic liberties can be effectively exercised, they will not exchange a lesser liberty for an improvement in their economic well-being at least not once a certain level of wealth has been attained. It is only when social conditions do not allow the effective establishment of these rights that one can acknowledge their restriction. The denial of equal, liberty can be accepted only if it is necessary to enhance the quality of civilization so that in due course the equal freedoms can be enjoyed by all. The lexical ordering of the two principles is the long-run tendency of the general conception of justice consistently pursued under reasonably favourable conditions".

These two principles of justice, and the priority principle, constitute the fundamental conception of justice for which Rawls argues. He does not claim that these principles are necessary truths, but that their justification "is a matter of mutual support of many considerations, of everything fitting together into one coherent view". The conditions descriptive of the original position, Rawls claims, constitute a plausible basis for the establishment of a theory of justice, not because they are a priori true, but simply because they are conditions that we do in fact accept, or can be led to accept, by philosophical reflection. The methodology, then, is "to collect together into one conception a number of conditions or principles that we are ready upon due consideration to recognize as reasonable", and the hypothetical deliberations in the original position are "an expository device which sums up the meaning of these conditions and helps up to extract their consequences", (P.21). Once we acknowledge the legitimacy of the description of the initial position as reflecting convictions about justice that we share, the argument becomes an exercise in rational choice: given those conditions, what would it be most reasonable for negotiators to choose as governing principles, publicly acknowledged, under which to live? Thus, for Rawls, the theory of

justice is an application indeed, he calls it a part of the theory of rational choice.

The heavy reliance on the exercise of reason, and on determining the sort of principle one could rationally endorse knowing it would be uniformly applied to all, is strongly reminiscent of the Kantian methodology and the resulting conception of the categorical imperative. For Kant, a categorical imperative is a principle that applies to one in virtue of his nature as a free and rational being-and hence applies equally to all. Critics of Kant have objected that he gives no convincing account of what principle fits that description, and it is this criticism that Rawls takes his theory to circumvent. For the conception of the original position, he claims, provides an argument showing specifically which principles free and equal rational beings would choose. For Kant, it is pure reason that yields moral principles. For Rawls, the principles of justice follow from an argument which incorporates as premises a body of beliefs about human psychology, social interaction, and the facts of moderate scarcity and competing claims. Thus Rawls departs from the pure rationalism of Kant, while at the same time offering an argument that is distinctly Kantian in its basic tone.

Once the principles of justice and priority of liberty are taken as established, the argument next moves to the establishment of a social order within the constraints of these principles. Rawls claims that those constraints will "define a workable political conception", although they will not specify uniquely what the social order should be in detail. They will not, for example, discriminate between social orders within which the means of production or transportation are privately owned and those in which there is public ownership. But they will discriminate between those that are representative, subservient to vested interest, or discriminatory, and those that function in the interest of providing every citizen with the best possible prospects of pursuing his life plan.

The evaluation of alternative social orders parallels the evaluation of conceptions of justice. Once the negotiators arrive at the selected conception of justice, the veil of ignorance is partially lifted, and they enter the second stage of deliberation. Here, they are to frame a constitution specifying the powers of government and the basic rights of citizens. The original position thus gives way to a constitutional convention, to which the negotiators as delegates bring not only their general wisdom, but "the relevant general facts about their society, that is, its natural circumstances and resources, its level of economic advance and political culture, and so on."

It is in this context that a constitution is chosen "that satisfies the principles of justice and is best calculated to lead to just and effective legislation". The constitution, constrained by the conception of justice, will have to protect "liberty of conscience and freedom of thought, liberty of the person, and equal political rights" (P.117). Thus the principle of justice that has most bearing at the constitutional level is the principle of liberty.

Of course Rawls does not suggest that this description has historical accuracy, nor that it is an empirically possible process for future deliberations. Instead, it is the articulation of a point of view with respect to which actual constitutions can be evaluated as being more or less in harmony with the principles of justice.

Once a just constitution is established, the negotiators move to yet another stage: they become legislators. Now constrained not only by the principles of justice, but by the particulars of the adopted constitution as well, they are to judge proposed bills and policies. Once again, the veil of ignorance lifts further, and "the full range of general economic and social facts (P.199), becomes part of the negotiators knowledge. Personal identity and characteristics remain unknown, however, so that no bias is possible in favour of the protection of vested interests. At this stage, it is the difference principle that holds center stage. Legislation is largely concerned with the achievement of long-term social and economic goals, and the difference principle requires that "social and

economic policies be aimed at maximizing the long-term expectations of the least advantaged under conditions of fair equality of opportunity" (P.199). Thus, laws favouring the privileged are excluded as unjust, unless they result in benefits which accrue maximally to the least advantaged.

Given the possibility of chain-connectedness such justified inequalities may well exist, and thus Rawls is no uncompromising egalitarian. He is quite prepared to countenance privilege-not, with the utilitarian, to maximize social good- but only in order to improve the plight of the least advantaged. The justifiability of special considerations, such as oil depletion allowances, or farm subsidies, depends therefore upon empirical facts about whether or not such benefits filter down ultimately to help the neediest. Such questions are often hard to answer, but their appropriateness has been evident in much of our public life.

While Rawls is not an egalitarian in the sense that he wants the available economic and social advantages distributed equally no matter what, he is surely an egalitarian :in his respect for the value and personal autonomy of each individual. Moreover, he is clearly a redistributionist in that he takes the proper function of government to include not merely the maintenance of a social order, but the achievement of distributive justice by placing the highest social value on the needs of the neediest. Since natural abilities and the circumstances of birth are among the advantages the inequitable distribution of which fosters privilege, and since such inequitable distribution is, as a matter of empirical fact, essentially ineliminable, it is a consequence of Rawls' position that the just society will seek to compensate for the resulting privilege by investing its resources, including the abilities of the most talented, in efforts designed to improve the plight of the least fortunate. Such a view is plainly at odds with the rugged individualism of the unconstrained free enterprise economy, and it is equally at odds with the highly controlled communist or socialist state that submerges the individuals autonomy in the quest for greater social welfare. For Rawls', the first obligation of the social order is the achievement of justice, and the legislative consequences of such a view may differ profoundly from those of a utilitarian view of government as an instrument for the maximization of the general happiness.

Rawls claims two kinds of advantages for his theory of justice as fairness as compared with utilitarianism. First, and most importantly, he holds that our sense of justice is more accurately reflected in his two principles than in utilitarianism. Thus, a moral superiority is claimed for the theory. Second, Rawls argues that the social contract theory of justice as fairness among free and equal rational deliberations is a theory that avoids many of the most troublesome problems that utilitarians face in trying to apply their theory to actual choice situations. For example, even knowing that policy A will benefit more people than policy B does not enable the utilitarian to decide in favour of A, since the benefits under B might be so much more productive of happiness that they would outweigh the broader distribution of benefit, under A. The resolution of such problems requires the quantitative comparison of one person pleasures with another's; yet it is unclear that such comparisons are possible to make in an adequate way. For Rawls, however, no such comparisons are needed; it is enough that we be able to identify the least advantaged and predict what will benefit him.

Still, Rawls' theory raises many questions, and it is not without its critics. Objections may be raised primarily at three different levels. First, one can question the adequacy of Rawls' method. Since his arguments seem to rely heavily on the plausibility of the notions of the original position and the veil of ignorance, some critics are challenging the use of these notions, suggesting that the original position is not really intelligible, or that the veil of ignorance would be immobilizing, with the result that the negotiators would be unable to make any decisions at all. Or one might argue

that if the notion of the original position is genuinely a heuristic device, then substantive claims cannot be based on its use. A critic holding such a view would, of course, then focus on the kind of support that Rawls offers, independently of the notion of the original position, for the claims that he illustrates by using this notion.

A second level of objection involves granting, at least for purposes of discussion, the adequacy of Rawls' method in principle. One may then question the correctness of the reasoning that is based on it in Rawls' account. For example, we may accept the view that the description of the original position makes sense and agree further that the negotiators could in fact reach conclusions. But we may then disagree with Rawls about what conclusions they would reach. Rawls claims they would seek always to adopt principles that would protect them against the disadvantages of being society's least advantaged citizens. But some critics of Rawls have already begun to argue that such a view is unrealistic; that the negotiators might will be less cautious, willingly risking some deprivations for a chance to be part of a privileged elite. The original contractees, as we have already stated, are more concerned to fend off disadvantages than to aspire to advantages, to ensure themselves of modest status than to accept the risk of attaining superior status. Is this the stance that rational self-interest would always adopt? Are not there gamblers in our midst? Rawls would perhaps answer that in a matter so grave, intelligent persons would not gamble, and further more, they are not out to make a killing of some kind but to formulate a theory of justice. Still, one wonders whether unanimity (or even consensus) would emerge from the original position.

Even if one accepts the essential conservatism of the negotiators as Rawls describes them, one can still question whether that conservatism would necessarily lead to the specific principles that Rawls espouses. Indeed, even the primacy of the primary goods can be called into question. Might not an ascetic anticipate that an equitable distribution of material goods and power would impose on him more than suits his own life plan? And is it not necessary for the negotiators to contemplate the possibility that when the veil lifts they will discover themselves to be such ascetics, to whom serenity, a sense of oneness with nature, and freedom from entrapment in the affairs of the world constitute the goods of life.

A third level of attack is based on an acceptance both of the intelligibility of Rawls' method and of his claim that the principles in question follow from that method. For such acceptance does not entail an acceptance of the principles themselves. One can grant that the two principles of justice follow, as Rawls claims, from the deliberations in the original position, but challenge his claim that those principles adequately reflect our most deeply held convictions about what is just. For example we may be unwilling to relinquish completely the view that there is some moral worth in striving toward perfection in pursuit of a moral ideal that is independent of any social contract. Or we may be uncomfortable about the absence, in Rawls' account, of sustained consideration of the jurisprudential aspects of justice, such as are reflected in our belief that punishment is appropriate for the guilty, but not the innocent.

Rawls is aware of these objections, among others, I would leave the question whether, in the end, the objections can all be met, open. In any event, Rawls has provided an important theory of the nature of justice, a powerful new instrument for illuminating social problems. The theory is based on the sense of fairness that impartial individuals would bring to the question of competing claims and rights. If the principles that such people would subscribe to are correct, then it is the function of the government to carry them out. In doing so, the government would be preserving a valid set of human rights.