4.6: A Theory of Justice (John Rawls)

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John Rawls, as mentioned in Chapter 2 of this work, is one of the most influential Philosophers of the 20th Century. He brought Political Philosophy back into contemporary debates by focusing on justice, fairness, and egalitarianism by bringing in a bit of ethics to help understand our obligations to others in the political state. Of course, he doesn’t want to infringe on our liberties, so it’s a very delicate balancing act to accomplish this in modern times.

A Theory of Justice

A Theory of Justice is a work of political philosophy and ethics by John Rawls, in which the author attempts to solve the problem of distributive justice (the socially just distribution of goods in a society) by utilising a variant of the familiar device of the social contract. The resultant theory is known as “Justice as Fairness”, from which Rawls derives his two principles of justice. Together, they dictate that society should be structured so that the greatest possible amount of liberty is given to its members, limited only by the notion that the liberty of any one member shall not infringe upon that of any other member. Secondly, inequalities either social or economic are only to be allowed if the worst off will be better off than they might be under an equal distribution. Finally, if there is such a beneficial inequality, this inequality should not make it harder for those without resources to occupy positions of power, for instance public office.

First published in 1971, A Theory of Justice was revised in both 1975 (for the translated editions) and 1999.

Objective

In A Theory of Justice, Rawls argues for a principled reconciliation of liberty and equality that is meant to apply to the
basic structure of a well-ordered society. Central to this effort is an account of the circumstances of justice, inspired by David Hume, and a fair choice situation for parties facing such circumstances, similar to some of Immanuel Kant's views. Principles of justice are sought to guide the conduct of the parties. These parties are recognized to face moderate scarcity, and they are neither naturally altruistic nor purely egoistic. They have ends which they seek to advance, but prefer to advance them through cooperation with others on mutually acceptable terms. Rawls offers a model of a fair choice situation (the original position with its veil of ignorance) within which parties would hypothetically choose mutually acceptable principles of justice. Under such constraints, Rawls believes that parties would find his favoured principles of justice to be especially attractive, winning out over varied alternatives, including utilitarian and right-libertarian accounts.

The “original position”

Rawls belongs to the social contract tradition, although he takes a different view from that of previous thinkers. Specifically, Rawls develops what he claims are principles of justice through the use of an artificial device he calls the Original position in which everyone decides principles of justice from behind a veil of ignorance. This “veil” is one that essentially blinds people to all facts about themselves so they cannot tailor principles to their own advantage:

"...no one knows his place in society, his class position or social status, nor does anyone know his fortune in the distribution of natural assets and abilities, his intelligence, strength, and the like. I shall even assume that the parties do not know their conceptions of the good or their special psychological propensities. The principles of justice are chosen behind a veil of ignorance.”

According to Rawls, ignorance of these details about oneself will lead to principles that are fair to all. If an individual does not know how he will end up in his own conceived society, he is likely not going to privilege any one class of people, but rather develop a scheme of justice that treats all fairly. In particular, Rawls claims that those in the Original Position would all adopt a maximin strategy which would maximise the prospects of the least well-off.

"They are the principles that rational and free persons concerned to further their own interests would accept in an initial position of equality as defining the fundamentals of the terms of their association." (Rawls, p. 11)

Rawls bases his Original Position on a “thin theory of the good” which he says "explains the rationality underlying choice of principles in the Original Position". A full theory of the good follows after we derive principles from the original position. Rawls claims that the parties in the original position would adopt two such principles, which would then govern the assignment of rights and duties and regulate the distribution of social and economic advantages across society. The difference principle permits inequalities in the distribution of goods only if those inequalities benefit the worst-off members of society. Rawls believes that this principle would be a rational choice for the representatives in the original position for the following reason: Each member of society has an equal claim on their society’s goods. Natural attributes should not affect this claim, so the basic right of any individual, before further considerations are taken into account, must be to an equal share in material wealth. What, then, could justify unequal distribution? Rawls argues that inequality is acceptable only if it is to the advantage of those who are worst-off.

The agreement that stems from the original position is both hypothetical and ahistorical. It is hypothetical in the sense that the principles to be derived are what the parties would, under certain legitimating conditions, agree to, not what they have agreed to. Rawls seeks to use an argument that the principles of justice are what would be agreed upon if people were in the hypothetical situation of the original position and that those principles have moral weight as a result of that. It
is ahistorical in the sense that it is not supposed that the agreement has ever been, or indeed could ever have been, derived in the real world outside of carefully limited experimental exercises.

The Two Principles of Justice

In chapter forty-seven, Rawls makes his final clarification on the principles of justice in one paragraph:

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

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

These principles are lexically ordered, and Rawls emphasizes the priority of liberty. The first principle is often called the greatest equal liberty principle. The second, until (b), the difference principle and the final addendum in (b) the equal opportunity principle.

The Greatest Equal Liberty Principle

"First: each person is to have an equal right to the most extensive basic liberty compatible with a similar liberty for others."

Mainly concerned with distribution of rights and liberties, the basic liberties of citizens are the political liberty to vote and run for office, freedom of speech and assembly, liberty of conscience, freedom of personal property and freedom from arbitrary arrest. However, it is a matter of some debate whether freedom of contract can be inferred to be included among these basic liberties:

"liberties not on the list, for example, the right to own certain kinds of property (e.g. means of production) and freedom of contract as understood by the doctrine of laissez-faire are not basic; and so they are not protected by the priority of the first principle."

The Difference Principle

Social and economic inequalities are to be arranged so that (a) they are to be of the greatest benefit to the least-advantaged members of society, consistent with the just savings principle.

Rawls' claim in (a) is that departures from equality of a list of what he calls primary goods—"things which a rational man wants whatever else he wants" [Rawls, 1971, p. 92]—are justified only to the extent that they improve the lot of those who are worst-off under that distribution in comparison with the previous, equal, distribution. His position is at least in some sense egalitarian, with a provision that inequalities are allowed when they benefit the least advantaged. An important consequence of Rawls' view is that inequalities can actually be just, as long as they are to the benefit of the least well off. His argument for this position rests heavily on the claim that morally arbitrary factors (for example, the family one is born into) shouldn't determine one's life chances or opportunities. Rawls is also keying on an intuition that a person does not morally deserve their inborn talents; thus that one is not entitled to all the benefits they could possibly receive from them; hence, at least one of the criteria which could provide an alternative to equality in assessing the
justice of distributions is eliminated.

Further, the just savings principle requires that some sort of material respect is left for future generations, even though Rawls is ambiguous about what should be left for them, it can generally be understood as "a contribution to those coming later" [Rawls, 1971, p. 255].

The Equal Opportunity Principle

(b) offices and positions must be open to everyone under conditions of fair equality of opportunity

The stipulation in (b) is lexically prior to that in (a). This is because equal opportunity requires not merely that offices and positions are distributed on the basis of merit, but that all have reasonable opportunity to acquire the skills on the basis of which merit is assessed, even if one might not have the necessary material resources - due to a beneficial inequality stemming from the difference principle.

It may be thought that this stipulation, and even the first principle of justice, may require greater equality than the difference principle, because large social and economic inequalities, even when they are to the advantage of the worst-off, will tend to seriously undermine the value of the political liberties and any measures towards fair equality of opportunity.

Influence and reception

In 1972, A Theory of Justice was reviewed in The New York Times Book Review by Marshall Cohen, who described the work as "magisterial", and suggested that Rawls' use of the techniques of analytic philosophy made the book the "most formidable" defense of the social contract tradition to date. He credited Rawls with showing that the widespread claim that "systematic moral and political philosophy are dead" is mistaken, and with providing a "bold and rigorous" account of "the principles to which our public life is committed." Though he suggested that it might take years before a satisfactory appraisal of the work could be made, he noted that Rawls' accomplishments had been compared by scholars to those of John Stuart Mill and Immanuel Kant. However, he criticized Rawls for "looseness in his understanding of some fundamental political concepts."

A Theory of Justice received criticism from several philosophers. Robert Nozick criticized Rawls' account of distributive justice in his defense of libertarianism, Anarchy, State, and Utopia (1974). Allan Bloom, writing in American Political Science Review in 1975, noted that A Theory of Justice had "attracted more attention in the Anglo-Saxon world than any work of its kind in a generation", attributing its popularity to its being "the most ambitious political project undertaken by a member of the school currently dominant in academic philosophy" and to Rawls' "radical egalitarian interpretation of liberal democracy." Bloom criticized Rawls for failing to account for the existence of natural right in his theory of justice and wrote that Rawls absolutizes social union as the ultimate goal which would conventionalize everything into artifice. Robert Paul Wolff criticized Rawls from a Marxist perspective in Understanding Rawls: A Critique and Reconstruction of A Theory of Justice (1977), arguing Rawls offers an apology for the status quo insofar as he constructs justice from existing practice and forecloses the possibility that there may be problems of injustice embedded in capitalist social relations, private property or the market economy.

Michael Sandel criticized Rawls in Liberalism and the Limits of Justice (1982), arguing that Rawls encourages people to think about justice while divorced from the values and aspirations that define who they are as persons and that allow
people to determine what justice is. Susan Moller Okin wrote in *Justice, Gender, and the Family* (1989) that Rawls had provided “the most influential of all twentieth-century theories of justice”, but criticized him for failing to account for the injustices and hierarchies embedded in familial relations. Economists Kenneth Arrow and John Harsanyi criticized the assumptions of the original position, and in particular, the use of maximin reasoning, with the implication that Rawls' selection of parameters for the original position was result-oriented, *i.e.*, calculated to derive the two principles that Rawls desired to advance, and/or, as the "contractarian critique" holds, that the persons in the original position articulated by Rawls would not in fact select the principles that *A Theory of Justice* advocates. In reply Rawls emphasized the role of the original position as a "device of representation" for making sense of the idea of a fair choice situation for free and equal citizens, and that the relatively modest role that maximin plays in his argument: it is "a useful heuristic rule of thumb" given the curious features of choice behind the veil of ignorance.

The economist Amartya Sen has raised concerns over Rawls' emphasis on primary social goods, arguing in *Inequality Reexamined* (1992) that we should attend not only to the distribution of primary goods, but also how effectively people are able to use those goods to pursue their ends. Norman Daniels has wondered why health care shouldn't be treated as a primary good, and some of his subsequent work has addressed this question, arguing for a right to health care within a broadly Rawlsian framework. The philosopher Gerald Cohen, in *If You're An Egalitarian, How Come You're So Rich?* (2000) and *Rescuing Justice and Equality* (2008), criticizes Rawls' avowal of inequality under the difference principle, his application of the principle only to social institutions, and what he sees as his obsession with the using primary goods as his currency of equality.

Sen critiques and attempts to revitalize *A Theory of Justice* in *The Idea of Justice* (2009). He credits Rawls for revitalizing the interest in the ideas of what justice means and the stress put on fairness, objectivity, equality of opportunity, removal of poverty, and freedom. However, Sen, as part of his general critique of the contractarian tradition, states that ideas about a perfectly just world do not help redress actual existing inequality. Sen faults Rawls for an over-emphasis on institutions as guarantors of justice not considering the effects of human behaviour on the institutions' ability to maintain a just society. Sen believes Rawls understates the difficulty in getting everyone in society to adhere to the norms of a just society. He also claims that Rawls' position that there be only one possible outcome of the reflective equilibrium behind the veil of ignorance is misguided. Sen believes that multiple conflicting but just principles may arise and that this undermines the multi-step processes that Rawls laid out as leading to a perfectly just society.