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Introduction

John Rawls – An Overview

I. PRELIMINARIES

John Rawls's published works extend over fifty years from the middle of the twentieth century to the present.¹ During this period his writings have come to define a substantial portion of the agenda for Anglo-American political philosophy, and they increasingly influence political philosophy in the rest of the world. His primary work, *A Theory of Justice* (*TJ*), has been translated into twenty-seven languages.² Only ten years after *Theory* was published, a bibliography of articles on Rawls listed more than 2,500 entries.³ This extensive commentary indicates the widespread influence of Rawls's ideas as well as the intellectual controversy his ideas stimulate.

From the outset Rawls's work has been guided by the question, "What is the most appropriate moral conception of justice for a democratic society?" (*TJ*, p. viii/xiii rev.).⁴ In *Theory* he pursued this question as part of a more general inquiry into the nature of social justice and its compatibility with human nature and a person's good. Here Rawls aimed to redress the predominance of utilitarianism in modern moral philosophy. As an alternative to utilitarianism, Rawls, drawing on the social contract tradition, developed a conception of justice "that is highly Kantian in nature" (*TJ*, p. viii/xviii rev.). According to this conception, justice generally requires that basic social goods – liberty and opportunity, income and wealth, and the bases of self-respect – be equally distributed, unless an unequal distribution is to everyone's advantage (*TJ*, p. 62/54 rev.). But under favorable social conditions a special conception, "justice as fairness," applies; it requires giving priority to certain liberties and opportunities via the institutions of a liberal constitutional democracy. Rawls's two

principles of justice require that certain important liberties be provided equally for all, that these “basic” liberties have priority over aggregate social welfare and perfectionist values, that “fair” (not just “formal”) opportunities be provided equally for all citizens, and that differences in income and wealth and in social positions be structured so as to maximally benefit the worst-off members of society.

Theory depicts justice as fairness as a universal moral ideal to be aspired to by all societies. Over two decades after *Theory* Rawls published *Political Liberalism* (*PL*). Here, because of the demands of liberalism itself, Rawls revises the argument for justice as fairness to limit its applicability. No longer does Rawls take issue directly with utilitarianism, perfectionism, or other general moral conceptions. Political liberalism instead addresses the culture of a constitutional democracy. Its guiding question is, What is the most just and feasible arrangement of basic social institutions that realizes the core democratic values of freedom and equality for all citizens?

To appreciate the development of Rawls’s views it is essential to understand that all along he has sought to work out a realistic ideal of justice (a “realistic utopia”⁵). His conception is *ideal* insofar as it is designed for the ideal conditions of a “well-ordered society,” where reasonable persons who are free and equal all accept the same conception of justice. Rawls’s account of justice is *realistic* since it is designed to apply neither to moral saints or perfect altruists on the one hand, nor to natural sinners or rational egoists on the other, but to what humans at their best are capable of, given their nature, under normal conditions of social life.⁶ To situate Rawls’s realistic ideal in terms of the predecessors that most influenced him: Akin to Kant, Rawls seeks to discover the fundamental moral principles that regulate reasoning and judgments about justice. These principles he presumes to be deeply implicit in ordinary moral awareness and are evidenced by our most considered moral judgments. But Rawls rejects Kant’s dualisms;⁷ he does not suppose principles of justice are a priori or based in “pure practical reason” alone. Human nature and the fixed empirical conditions within which practical reason is normally exercised are relevant to discovering and justifying principles of justice. Rawls here moves some way toward the more “sentimental” and “naturalistic” accounts suggested by Rousseau and Hume. He conditions the justification of principles of justice on certain psychological tendencies of human nature and our capacities

for sociability.⁸ This explains Rawls's emphasis on the "stability" or feasibility of a moral conception of justice. A conception of justice is stable when its realization would foster in people a steadfast will to do justice and a disposition to uphold just institutions (as that conception defines them). It is because of his concern for the stability of justice as fairness that Rawls is led eventually to make the modifications that lead to political liberalism.

In what follows I discuss some of the main features of justice as fairness, as presented both in *Theory* (Section II) and in *Political Liberalism* (Section III). In Section IV, I briefly discuss Rawls's recent account of international justice in *The Law of Peoples*. I aspire not to a comprehensive overview but to emphasize certain crucial ideas to aid the reader in understanding Rawls and the contributions to this volume.

II. A THEORY OF JUSTICE: JUSTICE AS FAIRNESS

A. *The Principles of Justice*

Rawls describes *Theory* as an attempt "to generalize and carry to a higher order of abstraction the traditional theory of the social contract as represented by Locke, Rousseau, and Kant" (*TJ*, p. viii/xviii rev.). This tradition's main idea is that the political constitution and the laws are just when they *could* be agreed to by free rational persons from a position of equal right and equal political jurisdiction. Rawls applies the idea of a hypothetical social agreement to argue for principles of justice. These principles apply in the first instance to decide the justice of the institutions that constitute *the basic structure of society*. Individuals and their actions are just insofar as they conform to the demands of just institutions. The basic structure is the interconnected system of rules and practices that define the political constitution, legal procedures and the system of trials, the institution of property, the laws and conventions which regulate markets and economic production and exchange, and the institution of the family (which is primarily responsible for the reproduction of society and the care and education of its new members). These institutions can be individually organized and jointly combined in several different ways. How they are specified and integrated into a social system deeply affects people's characters, desires and plans,

and their future prospects, as well as the kinds of persons they aspire to be. Because of the profound effects of these institutions on the kinds of persons we are, Rawls says the basic structure of society is “the primary subject of justice” (*TJ*, p. 7/6 rev.).

The significance of the basic structure comes out especially in Rawls’s treatment of economic rights of property and freedom of contract. Rawls takes a “holistic” approach to these rights and to distributive justice more generally.⁹ This means that we cannot decide what economic rights and duties people have without first determining the effects of various systems of economic rights and practices on others – particularly on others’ capacities to exercise their basic rights and liberties. Rawls’s principle of distributive justice is then closely aligned with his principle of equal basic liberties (as explained at the end of this Section A). We will begin then with the first principle of justice.

Rawls’s first principle, the principle of equal basic liberties, parallels J.S. Mill’s principle of liberty in that it is conceived as defining constitutional limits on democratic government. Rawls sees certain liberties as “basic.” These include liberty of conscience and freedom of thought, freedom of association, and the rights and liberties that define the freedom and integrity of the person (including freedom of movement, occupation, and choice of careers, and a right to personal property); also included for Rawls are equal political rights of participation and the rights and liberties that maintain the rule of law.¹⁰ To call these liberties “basic” means (in part) that they are more important than others. Most people would readily admit that it is far more important that people be free to speak their minds, practice their faiths or lack thereof, choose their careers, and marry, befriend, or associate with people they choose than that they be free to harass others, drive recklessly and as fast as they please, or walk the streets naked and relieve themselves in public view. Few would call laws restricting these latter actions restrictions on a person’s freedom at all. Most any purported liberal would agree with these restrictions and with the greater significance of Rawls’s basic liberties. But what makes Rawls’s list of basic liberties more important than other normally permissible liberties many people argue for, such as freedom to enter contracts of all kinds, to own weapons, or to accumulate, use, and dispose of productive resources as one pleases?

Rawls calls the liberties of the first principle “basic” since they are morally more significant to the freedom of democratic citizens than are the “nonbasic” liberties just mentioned. This means, first, that the basic liberties are necessary for pursuing a wide range of conceptions of the good. Second, the basic liberties are essential to the exercise and development of the two *moral powers* that define the conception of the person implicit in Rawls’s constructivist view.¹¹ The two moral powers are the capacity for a sense of justice (to understand, apply, and act on and for the sake of principles of justice) and the capacity for a conception of the good (to form, revise, and rationally pursue a rational plan of life). In *Theory* Rawls sees the moral powers in Kantian terms; as the powers of practical reasoning in matters of justice, they are the essential capacities for moral and rational agency. By virtue of these capacities we see ourselves and each other as free and responsible agents. As such the moral powers are the grounds for *full autonomy*. Subsequently, in *Political Liberalism*, the moral powers are characterized in less ambitious terms; they are the capacities that anyone needs if he or she is to occupy the role of citizen and engage in, benefit from, and comply with the demands of social cooperation in a democratic society.

Because of their role in defining the conception of moral persons that underlies Rawls’s view, justice as fairness assigns the basic liberties strict priority over other social goods. This means basic liberties can be limited only for the sake of maintaining other basic liberties. They cannot be compromised to promote greater aggregate happiness in society, to increase national wealth, or to promote perfectionist values of culture. The basic liberties cannot be limited even for the sake of better realizing the purposes of Rawls’s difference principle. That the worst off may be willing to give up some of their basic liberties (such as their right to vote) in exchange for added income supplements is of no political consequence. For the first priority of justice for Rawls is to maintain equal freedom and respect for persons in their capacity as democratic citizens. This indicates the way justice as fairness is grounded in an ideal of persons as free and equal citizens who exercise their capacities for justice and rationality (the two moral powers) as they jointly govern public matters and freely pursue their conceptions of a good life.¹² The political liberties, besides being necessary to a person’s sense of self-respect, are also essential to the full development of the capacity for a sense of justice

that partly defines this ideal of citizens. It is because the basic liberties are essential to the exercise of the moral powers that they are *inalienable*: there is no right to give up or trade away the liberties needed to define a citizen's status as a free and equal person. This is one of several ways justice as fairness differs from libertarianism. The unrestricted freedoms of contract and transfer that are defining features of libertarianism are not basic or even protected liberties according to Rawls's liberal view.

Now let us turn to Rawls's second principle and particularly the question of distributive justice. For Rawls economic rights of property and contract are institutional but not conventional. To say property is an *institution* means in part that it consists in a system of social (mainly legal) rules and practices that specify exclusive rights and duties with regard to the use and control of things. To say property is *conventional* means that the institutional rights of property people have are specified exclusively by existing legal rules and institutions and that these rules are valid only so long as they are effective and enforced. In the conventional view then, people have no claim to property independent of existing legal rules and institutional arrangements. Justice in distribution is simply enforcing current property conventions, thereby giving each person his or her due. Hobbes and Hume held such a view. Rawls does not.

Natural rights theory was designed to combat the conventional view. The idea of a state of nature emphasizes that certain rights are not conventional but are moral and apply to persons whatever their social circumstances. So Locke contends that governments have no authority to prohibit freedom of religious association, for this is an inalienable right people have independent of political society. Similarly, if the Crown confiscates people's property, an injustice has been done since they have arbitrarily been denied their livelihood and means of independence. Now Rawls says that because of the first principle, "justice as fairness has the characteristic marks of a natural rights theory" (*TJ*, p. 506n/443n). But he denies the account of "natural" or presocial property argued for by libertarians and Lockians.

The idea of natural, presocial property effectively deals with the problem of oppressive confiscations by governments. But the idea of natural property is inadequate when used to address questions of the kinds of property rights and distributions that ought to exist in

modern industrialized and democratic societies. In the isolated state of nature, where natural property claims hypothetically originate, people need not be so concerned with the effects on others of possessing and exercising their rights, for few are around to be adversely affected. When this conception of presocial property is applied to social conditions, it implies that people may accumulate, use, transfer, and exchange their possessions as if they were in an isolated state of nature, and no matter what the effects or how badly off others might be made as a result of a system of institutionalized natural property.¹³ Surely there must be some other way to argue that people can be morally entitled to their possessions without relying on a presocial state of nature.

Rawls, like natural property advocates, distinguishes between conventional property and the property rights people ought to have. But Rawls does not derive the property rights people ought to have from a preinstitutional state of nature. He refers instead to an ideal of social cooperation where institutions are designed to benefit everyone on a basis of *reciprocity*. They benefit everyone, not in the weak sense that all are made better off than in an apolitical state of nature, but in the strong sense that all are made better off than they would be in a state of equality and where no one benefits at the expense of the poorest. The role of Rawls's difference principle is to define this ideal of reciprocity.¹⁴ The institution of property is justly ordered when it is part of a social and economic system that specifies property relations so as to make the worst-off class better off than they could be under the institutions of any feasible alternative economic system (subject to the conditions that equal basic liberties and fair equality of opportunities are always maintained). It is the responsibility of political institutions to structure economic and property relations so that, over a lifetime, the economic prospects of the worst-off class (which might be defined as the average wage of unskilled workers, or in some other way) are as favorable as they can be.¹⁵

Here it should be emphasized that "worst off" is defined in terms of certain resources that Rawls calls "primary social goods" with special focus on income and wealth. From the standpoint of justice the worst off are the poorest among us. They are not necessarily the unhappiest (as in welfarist views) or the most disabled physically or mentally (as in Sen's capability approach).¹⁶ Rawls's reasons

for eschewing happiness or welfare as a basis for interpersonal comparisons is connected with his (Kantian) emphasis on freedom and responsibility. Agency requires that people see themselves as acting freely and as responsible for their ends. Because of our capacities to reflect critically on our desires and rationally structure our ends into a coherent plan of life, we normally do not see ourselves as saddled with desires and ends we can do nothing about. To encourage this self-conception and the development and exercise of these capacities for rational (and moral) agency, Rawls contends that a conception of justice should not simply take as given whatever desires people happen to have and distribute welfare as if people's ends were imposed on them. Instead, people should be held responsible for their ends and expected to adjust their desires to the fair share of resources they can legitimately expect. What individuals may fairly and legitimately expect is specified by the difference principle, which is itself geared towards providing resources adequate for realizing everyone's capacities for free and responsible agency.

It is because of his (Kantian) conception of agency that Rawls treats severe mental and physical handicaps as a special case. He abstracts from such handicaps in the initial argument for principles of justice, leaving special principles to be worked out for them to the legislative stage of his "four-stage sequence" (*Restatement*, pp. 171–76). This does not mean that such problems are unimportant or that the disabled are not due special consideration because of their handicaps. But it does imply that for Rawls justice is not primarily about redressing inequalities imposed by nature or misfortune. Rather justice is primarily about providing each person with resources that are sufficient to their realizing their "moral powers" of free, responsible, and rational agency. As a result, Rawls (unlike Sen) does not give the naturally handicapped absolute priority in decisions of justice.¹⁷ He treats their situation similar to problems of partial compliance. Principles of justice are initially chosen for the ideal case of a well-ordered society, where it is assumed all have the capacities for cooperation and that there will be "strict compliance." Just as the parties in the original position assume that the members of a well-ordered society have an effective sense of justice and normally will not violate just laws, they assume that members are normal cooperating members of society over a complete life who have the capacities needed for social cooperation (the moral powers). These are idealizations (like the

assumption of perfect competition in price theory). Rawls says these idealizations present a more tractable problem of choice and provide a basis for dealing with less than ideal circumstances, such as partial compliance or the special problems of the disabled.¹⁸ But what primarily underlies these assumptions is a view about the bases of social justice. It is an ideal of a society of free and equal citizens who take responsibility for their ends and cooperate with one another on a basis of reciprocity and mutual respect. It is this ideal, not the ideal of redressing undeserved inequalities of welfare, resources, or luck, that is at the foundation of Rawls's view.

This raises again the question of the relationship between the difference principle and the equal basic liberties. Rawls believes the two principles of justice cannot be appreciated or justified in isolation from one another. To be a liberal conception it is not enough to recognize basic liberties and assign them priority. A liberal conception of justice also recognizes a *social minimum*, a basic social entitlement to enabling resources, particularly income and wealth. For without a social minimum, the basic liberties are merely formal protections and are worth little to people who are impoverished and without the means to take advantage of their liberties. So, Rawls contends, any liberal view provides some kind of social minimum to guarantee the worth of the basic liberties (*PL*, p. 6, 156f.). What distinguishes justice as fairness is its egalitarianism: it defines the social minimum in terms of the difference principle.¹⁹ Now the difference principle has a distinct relationship to the principle of equal basic liberties. It permits inequalities in income and wealth in order to maximally promote the effective exercise of the equal basic liberties by the worst off:

Taking the two principles together, the basic structure is to be arranged to maximize the worth to the least advantaged of the complete scheme of equal liberty shared by all. This defines *the end of social justice*. (*TJ*, p. 205/179 rev., emphases added)

The “end of social justice” is not simply that everyone's equal freedoms be formally protected but that the basic liberties be effectively exercisable by all to the degree that the worth of freedom to the worst off is maximal. Its guarantee of the maximal worth of equal liberties provides one of the more compelling reasons for Rawls's difference principle.²⁰ In every other economic system, the value of

liberty to the least advantaged is less than in justice as fairness. For Rawls this means that the effective freedom of the least fortunate is being compromised for the sake of those better off. Only the difference principle achieves reciprocity in the sense that gains to those better off are not achieved at the expense of the poorest members of society (*Restatement*, pp. 123–24).

B. The Argument from the Original Position

Appeal to a hypothetical agreement – of what people could or would agree to under certain conditions – is characteristic of social contract doctrine. None of the major historical proponents of contractarianism (Hobbes, Locke, Rousseau, and Kant) saw the existing status quo as the appropriate perspective from which to achieve agreement on laws and social institutions. For even supposing agreement were achievable under current conditions, it would presuppose the validity of existing distributions of rights, bargaining advantages, and the very laws and institutions whose justice is to be decided by the social contract. In order to abstract from the influence of existing conditions, Hobbes and Locke assume that general agreement takes place in the prepolitical (and for Hobbes, presocial) circumstances of a hypothetical state of nature. Now a state of nature is *historical* in the following sense: Its inhabitants have knowledge of their circumstances and interests; they know everything about themselves that any historically situated individual might know about prevailing circumstances. So like any other contract, a social contract in a state of nature would be affected by its parties' access to information about themselves and others' situations.

One respect in which awareness of one's historical situation affects the resulting distribution of political power is evident from Locke's justification of passive citizenship. For Locke a political constitution is just only if free persons could agree to it via a series of agreements starting from a state of nature wherein each person has equal political jurisdiction. But while Locke's contracting parties begin with equal political rights, their knowledge of their circumstances in the state of nature leads to the peculiar consequence that the majority of free persons could agree to alienate their equal political status in exchange for other benefits. For Locke political rights are alienable in a way that freedom of conscience and the "right of