

John Rawls' Theory of Justice as Fairness

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When do citizens have a moral duty to obey the government and support the institutions of society?¹ This question is central to political philosophy. One of the 20 century's main response was John Rawls' theory of justice, "Justice as fairness", in the book *A Theory of Justice*, published 1971. The book *Justice as Fairness* was an improved and shorter presentation of Rawls' theory, published 2001 with editorial support by Erin Kelly, one of his former students.

When asked how rights, duties, benefits and burdens should be distributed, the ideals of freedom and equality often conflict with each other. In domestic politics we often see such conflicts between calls for more individual freedoms and schemes for universal, egalitarian welfare arrangements. It is such conflict between liberty and equality that Rawls attempts to reconcile with his theory of justice.

There are three main steps in Rawls' theory of justice. He assumes certain features characteristic of free societies, as well as some specific ideas about how society and people should be understood. Rawls believes that even people with different beliefs can agree with some principles to resolve basic conflicts over the distributional effects of social institutions. Secondly, he draws on the contract theory tradition in political philosophy, arguing that consent in some sense is necessary for the legitimate exercise of state power. Based on the requirement of consent, in a third step Rawls presents certain principles for a just society that citizens should be expected to support. The main idea of these principles is that political and civil rights must be protected, and that all individuals with the same abilities and efforts must be guaranteed equal opportunity to achieve different positions. Within this framework, those social groups who are most disadvantaged are given decisive weight in the distribution of economic benefits.

Rawls' theory is an alternative to *utilitarianism*, which had been dominant among philosophers and political thinkers since the mid-18th century. Notable politicians, economists and moral philosophers such as Adam Smith, Jeremy Bentham, John Stuart Mill and Henry Sidgwick had all advocated utilitarianism in one form or another. This tradition asserts the principle of welfare maximization: One should act so as to achieve as large expected utility as possible, considering all stakeholders. Welfare, understood either as happiness or satisfaction of interests, is the only thing that matters to utilitarianism, and the distribution of welfare between the parties concerned have no essential meaning. Utilitarianism thus claims that it may be appropriate to let someone suffer if necessary to

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promote the overall welfare. Rawls denies this, claiming instead that each individual has certain rights that can not be sacrificed simply for others to obtain more benefits.

A Theory of Justice is perhaps that contribution in political philosophy that has attracted most attention in the 20th century. The book revolutionized moral philosophy, and Rawls' critics declared quickly that political philosophers now must either work within his theory or explain why they chose not to do so. Although the book is long and difficult to read, it has had a major influence far beyond the philosophers' series, in law, psychology, political science and economics. Yet *A Theory of Justice* was challenged on many issues, and Rawls continued responding to critics ever since the book appeared.

On some issues he adjusted his views in the light of objections and suggestions, he has often modified and explicated the theory to get a better account than he originally presented. Sometimes he has refuted criticism. In the end, Rawls chose not to revise *A Theory of Justice*, but rather note changes in articles, as well as in the book *Political Liberalism*, where he developed his thoughts further. The book *Justice as Fairness* is a shorter and updated presentation to a large extent on Rawls' written lecture notes from the 1980s.

This introduction of Rawls falls into eight parts. After a brief biographical introduction, Part 2 presents the allocation principles he advocated. Part 3 presents Rawls' conception of society and the individual, as an introduction to the rest of the argument presented in part 4. Section 5 takes up his theory of justification, and part 6 points to three areas where the more recent book *Justice as Fairness* differs somewhat from *A Theory of Justice*. Section 7 presents some of the criticisms that have been raised, and section 8 points to some lasting contributions of Rawls' theory.

Social and Historical Context

John Rawls was born in the state of Maryland in the United States in 1921. With the exception of three years of military service during the 2nd World War he devoted his working life to philosophy. He received his Ph.D. in philosophy at Princeton University in 1950 and taught briefly there and at Cornell University in 1962 before he was offered a professorship in philosophy at Harvard University. When *A Theory of Justice* was published, he had worked on the book for 20 years.

A Theory of Justice is characterized by the analytical philosophy's emphasis on conceptual analysis and detailed argument. Why, *A Theory of Justice* caused such attention?

Political philosophy seeks to increase our understanding of how society is and how it should be. John Rawls emphasized that this understanding has an important practical goal, namely to help resolve deep conflicts between community members. Rawls, born and raised in the South of the US, felt strongly that American society suffered from the lack of a well thought out response to the question of how a just society should regulate the distribution of benefits and burdens of cooperation between members. This is the issue he devoted his life to answer.

One of the reasons that *A Theory of Justice* has had such an impact is undoubtedly that Rawls took the views of others seriously, and sought to benefit from the insights of earlier thinkers. Rawls often emphasized that if we are to learn from others, we must interpret them in the best light. It thus leads astray to believe that political philosophers throughout world history have given different answers to exactly the same questions. To the contrary, they often wrote with

current political conflicts in mind. Historical insight is therefore necessary to put the theories in a fair light and to harvest other's insights. When earlier thinkers sounds as naive, it is thus often because our interpretation of them is wrong. This attitude led Rawls to ask: What is the historical context for this author's writing, and what questions concern him – or her? What options do they perceive as possible? Many of the critics of *A Theory of Justice* failed to ask such questions about Rawls' own contributions. – though such background helps to understand why the book caused such a stir due to the political and philosophical conflicts of Rawls' time.

In the middle of the 20th century the United States was marked by deep political conflicts. The Civil Rights Movement in the 1950s and 60s posed fundamental questions about social life and governance in the US. Their role in the Vietnam War further focussed public attention on governmental legitimacy: By what moral right may the political authorities require that community members must obey society's rules and regulations?

Rawls argues that legitimacy is primarily a question of fairness: how rights and benefits are distributed among people. In a democracy, the public legal and political order must ensure political equality. But the situation of African Americans made clear that formally equal civil rights is insufficient to prevent racial discrimination. Inadequate legal protection and limited economic and political opportunities kept this minority oppressed. At the same time, their demand for greater economic and social equality threatened the majority's prosperity and freedom.

2 Rawls' *Theory of Justice*: Justice as Fairness

On the question of when citizens have a moral obligation to adjust to the social institutions that are maintained with state authorities, Rawls responds that this is primarily a question of justice, and particularly about the effects of the basic institutions when it comes to the distribution of "social primary goods" between individuals.

Principles of Distributive Justice

The theory justifies specific distribution requirements for the basic institutions of society, as a whole, on the assumption that they are generally complied with (Rawls 1993a, 5):

1. Principle of Liberty:

Everyone has the same inalienable right to a satisfying set of equal basic rights, which is consistent with everyone else's corresponding set of rights. They include civil and political rights, such as voting rights, freedom of speech and religion and the right to equal protection under the law.

2. The principle of social and economic inequalities:

The second principle consists of two conditions for the kind of social and economic differences that can occur over time. Rawls often refers to these two conditions as two different principles:

2 a) The Principle of Equal Opportunity:

The social and economic disparities that exist must be linked to social positions - jobs and careers - which are equally accessible to all with the same ability and willingness to use the abilities.

2 b) *Difference Principle:*

Social and economic inequalities are justifiable only if and insofar they benefit the least advantaged members of society. The smallest piece of the social pie must be as large as possible.

In a society in accordance with these principles, the principle of liberty has priority: the social institutions as a whole must not promote equal opportunity or allow economic inequality in ways that violate others' basic rights and liberties. Similarly, the principle of equality of opportunity prevails over the difference principle: Equality of opportunity can not be sacrificed in order to improve the worst off's income and wealth. The Difference Principle may allow economic inequality between people in different positions, for example, if the reward of extra effort raises productivity and thus contributes to increase the minimum wage in society. But this is justified only as long as the difference in wages is consistent with the other principles: Economic inequality may not translate into unequal political power and the opportunities for education and career choices for the next generation should not be affected. These principles can not easily be taken to justify neither economic liberalization policies, nor all social democratic policies. Rawls' theory is, in principle, open to allow large or small tax transfers, more or less use of market mechanisms, and means-tested or universal support arrangements. Such choices must depend on the socio-economic conditions and the impact of economic incentives.

These principles are primarily intended for institutions that exist over time, and that thus shape the population's preferences and aspirations. There is no claim on Rawls' part that these principles also apply to strategies to improve existing unjust arrangements. For example, it is not given that it is more important, or more urgent, to ensure political rights than to remove severe economic inequality in a society that is deeply unjust. Similarly, measures such as affirmative action or gender quotas can be normatively justifiable or necessary in some societies for a limited time to remedy existing injustice, even if such measures might conflict with the priority of the principle of equality of opportunity over the Difference Principle. Such important questions about the proper improvement of unjust arrangements fall outside the scope of these principle, since they are intended to apply to arrangements that are already in place.

3. Conceptions of Society and of the Individual

How can the theory of justice as fairness justify such detailed criteria for fair social institutions? Rawls does not attempt to *derive* these principles from a more fundamental principle. Instead, he argues that these principles are *more reasonable* than the utilitarian principle of utility maximization. When we think carefully about our perceptions, we see that many immediate arguments for or against different policies are unsatisfactory. That a certain fairness principle will favour a particular social group may easily be regarded as an unfair argument – the role of principles of distributive justice is indeed instead precisely to assess whether such discrimination is fair. The religious and normative diversity in society also prevents some arguments for proposed principles, such as to promote a certain belief, or to foster certain attitudes or certain capabilities. The argument can not simply be that this

particular view of life, or these attitudes or abilities, are correct or that they have intrinsic value. Individuals with other views concerning what has value have no reason to accept *such* reasoning.

The first step in Rawls' theory of justice consists of two basic beliefs that he believes are central to democratic societies: a particular understanding of community and a conception of community members. He suggests that society should be understood as a system of cooperation between free and equal members of generations. Rawls distinguishes himself from utilitarians, who see society as a mechanism to promote overall well being, and from many moral philosophers who argue that society should promote one specific human ideal. He believes that his basis is particularly suitable because of two important insights into the history and research have given us about the community: the impact of social institutions, and ethical diversity.

Justice as fairness focuses on a limited subject matter: the distributive consequences of basic social institutions such as law, the economic structure, tax arrangements and family structure. The theory is exclusively concerned with a specific theme: how such institutions, considered as a whole, should affect the distribution of certain benefits and burdens among ourselves. Rawls believes that this question is practically relevant, important - and extremely difficult to answer. In order to clarify and understand Rawls' theory, we must look at his views on society and the individual, and the relationship between these two.

Rawls chooses to focus on how the basic institutions of society should influence the distribution of benefits and burdens among ourselves. Two aspects of society make it difficult to agree on criteria for this distribution: We are shaped by the institutions, and we have different beliefs of value.

Social institutions affect our living conditions and values in far-reaching ways. Social institutions are man-made, not natural: they are not uniquely determined by our natural needs, and they could have been different. This is not a new insight: David Hume remarks about "social artifices" that they are carried out with a certain plan and purpose. And these institutions are under human control, in the sense that they can be changed, eg by legislation (Hume 1960, 475, 528). Planned institutional change is difficult, and often fail (Elster 1991). But given opportunities for appropriate changes, it still makes sense to ask how social institutions *should* be. Political philosophy has been concerned with such issues at least since Plato.

Rawls tries to answer a particular variant of this question, and is particularly concerned with what he calls "the basic social structure."

We are drastically affected by our social environment, and in this sense social beings. The legal system, market economy, taxation and family structure creates rights and obligations tied to different roles. These arrangements reward certain abilities and types of work, and provide guidelines for how the fruits of cooperation should be distributed. The institutions affect us in fundamental ways, so that we are not left with many independent indicators to discuss how institutions should distribute such benefits and burdens among us. Institutions exert influence in three ways: through the distribution of benefits, through the expectations they create among us for future benefits, and even by affecting the value we attach to such benefits and burdens.

Institutions firstly affect the distribution of benefits and burdens. We are born into specific places in society, and our opportunities in life are determined largely by the basic social institutions that affect our ability to achieve different social positions.

Second, we form expectations in light of these institutions. They reward certain abilities, and some types of work, and provide guidelines for how the fruits of cooperation should be distributed. Under stable arrangements, those who hold certain jobs or social positions are rewarded accordingly, and everyone gets rewarded what they have earned according to these rules. Thus to “give to all according to merit or effort” provides no answer to the question of what criteria should apply to such institutions which determine the expectations of citizens, which in turn determine what individuals will deserve (Hume 1975, 1993). Alternative institutions, such as other legislation for admission to study or for retirement pension, will give rise to different expectations. Existing expectations about the socially defined roles can thus not be the basis for claims of how social institutions should distribute benefits and burdens.

Thirdly, the institutions deeply affect our expectations and values. We are malleable: Institutions characterize even our assessment of the benefits and burdens that such institutions provide (March and Simon 1993, Elster 1983, March and Olsen 1989). Institutions shape us so early and profoundly that it is hard to imagine that we have an 'original' or 'really' complete set of values or interests, which is distorted or developed in the face of institutions. The question is not how such value socialization can be avoided, but rather the values and norms that institutions should nurture among citizens. This is one reason why the question of normative legitimacy is important: that is, how social institutions should distribute benefits and burdens, including how allocation, expectations, and socialization values should happen.

Paradoxically, since the institutions so massively impact on citizens it becomes difficult to find well-founded answer to the question how this power should be exercised. Because of our malleability social institutions' role cannot simply be to give us what we subjectively expect. Such correspondence between expectations and the distribution can be achieved by ensuring that institutions reduce the level of ambition of some groups. Many will argue that a fair distribution must satisfy additional requirements: A skewed distribution is not fair simply by making sure that the disadvantaged come to terms with the situation. But if we are not able to argue on the basis of our subjective expectations, there are few other clues to determine how benefits and burdens should be distributed among ourselves. One possibility would be to build on a conception of the good life, but this becomes problematic because of the plurality of conceptions of the good life.

Rawls assumes that in a society with freedom of religion and freedom of expression will entertain a diversity of beliefs. Many current normative beliefs may be inconsistent or incompatible with what else we know about biology, psychology, economics, and how society can survive over time. But Rawls assumes that unless state power is used to suppress certain beliefs, reflective and moral members of society will not completely agree about human nature and about what the good life consists in. So we can not use disputed parts of such beliefs as the basis for evaluating our common institutions by their effects on 'the good life' in general. That would mean that someone's beliefs are unduly influential, to the detriment of others'. Rawls believes instead that the rationale for standards of normative legitimacy must be neutral between these values. It does not mean that the reasons must be "value free," or that principles should not benefit any such beliefs, but citizens must be able to support the principles even though they do not agree on such deeper premises.

An additional challenge with this assumption of diversity of conceptions of the good is that a well-ordered society should be stable: Although citizens otherwise incompatible beliefs, the members' sense of justice should be developed and maintained so that they want to conform to the social institutions.

4 Argument Strategy

Rawls draws on the social contract tradition in political philosophy. This tradition regards the societal rules as rules one should be able to expect agreement to among all involved parties.² This tradition emphasises the consent of all in some sense - at least among those whose primary goal is to act in accordance with such rules. A satisfactory or appropriate set of rules is one that everyone concerned can expect to agree to, thus regardless of which party to the contract that you happen to be.

Government forces us to follow the laws of the land; we are in practice bound to obey. Can institutions still be said to respect individual freedom and equality? Yes, argued John Locke, Jean-Jacques Rousseau and Immanuel Kant. Under certain conditions, we can regard these rules as respecting us as free and equal, and we are therefore morally bound by the norms - even if we do not actually consent to them. The social basic structure respects individual freedom and equality if this scheme *could be* made the subject of voluntary consent of all parties concerned. However, arrangements are *illegitimate* if a person is worse off than she would have been under specified alternatives – for Locke, this base line was a natural state without social institutions. Locke thus argued that absolute autocracy was worse than such a state of nature, and that this arrangement therefore did not have the moral right to be obeyed.

This tradition interprets the norm of the equality of all human beings in a certain way. All interested parties count, and count equally in the sense that the rules and institutions of society must be defensible toward all. A satisfactory or appropriate set of rules is one that everyone concerned can be expected to join – i.e. that you would accept them regardless of which of the parties concerned you are.

Rawls choose such a social contract inspired approach. He proposed that a just society must meet the distribution criteria that would have been selected by parties on a free and equal footing. When criteria are such that they encounter no great objection to them - when they can therefore be said to be *reasonable* - we relate to each other as free and equal even when we are forced to surrender our social institutions. This is the idea behind Rawls' suggestion that we should understand *justice as fairness*.

² Presentations of the social contract tradition include Hampton 1993 and Freeman 1990. Early classic sources include Jean-Jacques Rousseau (1978), John Locke (1963), Immanuel Kant (1980 and 1965). Thomas Hobbes (1968) is also in the social contract tradition, but appears to justify moral norms from non-normative premises; cf David Gauthier (1986). Among recent contributors to the tradition are Ronald Dworkin (1981a, b, 1987; Brian Barry 1989 and 1995; Joshua Cohen 1989, Cohen and Rogers 1995 and TM Scanlon (1998).

For Rawls, the theme is not, as it was for some earlier social contract thinkers, isolated social institutions, but the social institutions considered as a whole. And the basis of comparison to assess the person's advantage or disadvantage is not for Rawls a natural state. Even though social institutions are "artificial" it is not sensible to try to assess ourselves as "really" existing outside the norms, ties and roles we are born into in. Instead, Rawls seeks to compare alternative principles for assessing social basic structures.

Rawls proposes a tool to make it easier to see how we can justify and rank such proposals for principles of justice. We envisage an initial negotiating "Original Position" in which all parties need to agree on principles for assessing whether social institutions are fair. This corresponds to a social-contract interpretation of equality and freedom as general consent. Furthermore, Rawls asks us to think that the parties are not aware of facts that could entice them to come by unfair or improper arguments. The parties argue thus behind a *veil of ignorance* in the choice of principles of justice.

In this original position the parties know that social institutions affect their lives in crucial ways as indicated above. Although everyone has a philosophy of life that they want to promote, they do not know what particular such beliefs they have. Therefore no one will advocate a particular distribution of benefits simply because it promotes a certain belief. Nor would anyone argue that social institutions should necessarily favour certain talents such as learning ability, entrepreneurship or bravery, since no one knows whether they have such characteristics. They may still agree that institutions can reward some such character traits, but then for certain reasons, for example to increase the amount of wealth that all will eventually have a share of. Rawls argues that the most disadvantaged social position will be given decisive weight in the choice of principles of justice. This is expressed by the idea that parties would think of the worst that could happen to them. In ignorance of how each will end up on the social ladder, they will ensure that the worst off are as well off as possible. Rawls' principles would be preferable over utilitarianism's principle of utility maximization, since the latter allows that some can be sacrificed for the benefit of others.

Rawls argues that this hypothetical choice in this original position is relevant to determine the principles of justice because this choice situation reflects the consideration we believe are appropriate when discussing these issues. In this position, the parties would prefer Rawls' principles over utilitarianism. Rawls' principles ensures that everyone, even the most disadvantaged, receive a portion of social goods. Choice in the original position reflects that we are trying to find principles that can be generally consented to, and that we wish to avoid policies that some will have great objections against. Such complaints will typically come from the very ones who are the worst off. Those who get less social primary goods than others will often weighty objections against such unequal distribution, especially when we take into account that these goods are created through collaboration, and when we realize the huge impact an unequal distribution has the living standards of the disadvantaged.

For this approach to work it is critical to be able to choose among competing principles on the basis of reasonable objections to any rules, with regard to the effects such rules have on the individuals concerned. Such normative arguments in this tradition require comparability between individuals in terms of the relevant consequences of such rules – i.e. those that define the practices of social institutions. Yet the factors mentioned above make it difficult to agree on such principles of justice: the topic – social institutions that affect life plans; the plurality of conceptions of the good, and the malleability of our preferences. These factors limit which effects on individuals that can provide the basis for arguments for and against such principles

of justice. Now various theories of distributive justice will have different perceptions about the *benefits* that should be regulated, the *interests* of the parties that matters, and how these interests should be taken into account. Rawls must clarify the benefits and burdens that principles of justice should regulate. This choice must be made in light of the various constraints mentioned above, and based on our need to be able to argue for and against such principles. Thus it is only detectable effects caused by social institutions that can count for or against the assessment of different principles for institutions. In addition, the benefits and burdens have roughly the same effects for all subjects. Rawls also need a theory of relevant interests that can be expected to command general agreement. The size of the benefits and burdens incurred by the various parties concerned must also be comparable.

To compare Rawls' theory with other contributions it will be important to look at these premises about interests, benefits, and equality as they appear in Rawls' argument.

Interests: Reasonableness and Rationality

Justice as fairness suggests that two interests are paramount (Rawls 1971, 505). When it comes to this issue of distributive justice, he believes that we can expect agreement that individual for such purposes has two important capabilities - even if we disagree on these important skills in other contexts. Firstly, we all have a *sense of justice*. We have the ability to understand, apply, and submit to the principles and rules we perceive as fair. This sense of justice means that we do not give ourselves unjust objectives contrary to the principles of justice we deem appropriate. Note that this premise is clearly normative. The theory thus does not attempt to justify moral considerations out of self-interest alone.

Second, we are *rational*, in a certain sense: Each of us has the ability to form an opinion about the good life within the possibilities envisaged. We try to promote or achieve this goal, alone or in collaboration with others.

In Rawls' theory it is only the consequences for these two interests that are considered as relevant bases for arguments about the principles of justice. Of course, we have many other important skills and interests, and many of these may be more important for each of us. But only arguments that pertain to the distributive effects on these two capabilities are such that Rawls believes we can expect consensus.

Social Primary Goods

Given our malleability and the plurality of conceptions of the good, it is difficult to find a suitable set of benefits and burdens whose distribution is to be assessed. Rawls introduces "social primary goods" as a creative response to these challenges (Rawls 1971, 62; 1999c). These benefits are political and civil rights and liberties, powers and formal positions and occupations, income and wealth, and the social basis of self-respect.

These benefits are partly of *intrinsic* and partly of *instrumental* value for the two relevant capabilities. Social primary goods are social conditions and assets under institutional control that are usually required in order to develop and use these skills, and to promote the particular conception of the good life one might have. The distribution of these goods emerge as a justified claim. They are even more so suited because we can understand the social primary goods as institutionalized authority. These benefits – income, for instance, in the form of

money - give people the legal power to determine the actions of others in specific areas. But such benefits – money – exists only to the extent that the pieces of paper are accepted as legal tender by other social actors. This means that these benefits only exist if the rules are followed and the prescribed outcomes thus actually follow. It is therefore in a sense the citizens' common practices that constitute the social primary goods. The distribution of these social primary goods through the basic institutions of society as a whole, - in accordance with the incentives and expectations created, must therefore be such that as a base line, all get equal shares of these goods over time. This is reflected in the principles of distributive justice, justice as fairness.

5. Rawls' Theory of Justification: Reflective Equilibrium

In normative ethics one argues for specific answers to questions about how we should act, what the good life is, or what kind of society we should have. Rawls' book is primarily a contribution to this branch of moral philosophy. In this way *A Theory of Justice* mark a break with much other philosophy that had become common in the West. Few philosophers, either in Europe or in the English-speaking world, had contributed much to answer normative questions. Proponents of logical positivism, for example, worked almost exclusively in clarifying concepts and reflect on how we can justify our beliefs and have certain knowledge. Moral philosophers in the analytic tradition thus tended to take no position on the normative questions, but instead discussed important *meta-ethical* issues. They analyzed ethical expression, and discussed whether the ethical claims can be said to be true or false, or whether they just express feelings. *A Theory of Justice* also helped to answer some of these important and interesting question.

Philosophers have often thought that our beliefs about what is right and wrong in certain situations is only based on more general moral principles about what is good and right, for example, that it is wrong to lie, or to abuse or exploit others. But how can these principles in turn be justified? Rawls proposed that the various allegations and perceptions of the normative theory mutually justify each other when we organize them as premises and conclusions in a systematic and clear way. Premises and conclusions justify each other in "reflective equilibrium". The considered judgments we have about specific situations help justify more general principles 'from below': Slavery is wrong because it violates principles of fairness and equal dignity. And the general principles we adhere to in turn justify particular judgements "from above" by showing that these principles fit well with the many individual perceptions and ethical reactions we have.

Consider Rawls' strategy to clarify the conditions under which people have a moral obligation to support the society's institutions. He sought to ascertain whether the institutions are in accordance with the values and ideals of the people have reason to support. To find answers, he seeks the justification of the various norms and rules we experience as binding: abstract values such as "freedom, equality and solidarity", specific commands and prohibitions from the government, and our assessments of what we think of as untimely or relevant considerations. He then tried to explicate these norms and values and put them together as coherent chains of premises and conclusions. Thus he sought to determine whether they are justified, or whether they need to be adjusted in light of their premises or consequences.

For example: The civil and political rights in a state respecting the rule of law gives content to the ideals of *freedom* from violations and arbitrary exercise of power. These rights limit legal power, and insists that government must be authorized by law.

Equality is expressed in requirements of due process, and in equal and democratic decision-making procedures. Welfare schemes express *solidarity*: that no one should be left completely without support. Social institutions must, among other things, ensure decent living conditions for the most disadvantaged.

Thus we seek to specify norms and values in different areas of life, at more concrete and abstract levels, and try to tie them together as a theory, as a consistent whole of premises and conclusions. Normative theory has this as its field of research.

This way of understanding the grounds of ethics is not new with Rawls: we find elements in earlier philosophers, as far back as in Aristotle. Rawls' contribution was mainly to organize and advocate this form of justification.

WV Quine (1908 - 2000), Rawls' colleague at Harvard, has claimed a more general point of view: that *all* our perceptions, not only in ethics, can *only* be justified by the fact that they are part of a systematic whole that fits with our experience. Rawls himself took no position on this, and would not even argue that his theory of justice is true. He would only say that the theory is an *acceptable* theory in political philosophy, and that it better explains our moral beliefs than does utilitarianism.

6. What's New?

In the more recent book *Justice as fairness* Rawls addressed some areas where he had changed his views, and clarified some details which he thought critics had misunderstood – such as the use of a 'maximin' principle and whether the theory can criticize oppressive gender roles. Three other aspects may also be mentioned briefly.

In his book *Political Liberalism* (1993b) Rawls discussed in particular how a society with ethical diversity can be fair and maintain support over time – that is, so that it can have both *normative* and *social legitimacy*. Is there reason to believe that citizens with different conceptions of the good will support Rawls' principles of justice and an existing just social basic structure over time? Rawls argues that philosophical reflection of the kind he contributes is important precisely to ensure such stability or sustainability. A common and public explanation of why institutions deserve our support can give everyone reason to support the fair arrangements, assured that most others think and do likewise – regardless of their other disagreements. Such justification must be based on assumptions on which we must expect consensus, based on an *overlapping consensus* across a range of beliefs that otherwise disagree on many points.

In late articles Rawls emphasized that the theory is "political" in certain ways. It is not intended as a comprehensive moral theory or a comprehensive philosophical theory of man and society in general. Instead, the theory is only applicable to certain social institutions, where the principles and assumptions are not claimed to be true, but rather pragmatically useful to achieve consensus.

In the book *Justice as Fairness* Rawls made it very clear that the theory is justified by reflective equilibrium. Not only did he refrain from asserting that the premises are self-evident or true definitions of the terms 'justice', 'person' etc. He also stressed that the theory draws on certain conceptions of all persons as equals and on society as a system of

cooperation between such free and equal citizens, two beliefs he found confirmed in Western political culture. He let it thus open whether these conceptions also exist and are widely shared in the rest of the world, and in what sense this would matter for the application of the theory. He started to explore some international implications of this theory in *The Law of Peoples* (Rawls 1999b), with regard to the principles that should govern the foreign policies of liberal states.

It is also evident that Rawls did not hold that U.S. institutions were in compliance with the principles of justice he defended. The theory is thus not to be understood as a defence of the existing American social order. He carefully explained that the freedoms his theory gives primacy does not include private ownership of the means of production. He also argued in favour of two other social systems than the U.S. capitalist welfare system: both what he calls corporate democracy and a liberal, democratic, socialist regime could satisfy his principles. He also noted that the U.S. had moved away from the principles of justice as fairness over time, partly because political parties can use private resources in the campaign so that the real value of political rights is reduced.

7. Criticism

Rawls' theory is part of the analytic tradition in philosophy that emphasizes reason giving. A strength of the analytic tradition is that the theories are thus more open to criticism: it is easier to identify disputed premises, weaknesses and mistakes. Rawls' theory has certainly not been left unchallenged - an annotated bibliography of critical articles appeared as early as 1982 (Well Bank, Snook, and Mason 1982), and five volumes of critical papers were published in 1999 (Richardson and Weithman 1999). Let us conclude by looking at some objections to the theory of justice as fairness.

Many of the critics have not noted that Rawls addressed a very limited question. Rawls' theory is obviously not responding to all the ethical and political challenges we face. The principles he proposed are intended to apply to the set of basic institutions of society, and they are not necessarily valid for other distribution issues - such as the distribution of health services, the distribution of wealth between generations, or distributive justice across borders. Our responsibility towards the developing world remained largely unanswered by Rawls' side until he discussed the norms of foreign policy in his book *The Law of Peoples* in 1999.

Furthermore, principles of justice can not be applied directly when we decide how we should act in certain situations. Also, the principles were intended by him to apply primarily to well-ordered society. How social institutions should remedy injustices of the past, and what we should do when we live under unjust arrangements, are important issues that Rawls barely addressed, e.g. in a discussion about civil disobedience. The theory can not easily answer these questions without further development. Rawls also restricted the scope of application of the principles, to communities under "favorable conditions" - That is, he assumed among other things that there is enough of an economic basis to ensure political and civil liberties, and enough to meet basic needs (Rawls 1999c). The priorities among benefits and among social primary goods in poorer countries is an open question.

That his theory does not provide answers to all questions are of course not a weighty objection, especially because parts of the approach may still be fruitful also for such topics. But the topic of Rawls's own writings is thus quite narrow.

Even within its intended scope is directed numerous thoughtful objections to the theory. Rawls takes as given that a fair distribution of benefits is necessary for a legitimate state. Conflicts of interest are therefore the focus of Rawls' view of society. Some critics have argued that this is based on a wrong conception of human nature, since the good society should instead be based on people's love and self-sacrifice (Sandel 1982, cf Gutmann 1985; Buchanan 1989; Mulhall and Swift 1996, Rasmussen 1990 Follesdal 1998)

One can also criticize the theory for focusing on social institutions, and ignoring other practices. There are at least three problems with this choice. Firstly, it is not clear where to draw the line - for example, Douglass North argues that there is a smooth transition to 'culture' understood as informal institutional rules (North 1990). Here the above discussion may be helpful: The institutions in question are those that affect individuals in fundamental and inescapable ways and that constitute benefits and burdens. Second, it can be argued that social institutions can allow a multitude of different practices with very different distributional effects. This diversity of practices should not be overlooked. Among the many studies on this Robert Putnam's research on Italy is interesting (Putnam 1993). Similar democratic and economic arrangements seem to work much better in the northern than in the southern regions of Italy. Putnam shows that this is due to the number of local networks of NGOs, which supposedly increases citizens' ability to think about the common good and not just on their own welfare. This attitude leads to increased confidence, and consequently to better social institutions. To a certain extent, these findings are consistent with Rawls' theory even if the findings point to obvious limitations in the application of the theory. For instance, one can ask whether it is reasonable to believe that justice as fairness can act stabilizing in the way Rawls imagined - regardless of the interpersonal networks that exist.

Thirdly, several critics argued that Rawls' approach ignores abuses going on in the so-called "private" sphere, shielded from the "public" state. His theory has been interpreted to mean that the division of labor within the family or in a segregated labor market is not a question of justice (Okin 1989, Kymlicka 1991). Rawls and others have argued against this interpretation of justice as fairness (Rawls 1997 and 1999) but there is no guarantee that the theory distinguishes between the private and the public sphere in a convincing manner.

Other political theorists disagree with some of Rawls' terms, or criticize the way they are put together in his theory. Equality and freedom can be expressed in ways other than through the social contract perspective. And even if the contract theory is kept, it is not certain that the ideal of equality requires that the state should be neutral between conceptions of the good in the way Rawls argues. Some may argue that social institutions should take into account the differing opinions about what is good, and promote the view that the majority of members share, and resolve conflicts between the parties in the light of that vision. Others, including those who believe that political activity has an intrinsic value, argues that the ideal of the politically active person can be justified as a premise for a theory of a just society.

One might also submit objections within Rawls' framework, by claiming that other factors must be considered relevant as reasons for principles of justice. This can be presented as a disagreement about what the ignorance veil should cover as to what the parties know about themselves and the society they live in.

Still other critics accept Rawls' formulation of the original position, but argue that participants would prefer other principles than Rawls'; either enhanced versions of utilitarian principles or other principles. Alternative normative theories will give different answers on which of a person's *interests* should be emphasized, what *benefits* must be ensured, and/or the

allocation principles for these goods that institutions should satisfy over time. Arguments for various policies indicate the value of such goods for certain interests. A major challenge for these options is to deal with the fact that social institutions also affect our preferences and values (Sen 1992).

Rawls' assumptions about citizens' interests are criticized from the view that other abilities and attitudes should be decisive in the choice of principles of justice. For example, minorities claim group rights to protect their own culture. An interesting development of liberal political tradition has been to determine how such interest shall be expressed and weighted in ways that draw on Rawls's insights (Kymlicka 1995, see Føllesdal 1996 for further references).

Amartya Sen has criticized Rawls' theory for ignoring personal differences in the metabolism of goods. Some "demanding" citizens, such as people with disabilities or special health needs (Sen 1980), must have more benefits to achieve the same opportunities to act. In addition needs vary with longevity, climate, employment, etc., in ways Rawls' theory does not capture. Therefore Sen criticizes a focus on social primary goods as *fetishistic*. They are understood as expressing benefits, but ignores that a benefit is essentially a relationship between individuals and goods. Social primary goods are considered as means to achieve something. Rather than focus on the equal distribution of these funds Sen believes that one should focus on equal distribution of what these means are means for, namely *functions and possibilities* (Sen 1992, 1993).

Sen argued that individuals' claims should not be evaluated based on what resources or primary goods they use, but on the basis of what features and freedoms they actually have to choose lives they have reason to value. Such interests captures the personal variations in leveraging resources, and how you choose to use such opportunities.⁹ Rawls sought to respond to this criticism in *Justice as Fairness*.

Some economists have criticized Rawls' use of uncertainty and ignorance as an argument for a "maximin strategy" for choices between principles in the original position, where the disadvantaged are decisive. Among other concerns, John Harsanyi argued that uncertainty only suggest a maximin strategy for the individual if one is extremely keen to avoid risks (Harsanyi 1975). In response, TM Scanlon has pointed out that many of the arguments of justice as fairness can still be preserved. The contract situation must then be specified so as to rank principles not on the basis of what it would be rational to choose by self-interested choosers under a veil of ignorance, but on the basis of which choice that cannot be reasonably objected against, regardless of one's social position (Scanlon, 1982, 1998).

8. What are Rawls' Lasting Contributions?

Ethical theories have a function that Rawls helped remind us of: to bring order and coherence among our different moral beliefs, thus helping to settle our practical conflicts. Justification by reflective equilibrium is an important insight, which can be applied to ethical theories in general, not just to Rawls' theory of justice.

Other theories that seek to answer other questions, may make use of parts of Rawls' theory, just as he built on what he saw as valuable in earlier political philosophy. For instance, many regard the idea of an original position as a fruitful tool to address other moral issues.

The theory of justice as fairness has not refuted utilitarianism or other political theories once and for all. Still, Rawls' theory is a thorough and systematic attempt to solve one of the major

policy issues we disagree about. Reflective equilibrium and overlapping consensus show how values can be justified, even in a society with diverse beliefs, so that we can treat each other as free and equal human beings, in spite of all our differences.

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