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RAWLS, John

American John Rawls (1921-2002) had a very significant impact on post-war political philosophy. He is credited with reviving a form of normative theorising that had gone into decline in the course of the twentieth century and, more specifically, resuscitating the social contract tradition of Locke, Rousseau and Kant. The focus of his work is justice – more specifically, distributive justice. Accepting that human beings can benefit from coercively-enforced social co-operation, he is concerned with the fair distribution of the costs and benefits of such co-operation. Although his most famous book – *A Theory of Justice* (first published 1971) – is primarily a discussion of justice between individuals under a state, he does address justice between states or peoples in his last substantively new work, *The Law of Peoples* (1999). Rawls reformulated his project and arguments in response to criticism and the discussion will follow the development of his work from the publication of *A Theory of Justice*, in which he sets out the method for determining what is a just distribution and defends his ‘two principles of justice’, to his revisions of the theory in *Political Liberalism* (1993) and, finally, to his theory of international justice.

A Theory of Justice

Although he locates himself in the contract tradition Rawls is not primarily concerned with the legitimacy of the state. He takes for granted that social cooperation must be backed up by sanctions if human beings are to solve the prisoner’s dilemma. Rather, his work focuses on the distribution of the benefits and burdens of such coercively enforced social cooperation. A society is just insofar as it is governed by principles that ensure a fair distribution of those benefits and burdens. This reorientation of the role of the contract away from state authority has, however, generated interpretational problems. While he stresses that he is offering a political conception of justice, rather than a moral one, Rawls’s version of the ‘state of nature’ – the original position – owes more

to Kant's moral theory than to his political theory. For Kant, an act is moral insofar as it is motivated by a good will, but a 'society of devils' can create a state just so long as they get the constitution right. It should be possible for a good person to live under that state, but you do not need good people to create and sustain it. In short, the legitimacy of political institutions is not grounded in human motivation. In contrast, for Rawls the stability of political institutions does appear to depend upon human beings having or developing motivations conducive to justice. While this problem recurs in his work it is clear that Rawls intends his theory to be specifically political in character. The theory applies to the basic structure of society and not to all social relations.

The basic structure consists of those social and political institutions that fundamentally affect a person's life chances, and restricting concern to this area of life has important implications. Rawls draws a distinction between the justice *of* the basic structure, and justice *within* the basic structure. The family illustrates this distinction. Household labour and child-rearing responsibilities, as well as income, are distributed within families as well as between families, and the dynamics of family relations are different to wider social relations, for while families can be dysfunctional, at their best they are held together by ties of affection rather than mutual advantage or civic duty. This difference is significant in at least two ways: it may not be possible to redistribute affection in the same manner as income or freedom is redistributed, and even if it were possible it would not be desirable to attempt a redistribution.

Although 'political' the theory is not intended to be applied directly to everyday political questions, but assumes that agents live a well-ordered society. We are asked hypothetically to choose principles of justice in the knowledge that all will comply fully with the chosen principles. In reality, there exists at best partial compliance, so we need answers to problems created by instances of non-compliance. For example, how do we deal with law-breaking? We need a theory of punishment. What is the morally correct response to human rights violations? We require a theory

of humanitarian intervention. Rawls does not deny the importance of these issues, and indeed accepts they are at the heart of everyday politics, but argues that a systematic grasp of ideal theory is necessary as a preliminary to dealing with the more urgent problems of non-ideal theory.

The Original Position

There are two aspects to Rawls's theory of justice: method and substance. The method by which we determine what is just is a reformulation of the social contract, while what is chosen consists of two principles of justice, the first guaranteeing an equal set of basic liberties, and the second equal opportunity and a minimum of material resources. The original position is the equivalent of the traditional state of nature, although it differs in important ways from the state of nature: it is not a description of an imaginary historical situation but a thought-experiment which can be undertaken by an individual at any time. Furthermore, Rawls takes the existence of the state as a background condition and not the object of hypothetical deliberation. Indeed, he rejects the idea of general political obligation, arguing instead that we have a moral obligation to create and sustain just institutions, rather than a moral obligation to a specific state.

The most important feature of the original position is the denial of knowledge of your identity – you choose principles of justice without knowing what position you occupy in society. Indeed, you do not know even your particular society. While this 'veil of ignorance' is its most memorable aspect, the original position has two other important components: primary goods and motivational assumptions. If you are denied knowledge of your 'ends' – that is, those things which you seek to protect or advance or achieve, such as a particular career, relationships with identifiable family and friends, or a set of beliefs about the world – then you need some substitute ends. Given that agents do not know their identities these ends must be shared by all agents in the original position, and they must be of fundamental importance. Rawls argues that each person desires to maximize his or her share of the (social) primary goods, which are rights and liberties, powers and opportunities,

income and wealth, and the 'bases of self-respect'. These goods are all-purpose means to the realization of a multiplicity of different ends. There is an objection to this argument: the primary goods are not equally valued by all people. A hedonist will require a higher share of the goods than an ascetic. To deal with this problem, the primary goods must not be of purely instrumental value: whilst the ascetic may require fewer primary goods than the hedonist, both must be capable of imagining being the other, such that whilst they may not *use* the same amount of primary goods, they recognize it is rational to *have available* the same amount.

The third important aspect of the original position is a set of motivational assumptions. These assumptions are advanced for the purposes of generating principles of justice and are not a description of how real people behave. As well as seeking to maximize his or her share of the primary goods an agent is non-envious, disinterested, and willing to live by the chosen principles. To understand the role of motivation in Rawls's theory it is necessary to distinguish rationality and reasonableness. Rationality entails the successful pursuit of your own interests, whereas reasonableness involves a willingness to see the world from the perspective of another person and act accordingly. Agents in the original position are directly rational and only indirectly reasonable: they are rational insofar as they seek to maximize their own share of the primary goods, but reasonable in that they are willing, and know that other agents are willing, to live by whatever principles are chosen. Critics of Rawls argue that his theory combines the contradictory impulses of self-interest and morality, but this is a misunderstanding, for he makes an analytical distinction between self-interest and morality precisely to motivate people to act morally. Agents in the original position have a formal sense of justice, meaning that they are willing to live by whatever principles of justice are chosen. This contrasts with a substantive moral sense that certain principles are valid. To be motivated people must see principles of justice as a product of their choice, but to give substance to principles they need some idea of what interests people have.

At the core of the theory is the idea that procedures validate outcomes, and consequently choice plays a fundamental role in explaining why we are morally bound to a set of political principles. The theory is constructivist. Constructivism has the advantage over alternative methods of justification that the chosen principles can be recognized by agents as (at least, hypothetically) the product of their own actions (choice), and therefore they are more likely to be motivated to respect them.

Principles of Justice

Agents in the original position are free to propose any principles they wish, although, of course, they must achieve unanimous agreement. Given they are identically situated the unanimity requirement is not onerous. However, determining what they would, in fact, choose is more challenging. Rawls claims they would choose the two principles of justice, but concedes that they might select different principles, hence the distinction between method and substance. To simplify matters he suggests the following menu of possible principles: free riding; first person dictatorship; general egoism; classical utilitarianism and average utilitarianism (with or without a guaranteed minimum); perfectionism; intuitionism; and, the democratic conception (the ‘two principles’).

The first three options are excluded by the way the original position is set up: we are all prepared to comply with principles rather than free ride; given ignorance of our identities it would be irrational to identify a dictator; and egoism would be unstable. The credible alternatives are average utilitarianism with a guaranteed minimum of resources, intuitionism, and Rawls’s preferred democratic conception, which consists of two principles:

- (a) Each person has the same inalienable claim to a fully adequate scheme of equal basic liberties, which scheme is compatible with the same scheme of liberties for all; and

(b) Social and economic inequalities are to satisfy two conditions: first, they are to be attached to offices and positions open to all under conditions of fair equality of opportunity; and second, they are to be to the greatest benefit of the least-advantaged members of society (the difference principle) (Rawls 2001: 42-3).

There is a lexical relationship between the principles of justice, meaning the first principle must be fully satisfied before the second principle can be applied, and within the second principle equality of opportunity must be respected before the difference principle can become operative. Lexical ordering is intended to avoid problems with the two main philosophical rival theories: intuitionism and utilitarianism. Intuitionists have to make judgements regarding the trade-off between values, such as freedom and equality, without determinate ordering principles to fall back upon. Utilitarians settle disputes by appeal to a single principle – that utility be maximized – at the expense of the plurality of values. Lexicality entails the recognition of the plurality of values but gives some precision to their ordering. The danger, however, is that the value which is given the highest priority – in this case, liberty – will, unless defined in a relatively narrow way, trump other values. Rawls acknowledges the need for a ‘limited application’ of higher ranked principles if lower ranked principles are ever going to come into play.

Although the first principle has been criticised, and the above version of the two principles is a late formulation intended to clarify the importance of specific liberties rather than liberty in general, it is the second principle that has generated most debate. In fact, the second principle has the appearance of two separate principles: equal opportunity and the difference principle. Equal opportunity requires that advantageous positions, such as college places and good jobs, are open to all and that each person has a reasonable chance of acquiring such a position. The difference principle entails maximizing the position of the worst-off representative person.

Rawls argues that rational agents in the original position, recognising the seriousness of the choice to be made in the original position, will insure that should they end up in the lowest socio-economic class they will be as well off as possible. The reasoning behind this is termed ‘maximin’: *maximum minimorum*, or the maximization of the minimum position. Although he avoids committing himself to any particular view on agents’ attitude to risk only highly risk-averse agents would select the difference principle over average utility, although a further argument is that the justification for average utility relies too much on the empirical claim that given the fact of diminishing marginal utility extreme inequality will be avoided. Rawls claims to offer a more direct argument for limiting material inequality.

In addition to risk-aversion, the motivational assumptions of mutual disinterest and non-envy are important in the derivation of the difference principle. Mutual disinterest leads individuals narrowly to seek their own advantage and not the advantage of identifiable others, and the fact that agents are not envious of other people renders the pursuit of equality for its own sake irrational. The conclusion of Rawls’s argument is that material inequality, in the shape of the difference principle, can be justified from a standpoint of equality – that is, from the original position.

Civil Disobedience

Most of *A Theory of Justice* is concerned with ideal theory; that is, he assumes for the purposes of his argument that people comply strictly with the principles to which they have agreed. He departs from this assumption in one relatively short, but very influential, section of the book – the discussion of civil disobedience. It is only in a society where there is partial, rather than strict, compliance with the principles of justice that civil disobedience has a role. This is because civil disobedience is an appeal to the majority – to its ‘sense of justice’. The majority is being asked to respect principles that it implicitly accepts. In a (fully) just society there would be no need for civil disobedience and in an unjust society there is no sense of justice to which you can appeal. The

concepts of majority and minority are central. Although unanimity is required in the original position, once the principles have been selected they need to be institutionalised and this is only possible through the creation of majoritarian political institutions. But majorities are liable on occasion to disregard the rights of minorities.

The leading idea behind Rawls's theory of civil disobedience is that in breaking the law the civilly disobedient are addressing, or appealing to, the sense of justice of the majority. All the other points that Rawls makes, including an important distinction between civil disobedience and conscientious refusal, lead back to this idea. He sets out the following conditions for an act to be one of civil disobedience: the injustice which is the object of civilly disobedient action must be clear. Civil disobedience involves breaking the law, rather than simply testing it, and must be a public act, non-violent in character and not 'threatening'. The civilly disobedient accept the penalties for law-breaking. And even if laws are seriously unjust, civil disobedience must not threaten the stability of the political system.

Rawls distinguishes civil disobedience and conscientious refusal. His aim in *A Theory of Justice* was to articulate a morality – a 'theory of justice' – appropriate to the political sphere. That political morality leaves open many other areas of morality. Conscientious refusal may be grounded in that political morality, but it need not be; it may be based on religious or other principles that extend beyond the political. The clearest modern example of conscientious refusal is objection to military service, either for general pacifist reasons or because of opposition to a particular war. Rawls argues that such objections cannot be automatically accepted, for justice requires on occasion that people be prepared to defend – by force of arms – the political system. The danger with conscientious refusal is that it undermines the political order by substituting individual moral judgement for the collective judgement of society.

A significant strand in conscientious refusal is the striving for moral integrity, that is, a feeling that regardless of the consequences you cannot support a law or policy. Insofar as conscientious refusal is a form of ‘moral purity’ it is in tension with civil disobedience, which looks ‘outwards’ towards the majority, and appeals to it to change. The idea of moral purity is central to Mahatma Gandhi’s *satyagraha*, which means an ‘insistence on truth’, and Rawls’s account of civil disobedience is often contrasted with Gandhian ‘civil disobedience’.

Political Liberalism

In the 1980s Rawls began to revise the account of justice which he had presented in his earlier work. Largely unchanged were the substantive principles, but in a series of articles, culminating in the book *Political Liberalism* he appeared to revise quite significantly the justificatory basis of the theory. He had assumed that in a ‘well-ordered’ society there was a widely, and deeply, shared moral code. But this belief does not, he now suggests, address the fact of reasonable pluralism: the existence of conflicting, yet reasonably held, conceptions of the good. Rawls does not abandon the idea of the original position, but his interpretation of it undergoes a significant change. It is important to stress that denial of knowledge of one’s identity (the veil of ignorance) entails not knowing one’s conception of the good – that is, one’s conception of what is ultimately valuable. This means that the resulting principles of justice must be compatible with a plurality of such conceptions. Expressed more concretely, Christians, Jews, Muslims, and atheists must all be capable of respecting the principles.

A theory of justice must be political, meaning that its motivational force must derive from a particular, circumscribed, sphere of life, and not from a comprehensive moral standpoint, such as Kantian or Millian liberalism. This is not a restatement of the standard liberal argument for the distinction between public and private, whereby individuals enjoy a sphere of freedom in which

they can act in ways which others might reasonably disapprove of, but rather, the claim is that the basis of justification is itself limited to the political. The distinction between a political and a comprehensive conception of the good in turn affects the motivational basis of the theory. It is important that this distinction is not defined in terms of the political as opposed to the moral, for the political conception is itself a moral conception, but a special one. Somehow, the agent must accept the principles of justice but for the 'right reasons', and that means as principles with independent moral force.

Rawls lists a number of features of human interaction that explain why reasonable people can disagree: evidence is conflicting and complex; different weights can be attached to different considerations; concepts are vague; there are conflicts between different moral considerations, such as duties to family and duties to strangers; no society can contain a full range of values. He then goes on to define a reasonable conception of the good as encompassing both theoretical and practical reasoning, and although a reasonable comprehensive view is not necessarily fixed and unchanging, it normally draws upon a tradition of thought and doctrine. It is not subject to sudden and unexplained changes.

From the idea of reasonable pluralism Rawls offers an explanation of how citizens, from a variety of different reasonable comprehensive conceptions of the good can come to respect liberal political institutions. There develops an 'overlapping consensus': it is for citizens as part of their liberty of conscience individually to work out how liberal values relate to their own comprehensive conceptions, where a 'comprehensive conception' could be a religion or a secular philosophy. Each reasonable comprehensive doctrine endorses the political conception from its own standpoint and individuals work towards liberal principles from what are, at a basic level, mutually incompatible comprehensive perspectives, and respect for those principles is built on the 'overlap' between them.

Rawls does not give concrete examples of how such an overlapping consensus can be achieved, but the position of Muslims in a Western society can be used to illustrate the argument. Various features of Islamic thought which might appear threatening to the liberal democratic order can be reformulated in a way consistent with political liberalism: a long history of toleration of Jews and Christians based on a shared monotheism; adherence to secular law so long as it respects Muslims' right to worship; an interpretation of *Jihad* as a spiritual struggle; and, 'submission' as a voluntary act. A Muslim cannot endorse comprehensive liberalism but can respect political liberalism. Other citizens – people of different faiths and none – may have other reasons for respecting the principles of justice but they can, along with Muslims, nonetheless converge on those principles.

The Law of Peoples

Liberal and Non-liberal Societies

In his last substantively new work – *The Law of Peoples* – Rawls turned his attention to international relations. The underlying aim is to outline the just foreign policy of a liberal society: when is intervention in the affairs of another state justified? And what duties do liberal societies have to non-liberal ones? Although that aim is quite narrow, in the course of the book Rawls does present an argument intended to show that non-liberal, non-Western societies can be stable and thus should be tolerated by liberal ones. Although he does not use these terms with great precision he makes a distinction between four types of society or 'people': 1. 'Liberal societies', such as those which (largely) respect human rights conventions, and the conventions of war; 2. 'Decent non-liberal societies', of which there can be several variants, but the one type Rawls discusses possesses a 'decent consultation hierarchy'; 3. 'Outlaw states' – states that violate the law of peoples, by, for example, waging aggressive wars or engaging in serious violations of human rights; 4. 'Burdened societies', where poor socio-economic conditions make respect for international law difficult.

Rawls applies the idea of the original position and the veil of ignorance developed in his theory of domestic justice to international law, but there are some significant differences between how these devices are used in Rawls's theory of domestic justice, and in his theory of international justice.

Liberal societies agree among themselves a 'law of peoples', and then decent societies endorse those same principles (Rawls argues that liberal democratic societies, by their nature, will tend to respect the human rights of their own peoples and the sovereignty of other peoples). The law of peoples consists of eight principles: mutual recognition of each people's independence; honouring of agreements; legal equality of peoples; duty of non-intervention (except in the case of dealing with outlaw states and grave violations of human rights); right to self-defence; respect for human rights; respect for the rules of war; duty to assist peoples living under conditions that prevent them from becoming just (liberal) or decent societies. The law requires of liberal societies that they do not seek to change the fundamental character of a decent society.

To understand how a decent society could endorse the law of peoples, and consequently why a liberal society should 'tolerate' a decent society, it is necessary to identify the characteristics of the latter. Rawls argues that a decent society is peaceful in that it pursues its interests through trade and diplomacy. The domestic laws of such a society are guided by a 'common good conception of justice', meaning that while it may not grant the freedoms to individuals enjoyed in a liberal society, in a fundamental sense all citizens are treated equally. There should exist a 'decent consultation hierarchy', which permits the possibility of dissent (the Arab-Islamic concept of Shura would be one example of a consultation hierarchy). Importantly, the common good conception of justice entails respect for human rights, including the right to life, liberty (freedom from slavery and forced labour), personal property and equality before the law. Although a decent society may not permit apostasy and proselytisation, it must accord a degree of religious freedom to minorities, and because that right is limited it must also allow citizens the possibility of emigration. Human rights do not depend on a particular conception of the human agent as autonomous, but rather they set a standard

for the decency of domestic political institutions'. Human rights fulfil three roles: they are a necessary condition of a regime's legitimacy; they determine the limits of sovereignty – the law of people prohibits intervention in the affairs of another state except when that state is violating human rights; and, they set a limit on the pluralism among peoples.

Just War

Peoples, Rawls argues, have a right to go to war in self-defence but not, as in traditional accounts of state sovereignty, simply in the rational pursuit of a state's interests. And in a liberal society conscription into the armed forces is only justified when just institutions are under attack – the need to defend liberty justifies a short-term, but transparent and proportional, interference in an individual's liberty. Since decent hierarchical societies do not share the same conception of domestic justice they may make further demands on their citizens; however, since both decent and liberal societies fight only defensive wars they will have no reason to amass armed forces beyond what is necessary to deter aggression.

A war is just if the reasons for waging it are just by reference to the law of peoples, and – importantly – if it is conducted in conformity with certain rules of combat. Well-ordered (decent and liberal) peoples must carefully distinguish three groups: an outlaw state's leaders and officials, its soldiers, and its civilian population. Since the population is not a 'people' in Rawls's sense – it is not consulted in matters of public policy – it cannot be held responsible for the instigation of an aggressive war. For this reason Rawls argues that the fire-bombing of Tokyo and other Japanese cities in the spring of 1945 and the atomic bombing of Hiroshima and Nagasaki were unjustified. Enemy combatants must also be treated with respect because they have human rights and because the possibility of long-term peace – which is one of the aims of a just war – is assisted if the armed forces of an outlaw state are treated with a respect which they themselves may not accord to forces of the well-ordered society.

Global Distributive Justice

Relatively well-ordered societies have a duty to bring burdened societies, along with outlaw societies, into the Society of Peoples. It does not follow that they must transfer resources to burdened societies in order to achieve this goal. Part of the reasoning is that transfers are indeterminate – we do not know at what point transfers must cease. A second, and more substantial, argument against transfers is that a society with few resources can be well-ordered if its political traditions, law, social structure and culture are capable of sustaining a liberal or decent society. Furthermore, the culture of a society is a very significant determinant of the wealth of that society. Following the work of Amartya Sen on international development Rawls argues that a society's population policy is extremely important and that failure in food distribution, due to a collapse in entitlements, such as wages, rather than food decline is the cause of most famines.

Rawls rejects the extension of the difference principle to international relations, arguing that the target of distribution is the achievement of a society's political autonomy and consequent upon that its joining the Society of Peoples. This argument fits with his rejection of the extension of domestic liberal justice to the international sphere: peoples are represented in the Society of Peoples, not individual human beings. A practical result of Rawls's position is that whilst he has a relatively egalitarian theory of domestic justice he has a view of international justice which is significantly inegalitarian.

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Further Readings and References

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Cross-References

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