

## **Realistic utopianism**

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When John Rawls set out to develop his theory of justice in the nineteen fifties, the predominant system of moral and political philosophy in the English-speaking world was a form of utilitarianism. The main problems with utilitarianism, such as the difficulty in developing an appropriate idea of ‘utility’, or well-being, by which possible states of affairs were to be judged, and the fact that it might, under certain circumstances, allow for the sacrifice of the few for the pleasures of the many, were well known. Still, no systematic alternative theory had emerged.

Rawls set out to build such an alternative theory of justice on the foundations of social contract theory. What characterises this tradition is that it sees justice as having a role in solving a particular problem. The conception of the problem differs between authors. For Hobbes, the problem was to ‘get out of that miserable condition of Warre’ that would exist without government; the solution was that individuals agree to cede their right to govern themselves to a sovereign, who must have ‘so much Power and Strength conferred upon him’ that ‘by the terror thereof he can ‘conform the wills’ of his subjects and ‘direct their actions to the Common Benefit’. Subsequent writers in the social contract tradition, such as Locke, Rousseau, and Kant, conceived of the problem more ambitiously, aiming to find social arrangements that could prevent and resolve conflicts between people, while maintaining the freedom and equality of those who had to live under these arrangements.

Rawls follows these latter authors. Rawls points out that society is marked both by identity and conflicts of interests between its citizens. There is identity of interests because social cooperation makes possible for everyone a life that is much better than a life outside of society. There is a conflict of interests because people all prefer a larger to a smaller share of the benefits of social cooperation. In addition, people have ideological differences, stemming from their different value systems and religious or philosophical beliefs. The problem a theory of justice has to solve is how in the face of these conflicts effective social cooperation can come about on terms that are justifiable to all.

Rawls characterised a society that is regulated by a conception of justice that performs this role as ‘well ordered’. In such a society, Rawls held, everyone accepts the same principles of justice. These principles therefore provide a mutually acceptable point of view from which citizens’ claims on the main social and political institutions, and on each other in matters of justice, can be adjudicated.

This sounds noble indeed. But what exactly does interpersonal justification of the terms of social co-operation mean? And what are these terms that can be justified to all, and that all can agree to in the face of their deep-seated differences?

The kind of justification Rawls was looking for is the kind that is offered between people who are well-informed and see each other as equals. This cuts off any arguments from authority, and bars agreement reached through Orwellian brainwashing exercises. Instead, it has to begin with some shared convictions about right and wrong, and about fairness. Rawls believed we can find such shared convictions in the culture of liberal democratic societies. These shared convictions can be organised under three headings.

First among these, Rawls argued, is our view of people as free and equal. This view is rooted in what he called people’s ‘two moral powers’. The first is individuals’ capacity to form, revise, and pursue their idea of the good life. The second is their ‘capacity for a sense of justice’, which is the

willingness to propose and honour fair terms of cooperation if others will likewise do so. We see people as free, Rawls wrote, when the material and social conditions under which they have been brought up and live allow them to have these powers. We see as equal all those who have these powers to the degree required of a responsible adult of whom we can say that he can decide the main matters of his life for himself. We can ask such a person for justification for his actions and views, and he, similarly, can demand these of us.

Rawls also believed our democratic culture yields a shared idea of fairness. Fairness in agreeing on the distribution of the benefits and burdens of social cooperation, Rawls held, means that the terms we propose aren't influenced by our particular interests, as people with certain abilities, a certain social position, or with specific wants and convictions.

Finally, we have shared firm and well-considered moral judgements about specific cases: that slavery and religious intolerance are wrong, for example.

To some, this list of shared convictions about justice may seem excessively optimistic. But another worry is more pressing: is it adequate for the task at hand? For though they may command some allegiance of all but the most anti-social or religiously fundamentalist inhabitants of Western societies, freedom, equality and fairness are vague notions. Furthermore, our judgements about specific cases only take us so far. What we are looking for is a set of principles that show us what these ideals demand, and that combine our firm judgements on individual cases into a coherent system. As Rawls put it, we want our judgements of cases and our principles to be in 'reflective equilibrium'.

Here, Rawls introduced his great innovation: to have the resolution of these difficulties take place via a device that fills out and represents our ideas about freedom, equality, and fairness, and that yields determinate principles of justice. He called this device the 'original position': an imaginary situation in which we place our representatives, and charge them with coming up with a social contract.

What goes on in the original position? As good negotiators, its inhabitants should be well-informed and look after the interests of those they represent. Simultaneously, the contract they agree to must be fair, that is, not be marred by prejudice or bias towards any one person's interests. Rawls met the first of these requirements by characterising them as cool, calculating people who know all the general facts and laws about human nature and society.

Rawls met the requirement of fairness by placing the contracting parties behind what he called 'the veil of ignorance'. Behind the veil of ignorance, parties do not know their sex, race, social class, talents and abilities, nor their specific values and aims in life. Behind the veil, the parties have to ask themselves: 'which distribution of the benefits and burdens of social co-operation do I want, given the fact that, though I am ignorant of the person I will be, I will have to be *some* person in this society'?

Thus, the veil bars contracting parties from favouring any particular person's interests. But it seems to have obscured too much. For without knowledge of their values and aims, how can the parties evaluate potential social contracts?

To resolve this issue, Rawls called on our conception of people as possessing the 'two moral powers' discussed previously: the capacity to form and pursue a conception of the good, and a capacity for a sense of justice. Though a liberal theory of justice cannot draw on any elaborate idea of what the good life for individuals is, it can, Rawls argued, draw on a 'thin liberal theory of

the good', which specifies that individuals' most important interest lies in securing the material and social conditions which allow them to develop and exercise these capacities. The parties, then, have a most fervent desire to secure these conditions for themselves. This means, Rawls argued, that they will evaluate social contracts in terms of the all-purpose means, or 'primary goods', that they make available to people who occupy different representative positions in society. Rawls drew up the following list of such primary goods: basic liberties, the powers and prerogatives of offices and jobs, income and wealth, and the social bases of self-respect.

All this greatly simplifies matters. For since all distinguishing characteristics and interests of the persons involved have disappeared, and all parties have been given the same liberal preferences, the parties are identical. The choice of a social contract then becomes a one-person decision problem. It is a problem we can, with some exercise of our imagination, pose to ourselves: 'Which social contract would I choose for the society in which I will have to live if I were well-informed and rational, and had an overriding interest in securing the conditions under which I can freely develop and pursue my life's ambitions, but didn't know whether I'd be talented or untalented, black or white, Muslim or atheist, etc.?' Well... which social contract would *you* choose?

Rawls recognises that this may appear a baffling question. He therefore invites us to choose our answer from a limited list of options, among which figure many of the key conceptions of justice developed in secular Western thought, such as utilitarianism. The list also includes Rawls's own conception, which he formulated as follows (*A Theory of Justice*, 54):

"All social values—liberty and opportunity, income and wealth, and the social bases of self-respect—are to be distributed equally unless an unequal distribution of any, or all, of these values is to everyone's advantage."

Rawls's idea was that the parties would naturally first think of distributing all primary goods equally, and then consider improvements that render everyone, including the least advantaged, better off. This general principle expresses what has become known as a 'maximin principle of justice': we assess social contracts by how well a person in the 'least advantaged social position' would fare under them.

Unsurprisingly, Rawls believed that the best answer you could give to this multiple-choice question is his own principle. We will return to Rawls's argument for this conclusion in a moment. First, it is clear that this general principle requires further specification. For we do not know how to trade off the separate primary goods it mentions. Is a society with greater income and wealth, but which restricts people's liberties, to be preferred to a poorer society in which people's rights are more extensive? And what are the conditions under which it might be in the interest of the least advantaged to have fewer liberties than others?

Rawls recognised that the first priority would be to meet everyone's basic needs. However, under the relatively favourable economic and social conditions of modern democracies, we can answer these questions as follows. First, there is no reason to suppose that unequal liberty (unequal voting rights, for example) would advantage those with the lesser liberty. Indeed, Rawls believed that a case for the beneficial effects of inequalities could only be made in the case of income and wealth (to provide for costs of training, incentives, and the like). Furthermore, he argued, drawing on the parties' liberal-minded interests, we can rank the primary goods in order of importance: liberty is more important than equal opportunity, and, in turn, equal opportunity is more important than income. These considerations led him to the following three more specific principles of justice, ranked in order of importance:

*The Liberty Principle:* Each person is to have an equal right to the most extensive total system of basic liberties (among which are the right to vote and hold political office, freedom from arbitrary arrest and imprisonment, freedom of thought, freedom of association, and free choice of occupation) compatible with a similar system of liberty for all.

*Fair Equality of Opportunity:* Positions should be open to all under conditions of fair equality of opportunity, that is, there should be equal prospects for those of equal native talent and ability.

*The Difference Principle:* Inequalities of income and wealth are to be arranged so that they are to the greatest benefit of the inhabitants of the social position that is accessible to those who are least advantaged by the distribution of talent and social and family background.

What of Rawls's argument for this maximin conception of justice? Doesn't it focus inordinate attention on how the least advantaged fare? Rawls replied to such questions that when considering weighty matters like their prospects over their entire lives, the parties would be very worried about occupying the least-well off position in society. Subsequently, they would care most about securing good conditions for its occupants. But he also pointed out the power of a maximin conception of justice to justify inequalities. For imagine a less well off person in a Rawlsian society asking of a more well off person: 'why do you have more than me?' The answer would be: 'because if social arrangements were such that someone like me would have less, then you too would have less.'

Many remain unconvinced by these arguments. The parties, they believe, should behave like the calculating people Rawls made them out to be, and accord some weight to outcomes other than the lowest one. The result, they claim, would be more akin to the utilitarianism Rawls set out to replace.

But if these critics are correct, it does not follow that the Rawlsian project has to be abandoned. For Rawls's project was to find a theory of justice that can fill out our core normative ideas and bring our considered moral judgements of individual cases into balance with a set of principles of justice. We already know that utilitarianism cannot be such a theory, among other reasons because it violates our considered judgements of individual cases, such as the impermissibility of slavery. It follows that if the original position as Rawls first designed it yields utilitarianism, we simply have to return to the shared ideals we started with and tinker more with its specification until it yields more satisfactory principles.

A more fundamental criticism is that the whole project presupposes too much social unity to start with. In a society riddled with conflicts of interest and ideologies, can we really find the basis for a shared conception of justice? Hasn't society historically just resolved these conflicts by force, or by parties agreeing on a peaceful *modus vivendi*? Rawls himself saw these as the most pressing questions his theory had to face, and devoted much of his later work, collected in *Political Liberalism* and *Justice as Fairness*, to addressing them.

Fundamentally, Rawls's response was that the task of finding a shareable conception of justice is one we cannot give up on before attempting it. He thought political philosophers should look for bases of agreement where none seem to exist, and should attempt to extend the range of existing consensus. They can do so, he wrote, by probing the basis for our moral judgements, and framing new or more discriminating moral and political ideas. Rawls viewed this task as an exercise in 'realistic utopianism': to probe the limits of practical possibility, taking people and social institutions not as they are, nor as we might naively like them to be, but as they can be.