

John Rawls - A Theory of Justice

In 1971, John Rawls published **A Theory of Justice** in which he set out his views of the principles of a just society and the steps that can be taken to achieve them. In the links, you will find two articles containing short accounts on Rawls, one written by Robert East (entitled John Rawls – A Theory of Justice) and one by Richard Walker (entitled Veil of Ignorance). Together they briefly outline Rawls's views. In the session, we will examine these and see if we can provide an alternative set of principles.

INTRODUCTION

Published in 1971, John Rawls' *A Theory of Justice* constitutes one of the most important contributions to political philosophy in the twentieth century:

“Rawls’ massive book, *A Theory of Justice* is, by the admission of one of its most vehement critics, Robert Nozick:

‘...a powerful, deep, subtle, wide-ranging, systematic work in political and moral philosophy which has not seen its like since the writings of John Stuart Mill, if then. It is a fountain of illuminating ideas, integrated together into a lovely whole. Political philosophers now must either work within Rawls’ theory or explain why not.’” (*Understanding Jurisprudence* R Wacks p.264, quoting from *Anarchy, State and Utopia* R Nozick p.183)

Rawls subsequently wrote *Political Liberalism* in 1993 and *Justice as Fairness: A Restatement* in 2001 in which he reformulated his ideas in response to some of the criticisms that his hugely influential *A Theory of Justice* had generated.

SUMMARY OF RAWLS’ IDEAS

An initial summary of Rawls’s ideas may help to comprehend the details of his approach. The first thing to note is that Rawls’

theory is a **SOCIAL CONTRACT** theory. Traditional social contract theories claim that, before men and women entered into a politically organised society, in which they are governed by individuals or institutions of political (or central) authority, they lived in a state of nature. Individuals only left this state of nature by entering a contract between themselves and those who govern over them. The social contract set out the principles of justice upon which the new politically organised society will operate and which will determine the nature of the laws that will be introduced in that society. There are a large number of social contract theories and they differ radically as to what are claimed to be the terms of the social contract. Three of the most famous were those developed by Thomas Hobbes, John Locke and Jean-Jacques Rousseau. However, Rawls uses what he calls a 'refurbished' version of the social contract idea. What this means is that he does not claim that, historically, a social contract ever in fact took place. Rather, he uses it as an admittedly artificial device but which provides a mechanism to explore the principles of a fair society which individuals could agree upon:

“My aim is to present a conception of justice which generalises and carries to a higher level of abstraction the familiar theory of the social contract, as found, say, in Locke, Rousseau and Kant. ..[T]he guiding idea is that the principles of justice for the basic structures of society are the object of the original agreement [i.e. the social contract].” (*A Theory of Justice* J Rawls p.11)

“What Rawls hunts out are mutually acceptable ground rules.” (*Lloyd's Introduction to Jurisprudence* M D A Freeman p.585)

RAWLS' THEORY OF JUSTICE

Rawls asks us to assume that individuals are in what he calls the **ORIGINAL POSITION** whereby they are required to consider the terms of the social contract that will form the

principles of a just, fair society. To do this he places these individuals behind a **VEIL OF IGNORANCE**:

“[Rawls]...conducts a thought experiment. He imagines a hypothetical forum of individuals [i.e. those in the ‘original position’] subject to a ‘veil of ignorance’. This precludes them from knowing more or less everything about their own selves, their conditions, so that they are incapable of distorting principles to serve their own or other special interests. . . They would be ignorant of their own views on the ‘good life’. They would not know their sex, status, social position, class, colour, religion, degree of intelligence or strength. They would not even know at what time or in what place they are living. They would not know to what generation they belong, or the stage of civilisation of their society.” (*Lloyd’s Introduction to Jurisprudence* Freeman *ibid.* p.585)

“The purpose of the veil of ignorance is to ensure that agreement is possible. Rawls conceives of the process as a ‘bargaining game’, in which people are free to offer proposals of their own and to reject those of others until unanimity is achieved. If people in the original position know too much about themselves and how proposed principles would affect them personally, they might become deadlocked and prefer no agreement to one that puts them at a disadvantage. Behind the veil of ignorance, they are forced to be impartial and to view proposed principles from the perspective of all persons at once.” (*Ethics and the Conduct of Business* J R Boatright [1993] pp.102)

Lacking such knowledge, Rawls therefore argues that the individuals behind the veil of ignorance are in a position to draw up objective principles to create a fair society. He argues that, in deciding what these principles should be, individuals in the original position are motivated by **SELF INTEREST**:

“Rawls argues that the rationality of self-interest of those who do not know which way their luck is going to turn will inevitably

guide them towards principles that safeguard the interests of everyone in society with as much equality as is practically realisable.” (*Philosophy of Law* M Tebbit p.99)

‘MAXIMIN’ STRATEGY

Motivated out of self interest, Rawls argues that the ‘people in the original position’ (sometimes referred to as **‘POP’**) would adopt the approach of **MAXI**mising the **MIN**imum position. This approach, as developed by Rawls, is known as the **‘MAXIMIN’ STRATEGY**..:

“...stripped of their individuality, the POP will opt, says Rawls, for a ‘maximin’ principle...[T]he POP, as rational individuals, would choose principles which guarantee that the worst condition one might find oneself in, when the veil of ignorance is lifted, is the least undesirable of the available alternatives. In other words, I will select those principles which, *should I turn out to be at the bottom of the social pile*, will be in my best interest.” (*Understanding Jurisprudence* R Wacks pp.223)

As such, Rawls argues, they will arrive at **TWO PRINCIPLES**.

THE PRINCIPLES OF JUSTICE

i) Liberty

The first principle is that:

‘Each person has an equal right to the most extensive system of equal basic liberties, compatible with a similar system for all’ (*A Theory of Justice* p.302).

In other words, individuals in the original position would agree to this ‘liberty principle’ as a fundamental feature of a just society. The principle embraces individual freedom of thought, conscience and association as protected by the rule of law, which itself includes the notion of due process:

“Rawls does not specify the ‘system of equal basic liberties’ precisely. He indicates that it includes political liberties (the right to vote and to be eligible for public office, freedom of speech and of assembly, liberty of conscience and freedom of thought); freedom of the person; the right to hold personal property; and freedom from arbitrary arrest and seizure, as defined by the concept of the rule of law.” (*Legal Philosophies* J W Harris p.283)

ii) Limited economic inequality

The second principle is again based on people in the original position making a decision based on self interest. In this respect, Rawls claims that, because they will be unsure of their own circumstances, for example, whether they will be talented or not or whether they will be at the top, middle or bottom of the income scale, the individuals in the ‘original position’ behind the ‘veil of ignorance’ will ensure that the circumstances of the worst off in the proposed society are as beneficial as possible. Thus, the second principle is as follows:

‘Social and economic inequalities are to be arranged so that they are both:

- to the greatest benefit of the least advantaged, consistent with the just savings principle, and
- attached to offices and positions open to all under conditions of fair equality of opportunity’. (*A Theory of Justice* p.302)

This means that, uncertain of whether they might be at the bottom of the income scale, people in the original position, will seek to ensure that those at the bottom will be as well off as is possible. They would, therefore, reject a very unequal distribution of economic rewards, which would give some people vast riches with some others living in abject poverty. Rather, Rawls contends, they would argue that the least well off should be as well provided for as possible. This means, for example, that Rawls is an advocate of the state providing a

system of social security provision to those deemed to be in need. However, he rejects total equality of income. A successful economy requires those in positions of responsibility and those with ability to be rewarded more than others. Without this, the economy will be much less successful, thereby generating much less resources to be made available to those at the bottom of the income scale. Thus, some income inequality is justified in terms of providing 'the greatest benefit of the least advantaged'. However, the second part of this second principle stipulates that any such social and economic inequality should be 'attached to offices and positions open to all under conditions of fair equality of opportunity'. This means that everybody in society should have the same chance to be appointed to the most responsible and well paid jobs, offices and positions and, therefore, that they will be filled by the most able and talented.

For Rawls, therefore, the first criterion in deciding how income and wealth should be distributed in a just society is **NEED**. Every individual in society should be provided with enough resources to meet their basic needs. Once such a 'social floor' of a minimum income is provided, other factors can be taken into account in determining whether others should receive more than the minimum. The most important of these is **MERIT**. In other words, this is a 'meritocratic approach' in that, all jobs (which Rawls calls 'offices and positions') that carry salaries above the minimum position should be available to all, no matter from what class or social group (e.g. based on gender, ethnic background, sexual orientation, etc.) an individual might come from. An individual's own talents or merit should be the sole criterion in determining what job, and what level of income, s/he will achieve. This second principle is known as the **DIFFERENCE PRINCIPLE**.

LEXICAL PRIORITY

An important point to note is the relationship between these two principles. In this respect, Rawls argues that the first principle

has **LEXICAL PRIORITY** over the second one (i.e. greater importance in respect of making laws). What this means is that it is **NOT** justifiable to introduce laws on the basis of the second principle, if the impact is to erode the first principle. In other words, liberty granted to individuals is the most important feature of a just society and it is not legitimate to pass laws that reduce liberty in order, for example, to alter the ways economic rewards are structured in that society:

“These two principles are arranged by Rawls in order of priority. The task of ensuring that every one has basic rights (the first principle) ought to be completed before any inequalities based on the second principle are permitted. Further, liberty ought not to be traded for welfare; that is, no one following these principles would give up liberties for the sake of an increase in welfare.” (Boatrigg p.103)

IMPACT OF RAWLS' *THEORY OF JUSTICE*

One of the most important consequences of Rawls' theory is that it provides a clear blueprint for establishing the political, social and economic make up of what he regards as a just society, including the scope of liberty and the extent to which some economic inequality would not only be tolerated but actually encouraged, namely if it is seen as benefiting the least well off. Firmly in the 'liberal' tradition of politics, it rejects the idea of an unregulated *laissez faire* approach to economics in a market economy, on the grounds that this produces huge inequality, with large numbers of people living in poverty. Such a level of inequality and its consequences could not be justified from the 'maximin' standpoint.

Most notably, Rawls' theory provides a very valuable perspective on the relationship of the state and the individual. Writing in 1982, Alan Ryan explains this as follows:

“The problem faced by American liberals is simple enough – they wish to defend measures of economic redistribution, substantial welfare expenditure, government intervention to

reduce discrimination against disadvantaged minorities, but they do not want the sort of strong state many conservatives want: that is, they do not want the state to censor literature or the other arts, they do not want the state to interfere with the sexual tastes of the citizenry...Rawls's theory provided just what was wanted. *A Theory of Justice* neatly separates out a group of political and civil liberties which are all but absolutely inviolable, placing them in a different category from the rules about such things as property rights which enable economic activity to proceed. (“The ideologist of American liberalism’ A Ryan *Times Higher Education Supplement* 8.10.82)

In other words, the political and civil liberties referred to in the last quote come within the first of Rawls' principles and could not be eroded whereas the economic rights, including property rights, can be altered under the second principle. For example, people's 'property rights' can be affected by taxing the wealth of the rich (i.e. part of the 'property' they own') and redistributing it to the poor via the social security system (part of what Ryan refers to as 'welfare expenditure').

One of the main reasons for arguing that it is legitimate for such economic redistribution to take place is Rawls' argument that the talents of individuals constitute a **POOL OF RESOURCES** from which all of society should benefit. Rawls argues that it is purely an accident of birth for individuals to be born talented. It is not a result of anything that they have themselves actually earned and, therefore, they are not entitled to claim that only they should benefit from these talents. People in the original position would, rationally, argue, under the difference principle, that the benefits of individuals' talents should be 'pooled' for the advantage, in particular, of the least well off. One way of doing this is to tax high earners in order to fund social security payments and other welfare services for the poor:

“To Rawls, the [difference] principle represents ‘an agreement to regard the distribution of natural talents as a common asset

and to share in the benefits of this distribution whatever it turns out to be'. He sees the distribution of natural talents as a 'collective asset' with the result that the 'more fortunate are to benefit only in ways that help those who have lost out'." (*Lloyd's Introduction to Jurisprudence* M D A Freeman p.590)

RAWLS THEORY OF JUSTICE IN ACTION – OR IS IT?

It may be useful, at this point, to seek to examine the practical significance of Rawls' ideas on the policies of the then 'New Labour' Government from a Rawlsian perspective. In May 2001, with Tony Blair as Prime Minister, the Labour Government had been in power for 4 years and Will Hutton reflected on its approach in respect of social security and associated matters as follows:

"Mr Blair...view[s] a good society as one in which a means-tested social safety net is erected as high as it can be, consistent with the current level of taxation,...[This] social floor has been solidified with the adoption of the minimum wage, an improvement in the supply of decent houses for low-income families and a rise in retirement incomes centred around the minimum...income guarantee [subsequently replaced by the Pension Credit] and belatedly, and begrudgingly, the state pension. In the efforts to improve the incomes and life chances of poor children, notably through Surestart and the working families' tax credit [subsequently replaced by working tax credit], there are the tentative beginnings of more meritocracy. The number of 11-year-olds failing their maths and English tests has fallen by a quarter over the last four years while...even Oxford is (marginally) improving its intake of state-school students...." ('Be a social democrat, Mr Blair' W Hutton *The Observer* 20.5.2001)

Commenting on these reforms, Hutton argues that:

"Mr Blair does not acknowledge his new guru, but it is not hard to detect the long shadow of the American philosopher, John Rawls, in his current thinking. The famous Rawlsian theorem is

that the just society is the one we would have rationally chosen if we were ignorant of our own natural assets and capacity for personal effort and if we wanted both to avoid the worst possible outcomes for ourselves while preserving the chance of the best. This society would offer a high social floor, offer social mobility to the meritocratic and not worry about high incomes at the top.” (Hutton *ibid*)

However, Hutton then queries one feature of the aforementioned policies, arguing that lack of concern about high incomes at the top is inconsistent with Rawls’ approach. To allow the wealthy to maintain their riches allows them to exploit their privileged position, send their children to private schools and to gain a “stranglehold on entry into the best universities” (*ibid*). In other words:

“Not to care about incomes at the top, in short, is to kiss goodbye to any notion of meritocracy.” (*ibid*)

Hutton, therefore, argued for a change in some of New Labour’s policies at that time if they were to conform to Rawlsian ideas:

“If Britain wants to sustain and increase the combination of a good social floor and meritocracy, it needs to do more of the things it was doing before the Thatcher years – progressive taxation, free university education and universal welfare benefits.” (*ibid*)

Subsequent Governments, from David Cameron’s coalition Government to the Conservative regimes of Boris Johnson, Theresa May, Liz Truss and Rishi Sunak have, however, clearly involved a rejection of Rawls’ ideas, particularly his difference (or ‘maximin’) principle, as they are based, on substantial economic inequality.

CRITICISMS OF RAWLS

ROBERT NOZICK

The importance of Rawls' ideas is reflected in the fact that they have generated a vast literature of critical comment, His most famous critic, however, is one of his former students, Robert Nozick. Nozick mounts a right wing or conservative attack of Rawls, based on a dislike of Rawls' support for the state having a substantial welfare agenda, taking resources from some, via taxation, and giving it to others in the form of social security benefits and the provision of social services:

“Robert Nozick’s theory, set out in *Anarchy, State and Utopia*..., rejects not only the concept of distributive justice but also the elaborate mechanisms of State that go with it. To this extent Rawls and Nozick stand on the opposite sides of a dichotomy which become prominent in political debate in both the United Kingdom and the United States, and in varying degrees in a number of other countries...” (*McCoubrey & White’s Textbook on Jurisprudence* J Penner p.236)

Nozick’s starting point is that Rawls’ two principles conflict. Any attempt to redistribute resources, as set out in the last paragraph (based on the difference principle) inevitably erodes liberty (his first principle:

“For Nozick, liberty and equality are irreconcilable: we cannot, he argues, interfere in the distribution of resources without interfering with the liberty of individuals. Any ‘patterned’ distribution (like the one advocated by Rawls)...presupposes a state with excessive powers.” (*Wacks op. cit.* p.228)

Nozick places great emphasis on the freedom or liberty of individuals, which he also refers to as autonomy. Such liberty or autonomy exercised by individuals, he argues, is inevitably threatened by the state. As such, state action is ‘intrinsically immoral’ and its role should be as limited or ‘minimal’ as possible. Nozick, therefore, argues for a ‘night-watchman’ state,

whose role should be strictly limited to ensuring the security of individuals within its territorial borders and a number of other necessary roles:

“...he proposes a ‘minimal State’ whose functions are limited to the ‘night-watchman’ protection against force, theft and fraud, the enforcement of contracts and a few other essentials. A state that goes beyond this narrow model is an infringement of individual freedom which is based on the ‘separateness of persons’.” (Wacks *ibid.* p.228)

On this basis, Nozick puts forward a radically different theory of justice to that of Rawls, based on the **THEORY OF ENTITLEMENTS**. So long as an individual’s wealth was legitimately obtained then s/he is entitled to keep it:

“We should be concerned not with redistributing resources, but with protecting individuals’ rights to *what they already have*. In other words, the question of whether a particular distribution of goods is just should be answered by reference to whether the *initial acquisition* was just. So where I acquired my property by freely entering into a contract, I am entitled to keep it, hence Nozick’s ‘entitlement theory’ of justice.” (Wacks *ibid.*)

Nozick, therefore, strongly supports the idea that individuals are entitled to retain all wealth and property if it was legitimately acquired, whether through inheritance or by one’s own talents or whatever, and the state is not entitled to seek to take this from them:

“Nozick’s book challenges the whole concept of distribution. There is ‘no such meaningful concept as the goods of society [as Rawls argued] but only the goods of particular individuals and society has no prima facie right to shuffle these around individuals’.” (Lloyd’s *Introduction to Jurisprudence* M D A Freeman, quoting Nozick, pp.596-7)

On this basis, Nozick challenges the very basis of the state taxing the income of individuals:

“Nozick regards the redistribution of wealth by means of income tax as being tantamount to forced labour exacted by the state from the taxpayer. This argument is based on the proposition that if an individual chooses to work less in order to enjoy more leisure, nobody would seek to argue that any of that leisure time should be expropriated by the state, in order that it may be deployed for the public good. By parity of reasoning, therefore, those who choose to work more, and in consequence enjoy less leisure, should not have their earnings expropriated by way of income tax which will then be used for the purposes of distributive justice.” (*Legal Theory* | McLeod p.180)

Nozick’s views clearly embrace the idea of unregulated capitalism, with a very limited role for the state, as explained by Meyerson as follows:

“Such unrestrained capitalism will no doubt lead to massive inequalities in society, as the talented and those born to privileged families prosper, while those who lack skills and are born to poor families suffer, but taxation to relieve poverty or to provide goods such as public education or public health care would violate people’s rights over their property and is therefore unjust. The only legitimate use of tax money is to protect individuals in their enjoyment of their rights and the state’s role is therefore confined to that of ‘night-watchman’ – ensuring that there is no force, theft, fraud or breach of contract. Thus tax money may be used to provide goods such as a defence force, a police force and a legal system but any more extensive, welfarist state is morally illegitimate.” (Meyerson, p.168)

OTHER CRITICISMS

As well as Nozick’s concerted attack on Rawls, with his development of a radically different theory of justice, a number of other criticisms are made of Rawls’ theory. The following are just a few of these:

a) The 'original position' has been attacked on a number of grounds:

"...the 'original position' has been criticised both as a hypothetical device (it is highly artificial; can people *really* be stripped of their values?)..." (Wacks *ibid.* p.226)

"...several critics have doubted whether the POP [people in the original position] would *necessarily* opt for Rawls' two principles and, even if they did, why should they prefer liberty to equality? What about the winner-takes-all philosophy that many have? Why should the POP not prefer this more adventurous alternative?" (Wacks *ibid.* p.226)

b) Criticism is made of some of the assumptions underpinning Rawls' theory. One of these is that people in the original position are motivated by individual self interest, which forms the basis upon which they chose the principles of justice. For some this is a position of ideological 'bias' rather than being objective:

"Thus, from a Marxist point of view, it has been argued by several writers that Rawls makes several traditional, bourgeois, liberal assumptions. For instance, he regards people as naturally 'free'; but they are largely a product of their class interests. Similarly, his conception of the state is a consensus rather than a conflict model." (Wacks *ibid.* p.227)

- The second of his principles (the difference principle) has been attacked:

"The 'difference principle' has attracted lively debate. To Rawls, the principle represents 'an agreement to regard the distribution of natural talents as a common asset and to share in the benefits of this distribution whatever it turns out to be'. He sees the distribution of natural talents as a 'collective asset' with the result that the 'more fortunate are to benefit only in ways that help those who have lost out'. But, so Nozick argues, to regard people's natural assets as common property contradicts...the

inviolability of the individual and the distinction between persons.” (Freeman *op.cit.*, quoting Rawls, p.590)

As the quote shows, this requires a return to examining Nozick’s views. He points out that the logic of Rawls’ ‘collective asset’ view is that people’s bodily organs also fall into this category and, therefore, for example, people with two healthy kidneys could be forced to donate one of them to somebody whose kidneys have ceased to function as a result of kidney disease,.

CONCLUSION

This account has set out the main features of Rawls *Theory of Justice*. It is a major contribution to twentieth and twenty first century political philosophy and, as a consequence, has generated a vast amount of critical literature. Amongst other things, this account has highlighted the practical relevance of Rawls’ ideas by applying them to the policies and approach of the ‘New Labour’ Government that came to power in May 1997 under the leadership of Tony Blair. It will be interesting to see if Rawls’ views have any relevance if another Labour Government gets into power under the leadership of Kier Starmer.