



John Rawls (1921-2002)

## **A Theory of Justice – Outline**

[Note: change in the reading for next class, read *A Theory of Justice*, chapter 2, sections 10-12, 14-15, and handout on the difference principle. It is important that you read the handout carefully.]

*1. Concluding thought on Marx: Does Marx have a theory of justice?*

Well, depends on what we mean by a theory of justice.

*2. John Rawls, his life and times*

20<sup>th</sup> Century, not without drama...

Rawls, changed by his experiences in WWII, made justice his life-project. Strictly speaking, wrote just one book: *A Theory of Justice* which became the defining text of 20<sup>th</sup> century political philosophy.

*3. Elements of Rawls's theory of justice*

1. A definition of the topic of justice (the site of justice)
2. Articulation of the two principles of justice
3. An argument for the two principles of justice

In this class I'll try to present an overview of the whole thing. The following two classes are about the meaning of, and argument for, the two principles of justice.

#### 4. *The aim, background, and basic idea of A Theory of Justice*

The **aim** of *A Theory of Justice* is “to generalize and carry to a higher order of abstraction the traditional theory of the social contract as represented by Locke, Rousseau, and Kant.” (xviii)

The **background** of this project is the dominance of utilitarianism in political philosophy and practice. When Rawls wrote *A Theory of Justice* the social contract tradition, it’s fair to say, was considered of mainly historical interest – though there were dissenters and disagreements, the utilitarian framework had gained hegemony as a matter of political philosophy and practice. Rawls’s aim of revitalizing the social contract tradition is an attempt at articulating a worthy alternative to utilitarianism.

The **basic idea** of *A Theory of Justice* is that the principles of justice that can be agreed to by all in an appropriately defined initial situation will carry a *prima facie* claim to be the principles of justice that best fit and justifies the moral sense and judgments about justice of the members of this society and, therefore, will carry a claim to being the best articulation available of principles of justice valid for the question at hand.

[Note: it’s not clear whether these principles are valid relative to liberal democracies or independently of context. It is clear that Rawls articulates these principles from the standpoint of democratic citizens and they are meant to govern the design of the basic structure of a liberal democracy. Rawls does not, I think, commit himself to the claim that societies other than liberal democracies are unjust, because they fail to satisfy the requirements of these two principles.]

**Rawls’s contractualism**, accordingly, is not of the kind that consent (whether actual or hypothetical) is a requirement for political authority. At least, that’s not the idea that leads him to the idea of a social contract. Rather, the idea is that of **justice as fairness**: that the principles of justice are those that *would* be agree to in a fair initial situation. The idea, I think, is that the fairness of the initial situation transfers to the principles agreed upon within it, and so that a society structured by these principles can be said to be fair to all citizens.

So, the idea is that the basic role of principles of justice is to regulate social cooperation between free and equal persons and that such cooperation *should take place on terms fair to all of those participating in it*. What we need, accordingly, is a way to identify what the principles are in light of which social cooperation will be fair to all those partaking in it. To identify these principles, Rawls constructs the device known as **the original position**.

### 5. *The site of justice: What the principles of justice regulate*

The site of justice is the **basic structure** of society. The basic structure is the social and political institutions by virtue of which all the legally defined rights and duties exist – the institutions of government, property, tax-system, law, penal code, etc. are constituents of the basic structure (see *TJ* section 2).

The basic structure has two main parts: a system of rights and obligations and a design of the economic institutions (property, contract, etc.). A conception of justice will, accordingly, have two parts: a theory of rights and liberties and theory of how to govern inequalities of powers and positions (a view on equality of opportunity) and of distribution of wealth and income. Rawls's two principles correspond to these two parts.

The site of justice is *not* acts or traits of character (virtues). Nor does the kind of justice that is Rawls's topic and the two principles he directly apply to issues about how we should relate to animals or issues of international right.

### 6. *The original position (half of Rawls's argument for the two principles)*

To identify these principles, Rawls presents us with the **original position**. In the original position, the parties (representatives of the citizens engaged in social cooperation) try to maximize the interests of those they represent and so care naught for justice or morality or any of those things, except insofar as they pertain to their self-interest. So, if the parties agree to principles in this situation, the principles can be said to be fair to all members of society, for all members were equally represented in the position and equally chose these principles against any available alternatives.

What, then, determines what principles the parties agree on? The situation and interests of the parties.

**The situation of the parties:** the parties are situated behind a **veil of ignorance** so that they have limited information about those they represent. This veil excludes a variety of information (assumption: it excludes all and only the sorts of information that would support reasons that are not reasons of justice): the parties do not know any facts about themselves or the society they live in. They do not know their gender, race, or class, their wealth or talents, or family background or any other such fact. Nor do they know the level of affluence or size of the population or any other specifics about the society they live in. What they *do* know are the laws of economics, basics of psychology, and other such *general* facts or theories about human nature and the human condition. Part of this knowledge is the knowledge that any human being has a conception of the good and that he or she needs access to adequate all purpose means to pursue his or her conception of the good, whatever it is (= **the primary goods**, rights and liberties, powers and opportunities, positions of office, income and wealth). So, though the parties

don't know what their conception of the good is or what special needs they might have related to their particular conception of the good, they know that they have one and that they want to maximize their access to the primary goods.

**The interests of the parties in the original position** are determined by the knowledge that they have some conception of the good and that they want to maximize their access to the primary goods. So one set of reasons is given by this desire to maximize their share of the primary goods. But there is more. The parties are under the **strains of commitment**, have a special kind of **risk-aversion**, will have a special interest in preserving **self-respect**, they care about **stability**, and **publicity**. We will return to what these kinds of reasons are in the third class on Rawls.

### *7. Reflective Equilibrium (the other half of Rawls's argument)*

**Reflective Equilibrium** is the other half of Rawls's argument. But we won't go into the details of this part of his theory.

The idea is that the principles of justice that we've identified by the original position argument must be further justified by the results of implementing them. These results must, the idea is, fit with our considered judgments about what justice requires and a society ordered by these principles must be 'well-ordered'. A **well-ordered society** is an ideal of a perfectly just society, stable for the right reasons. In a well-ordered society:

- i. All citizens agree on the same conception of justice and know that they so agree,
- ii. The laws and institutions of society really carry out the requirements of this conception of justice,
- iii. Citizens are in political matters governed by their sense of justice and so willingly comply with the requirements of justice.

There are two parts to the reflective equilibrium argument, corresponding to the two main ingredients of the well-ordered society: first, the institutional argument that spells out what laws and institutions would realize the two principles (at a sufficient level of generality with further specification of how more specific laws and institutions can be democratically decided upon). Second, the psychological argument, that shows how persons can come to acquire the sense of justice so that they sincerely affirm the requirements of the two principles of justice and willingly comply with these requirements, even if it might be to their advantage to defect. A society that has the right institutions and where the citizens freely affirm the conception of justice that governs these institutions is a society **stable for the right reasons**. These two parts of Rawls's argument are carried out in, respectively, parts II and III of *A Theory of Justice*. We are not in this class concerned with these.

### 8. *The two principles*

Once the parties in the original position have been fully described and we've understood how they would reason, given their lack of information and considerations they would give weight, the choice of principles is, Rawls argues, clear: they would choose the following two principles over any of the available alternatives (section 46):

1. (Principle of equal liberty:) Each person is to have an equal right to the most extensive total system of equal basic liberties compatible with a similar system of liberty for all.
2. Social and economic inequalities are to be arranged so that they are both:
  - a. to the greatest benefit of the less advantaged (the difference principle)
  - b. attached to offices and positions open to all under conditions of fair equality of opportunity (principle of fair equality of opportunity).

*Priority rules:* 1 has priority over 2 and b has priority over a.

The interpretation of these principles is the matter for our next class.

