

Notes on Rawls' Theory of Justice Chapters 1 -3 Seth Paskin, Austin, TX

John Rawls was a 20th century American philosopher, born in 1921 (in my hometown of Baltimore, MD) and died in 2002. He attended Princeton as an undergraduate, enlisted after graduation and served in WWII as an infantryman in the Pacific where he saw the aftereffects of the bombing of Hiroshima. He declined to re-enlist and returned to the US where he got a Ph.D. from Princeton in moral philosophy.

Over his career Rawls taught or studied at Princeton, Oxford University, Cornell, MIT and Harvard. Remarkably, Rawls' first major publication was *A Theory of Justice* (1971) which almost immediately and ever since has been considered *a* if not *the* primary text in modern political philosophy. The work has gone through numerous reprints and revisions and was subject to many critical responses over the last 50 years. Shortly before his death Rawls' published a work addressing those criticisms.

Rawls opens *A Theory of Justice* by noting that the dominant theory of justice which has prevailed in western society for the last few hundred years is that of utility. That is: Justice as utility conceived of in the philosophical sense: the greatest good for the greatest number. Rawls credits the Utilitarians for including a conception of Justice in a wider, comprehensive scheme and chides those who criticized the Utilitarians on this or that point without providing a systematic moral conception in opposition. His goal is to provide (at least the beginnings of) a competing social theory which covers individual morals as well as social justice, beginning with the latter.

What Rawls means when he says 'Justice' is social justice (as opposed to just or unjust people or actions). Social justice is "the way in which the major social institutions distribute fundamental rights and duties and determine the division of advantages from social cooperation." Justice is the first virtue of social institutions in the same way that truth is the first virtue of systems of thought.

Rawls asks that we accept the following:

- A society is a more or less self-sufficient association of individuals who recognize certain rules of conduct as binding and generally act in accordance
- These rules specify a system of cooperation designed to advance the good of those who participate
- There is conflict as well as identity of interests between individuals
 - Identity in that cooperation makes life better than possible solely by oneself
 - Conflict in that people are not indifferent as to how the benefits of cooperation are distributed

A set of principles is needed to determine how the benefits of cooperation are distributed. These are the principles of social justice.

Now, individuals have an inviolability within a society that is founded on justice as well. The welfare of the society as a whole cannot override this. Justice denies that the loss of freedom for some can be made 'right' by a greater good. This is where Rawls takes issue with the utilitarian notion of Justice and claims that his conception of justice will be built upon the foundation of social contract theory. In a just society the liberties of equal citizenship are taken as settled: rights are not subject to political bargaining or social interests.

A theory of Justice then does two things:

- Assigns rights and duties to individuals
- Defines the appropriate division of social (cooperative) advantages

The primary role of Justice is to acknowledge that what is guaranteed by the first (rights and duties) is often impacted by the social institutions of the second. That is, within any society there are more and less advantageous starting places which are not in any sense chosen or earned by individuals. For example, in current American society it is substantially more advantageous to be born a white male into a wealthy, stable family than a black woman born into poverty. This is not a moral or value judgment: it is simply true that white, wealthy males have better life prospects the way our social institutions work than poor, black women.

Rawls' notion is that any particular conception of Justice is good insofar as it guarantees the first principle (assigning rights and duties) by addressing inequalities in starting positions with the second principle (defining division of social advantages). It is in this sense that Rawls will call his conception *Justice as Fairness*. Insofar as he is concerned with social justice and the distribution of advantages he is talking about *distributive justice*.

The question then becomes how to determine a specific conception of Justice given the theoretical framework of Justice assigning rights and duties and defining division of social advantages. Rawls posits that the principles we (should) accept are those we would accept as individuals entering into a social contract from a position of mutual equality. That is, the principles that free and rational individuals would define as the terms of their association if they were negotiating 'from scratch' as equals.

This is the "social contract" aspect of Rawls' theory which he calls the *original position*. You may think of it as what Hobbes, Locke and Rousseau called the *state of nature*. Rawls is not going to claim there ever was an original position – he wants us to consider it from our current position hypothetically as a thought experiment. The critical development that Rawls introduces is the idea that to truly hypothesize from a position of equality, individuals must not

know any particulars of their position in the society after the principles have been settled. One must formulate the principles without knowing in advance whether one will be white or black, male or female, born into rich or poor families, live in country or city, etc. In this fashion he believes we will jointly agree upon principles that are fair. This lack of knowledge of our resulting position in the social framework he calls the *veil of ignorance*.

So much for the framework of Rawls' theory. The remainder of the reading which we assigned ourselves (Chapters 1 -3) is dedicated to working out his specific conception of the principles which are, roughly:

- Every individual has an equal right to the most extensive basic liberty compatible with a similar liberty for others
- Social and economic inequalities are to be arranged so that they can be reasonably expected to be to everyone's advantage and any social roles are open to all

The first principle basically catches out to what we currently understand as traditional liberal, democratic rights: conscience, association, self-determination, etc. The second principle requires some clarification.

Rawls explores several notions of liberty that could underlie the second principle. The first is what he calls Natural Liberty which says that equality = efficiency. The most efficient system is the most fair *aka* desirable. (Because it produces the most overall advantages) This he dismisses because there are efficient systems where all advantages lie with one group but which don't guarantee equal rights (e.g. slavery). The second notion of liberty which addresses a deficiency in the first he calls Liberal Equality, which adds a condition of equal opportunity. That is: the most efficient system is the most desirable provided that opportunity for the most advantageous position within that system is open to all. This is an improvement in that it rules out a one-sided system like slavery but it is defective in that it doesn't account for differences in individual's natural abilities, aptitudes and temperaments. Even if equality of opportunity is present, if an individual is not endowed with the appropriate abilities, aptitude or temperament to take advantage it is not fair to that individual.

Now Rawls is not naïve enough to think that everyone is the same and the most advantageous position in a society should be something that everyone can achieve. He is committed, however, to ensuring that everyone in the society be treated fairly. His remedy is to propose what he calls Democratic Liberty.

Democratic Liberty is a combination of fair equality of opportunity (as in Liberal Equality) with something he calls the *Difference Principle*. The Difference Principle simply says that inequality in opportunity or advantage is just (or fair, if you like) if and only if the inequality benefits

everyone. Through some logic I don't have time to go into for this summary, Rawls uses a hypothetical 'least advantaged individual' to serve as a measure for the Difference Principle. If you are asking in any context whether an inequality enjoyed by someone is just, ask whether giving it to that individual will simultaneously create benefit for the least advantaged person in the same society.

The idea is that it is okay to have inequality in social advantages if such inequality benefits not only the individual receiving it, but everyone. Rather than having to calculate overall benefit and degrees of benefit as in the Utilitarian model, you simply have to know whether the worst off in the society will benefit as well – or at least not be harmed in any material way. Rawls thinks this addresses deficiencies in both the conceptual foundation and practical application of the Utilitarian version of Justice against which he set out to provide an alternative.

This is of course only the barest of summaries and there are many clarifications and objections which we will explore in our upcoming full episode. Thanks!