

John Rawls's Theory of Justice: a brief overview¹

John Rawls's theory of justice is a sound theory which says that a well-ordered society needed a concept of justice as a basic requirement and that such a concept could be developed by rational individuals behind a 'veil of ignorance' about their own position, and that it would involve, primarily, equal right to basic liberties for all, and secondly that social and economic inequalities should derive from equal opportunities and in the end should benefit the least advantaged.

Life and major works:

John Rawls was born in 1921 in Baltimore, USA. He was a Fulbright fellow at Oxford in 1952. He was the Professor of Philosophy in the Universities of Princeton, Cornell, Harvard and the Massachusetts Institute of Technology. He died in 2002. His major works include the following:

1. 'Outline of a Decision Procedure for Ethics', *Philosophical Review* (1951)
2. 'Two Concepts of Rules', *Journal of Philosophy* (1955)
3. 'Justice as Fairness', *Philosophical Review* (1958)
4. 'Distributive Justice', *Philosophy, Politics and Society* (1967)
5. **A Theory of Justice** (1971)
6. 'Kantian Conservatism in Moral Theory', *Journal of Philosophy* (1980)
7. 'The Principles of Liberty and Their Priority', *The Tanner Lecture on Humanities* (1982)
8. 'Justice as Fairness: Political not Metaphysical', *Philosophy and Public Affairs* (1985)
9. 'The Idea of an Overlapping Consensus', *Oxford Journal of Legal Studies* (1987)
10. 'The Priority of Right and Ideas of the Good', *Philosophy and Public Affairs* (1988)
11. 'The Domain of the Political and Overlapping Consensus', *New York University Law Review* (1989).
12. **Political Liberalism** (1993)
13. **The Laws of Peoples** (1999)
14. **Justice as Fairness: A Restatement** (2001)

The time and influence:

Post-World War II era (1945 onwards):

- A general skepticism over the study of political philosophy – the 'end of ideology' debate.
- Erosion of values in the liberal democratic set up due to tensions in internal as well as external ambiances.
- The major political issues were: Civil Rights Struggle, Cold War, Vietnam War, etc.
- The liberal values and political set up were in crisis.

¹ Prepared by Sandipan Sen for PLSA – III Paper V Half 1 Topic 4b

Rawls was deeply influenced by the liberal thinkers like John Locke, Jean Jacques Rousseau, Immanuel Kant, Hume and others.

The core issue:

Rawls saw problems for the justification of liberal democratic order in the American society during his times. In this context he offered a theoretical scheme for the *systematic reconstruction and defense of the values of liberal democracy*. In doing this Rawls demonstrated that because of the dependence and urgency of the political questions, they can not be primarily philosophical in nature and they should be studied in reference to other social sciences, especially economics. He insisted that the method of political philosophy was essentially 'normative and impure' in nature.

The objective of the theory:

To provide a justification for political liberalism Rawls made an attempt to work out *a theory of justice* that would be appropriate for a '*well-ordered society*'.

To Rawls a *well-ordered society* or a good society should have two major aspects:

- i) A society "as one designed to advance the good of its members and effectively regulated by a public conception of justice".
- ii) "... it is a society in which everyone accepts and knows that the others accept the same principle of justice and the basic social institutions satisfy and are known to satisfy these principles."

How to solve the problem of producing a universally acceptable set of moral and political principles – given the fact of the presence of competing and often incommensurable values within the modern societies?

Rawls argued that it was possible to envisage a class of hypothetical '*competent moral judges*' who would be able to decide between competing moral and political ideals from a position of *reasonableness and impartiality* and they would not be committed to the application of ideals derived from any of the moral standpoints within the society.

Rawls was worried to see the disagreement within the liberal democratic system regarding the way basic social institutions should be arranged if they were to conform to the freedom and equality of citizens as moral persons.

Justice as Fairness:

According to Rawls, justice should be regarded as *a virtue of institutions*, or 'practices', rather than of particular actions or persons. To him it was one among many virtues and not an all inclusive vision of a good society.

To him, “The question of fairness arises when free persons, who have no authority over one another, are enjoying in a joint activity and amongst themselves settling or acknowledging the rules which define it and determine the respective shares in its benefits and burdens.”

Distributive Justice:

Rawls was concerned with the distributive form of justice. To him, it “... is upon a correct choice of a basic structure of society, its fundamental rights and duties, that the justice of distributive share depends.” To find out the best possible way to make such a ‘correct choice’ Rawls revived the notion of *social contract* against the then dominant theories of utilitarianism and intuitionism. As to him utilitarianism sacrificed individual freedom for the sake of common good. And intuitionism was also a weak theory to him as it left little for individual’s judgement guided by his reason.

Social contract theory allowed for the separation of justice – the right, from the notions of what would produce the most good. They should be separated because there can be no natural agreement in modern states over competing ideas of the good. The virtue of justice is that it creates the possibility for competing ideals of the good to coexist within a relatively stable political order – which can be termed as a ‘*well-ordered society*’.

Defining justice:

The term 'justice' originates from a Latin word *jus*, meaning a tie or a bond in English. Ernest Barker says: “The function of justice may be said to be that of adjusting, joining or fitting the different political values....it is the reconciler and synthesizer of political values in their union in an adjusted and integrated whole...” Barker also says: “The idea of justice resides in all minds, and it has been created and developed through the ages by a process of historical social thought, which has made it a common inheritance ... it is not an abstract conception but a social reality: an actual content of actual minds...”

To Rawls, “Justice is the first virtue of social institutions, as truth is of systems of thought. A theory however elegant and economical, must be rejected if it is untrue; likewise laws and institutions no matter how efficient and well-arranged, must be reformed or abolished if they are unjust. Each person possesses an inviolability founded on justice that even the welfare of society as a whole cannot override.”

Well-ordered society:

The necessity of a theory of justice arises from the fact that although “a society is a co-operative venture for mutual advantage, it is typically marked by a conflict as well as by an identity of interests.” From the commonsense of sociology it is essential that a society requires a set of principles for choosing between the possible arrangements for distributing advantages and for justifying an agreement on the ‘proper distributive shares’.

For Rawls a society is “...well-ordered when it is not only designed to advance the good of its members but when it is also effectively regulated by a public conception of justice. That is, a society in which (i)

everyone accepts and knows that the others accept the same principle of justice and (ii) the basic social institutions generally satisfy and are generally known to satisfy these principles.”

How to achieve such a society?

‘Justice as fairness’ could only be accounted for from the standpoint of a hypothetical *contract*, which is not a device for entering a particular society or setting up a particular form of government, but the context in which the principles of justice appropriate for the basic structure of society are formulated. Here, Rawls was influenced by Locke, Rousseau and Kant.

The conditions for the contract:

The following are the four conditions that Rawls advocated for the successful conduct of a contract leading to the formulation of the basic principles of justice for a well-ordered society.

1. ‘Circumstances of justice’ or ‘natural fact’:

Under the influence of Hume Rawls considered that men are bounded by incomplete knowledge, limited attention and limited capacity of judgement – these conditions are ‘natural’, not artificial, alterable or modifiable.

2. ‘Original / initial position’:

According to Rawls, “... what would emerge from such a hypothetical condition would be those principles that free and rational persons concerned to further their own interest would accept in an *initial position of equality* as defining the fundamental terms of their association.”

3. ‘Veil of ignorance’:

He also said: “Among the essential features of this situation is that no one knows his place in society, his class position or social status, nor does anyone know his fortune in the distribution of natural assets and abilities, his intelligence, strength and the like. I shall even assume the parties do not know their conception of the good or their special psychological propensities. The principles of justice are chosen behind a veil of ignorance.”

4. ‘Maximin rule’:

In such a condition as mentioned above, Rawls, under the influence of the ‘game theory’ of modern economics, expected the rational individual would rank alternatives by their worst possibilities. Those alternatives will be adopted the worst outcome of which is superior to the worst outcomes of the others. A person would choose for the design of a society in which even his enemy is to assign him his place.

The outcome of the contract:

Rawls expected that two principles of justice would be chosen on the basis of the ‘original position’:

1. First: each person is to have an equal right to the most extensive scheme of equal basic liberties compatible with a similar scheme of liberties for others.
2. Second: social and economic inequalities are to be arranged so that they are both (a) reasonably expected to be to everyone's advantage, and (b) attached to offices and positions open to all.

Later on Rawls modified these principles and presented them in the following way:

1. Each person has an equal right to a fully adequate scheme of equal basic liberties which is compatible with a similar scheme of liberties for all,
2. Social and economic inequalities are to satisfy two conditions. First, they must be attached to offices and positions open to all under conditions of fair equality of opportunity; and second, they must be to the greatest benefit of the least advantaged members of society.

Priority rules:

Rawls advanced two cases of 'priority rules' in respect to the above principles:

- i) A less-extensive liberty must strengthen the total system of liberty shared by all; ii) A less than equal liberty must be acceptable to those citizens with the lesser liberty.

Basic structure of the society:

According to Rawls these principles are applicable to the 'basic structure' of the society. The basic structure can be divided into two aspects:

- i) Those aspects of social system that define and secure the equal liberties of citizenship, *e.g.*, political liberty, freedom of speech and assembly, liberty of conscience, freedom of thought, right to hold property, freedom from arbitrary arrest.
- ii) Those aspects that specify and establish social and economic inequalities, *e.g.*, distribution of income, wealth and of authority.

Rawls also emphasized that there is no need for economic equality for implementing the principles of justice, but the need is for a pattern of economic distribution to the benefit of the least advantaged and as complete as possible openness of all positions of authority.

To him there is no favourite economic system for the implementation of these principles, it depends on the 'traditions, institutions and social forms of each country'.

Significance of the theory:

The theory aims at setting out an 'Archimedean point' in terms of which different societies would be assessed. It aims to arise at a state of affairs that Rawls called as '*reflective equilibrium*'. But he always insisted that the theory was open to further modification, which he did during the late nineteen seventies and eighties.

Further modifications:

Major modifications done by Rawls himself on the theory are as following:

1. Justice as fairness is to be regarded as a specifically political and *not* a metaphysical theory. He says: "...in a constitutional democracy the public conception of justice should be, so far as possible, independent of controversial philosophical and religious doctrines."
2. It is important to make distinction between *procedural neutrality and neutrality of aim*. While justice as fairness is not designed to favour any particular moral doctrine, it is impossible to resist the social order to aid some and hinder others.
3. Social unity in a 'well-ordered society', can only take the form of an '*overlapping consensus*' in which the political conception of justice as fairness is affirmed by citizens who themselves hold conflicting moral, political and religious doctrines.

Critical appreciation:

- P.H. Nowell Smith and B. Williams: It is a fundamental mistake to expect a greater degree of precision than a subject matter will allow. Politics is not and can not be an exact science.
- H.L.A. Hart: The precise meaning of Rawls's argument is unclear, there is clearly no direct deduction of the two principles of justice from the 'original position', neither is there a definitive accounting for the 'primacy of liberty'.
- Amartya Sen: The principle of "priority of liberty" can be questioned: "Why should the status of intense economic needs, which can be matters of life and death, be lower than that of personal liberties?"
- F.A. Hayek: The search for social justice is to chase after a mirage.
- Robert Nozick: The quest for distributive justice requires more than a minimalist state.
- C.B. Macpherson: It is a fundamental mistake to separate distribution from production in the consideration of justice.
- Sandel and McIntyre: It is impossible to affirm rights and liberties without the moral doctrines or ideas of good society.

Uniqueness and relevance of Rawls:

- Rawls made a radical departure from his predecessors in the field by not getting concerned with mere conceptual analysis, but by constructing a *theory* of justice to face real political problems and issues.
- His theory is deeply rooted in liberal democratic traditions as he revived the idea of Social *Contract* as depicted by Locke, Rousseau and Kant in contrast with utilitarianism and intuitionism.
- He revived the tradition of English language political thought which was on the verge of extinction after John Stuart Mill's *On Liberty* (1859) and Henry Sedgwick's *The Method of Ethics* (1874).
- Even his critics like Robert Nozick had to say that Rawls's *A Theory of Justice* was such a "powerful, deep, subtle, wide-ranging, systematic work" that, political philosophers must now "either work within Rawls's theory or explain why not."
- Amartya Sen also recognized it as "...the most influential – and in many ways the most important – of contemporary theories of justice...." *

References:

1. **A Theory of Justice**, John Rawls, 1971
2. '*John Rawls, Justice and a Well-ordered Society*', by Peter Lass man in **Political Thought Since 1945: Philosophy, Science and Ideology** edited by Leonard Tivey and Anthony Wright , 1992