Explain and assess Rawls' theory of justice

by Christopher Evans

I shall seek to place John Rawls' theory of justice in the context of contract theory, where Rawls places it, and other theories with which he contrasts it. I shall consider key arguments for and against his approach. I shall focus primarily on distributive justice, though his theory also applies to issues of liberty and governance such as tolerance and intolerance[1]. I shall argue that Rawls' approach provides a persuasive method of evaluating political propositions, even though the nature and priority of his proposed values ("primary goods") and principles of justice can be challenged.

<u>Rawls' aims, approach and context</u>

In *A Theory of Justice*, Rawls describes justice as "the first virtue of social institutions", and as a matter of "fairness". He sets out his aim for a theory building on the social contract idea, as a viable alternative to classical utilitarian and intuitionist conceptions of justice[2].

In seeking an alternative to utilitarianism, Rawls argues against what he regards as the prevailing dominant theory[3]. He comments that in the utilitarian view of justice "it does not matter, except indirectly, how [the] sum of satisfactions is distributed among individuals"[4]. In other words, "utilitarianism does not take seriously the distinction between persons."[5] In this respect, one could say that it pays insufficient regard either to liberty or equality.

On intuitionism, defined by Rawls as "the doctrine that there is an irreducible family of first principles which have to be weighed against one another by asking ourselves which….is the most just"[6], Rawls himself occasionally appeals to intuition to support his arguments - referring for instance to "our intuitive conviction of the primacy of justice"[7]. Nevertheless, he builds his case without undue reliance on intuition. As D.D. Raphael puts it, "Dispute between advocates of [rival conceptions of distributive justice] tends to get bogged down in intuitive feelings of what is just or fair. Rawls wants to…produce instead an objective argument which everyone will accept."[8]

Rawls turns therefore to social contract theory. Some earlier contract theories had been attacked, by David Hume[9] and others, on the grounds that neither actual nor tacit political consent could be established. Rawls' approach, more persuasively, is closer to theories of hypothetical consent. Jonathan Wolff comments that this is a very weak form of consent[10];

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1 Rawls, pp.190-194.

2 ibid. p.3.

3 ibid. p.3.

4 ibid. p.23.

5 ibid. p.24.

6 ibid. p.30.

7 ibid. p4.

8 Raphael, p.146.

9 Hume, pp.66-68.

similarly, Wolff quotes Ronald Dworkin - "A hypothetical contract…is no contract at all"[11]. Although these arguments have some force, it may be unhelpful to apply too literally the metaphor of a legal contract. Rawls' appeal to "fairness" echoes Herbert Hart's argument that an explicit (contractual) promise is not necessary for obligations to arise from mutual social activity[12].

The Original Position

Rawls posits an "original position" where people of equal liberty choose basic principles to guide their political decisions. This, says Rawls, "corresponds to the state of nature in the traditional theory of the social contract"[13]. The choice is made by people behind a "veil of ignorance" about their assets, capabilities, gender and so on. Nor do they know the characteristics of their society, except that it is in "the circumstances of justice" - not in such crisis nor so perfect that normal cooperation to achieve justice is impossible or unnecessary[14]. The scenario is designed to illustrate what principles an unbiased person would choose, and is a powerful tool for discounting partial, possibly unconscious, assumptions.

For Rawls, those choices are made through rational choice rather than altruism. He argues that "the combination of mutual disinterest and the veil of ignorance achieves much the same purpose as benevolence"[15] but with greater simplicity and clarity (if we relied on benevolence, how would we know what worked best for others, and how much weight to give that?).

Rawls makes a convincing case, though his method is sensitive to what people value in making their rational choices.   Rawls posits a "thin" [basic] theory of the good". According to this, people rationally value certain "primary goods": rights, liberties, opportunities, income, and wealth, and also self-respect[16] (the sense of one's own value, confidence in one's ability to carry out one's intentions, and recognition by others[17]).   It is not entirely clear that this list is self-evident or exhaustive. Iain MacKenzie[18] cites criticisms by Charles Taylor and Michael Sandel that Rawls' approach is too atomistic, underrating the intrinsic value of collective activity. Rawls attempts to address this in recognising "the idea of social union"[19], though his defence still appears to give primacy to individual choice. Nevertheless, Rawls' list of primary goods appears in practice to be one which many could accept.

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10 Wolff (1), p.46.

11 ibid. p.170, from Dworkin, 'The Original Position', 1973.

12 Hart, pp.71-72.

13 Rawls, p.11.

14 ibid. pp.109-112.

15 ibid. pp.128-129.

16 ibid. pp.78-81.

17 ibid. p.386.

18 MacKenzie, pp.97-101.

19 Rawls, pp.456-464.

A further potential objection is that what for Rawls is rational choice might in fact be unduly risk-averse. Rawls claims that his approach is based on rational decisions "for anyone whose aversion to being able to secure their fundamental interests is within the normal range"[20]. This issue is considered further below.

Principles of Justice

Rawls argues that the principles one would rationally adopt in the original position are as follows:

"FIRST PRINCIPLE

Each person is to have an equal right to the most extensive total system of equal basic liberties compatible with a similar system of liberties for all.

SECOND PRINCIPLE

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

(a) to the greatest benefit of the least advantaged, consistent with the just savings principle, and

(b) attached to offices and positions open to all under conditions of fair equality of opportunity."[21]

It is characteristic of Rawls' painstakingly reasoned approach that he begins *A Theory of Justice* with a different formulation, and then takes the reader through additional points which lead him to revise it.

Rawls argues, further, that these principles are in the following priority order: liberty principle (1); fair equality of opportunity principle (2(b)); "difference" principle (2(a)).

Basic liberties include, for Rawls, political liberty, freedom of thought and expression, freedom of the person and the right to hold personal property[22]. In giving primacy to these Rawls makes an intuitively powerful case, referencing Kant, for the importance of personal autonomy[23].

On fair equality of opportunity, Rawls argues convincingly that this should not be solely formal, but that all with similar talents and motivation should have a fair chance to attain positions of social and political power[24]. For that to become a reality, this principle needs to be combined with the difference principle.

The difference principle is, as Wolff says[25], distinctive in particular for insisting that any inequalities should most benefit the least well off (subject to "just savings" to provide for

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20 ibid. p.148.

21 ibid. p.266.

22 ibid. p.53.

23 ibid. pp.221-7, 450-5.

24 ibid. pp.57-65, 73.

25 Wolff (2).

intergenerational justice[26]). Allowing for some inequalities seeks to address the common criticism that redistribution inhibits motivation for industry and innovation. Nevertheless, it is strongly egalitarian - going further than, say, permitting inequalities only if they benefit everybody on average.

Robert Nozick[27], championing "unpatterned" over "patterned" conceptions of justice, criticises redistribution for compromising liberty and legitimately acquired property. Whilst his example (people paying to see a sports star) is engaging, and his commentary witty ("the socialist society would have to forbid capitalist acts between consenting adults"), this does not feel like a comprehensive rebuttal of Rawls' approach. In the example, the spectators presumably gain something as well as the sportsman. At any rate, Rawls does not object to voluntary exchange at prices set by markets[28]. Nor is redistribution incompatible with Rawls' liberty principle - which guarantees basic liberties, not freedom from all regulation.

Even allowing for some redistribution, Rawls' difference principle can be challenged. It assumes that the rational choice in Rawls' "original position" is "maximin" - choosing options where the worst outcome is still better than the worst outcome for any other options[29]. This may seem unduly risk-averse. Rawls responds that it is rational in the special case of choosing lasting principles of justice from "the original position". This is plausible, though a case can be made for variants such as Ronald Dworkin's[30] hypothetical insurance market which may be closer to actual attitudes to risk. A key feature of both, though, is support for those least well-off[31].

Conclusion

I have argued that Rawls' *Theory of Justice*, drawing on earlier thinkers, provides an original, persuasive perspective for political judgements. His principles and conclusions, whilst not immune to challenge, provide a coherent, powerful case for liberal egalitarianism. His influence is widespread, in both philosophy and public policy (eg recognition of the need for distributional impact analyses). Rawls acknowledges imperfections in his work but sets out his aim to provide a "theory of justice as a guiding framework"[32] for decision-making, which he has done.

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26 Rawls, pp.251-8.

27 Nozick, pp.245-8.

28 Rawls, pp.241-2.

29 ibid. p.133.

30 Dworkin, pp.248-254.

31 See White.

32 Rawls, p. 46.

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