

## Second Prize

### What are Rawls' principles of justice? Is his argument for them convincing?

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Rawls introduced his principles of justice in his seminal work "A Theory of Justice" (Rawls, 1999). My essay will present these principles and evaluate Rawls' arguments in support of his theory to determine if they are convincing. I will consider his response to critics who support other theories of justice such as libertarianism and egalitarianism. Criticism from commentators on racial equality will be addressed initially. Other criticisms arise, for example, from those who favour sufficientarianism (see, for example, Frankfurt, 1987) or prioritarianism (see, for example, Parfit, 1995). However, time does not permit a discussion of these.

Rawls developed his principles of justice as a criticism of utilitarianism. His principles follow the social contract approach developed by Locke, Rousseau, and Kant. They are based on ideal theory, which assumes that people are willing to comply with the principles chosen.

Rawls' two principles of justice are:

1. 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 others.
2. Social and economic inequalities are to be arranged so that they are both:
  - a. To the greatest expected benefit of the least advantaged
  - b. Attached to the offices and positions open to all under conditions of fair equality of opportunity

The first principle is the liberty principle. The first part of the second principle is the difference principle, which is often referred to as "maximin" (Rawls, 1999, p174). Rawls assigns these principles a lexical priority. Thus, applications of the difference principle are not tolerated if they violate the first principle (Rawls, 1999, p135).

Overall, these principles are referred to as 'Justice as Fairness', which stems from the premise that they are principles of justice which are agreed in an initial situation which is fair. Rawls uses an artificial device known as the original position to establish his principles. Central to this device is the concept of a veil of ignorance. Members of society must determine just principles without knowing their ultimate position in the society which they envisage. It is supposed that the parties involved are rational, but also have no particular interest in the interests of others. Nevertheless, it is recognised that such individuals have a desire to further their own interests. As Rawls points out, if a person in the original position knew that they would be rich it would be rational to propose that a redistributive tax system would be unjust (Rawls, 1999, p17).

Rawls' principles of justice have an egalitarian basis ("...equal basic liberties..."), but also allow for inequalities. This has led to it being described as complex egalitarianism (Daniels, 2003). With respect to the difference principle, the consideration made by Rawls is a financial one and not some other metric of advantage, such as happiness. Whilst this principle is subordinate to the liberty principle, it should not be viewed as being unimportant.

When evaluating the principles, we may use reflective equilibrium to determine if the derived situation fits with our considered judgements. Using this process allows Rawls to avoid placing thresholds on the least advantaged as we may judge the acceptability ex-post. Rawls recognised that the state of equilibrium is not stable and can be further examined, causing us to revise our judgements (Rawls, 1999, p18). Whilst this may be a positive aspect of the theory, it is open to criticism as it is subjective.

A major criticism of Rawls' Theory of Justice is that it is largely silent on matters of racial equality (Foster, 2004). This appears to be a surprising omission considering that the theory was developed during a time of continued racial tensions within the United States. The Civil Rights movement was prominent, as were concerns of racial inequalities in the Vietnam war.

We may reflect that Rawls presents an ideal theory. The liberty principle establishes the equal rights of all in the original position. Indeed, Rawls states "...we are confident that religious intolerance and racial discrimination are unjust." (Rawls, 1999, p17). I contend that Rawls did not say much on this topic, as the basic premise is unambiguous. Where "Scholars of Race" (Foster, 2004, p1715) have an argument with Rawls appears to be concerned with the "what is" of current, especially American, societies rather than the "what ought to be" of an ideal theory. Rather, more time has been devoted to the question of wealth distribution, since we are much less confident that we know what a just distribution of wealth is. Thus, more discussions are to be found around the difference principle.

The difference principle gives rise to several objections and has been the subject of attack by those both on the left and on the right of the political spectrum. A strident critic of Rawls was his Harvard contemporary Robert Nozick in his major work *Anarchy, State, and Utopia* (Nozick, 1974), where he presented his arguments for the minimal state; the so-called "nightwatchman state". Nozick argued against egalitarian theories of justice such as that proposed by Rawls, as they require the redistribution of resources from legitimate owners. Furthermore, Rawls' theory is an example of a "pattern theory" (Nozick, 1974, p155). To maintain the pattern required of the difference principle there must be continuous state intervention. Nozick contends that such interference is a violation of people's rights (Meadowcroft, 2011, p169).

To demonstrate his principle of "justice in acquisition" Nozick uses an example of Wilt Chamberlain, a famous basketball player, who justly derives income from people who pay to see him play. Since his financial rewards were justly acquired it must follow that any redistribution of his wealth would not be just (Nozick, 1974, p161).

The counter argument relies on what the rational person would consider in the original position, under a veil of ignorance. It is reasonable to assume that the unequal wealth attainable by Wilt Chamberlain would be foreseen and mitigated by way of a redistributive tax. Since this position is agreed ex-ante, it cannot be considered unjust.

A second argument arises from the now familiar idea of the “trickle down economy”, which may also be captured by the phrase “a rising tide lifts all boats.” Such ideas are embodied within supply-side economics which favour low taxes, especially for the highest earners, decreased regulation, and increased free trade. Proponents of such economic policies argue that they are consistent with Rawls’ difference principle as the trickledown effect ensures that any inequalities are to the greatest benefit of the least advantaged (Reiff, 2012, 119 – 173). It can be argued that such a situation should not arise according to Rawls’ theory, as it must fall foul of the liberty principle and this has lexical priority over the difference principle. In cases where there are extreme differences in economic equality there are likely to be inequalities in primary social goods, including in political processes.

An initial reading of the difference principle may lead one to conclude that Rawls would be in favour of a Universal Basic Income (UBI). Philippe van Parijs, a well-known proponent of UBI, has discussed this topic and proposed that the difference principle would lead to a wage subsidy or a guaranteed income (i.e., a UBI) (Parijs, 2003, p217). One challenge that proposals for UBI face is that those who voluntarily do not work, are amongst the least advantaged and would be entitled to benefit from the difference principle. Such a group was exemplified by “Malibu surfers”. Given that the principles of justice are established based on social contract theory which brings both rights and duties to members of society it is not surprising that Rawls did not agree. He was able to modify his principles to address the former criticism by including leisure as one of the primary goods in the liberty principle (Parijs, 2003, p217).

Although Rawls’ principles of justice are considered to be egalitarian, he also faced strong criticism from strict egalitarians such as Cohen. Under a strict egalitarian system Cohen proposed that workers would not require incentives, which are manifested in the difference principle, to use their talents in ways that are socially ideal and lead to a just society (Moon, 2015, p43). However, the difference principle proposed by Rawls is more convincing than the strict egalitarian ideal of Cohen to address the basic structure of society, both in terms of ideal theory and reality.

In this essay I have presented Rawls’ principles of justice and provided evidence that his arguments in support of these principles are convincing. Criticism based on racial discrimination has been rebutted by reference to the first principle and our confidence that such discrimination is unjust. Replies to attacks from libertarians can be based on the original position and by reference to the first principle. Although Rawls’ theory would appear to support UBI, the social contract principle does not support this. Furthermore, it has been shown how Rawls adapted the interpretation of his principles to address certain criticisms, such as adding leisure into the consideration of primary

social goods. Finally, with reference to criticism from egalitarians, the difference principle is more convincing than strict egalitarian principles.

## Bibliography

Daniels, Norman, "Democratic Equality: Rawls' Complex Egalitarianism" in "The Cambridge Companion to Rawls", Freedman, Samuel (Ed).

Foster, Sheila R., "Race and Ethnicity, Rawls, Race, and Reason" in *Fordham Law Review*, 2004, 72, 5, Article 16

Frankfurt, Harry, "Equality as a Moral Ideal", *Ethics*, 1987, pp 21 - 43

Meadowcroft, John, "Nozick's critique of Rawls: distribution, entitlement, and the assumptive world of A Theory of Justice" in "The Cambridge Companion to Nozick's Anarchy, State and Utopia", Bader, Ralf, E. and Meadowcroft, John (Eds)

Moon, J. Donald, "Cohen vs. Rawls on Justice and Equality", *Critical Review of International Social and Political Philosophy*, 2015, 18:1, 40 - 56.

Nozick, Robert, "Anarchy, State, and Utopia", 1974

van Parijs, Philippe, "Difference Principles" in "The Cambridge Companion to Rawls." Freedman, Samuel (Ed).

Parfit, Derek, "Equality of Priority", in the Lindley Lectures (Kansas, The University of Kansas, 1995)

Rawls, John, "A Theory of Justice", 2nd Edition, 1999

Reiff, Mark, R., "The Difference Principle, Rising Inequality, and Supply-Side Economics: How Rawls Got Hijacked by the Right", *Revue de Philosophie Economique*, 2012/2, Vol 13, 119 - 173