

RAWLS' THEORY OF JUSTICE

I. Hypothetical Contractarianism: The intuition behind contemporary hypothetical contractarianism is that the principles of justice are those principles that everyone would accept from a certain, specified point of view. Typically, this point of view is one in which people are ignorant of who they are in society. The analogy to choosing the rules and/or set-up of a game prior to knowing anything about your own role in the game is helpful in capturing this intuition. Since we can't literally set up our social rules before we play the game of life, hypothetical contractarians ask us to imagine what rules we would set up if we were ignorant of our role in life.

II. Rawls' Assumptions:

- A. Rationality:** Agents in the Rawlsian original position are assumed to be rational in the sense of taking efficient means to desired ends.
- B. Mutual Disinterest:** Agents in the original position are assumed not to take an interest in the payoff of others nor in the differences between their own payoffs and those of others.
- C. Veil of Ignorance:** Agents in the original position do not know particular facts about themselves. (That is, they do not know their own age, sex, race, religion, life goals, etc.)
- D. (Implicit) Veil of Volition:** Agents in the original position are not motivated by their real life motivations except insofar as those are identical with the motivation for primary goods discussed below.
- E. Desire for Primary Social Goods:** Agents in the original position are motivated to attain for themselves the highest quantity of primary goods possible. These are: rights & liberties, income & wealth, powers & opportunities, and the social bases of self-esteem.

III. The Reasoning of the Contractors

- A. The Maximin Strategy:** The maximin strategy requires that one choose that alternative, the worst possible outcome of which is better than any other alternative's worst possible outcome. It instructs one to maximize one's minimum possible gain.
 - 1. The Argument for the Maximin Strategy:** Rawls offers several considerations in favor of the claim that the contractors in the original position would choose the principles of social organization according to the maximin strategy.
 - a) They don't know the probabilities that are required to make it reasonable to gamble in making their choice. That is, they don't know how likely it is that they will be in a given social class (if the principles they choose create classes). Thus, they will be reluctant to make the worst-off classes any worse off than they need to be because, for all they know, it might be very likely that they will be in that class.
 - b) They are dealing with goods that are very important to the quality of life.
 - c) The choice in the original position is a "once and for all" choice. They cannot return to gamble again if they lose a gamble. The decision made will affect the quality of their life forever.
 - d) The contractors care very much to ensure that they receive primary social goods above a certain minimally required level. Gains above that level are not nearly so important to them.
 - e) Principles of justice made in accordance with strategies that risk falling below the requisite minimum do not accord with our considered judgments about justice.

IV. The Content of the Contract

- A. **The General Conception of Justice:** Rawls believes that the contractors would accept the following general conception of justice. All primary social goods are to be distributed equally unless an unequal distribution works to the advantage of all. This general conception leads the contractors to the following two principles of justice.
- B. **The Equal Liberty Principle:** Each individual 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. *I.e.*, each is to have maximim liberty compatible with like liberty for all.
- C. **The Difference Principle:** Social and economic inequalities are to be distributed in such a way that (a) they can reasonably be expected to work to everyone's advantage, and (b) the advantages are attached to positions that are equally open to all.

1. Interpretations of the Difference Principle

a) "open to all"

- (1) **Careers open to talents:** This interpretation requires that advantaged positions be formally open in the sense that at the point of selection for the position, talent is the only consideration employed. Discrimination on the basis of race, religion, sex, etc. in hiring, admission to professional schools, etc. is forbidden.
- (2) **Fair opportunity:** This interpretation requires compensation for the results of past discrimination and for unequal chances resulting from factors beyond the agent's control. Thus, society is required to provide a means for preparing those disadvantaged in competition for the more desirable positions for the above reasons with assistance in gaining the talents necessary to compete fairly.

b) "to everyone's advantage"

- (1) **Pareto Efficiency:** A distribution of Pareto efficient if, and only if, there is no alternative distribution that leaves everyone at least as well off and makes at least one person better off. The above statement of the difference principle could be interpreted as only requiring Pareto efficiency. Rawls rejects this interpretation because it doesn't accord with maximin reasoning and it is compatible with many different distributions that are not morally "on a par" with each other and that the contractors would not consider equally good.
 - (2) **Difference Principle Interpretation:** This interpretation of the difference principle requires that inequalities in social and economic goods work to the advantage of the worst-off group in the sense of maximizing the quantity of primary goods that members of that class enjoy. [Rawls goes on to say that if two distributions satisfy this requirement—leaving the worst-off equally well off—then the difference principle requires us to choose on the basis of which distribution leaves the second worst-off as well as possible, etc. This will ensure that the final distribution will be Pareto efficient as well as satisfying the "difference principle interpretation" of the difference principle.]
2. **Final Statement of the Difference Principle:** Social and economic inequalities are to be arranged so that they are both (a) to the greatest benefit of the least advantaged and (b) attach to offices and positions open to all under conditions of fair equality of opportunity.

V. Criticisms of Rawls

A. Internal Criticism

- 1. **Inadequate Argument for Maximin:** Rawls is guilty of a false dichotomy. His "considerations in favor" of the maximin strategy only show that the contractors would be averse to risking falling below a satisfactory minimum. But they could ensure against

that by employing an insurance strategy rather than the more conservative maximin strategy. An insurance strategy wouldn't lead to the difference principle.

B. External Criticisms

1. **Dworkin's Methodological Criticism of Hypothetical Contractarianism:** The fact that people would agree to certain principles can provide no argument in itself for the justice of those principles. Of course, the reasons for which people would agree to such principles might be morally relevant, so the fact that people would agree to those principles might *indicate* that those principles are just. But the hypothetical agreement offers no argument for the justice of the principles that is independent of these reasons.
 - a) **Reply:** The contractarian wants to show not only that certain principles are right, but that they are principles of *justice*. If we take principles of justice to be moral rules concerning what we owe to each other rather than just what it would be good for us to do for each other, then the fact that these principles would be acceptable from a moral point of view may serve as part of the justification for their being principles of justice.
2. **Liberty and Patterning:** Based on an argument that employs the Wilt Chamberlin example, Nozick maintains that no patterned principle of justice can be continuously maintained without continuous interference with liberty. Thus, patterned principles, like Rawls', are inconsistent with liberty. (In connection with Rawls' theory itself, it is better to make the objection as follows: If Nozick is right that liberty and patterning are incompatible, then Rawls' difference principle will never come into play because it will always be blocked by the equal liberty principle.
 - a) **Replies**
 - (1) Defenders of so-called patterned principles of justice do not, for the most part, endorse such fine-grained patterns as the Wilt Chamberlin example suggests.
 - (2) Defenders of such principles usually speak of promoting a pattern of distribution over the long-run, not at individual instants.
 - (3) Rawls, in particular, is speaking of all primary goods, not just wealth. Rights and liberties are included in these. It is not clear that Nozick could get a plausible Wilt Chamberlin example going that was based on the distribution of all primary goods.
 - (4) Rawls, like most other proponents of patterned principles, is speaking of the right to use and dispose of wealth, not the wealth itself. Such people would not force wealth on those who do not want it. Thus, having had the right to dispose of the quarter as you see fit (even to see Wilt Chamberlin play) is what is at issue—not keeping the quarter.
3. **Personal and Collective Assets:** Nozick claims that the choice constraints on the original position (the veil of ignorance, in particular) force the contractors to view individual abilities and talents as collective assets. This view of individual talents is not well argued for in Rawls and is a violation of the dignity of the individual and leads to morally repugnant conclusions.
 - a) I think Rawls has to bite this bullet, but there is nothing to prevent him from softening it up a bit first. While, in principle, from the point of view of the original position, individual talents are to be viewed as collective assets, people in the original position should realize the special attitudes people in real-life have toward their bodies and talents. Given this, it is unlikely that they would agree to the sort of clearly objectionable use of the talents of the better endowed against their will.