



Jus Corpus Law Journal

Open Access Law Journal – Copyright © 2022 – ISSN 2582-7820
Editor-in-Chief – Prof. (Dr.) Rhishikesh Dave; Publisher – Ayush Pandey

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Critical Analysis of John Rawls' Theory of distributive Justice

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Received 03 May 2022; *Accepted* 18 May 2022; *Published* 01 June 2022

John Rawls is an American political philosopher dealing with liberal ideas. He rose to fame after the release of his paper "Justice as Fairness" in 1958. His theory of justice provided a moral alternative to utilitarian principles. He intricately discussed his idea of justice in his book "A Theory of Justice" written in 1971. He describes in his theory, an ideal society, where all members follow a particular set of principles of justice and a society that is devoid of crimes or breaking of the law. In this society, citizens are rational and reasonable. They cooperate with each other on principles that are acceptable to all. Rawls provides two principles of his theory of justice as fairness. First, Basic equal liberties for all members of society, and second, social and economic inequalities. The second principle gives the circumstances where inequalities are permissible and is divided into two parts, one, Inequalities in benefits and burdens depending on the office or position held by a member are permissible provided there is fairness in the equality of opportunity, and two, the greatest benefits need to give to the least advantaged members of the society. The "Thick" veil of ignorance ensures that there is equality and that the laws are just. The original or initial position is a situation where all members of society are devoid of differences in personal goals, features, or thoughts. Hence, with the veil of ignorance, the parties choose the principles that they want to be governed by, very cautiously as they might end up in the worst possible situation. Rawls has also given the theory of Maximin where he stated that in order to make the best possible choice, the deliberators need to examine the worst possible outcomes as a result of making each of the choices individually. Therefore, This paper aims to elaborate on the original position, veil of ignorance, and the principles of justice given by Rawls. It also discusses the criticisms and analyses surrounding John Rawls's theory of justice.

Keywords: *justice, fairness, veil of ignorance, original position, maximin principle.*

INTRODUCTION

John Rawls is an American political philosopher prominent for his paper "Justice as Fairness" written in 1958 and his Book "The Theory of Justice" written in 1971. His work was regarded as one of the most important contributions to political philosophy after the Second World War.¹ In his article, "Justice as Fairness" he has presented a theory of justice which was also the "Hypothetical Choice Theory" and was based on two principles. The first principle discussed a situation where each person has an equal right to the basic, most extensive level of liberty attainable harmonious with similar liberties for all members of society.² The Second principle, also known as "The Difference Principle" defines what kinds of inequalities are acceptable. It mentions how the presumption of equal liberties for all persons may be discounted. Here, Inequality is permissible when it provides maximum benefits to the disadvantaged and reduces their burdens. "Inequality" does not mean Inequality in Status or the various types of offices held by people, but in the benefits and burdens that come with belonging to that particular position.³ For Example Differences in the rate of Taxes depending on the income of a person or socio-economic benefits given to the underprivileged.

ORIGINAL POSITION

John Rawls in his massively successful book "The Theory of Justice" rationalized his theory with the help of a hypothetical contract. His contract is similar to that of Emmanuel Kant's albeit a more sophisticated model than the latter. This contract discussed by him does not have or is not based on any historical existence. Hence, Rawls does not claim that people actually have accepted a particular set of principles of justice but instead would agree to such principles if certain conditions are satisfied. The original position is one such condition and the central feature of this hypothetical social contract situation given by Rawls. It is an artificial

¹ Norman Frohlich, Joe A. Oppenheimer & Cheryl L. Eavey 'Laboratory Results on Rawls's Distributive Justice' (1987) 17 (1) British Journal of Political Science <<https://www.jstor.org/stable/193962>> accessed 25 April 2022

² Patrick riordan & Rainier R.A. Ibane 'John Rawls on Justice' (1991) 39 (1) Philippine Studies, <<https://www.jstor.org/stable/42633225>> accessed 01 May 2022

³ John Rawls 'Justice as Fairness by John Rawls' (1958) 67 (2) The Philosophical Review <<https://www.jstor.org/stable/2182612>> accessed 02 May 2022

device designed to be a situation where people can enter into a contractual agreement without perceiving one to be more advantaged than the other. While accepting this hypothetical situation, one needs to imagine oneself as a part of a society where all are free and equal who jointly agree and commit to certain principles of justice. They need to be free from the distorted view of bias and one's own sectional interests when agreeing to such principles of social and political justice. This original position is based on the theory of a veil of ignorance which prevents people from neither having the knowledge of all of their personal characteristics such as ethnicity, race, sex, income, and wealth.⁴ Social or historical conditions, nor the specific facts such as the size, climate, and location of the territory they live in, the natural resources available, the population or density of population, wealth, or technological advancements. However, they are not kept oblivious of all facts. They are aware of general facts about people and society, including uncontroversial scientific laws and general knowledge about economics, political science, biology, physics, and other social and natural sciences. Particular facts about a person or society which is morally unimportant and which can generate prejudicial thoughts or selfish bias fall under the veil of ignorance. The purpose of introducing the veil of ignorance is to remove particular facts, the knowledge of which would influence the persons in the Original position to be influenced to choose principles that are not just. John Rawls proposes a "Thick veil of ignorance" in order to maintain a strict "Position of Equality". They are strongly situated equally and symmetrically and purely in their capacity as Equal, Moral, and free persons. They have social cooperation with each other. The theory is of original positions logical and abstract. Since there is a presence of a universal and general view leads to everyone is placed in that position to have the same conclusions. The veil of ignorance results in parties turning into anonymous or general people.

RATIONALITY AND MUTUAL DISINTEREST

Though original position and veil of ignorance are presented as logical conditions in Rawls's theory of justice, it is not all. The society The parties must be rational and reasonable. They should be able to understand the consequences of their actions and be fully cooperative in

⁴ Thomas Pogge, *John Rawls: His Life and Theory of Justice* (Oxford University Press 2007) 64

society. They should have similar interests and needs. All members hold equal power. The parties in their original position, according to John Rawls, are “mutually disinterested”. This means that they have “no interest in the interests of each other”. However, this does not imply that these persons are self-centered or that they do not care about the well-being of others. But, the parties in the original position are not selflessly motivated to show benevolence to the other party. They assume a role of an impartial spectator without interference in the interests of others. Mutual Disinterest also means that the parties are not influenced by envy or hate towards each other. They neither compete with each other in order to become better than others nor do they sacrifice benefits to prevent others from possessing more. Each party is motivated to do what one can do in absolute terms in order to advance the good of its members, without any regard for how little or how much others possess. They strive to achieve a share of primary good in order to pursue their own unknown impression of good.⁵

PRINCIPLES OF JUSTICE

Rawls in his theory talks about a well-ordered society that is regulated by a public conception of justice to which all of the members would adhere to. Since deliberations take place behind the veil of ignorance, no member is aware of each other's personal characteristics or circumstances or their unknown conceptions of good. Hence, it would be irrational for the parties to discriminate on the basis of personal characteristics of race, ethnicity, sex, income, etc. as they may end up in a disadvantageous position. For example, if property rights are given to a particular ethnicity or race, when lifting the veil of ignorance they may realize that they do not belong to that ethnicity or race and hence, they do not have any property rights which would be a disadvantageous position to be in. Thus, the first principle states that Each person has equal and basic liberties which is consistent with the liberties given to the other members. Few Basic liberties given by Rawls include Freedom of speech, freedom of property, freedom of assembly, freedom from arbitrary arrest, freedom of person which includes freedom from physical and mental harm, freedom of integrity, freedom of thought, liberty of conscience, etc. Since the veil of ignorance includes ignorance of probabilities of ending up on

⁵ Samuel Freeman, 'Original Position' (*Stanford Encyclopedia of Philosophy*, 3 April 2019) <<https://plato.stanford.edu/entries/original-position/#Veilgn>> accessed 25 April 2022

the wrong side of deliberations, parties would be extremely cautious and employ the maximin principle given by John Rawls in making their decisions and choosing the principles of justice. The maximin principle is a principle used for making choices when one is not aware or is uncertain about the outcome as a result of the choices made. The maximum-minimum or maximin principle states that for each choice given, parties need to analyse the worst possible outcome as a result of making that choice, and after analysing the worst outcomes of all the choices, choose the option that gives the best worst outcome. The deliberators would hence, choose the option where if they ended up in the worst possible situation they could end up being as good as possible situation. Rawls's second principle addresses the socio-economic inequalities faced by members. It is divided into two parts. The first part discusses the equality of opportunity. It means that all persons should have the opportunity to acquire the skills to be able to hold a particular office or position. The Second part mentions the Difference Principle. it states that inequalities are permissible when it benefits the least advantaged. Lexically, the principle of equal opportunity comes prior to the Difference Principle.

CRITICISMS

Rawls in his social contract theory states that the members or parties who are entering into the hypothetical contract mentioned by him are rational and reasonable human beings who are able to fully cooperate with other rational members. However, it overlooks members in the society who are not able to fully cooperate as a result of mental impairments, unsound mind, idiocy, and other severe disabilities and does not take them into consideration.

According to Martha C. Nussbaum, there is a failure in adequately dealing with the needs of disabled people. In order to ensure Human justice, the rights and citizenship of disabled people must be recognized. She has criticized Rawls's theory by stating that in order to maintain the simplicity and uncomplicated nature of his theories, he has completely ignored the rights of the disabled and their justice. Renowned Economist and philosopher Amartya Sen rejected the focus on primary goods. He opined that due to the diversity of human beings, even after providing the same set of liberties or rights, they may end up in different situations depending on factors such as health and body requirements, the longevity of life, etc. He said

that in order for Rawls's theory to work, human beings need to be very similar which is not the case. He gave the example of three children and a flute. The first child, Anne knows how to play the flute, the second child, Bob is so poor that he has no toys to play with, and the third child, Carla states that the flute is the result of her labour and that's why she should be the one receiving it. Therefore, there are no institutional arrangements to decide who should be receiving the flute in a universally just manner. Sen further states that Mere conceptions of what a just society looks like are not enough to settle the dispute. Even with the one-dimensional approach, the reason is not enough at arriving at a conclusion. Justice is a pluralistic nation with many dimensions. In order to arrive at a conclusion, one needs to examine the value attached to the pursuit of Human satisfaction, removing poverty, and the right to enjoy the fruits of one's labour.⁶ The additional benefits, rights, liberties, and opportunities provided to the least advantaged are on the basis of class, wealth, income, etc. However, that might result in inequality against the meritorious persons who happen to belong to the privileged category of society since no advantage is provided to persons on the basis of merit. Rawls has overlooked the Capabilities approach in his theory. People who are capable of achieving a greater well-being on the basis of their own capabilities should be given more importance. Rawls's theory of a just set of principles being used to form just institutions is just a hypothesis that would eventually get affected by limitations. The focus of Rawls remained only on just institutions and not on just society. Amartya Sen rejected the notion of perfect Justice and gave his own idea of justice with the help of the principles of Nyaya and Niti.⁷

CONCLUSION

The theory of Justice proposed by John Rawls is a comprehensive theory, based on ethical grounds, and calls for fair distribution of primary goods. Rawls gives a hypothetical situation where all persons benefit equally. Each person takes a conscious part in choosing the

⁶ Lydia Kerketta 'Theory of Justice by John Rawls: Its Criticism by Martha C. Nussbaum and Amartya Sen' (*Legal Services India*) <<https://www.legalservicesindia.com/article/1897/Theory-of-Justice-by-John-Rawls-its-criticism-by-Martha-C.-Nussbaum-and-Amartya-Sen.html>> accessed 27 April 2022

⁷ Dhawal Shankar Srivastav 'Rawls's Theory of Justice through Amartya Sen's idea' (2016) *ILI Law Review* <https://www.ili.ac.in/pdf/p11_dhawal.pdf> accessed 02 May 2022

principles of justice that they want to be governed by. Rational persons, under a veil of ignorance, choose the principles of justice without being influenced by personal characteristics or characteristics that would lead to the rational persons becoming biased and inclined to choose unjust laws. His difference principle provides justice to the least advantaged society. Though his theory is comprehensive, it leaves out determinants such as the health and disabilities of a person which acts as a limitation to the theory. The theory of justice presented by Rawls has to a great extent simplified the concept of justice. Rawls has addressed a few of the criticisms in his later works such as “Justice as Fairness - A revisit” and “Political Liberalism”. Nevertheless, it is one of the most significant theories and acts as an alternative to utilitarian principles.