Rawls – Justice as Fairness

Excerpts from:

- *Sandel (2010), "Justice", Chapter 6 – The case for Equality; pp. 141—142, pp. 151—152*
- *Stanford Encyclopedia of Philosophy (2019), "The Argument from the Maximin Criterion" (https://plato.stanford.edu/entries/original-position/#ArgMaxCriTJSec262)*

From Sandel:

Suppose we gathered, just as we are, to choose the principles to govern our collective life—to write a social contract. What principles would we choose? We would probably find it difficult to agree. Different people would favor different principles, reflecting their various interests, moral and religious beliefs, and social positions. Some people are rich and some are poor; some are powerful and well connected; others, less so. Some are members of racial, ethnic, or religious minorities; others, not. We might settle on a compromise. But even the compromise would likely reflect the superior bargaining power of some over others. There is no reason to assume that a social contract arrived at in this way would be a just arrangement.

Now consider a thought experiment: Suppose that when we gather to choose the principles, we don't know where we will wind up in society. Imagine that we choose behind a "veil of ignorance" that temporarily prevents us from knowing anything about who in particular we are. We don't know our class or gender, our race or ethnicity, our political opinions or religious convictions. Nor do we know our advantages and disadvantages—whether we are healthy or frail, highly educated or a high-school dropout, born to a supportive family or a broken one. If no one knew any of these things, we would choose, in effect, from an original position of equality. Since no one would have a superior bargaining position, the principles we would agree to would be just.

This is Rawls's idea of the social contract—a hypothetical agreement in an original position of equality. Rawls invites us to ask what principles we—as rational, self-interested persons—would choose if we found ourselves in that position. He doesn't assume that we are all motivated by self-interest in real life; only that we set aside our moral and religious convictions for purposes of the thought experiment.

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What principles would emerge? According to Rawls, we wouldn't choose utilitarianism. Behind the veil of ignorance, we don't know where we will wind up in society, but we do know that we will want to pursue our ends and be treated with respect. In case we turn out to be a member of an ethnic or religious minority, we don't want to be oppressed, even if this gives pleasure to the majority. Once the veil of ignorance rises and real life begins, we don't want to find ourselves as victims of religious persecution or racial discrimination. In order to protect against these dangers, we would reject utilitarianism and agree to a principle of equal basic liberties for all citizens, including the right to liberty of conscience and freedom of thought. And we would insist that this principle take priority over attempts to maximize the general welfare. We would not sacrifice our fundamental rights and liberties for social and economic benefits.

What principle would we choose to govern social and economic inequalities? To guard against the risk of finding ourselves in crushing poverty, we might at first thought favor an equal distribution of income and wealth. But then it would occur to us that we could do better, even for those on the bottom. Suppose that by permitting certain inequalities, such as higher pay for doctors than for bus drivers, we could improve the situation of those who have the least—by increasing access to health care for the poor. Allowing for this possibility, we would adopt what Rawls calls "the difference principle": only those social and economic inequalities are permitted that work to the benefit of the least advantaged members of society.

Exactly how egalitarian is the difference principle? It's hard to say, because the effect of pay differences depends on social and economic circumstances. Suppose higher pay for doctors led to more and better medical care in impoverished rural areas. In that case, the wage difference could be consistent with Rawls's principle. But suppose paying doctors more had no impact on health services in Appalachia, and simply produced more cosmetic surgeons in Beverly Hills. In that case, the wage difference would be hard to justify from Rawls's point of view.

What about the big earnings of Michael Jordan or the vast fortune of Bill Gates? Could these inequalities be consistent with the difference principle? Of course, Rawls's theory is not meant to assess the fairness of this or that person's salary; it is concerned with the basic structure of society, and the way it allocates rights and duties, income and wealth, power and opportunities. For Rawls, the question to ask is whether Gates's wealth arose as part of a system that, taken as a whole, works to the benefit of the least well off. For example, was it subject to a progressive tax system that taxed the rich to provide for the health, education, and welfare of the poor? If so, and if this system made the poor better off than they would have been under a more strictly equal arrangement, then such inequalities could be consistent with the difference principle.

Some people question whether the parties to the original position would choose the difference principle. How does Rawls know that, behind the veil of ignorance, people wouldn't be gamblers, willing to take their chances on a highly unequal society in hopes of landing on top? Maybe some would even opt for a feudal society, willing to risk being a landless serf in the hopes of being a king.

Rawls doesn't believe that people choosing principles to govern their fundamental life prospects would take such chances. Unless they knew themselves to be lovers of risk (a quality blocked from view by the veil of ignorance), people would not make risky bets at high stakes.

From Stanford Encyclopedia of Philosophy:

In rational choice theory there are a number of potential "strategies" or rules of choice that are more or less reliably used depending on the circumstances. One rule of choice—called "maximin"—directs that we play it as safe as possible by choosing the alternative whose worst outcome leaves us better off than the worst outcome of all other alternatives. The aim is to "maximize the minimum" regret or loss to well-being. To follow this strategy, Rawls says you should choose as if your enemy were to assign your social position in whatever kind of society you end up in. By contrast another strategy leads us to focus on the most advantaged position and says we should "maximize the maximum" potential gain—"maximax"—and choose the alternative whose best outcome leaves us better off than all other alternatives. Which, if either, of these strategies is more sensible to use depends on the circumstances and many other factors.

A third strategy advocated by orthodox Bayesian decision theory, says we should always choose to *directly maximize expected utility*.

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Rawls argues that, given the enormous gravity of choice in the original position, plus the fact that the choice is not repeatable, it is rational for the parties to follow the maximin strategy when choosing between the principles of justice and principles of average or aggregate utility (or most any other principle). Not surprisingly, following the maximin rule of choice results in choice of the principles of justice over the principles of utility (average or aggregate); for unlike utilitarianism, justice as fairness guarantees equal basic liberties, fair equal opportunities, and an adequate social minimum for all citizens.