

Philos 117AC, Fall 2017

Main text:

John Rawls, *A Theory of Justice*, §§ 3, 11–14

Rawls’s project:

- *Basic Goal*: Provide a *systematic* alternative to *utilitarianism*.
- *Utilitarianism*: Arrange social institutions to as to maximize the sum (or average) of happiness (desire satisfaction or pleasure) across the whole population.
- Utilitarianism certainly gives us a principled system. If we ask, “Should social institutions be this way?” utilitarianism gives us a clear-cut answer, “Yes, if such social institutions maximize the sum of happiness, no if not.”
- The problem with utilitarianism is that it fails to take seriously the distinction between persons, and it views society as a “single system of desire.”
- So we replace the utilitarian conception with a conception of society as a fair system of cooperation among free and equal persons.
- But what principles of justice do these abstract alternative conceptions then imply?
- Rawls’s suggestion: Ask, “What principles of justice would be chosen by persons in a situation that is fair to them as free and equal?”
- This is the *original position*: roughly, we imagine that we were to choose principles of justice for our society from behind a *veil of ignorance*, that keeps us from knowing what position we will occupy in society, what our talents or religious beliefs might be, and anything else that might let us “game” the choice of principles in our favor.
- The OP “generalizes and carries to a higher level of abstraction the traditional conception of the social contract” that we see in e.g. Locke.
- What principles would we choose in the OP?
- Not utilitarianism, but instead the “two principles” of “justice as fairness.”
- Like utilitarianism, however, these two principles still give us a principled system, a definite way to answer questions about how social institutions are to be structured.

The Problem with Utilitarianism: Sacrificing the few

- Consider persecuting a minority whose practices we, the majority, find displeasing.
- Each victim suffers more than each beneficiary benefits.
- But there are more beneficiaries than victims.
- So the sum total of happiness increases.
- So utilitarianism tells us to do it.
- In sum, utilitarianism implies that we are morally required to impose great suffering on a few people in order to produce a greater sum of smaller benefits for many other people.

Rawls’s diagnosis: Overlooking the distinction between persons

Rawls claims that this is a mistake. And he tries to diagnose the source of this mistake. He suggests that it lies in treating the whole of society as though it were a single person. This principle permits us to “impose a sacrifice on ourselves now for the sake of a greater advantage later” (23). Consider my decision to visit the dentist:

	<i>Today for me:</i>	<i>Everyday for me after age 50:</i>	<i>Total:</i>
Go to dentist	Severe pain	[Avoid mild discomfort]	Severe pain today
Don’t go to dentist	[Avoid severe pain]	Mild discomfort	Years of mild discomfort in the future

- It can be rational for me to go to the dentist, because *I* will be compensated for my displeasure *today* by less displeasure in the *future*.
- Now suppose that this principle of rational choice applies to *society* as a whole. Then it may be rational to cause a *few* people displeasure, because *society* will be compensated for their displeasure by less displeasure for *many other* people.

	<i>Minority:</i>	<i>Majority:</i>	<i>Total:</i>
Oppress minority	Severe pain	[Avoid mild discomfort]	Severe pain for the few
Don't oppress minority	[Avoid severe pain]	Mild discomfort	Mild discomfort for the many

- But there is no person, “Mr. Society,” who is compensated for the displeasure of the few.
- The only people who *could be* compensated for the displeasure of the few are the few themselves. And in this case they are *not* compensated. They are simply sacrificed for the benefit of *other* people.
- “Utilitarianism does not take seriously the distinction between persons.”

The overall structure of Rawls’s theory:

Particular judgments about justice (e.g., slavery is unjust)
are accounted for by the

two principles,
which would be chosen in the

original position,
which is a device of representing (i.e., a way of showing what follows from)

*fundamental conceptions of persons—as free and equal—and
of society—as a fair system of cooperation.*

Comparison and contrast with the social contract tradition:

Differences:

1. The objects of Rawls’s choice are *principles of justice*. By contrast, the objects of Locke’s choice are *particular communities and governments*.

2. Rawls’s choice is *hypothetical*, not *actual*. What matters is what the parties *would* choose, not what anyone *did in fact* choose.

- For Locke, I do not have political obligations unless, at some point, I really did give my express or tacit consent.
- Rawls does not think that all political requirements arise from consent. Instead, there is the natural duty “to support and comply with just institutions that exist and apply to us,” which we have whether or not we have performed any voluntary act. This principle *would itself be chosen in the OP*.

Similarity:

Both the OP and the traditional social contract are meant to help us to see what follows from viewing persons as free and equal.

- Locke: how political power and authority can be legitimate given that persons are naturally free and equal.
- Rawls: what conception of justice follows if we view persons as free and equal.

Rawls's two principles of justice

In §11, Rawls gives a provisional statement of the two principles, which he will go on to flesh out.

- First: each person is to have an equal right to the most extensive scheme of equal basic liberties compatible with a similar scheme of liberties for others.
- Second: social and economic inequalities are to be arranged so that they are both (a) reasonably expected to be to everyone's advantage, and (b) attached to positions and offices open to all.

First, the basic liberties are simply given by a list. The list includes:

- (i) Political liberty (the right to vote and hold public office)
- (ii) Freedom of speech and assembly
- (iii) Liberty of conscience and freedom of thought.
- (iv) Right to hold personal property
- (v) Freedom from arbitrary arrest and seizure... etc.

Second, the principles are “lexically ordered.” The first principle is “prior” to the second principle, and (confusingly!) the second part of the second principle—i.e., (b)—is prior to the first part of the second principle—i.e., (a). If principle X is “prior” to principle Y, then we must first be sure that we have satisfied X before attempting to satisfy Y. This means that infringements of basic equal liberties cannot be justified on the grounds (say) that this will produce greater income and wealth, and inequality of opportunity cannot be justified on the grounds that this will produce greater income and wealth.

Part of the appeal of utilitarianism is that because it consists in a single principle, we don't face the question of how to resolve conflicts among principles. If Rawls is to provide a systematic alternative to utilitarianism, then he needs a way to resolve conflicts. Hence, lexical ordering.

Third, the principles apply to the basic structure. They do not apply to the actions of individuals or to “private” associations—churches, clubs, families—within the basic structure.

Fourth, when the principles refer to persons, they refer to representative persons and their life-prospects, not particular persons and their actual situation.

Finally, distributive shares are a matter of *pure* procedural justice.

- *Perfect* procedural justice: (i) an independent criterion of a just outcome; and (ii) a procedure guaranteed to realize that outcome. An example is dividing a cake. The independent criterion of a just outcome is an equal division, and a procedure guaranteed to realize that outcome is to give the last choice of slice to the person who cuts.
- *Imperfect* procedural justice: (i) an independent criterion of a just outcome; but (ii) no procedure guaranteed to realize it. An example is a criminal trial. The independent criterion of a just outcome is that the guilty and only the guilty will be convicted. But no procedure seems guaranteed to produce this result.
- *Pure* procedural justice: There is no independent criterion of a just outcome. Whatever outcome results from the specified procedure is just. An example is a lottery. One possible outcome is that you are up a million bucks and I am down a buck. Another possible outcome is that I am up a million bucks and you are down a buck. Whichever outcome results is just, so long as the lottery was fairly run. If you win, I have no grounds to complain, and if I win, you have no grounds to complain.

From the system of natural liberty to liberal equality to democratic equality

In §12, Rawls announces that two important phrases in the second principle are ambiguous and must be clarified. These are “everyone’s advantage” and “equally open to all.” Each phrase can be taken in two ways, resulting in four different interpretations of the second principle.

	“Everyone’s advantage”	
“Equally open”	Principle of efficiency	Difference principle
Equality as careers open to talents	System of Natural Liberty	Natural Aristocracy
Equality as equality of fair opportunity	Liberal Equality	Democratic Equality

The *principle of efficiency* is realized when it is impossible to make one person better off without making another person worse off. Many different distributions, however, may be efficient. The problem isn’t simply multiplicity. It is also, and more significantly, that many of these arrangements seem plainly unjust. Consider, for example, serfdom, which maximizes the expectations of the landed aristocracy.

So, the principle of efficiency must be supplemented by some other principles. In the system of natural liberty, the principle of efficiency works against a background of equal liberty and “careers open to talents.” This means *formal* equality of opportunity: everyone has legal rights of access to positions. No one may be barred from being a doctor, say, because she is female or non-white. The system of natural liberty is more or less *laissez-faire* capitalism.

Now the efficient distributions that result from the system of natural liberty, Rawls notes, will be strongly influenced by two kinds of contingency: (i) native talent; and (ii) social starting point. “[T]he most obvious injustice of the system of natural liberty is that it permits distributive shares to be improperly influenced by these factors so arbitrary from a moral point of view” (63).

Liberal Equality takes a stricter interpretation of “open to all.” It requires not only that positions are formally open to all, but also that everyone has an equal chance to hold them. Specifically: everyone with the same native talent and motivation should have the same chance of holding the position. The social class of one’s birth into should not affect one’s life-prospects. This equality of opportunity is achieved by preventing excessive accumulations of wealth and by ensuring equal access to education, among other measures.

Now while Liberal Equality does not allow social starting points to affect life prospects, it does allow native talents to affect life prospects. This makes Liberal Equality an unstable position. “[T]here is no more reason to permit the distribution of income and wealth to be settled by the distribution of natural assets than by historical and social fortune” (64). That is, if we accept the reasoning for rejecting the system of natural liberty, we ought to be dissatisfied, for analogous reasons, with liberal equality. Native talents are no less arbitrary from a moral point of view than social class.

Thus, we arrive at the *difference principle*: inequalities in social and economic expectations are just if and only if they improve the expectations of the worst-off representative person. The only defense the better off can offer for enjoying their advantages is that the worst-off would be even worse off if they (the better off) did not enjoy those advantages.