

## JUSTICE AS FAIRNESS

First, some background. There are two phases in writing one of these papers: thinking about doing it and doing it.

For me the thinking phase usually starts when the schedule comes out showing I'm up some time in the next year. It can take a long time.

This year I thought back to the guidelines provided when I first joined the Club, which must be nearly 20 years ago (or more?) Go outside your normal line of work. Completely outside. Do something you always wanted to do or meant to do and never got around to it. Or, do something you never thought you'd do.

Well, this is a case of something very outside of my line of work, and something I've been thinking about doing for a long time.

More than 30 years ago, in the spring of my senior year in college, I enrolled in a class in political philosophy—I still remember the course number: Philosophy 171. The prof was young and dynamic, with an excellent reputation. But there was one problem. The course came with a reading list from hell. You may recall that in most undergraduate courses there is a finite reading list with clear expectations. Sometimes they would tell you what pages to read. Sometimes they would even match a specific reading with a particular lecture. Not this one. In my memory it went on for pages and pages, with one entry after another. And each entry seemed to be a book--not just a few pages.

Now I was a reasonably conscientious student. Even in those chaotic days I went to almost all my classes—admittedly I didn't schedule any too early in the morning, but that was just good planning. I produced the papers and did a good share of the reading.

But this was spring of my senior year, and I had a lot on my mind. Wedding and graduation coming up in June. Draft lottery and draft physical. Graduate school or job. Not to mention a

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senior thesis. And this list was overwhelming. Bottom line: as we approached the end of the semester, I had attended nearly every lecture, but I had not done a single page of the reading. Not one. Never had I put myself in a situation quite like this. Given the context of the Vietnam War at the time, it would be wrong to call it a nightmare. The Vietnam War was a nightmare. But this was a very bad dream. I was trying to steel myself for a very intense reading period prior to exams, when salvation came from a most unexpected source. President Nixon invaded Cambodia, and the campus erupted. Exams were not cancelled, but were made optional. A student could take the exam and go for a grade, or skip the exam and take the course pass/fail. Relieved, but not without guilt, I opted for the pass.

A year later, a much-heralded book was published entitled A Theory of Justice, by Professor John Rawls. Now Professor Rawls was one of the major gurus of the course I had slighted so badly. My professor did not always agree with him, but he quoted and referred to him often. And essays by, and critiques and commentaries about John Rawls were heavily featured on the reading list I had snubbed.

"Here's a shot at redemption", I thought. "I'll buy and read this 600-page tome". Well, I did buy it. And I kept it by my bedside for years. I even traveled with it a few times. But it was hard going. And if fear of finals couldn't motivate me in college, I certainly couldn't get much further with deadline pressure eliminated.

Then, this spring, as I started thinking about a topic, I saw in the New York Times' book review that John Rawls had published a new book: Justice as Fairness: A Restatement. This new work was alleged to summarize not only the original Justice but also at least 10 other major essays by Rawls. It reflects the results of 30 years spent defending, amending and refining the original work.

"Aha!" I thought. "An extremely rare second shot at at least partial redemption. And not only is it much thinner than the first work, I have the added benefit of the next best thing to a final exam to set a deadline for getting it done!"

So I got the book, and completed phase 1 of preparing this report: thinking about doing it. Now this phase usually takes me so long, that once it is complete, there is no turning back. There is not enough time to start thinking about another topic.

Thus a most grave concern descended upon me as I started struggling to understand what I was reading while still in the preface. The good news was that book is supposed to synthesize over 1,000 pages of weighty thought into just over 200. The bad news was that I was bogging down while still on page xvii! But then, a glimmer of hope. On page xviii the author acknowledges, "The meaning of these remarks will not be clear at this point". "Thank goodness!" I thought. He acknowledges the opacity. Keep going, I can do this.

Well I did. And tonight I would like to try to pass on to you Rawls' central organizing idea of justice as fairness, to explain what I think some of his basic concepts mean, and then to highlight a few of his insights that I found most intriguing.

Rawls' Theory of Justice is a fundamental work of political philosophy. Political philosophy provides a framework for thinking about basic rules and organizing principles for society. Its practical role is to focus on basic and often deeply disputed questions and to see what kind of fundamental agreements can be reached. If agreement can't be found, then perhaps differences can at least be understood clearly, refined, and possibly narrowed. At a minimum the goal is to provide a basis for cooperation and mutual respect among citizens.

Rawls' practical aim in his theory of justice as fairness is "to provide an acceptable philosophical and moral basis for democratic instruction and thus to address the questions of how the claims of liberty and equality are to be understood." I take this to mean, "What are the basic principles of fairness that should guide us as we create rules and laws that make social cooperation possible?" "These same principles should provide the basis for dividing up the benefits of social cooperation; that is, the economic pie.

Rawls starts his quest for basic principles of justice by imagining people in what he calls the "original position" and this seems to me very similar to what I remember from college as the "state of nature". In other words, if people start out behind a "veil of ignorance", with no idea how or where they would end up after the rules were made, what basic principles of justice could they agree upon? The veil would be lifted progressively as the society evolved from constitution, to legislation, to administration and judiciary.

In all of this discussion, we are talking about Rawls' rules for the "basic structure". To simplify, we might think of it as a country. These are different than what rules might apply to an association, or a religious group. In fact Rawls specifically says that a religious philosophy (what he called a "comprehensive view") alone or itself must not provide the basic principles of justice. Religious ideals can certainly guide and influence us as we establish the rules. But we have to find principles that can gain acceptance from an "overlapping consensus of comprehensive views".

This is critical because a reasonable pluralism is a fundamental historical fact. There is even a section of the book where Rawls sets out to prove by pure logic that pluralism, or multiple views, are inevitable. In any event, whether by logic or by history, pluralism is a fact. There will be no one religion or set of beliefs that all will accept. More on this later.

To restate: Rawls starts with the fundamental idea of society as a fair system of social cooperation over time, from one generation to the next. He is looking for principles to apply at the level of the basic structure or country. These rules must be ones that free and equal citizens would agree to without knowing where they will end up in society. And, so that they will endure, the principles must be ones that all (or the vast majority) of a pluralistic society—that is people with differing moral codes—will accept.

These are principles of justice:

1. Each person has the same fundamental claim to a fully adequate scheme of equal basic liberties, which scheme is

compatible with the same scheme for all; and

2. Social and economic inequalities are to satisfy two conditions: first they are to be attached to offices and positions open to all under fair equality of opportunity; and second they are to be to the greatest benefit of the least advantaged members of society.

This last point is called the Difference Principle, and we shall discuss this in more detail a bit later.

Using these principles and very carefully progressing arguments, Rawls evaluates alternative political regimes and their institutions. The arguments are theoretical, but also acknowledge the practical. He is less concerned with simply reaching conclusions than with providing a framework for citizens to debate and reach conclusions themselves. I could not possibly trace all the arguments. Rather, I would like to present a few gleanings on three topics.

The first topic is pluralism and its implications for political philosophy. Throughout the book Rawls refers to the different and conflicting views reasonable people might have. He says that pluralism is a fact of life both logically and as a matter of historical fact. And it is not just a historical condition that may one day pass over; it is a permanent feature of the public culture of democracy.

For this reason, it is essential that fundamental principles of justice be capable of being reached without depending on any one comprehensive moral view. Adherents to competing moral codes should be able to agree upon these basic principles.

In fact, Rawls argues, the only way that shared adherence to one comprehensive doctrine (e.g., a religion) can be maintained is "by means of oppressive use of state power, with all its official crimes and the inevitable brutality and cruelties, followed by the corruption of religion, philosophy and science." I quote this directly and at some length because I believe it is so important here and now. I say "here" because sometimes it seems that the fundamental importance of the separation of church and state is still up for debate around here. And I say "now" because of the stark truth of the oppressive consequences for a society centered around the

primacy of a single religion that are so evident today in Afghanistan and its neighbors.

In hammering on the fact of pluralism, Rawls is not saying that there is no one true comprehensive doctrine, or no best conception of the good. He only says that we cannot expect to reach a workable political agreement as to what it is. Social unity is based on citizens' accepting a political conception of justice and uses ideas of the good fitting within it. Put another way "the just draws the limit, the good shows the point."

Finally I would like to pass on a footnote to this discussion; Rawls had it in a footnote as well: "Political liberalism begins with the division of Christendom after the Reformation, though that was hardly the Reformers' intent".

A second topic is education. As we discussed, Rawls first basic principle of justice is that each person has the same claim to equal basic liberties. And one of the very first things this requires is equal educational opportunity. It is entirely appropriate that debates about public education occupy such a central place in our political life. An equal claim to equal basic liberties is a core value in our society, and this claim means nothing if it does not include equal educational opportunity. I think that most of our citizens and political leaders have sincere intentions toward this goal. And there has been progress (Proposal A for all its faults). But as has been discussed in other papers, we know we are falling terribly short in achieving it.

How short we are falling is enforced by reading Rawls' description of educational goals: "educating citizens to a conception of themselves as free and equal...encourage in them an attitude of optimism and confidence in their future, and a sense of being treated fairly." Think about it: how many kids can we imagine emerging from some of our schools, particularly in major cities today, with an attitude of optimism and a sense of being treated fairly?

Another gleaning under the topic of education is the notion of narrow vs. wide reflective equilibrium. Rawls is talking about an equilibrium or agreement within a person of his initial opinions and his conception of political justice. A narrow equilibrium is reached when someone finds a conception of justice that fits his

preconceived ideas. A wide reflective equilibrium is reached only after seriously considering alternative conceptions. Clearly, it is the latter which is preferred. This too has implications for education. By studying our government system itself, but also in terms of historical, international and theoretical alternatives, we can learn a deeper appreciation for what we have today and how we might work to improve in the future.

Rawls makes a related point when discussing the education of children of various religious sects which might include home schools. He says that states should have the right to expect that children's education include knowledge of their constitutional and civil rights. They are entitled to know that liberty of conscience exists, and that apostasy is not a legal crime. Once these children grow up, their continued religious membership should not be based on ignorance or fear of punishment.

Bringing this back home, I ask, would a college really be serving its students well by actively working to limit their exposure to professors with differing religious views?

A third and final broad topic is the Difference Principle. As you may recall this was part of Rawls' second principle of justice, specifically that inequalities in society are to operate in a manner that brings the greatest benefit to the least advantaged members of society.

The Difference Principle is particularly interesting in that it is the least familiar part of Rawls' core principles. At least it was least familiar to me. And, Rawls acknowledges that it is not often expressly endorsed. "In fact it may prove to have little public support in our public political culture at the present time". Nonetheless, Rawls takes it to be essential to true democratic equality.

The Difference Principle is intended to help answer these questions.

1. How are the institutions of the basic structure (country) to be regulated as one unified scheme of institutions so that a fair efficient productive system of social cooperation can be maintained over time—from one generation to the next?

2. What inequalities would a well-ordered society allow or be particularly concerned to avoid in light of how people are born with differences in

- Social class.
- Native Endowments.
- Luck.

He displays this principle with an incredibly elegant graphic presentation, which I would like to share with you for take home value. If anyone at your house thinks these evenings are wild drink fests, just show them this!

Explain.

Ideas

1. AS - equal result.
2. OD - general agreement, everyone getting more.
3. Issue: stop at D or go further?
4. DF Zone of conflict. Some get more, others less.
5. D Difference Principle says stop here. The more advantaged may not gain any more if the less advantaged end up with less (reciprocity).
6. B Bentham Point – Maximum Total Utility (but required sacrifice "for the common good" and sacrifice by the less well off!)
7. F Feudal Point
8. Remember state of nature, original position.  
What would people agree upon?  
Difference Principle says keep moving as long as all gain at least something.
9. Also advocates arrangements which move D left.
10. Tough to achieve in practice, but if you don't at least start out with this aim, no chance of achieving it.
11. Given tendency of people to gain power and exploit it, better target D rather than knowingly enter a zone of conflict.
12. Want all citizens to feel engaged, not alienated.

Implications - Each one could be a topic.

1. Avoid excessive concentration of power.
2. Tax on inheritances – but not the estates themselves (e.g. family with more kids should be able to pass on more).
3. Governmental election funding.



4. Firm divorce and child support laws.
5. Basic medical care to restore health-not cosmetic (no reference to Viagra).
6. Consumption tax.

For a conclusion - I can't improve on Rawls own:

"A well-ordered society is stable, then, because citizens are satisfied, all things considered, with the basic structure of their society. The considerations that move them are not perceived threats or dangers from outside forces but are given in terms of the political conception they all affirm. For in the well-ordered society of justice as fairness, the just and the good fit together in such a way that citizens, who count as part of their good being reasonable and rational and being seen by others as such, are moved by reasons of their good to do what justice requires."

# Production and Distribution of Income and Wealth

## The Difference Principle

