JOHN RAWLS AND THE QUESTION OF SOCIAL JUSTICE
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From its publication in 1971, *A Theory of Justice* by the American philosopher John Rawls became the source from which all thought on social justice springs. This issue had practically disappeared from the agenda of political philosophy during the entire period when it was believed that only a radical upheaval of the means of production founded on private property could solve the problems of exploitation, power, and inequality that modern society continued to experience after having attained political democracy and equal rights. But since the fall of the Berlin wall, we know that collective ownership of the means of production is an impasse and that the centralized allocation of resources cannot adequately satisfy fundamental human needs. Nevertheless, the acceptance of free exchange and the plurality of centers of decision and property does not imply that all distribution arising in the context of laissez-faire necessarily be considered as legitimate. This would only be the case if the market were an intangible order resulting from the very nature of social interactions and independent of all human control, and not an institution established and maintained by rules of human origin. But if the social order – including the market – is an institution, we can and should ask about its fairness, i.e., the way it should be arranged or organized in order to be considered legitimate by those who must abide by its rules. If as Rawls maintains, fairness should be the first virtue of social institutions, it is because citizens in a free society cannot be forced to obey an unfair order. It has often been said that it is as puerile

to fight injustice as it is to fight death but, precisely, the central idea behind all theories of justice is that injustice is not a fact of nature: it is a human institution.

The Intuition of John Rawls (1971)

How can we define justice? Rawls’s intuition seems very simple: an institution is fair if its rules are made to function to the advantage of all citizens and not just some of them. On the other hand, if institutions appear to be instruments of exploitation by which some may take advantage of the collaboration of others without the reciprocal being true – as in the case of slavery – they are neither fair nor legitimate. Slavery is obviously an extreme case, but the example of utilitarian political theory may help us to arrive at a better understanding of the meaning of injustice. Reduced to it simplest expression, the utilitarian theory states that in fact social and economic institutions are legitimate if their objective and consequence are to maximize the satisfaction or the overall or average utility of society. However, says Rawls, such an objective can be attained perfectly well by the sacrifice of certain members of the community to the profit of certain others, in such a way that overall or average utility would increase while that of other members of society would decrease. It is even possible that the overall increase could only occur through the reduction of the utility that goes to some, and by means of this reduction. In this case, the wellbeing of some will be sacrificed to that of others, and it must be said, according to Rawls, that a society organized along these principles is not attentive to the distinction or the separation of persons. It pays no attention to the idea that each human being is equally worthy of respect and that no one should ever be used as a simple means by others but must also always be considered as an end. If it is natural that everyone uses the presence of others to acquire, by means of collaboration, a utility that could not be attained alone, no one may try to confiscate for himself all the benefits of cooperation. This is to ensure that it is only legitimate if each individual is both a means and an end, if everyone benefits equally, and if everyone in this context considers it legitimate that the object of social institutions is not only his own benefit but that of every member of the community.
How will we know that this condition is met? How do we recognize that institutions are legitimate? Rawls's answer is a profoundly modernized version of the theory of the social contract, i.e., the idea that the obligation to obey a rule derives from the consent of the person who is subject to the obligation to obey it. If we imagine that representatives of citizens are called upon to determine the basic institutional structure of society, according to what conception of justice would they choose to organize it? What would be the guiding principles of their choice? In order for the answer to this question to be meaningful and to have moral consequences, these representatives would however have to reflect in ignorance of the way that their choices might affect them personally, and thus they could not know what their place would be within the future society. If the opposite were true, the final option would be marred by moral incertitude since everyone would choose according to his own interest. The hypothesis of a veil of ignorance – the organizing principles of a society are chosen behind a veil that hides everyone's place in society – answers the need to rid the contract of all the partialities that could prevent it from producing the result we expect, i.e., establishing the moral obligation of citizens to obey common rules.

Thus we arrive at a formal definition of justice: principles of social organization are fair when chosen by citizens who are called upon to regulate their conduct as if they were placed in a situation that would ensure the impartiality of their judgment. We may suppose, for it is the very meaning of a theory of social justice, that these citizens are reasonable, i.e. that they are willing to find a social organization acceptable to all and that the notion of legitimacy has meaning for them. They thus reject the very idea of submitting to a power struggle or living in a social order established only in fact and not in law. We also postulate that they are rational; i.e., that they have ends – doubtless all different from each other – and are trying to optimize their chances to achieve them or at least the means of pursuing them. They would therefore look for an organization that would allow each one to take the rights of the others into account without forgetting their own.

What basic considerations would inspire the partners under these conditions? What principles would they choose? Rawls thinks that their first preoccupation would be to guarantee the basic liberties essential to the preservation of their integrity and the development
of their moral faculties, particularly freedom of thought and expression, but also freedom of conscience and all the political and civil rights that form the core of constitutional democracy. Their second preoccupation would be to maximize the number of material means for everyone to make use of these liberties. They would therefore opt first for a principle of freedom, i.e., for institutions guaranteeing the widest system of fundamental freedoms – political and personal – for everyone, compatible with the possession of this same system by everyone. By insisting on the imperative priority of this principle of freedom, they would express the idea that the prime quality of an institutional system is equal respect for the moral independence of its citizens, allowing everyone to reach his own ends as long as they are compatible with an equal right to do so for all; and they would affirm their will to guard against any use of coercion by the state to force their consciences or oblige them to adopt objectives, values, or lifestyles to which they do not adhere. They would also stress that a social order can only be legitimate if everyone has an equal right to take part in making collective decisions. With these two aspects – equality of rights and equality of the power to participate – the principle of freedom would show the paramount importance that the partners attribute to the idea that everyone has equal moral importance, that everyone has the right to the same respect, that no one can be sacrificed to the wellbeing of another.

The Idea of Equality

Once basic freedoms were guaranteed, the partners could reflect on the sharing of the material benefits of social cooperation, and here Rawls thinks that their basic intuition would be to refuse all criteria of an obviously arbitrary or contingent nature. They would naturally reject race, sex, or condition of birth, but also any distribution that might be influenced by social origins. Instead they would choose a principle of fair equality of opportunity guaranteeing that given equal vocations and qualifications, individuals would have a fair and equal opportunity to reach the same social positions. Would that be enough to satisfy their aspiration to the respect of equal moral status? No, for such a system would give rise to a meritocracy in which the most gifted would receive a greater share of social resources. For the distribution
of talents and aptitudes is just as arbitrary as social origins, and even if it were possible to evaluate the contribution of each one to the collective task, it would be unfair to calculate rewards in consequence, since this contribution always results from personal qualities for which their owners cannot claim responsibility and that to a certain extent were only arbitrarily attributed to them. The partners would conclude that since individuals have the same moral value, they have the right to identical resources. If we reflect upon this but a little, we see that this is common sense: why in fact should individuals claim a greater share of social resources on the pretext that fate or nature has favored them by giving them the qualities demanded by society?

If, under the veil of ignorance, the prism of impartiality that shapes the partners’ thinking makes them adopt this intuition of egalitarian morality, they still remain rational beings. Therefore, this method of calculation tells them that it would be irrational to opt for an equality of resources if there is an alternative to equal distribution where all the partners would be better treated. This is the meaning of the second principle of justice, that Rawls calls the difference principle. The reflection that leads to it is connected to considerations of efficiency and optimization: if distribution is equal, the most talented and energetic will have no reason to develop their qualities and put them to the service of the common good; if, on the other hand, they are promised more substantial benefits, this will stimulate their activity and the resulting multiplication of riches will be such that everyone will profit. The partners would thus decide to allow inequalities on condition that part of the benefits generated by the activities of the most talented would accrue to the least favored. Or they might even opt for a principle allowing for inequalities if they benefitted everyone, and they would organize social institutions in consequence – for example by taxing the highest revenues and using the income from these taxes to finance public education and health systems accessible to all. Such retribution for talent in the form of stimulation is not however a return to meritocracy, since the right of the most talented to earn more will come from a commitment made to them by the community – in exchange for their activity – and not as a result of their merits; it would always be subject to reevaluation, since society would be entitled to cancel or adjust the benefits in question every time they were seen not to be to the advantage of all members of society, and especially those occupying the least favored positions. Talent
does not mean a right to higher revenues, but it is legitimate to promise additional income to those who possess it in order to incite them to develop it for the benefit of all.

The main lines of this theory are easily discernible: first of all, it is a liberal political theory, since its primary preoccupation is to preserve individual independence and guarantee all the freedoms indispensable to that end. It not only does not impose any conception of the good life, it emphasizes both the right of each person to develop his own conception of good and the fact that a theory of the legitimacy of institutions must be based on a criterion exempt of any concept dealing with the way one should live. Thus it satisfies the first of the citizens’ requirements, which consists of never being subject to constraint concerning what they hold as most precious and most important: their moral values, their religious beliefs, and the way they think it best to live. But this liberalism, contrary to that of its founders, tries to include the idea of equality by stressing that it is not possible to stop at equal rights and that we must, as much as possible, ensure that everyone has more resources to build his existence than he would have in any alternative social organization. It is the basis of the difference principle, which states that no one has the right to keep for himself all the benefits that he acquires from the favorable and morally arbitrary circumstances in which he finds himself and that inequalities are only legitimate if everyone benefits – not necessarily in the same proportions – from the extra riches that they make possible. The requirement of equality leads to the imperative maximizing of the position of the least favored; only the fact that the poorest are convinced that the whole system tries to better their situation, and that in every alternative system of distribution their fate would be still less enviable, can give them the feeling that they are living in a legitimate political system and free them from the idea that they are victims sacrificed to the wellbeing of others.

**Debates and Protests**

Rawls’s proposals have obviously given rise to numerous debates in contemporary political philosophy. Let us consider two of the most important.
First of all, many readers of *A theory of justice* have been struck by a singular absence. Rawls says nothing about the value of justice as an individual virtue, except to state that the fair-minded man is one who supports fair institutions. A society is not fair because it encourages men to live well, because it cultivates the highest aspirations in them, or because it strengthens their moral ideas, but only because it treats its citizens impartially and equally. In other words, politics have nothing to say about human ends; it is not for it to judge them but to provide the conditions of their legitimate compatibility and cohabitation, excluding only those that are not reasonable, i.e., those that refuse to admit the legitimate plurality of concepts of the good. But do not politics lose all meaning when the community stops seeking the best way to live through them? What happens to human society if everyone chooses what seems good to him and only cares about others in a negative way and by leaving society alone? Is not this mutual indifference a form of contempt for others? Is not liberty empty if it is reduced to an indistinct power of choice without principle? Are not shared moral ideals and ethical traditions that give meaning and richness to life what characterize an authentically human community? Rawls’s liberalism stands thus accused of endorsing the modern image of a skeletal ego reduced to pure will that would define itself not by its ideals but by pure power of choice.\(^2\)

These questions, which are at the heart of the “communitarian” concept of society, are however very ambiguous. Does this mean that liberalism gives a *false* image of society and man because the sharing of traditions and morals – even a religion – is the essence of all communities and that man is not a will or a being of choice, but above all a being who reflects on the good and only finds meaning in community life if he shares this reflection with others through its institutions? Or does it mean to the contrary that liberalism gives a *true* image of what man and society have sadly become with the impact of a modernity of which he is one of the essential elements?

In either case, Rawls’s answer is clear. The question of the purpose of human life is an essential question that must continue to be asked and will continue to be asked. It is also a question which must

be debated, and men form and will form communities around the shared replies that they give to these questions. But these communities are voluntary, based on the conviction of their members who can enter or leave them according to whether they do or do not share the moral ideals expressed there, and the plurality of these communities and the ethical convictions present there is an irreducible fact of societies today. Moreover, this plurality is reasonable, i.e., it is not possible to say that those who do not share our ideals are not in their right minds. Someone who believes in heaven cannot accuse someone who does not of being out of his mind, and that would be for that matter the root of all intolerance. Public institutions cannot therefore adopt certain ultimate moral values without repressing others, and it is for this reason that they claim no concept of good: if they did, they would necessarily be tyrannical, for the reduction of pluralism is only possible through the use of force. Politics, therefore, are based not on compromise, but on the search for a minimal ethical idea or one that is acceptable to all, and they find it in the concept of impartiality, i.e., in the affirmation that all ends that accept pluralism have the right to equal respect. The image of the human being that they promote and encourage is not a metaphysical concept, and liberalism does not define man as a being of will or free choice. They limit themselves to saying that each one of us would like to be governed by public institutions led and abiding by a representation of the human being as a free and equal person. Liberalism does not say that man is a being with choice, but that each citizen aspires to be governed by institutions that consider him as a being with choice. This is a political, not a metaphysical concept. Still it is a concept that we would wish our institutions consider when deciding what they may impose or demand from us. Sectarianism is completely mistaken when it says that liberalism forgets the reality of shared moral convictions and the structuring power of ethical ideals in building personality. To the contrary, it is because it is aware of their importance that liberalism wants to impede the action of coercive political institutions trying to impose one of these on those who do not accept it, and it is because it is aware that ideals that are imposed cease to be authentic that it demands the armed wing of the state to approach its dealings with citizens by representing them as beings who must be left free to choose how they wish to live.
The second debate brings still more concrete issues to the fore. In his analysis, Rawls singles out what he calls the least favored position, and he thinks that those who occupy this position cannot adhere to social institutions unless they are convinced that they are designed in a way to maximize their fate. Fair institutions are thus those where the lowest position is still higher than in any other possible social organization guaranteeing the same freedoms. For Rawls, this idea incarnates the ideal of reciprocity. But are all those who occupy the least favored position eligible for the same treatment? Among them, some are certainly victims of their social origins, bad luck, or lack of natural capacities. But others may be responsible for their fate due to their choices, their imprudence, or their inertia. This notion of responsibility seems essential in the context of fairness, and it seems contradictory only to consider positions in a distribution structure without asking who occupies them and why. It is certainly legitimate to organize institutions in a way that compensates for the losses of victims of fate, but choices made by individuals must be their own responsibility.

Despite the undeniable attractiveness of this idea, Rawls’s followers still believe that it is better to resist it since it seems philosophically impossible to make a distinction, in the situation of an individual, between what results from choice and what results from the circumstances in which he finds himself. Does the very idea of “free” choice have meaning, and if so, does it designate an action entirely independent of circumstance? We are justified in having doubts about these issues and in concluding that it is the role of political society to organize the various “positions” that it contains in order that they form at least a relatively continuous fabric, and that cooperative relations between free and equal persons are possible between those who occupy them, i.e., that no one may have the feeling that cooperation is to his own detriment and to the exclusive benefit of others. The notions of merit and responsibility remain desperately elusive, and one of the ambitions of the reflection on justice to which Rawls gave such a strong impetus consists of breaking with a simplistic image that assumes that individuals, with their choices, talents, merit, energy, and contributions are intangible data that, to be fair, institutions should reward in appropriate proportion. The social system,

laws, education, habits, traditions, and inheritances – all these traits of our collective lives – make individuals what they are as much as they are made by them and to such an extent, that instead of asking who deserves what, it might be better to approach the question as Rawls suggested: imagine that the social system is the work of your worst enemy and he chooses your place in it. Would you consider this system legitimate? Attempting to reason from the viewpoint of the one who occupies the most uncomfortable position is perhaps not the worst way to reflect on equity.

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