

South London Philosophy Circle: 5 October 2014

Does John Rawls' *A Theory of Justice* refute Isaiah Berlin's assertion that, 'No commanding work of political theory has emerged in the twentieth century?'ⁱ

On the face of it, our task this afternoon is straightforward. I give you a brief overview of the mind experiment in John Rawls' book *A Theory of Justice* together with some indication of the kind of response commentary it attracted. We then discuss the ideas involved before attempting to decide whether *A Theory of Justice* qualifies as a 'commanding work' and one sufficiently robust to rebut Berlin's assertion. And that done we might then go on to consider what we, individually or collectively, would regard as a 'just' society.

Those of you well versed in Rawls will realise that I am confining myself to a narrow canvas. I do so because Rawls is not well-known outside academic circles and his writing is detailed and opaque. *A Theory of Justice* is his attempt to pull together in a coherent defence his particular conception of 'justice as fairness'. His book is in three parts. The first is about the theory of justice. The second how he envisages that theory playing out in political and economic institutions and the third describes how his ideas would lead on to a stable society consistent with the good of the members of that society.

Let's start with Berlin's assertion that no commanding work of political theory emerged in the twentieth century. 1. Why did Berlin make this remark? 2. What would he have regarded as a 'commanding work'? 3. Why the focus on the C20? We can find some clues in his article for a 1961 edition of the French Journal of Political Science. A year later, Berlin had revised the article for publication in English and 'it appeared with the title 'Does Political Theory still Exist?'ⁱⁱ. Berlin opens his remarks as follows:

'Is there still such a subject as political theory? This query put with suspicious frequency in English-speaking countries questions the very credentials of the subject: it suggests that political philosophy, whatever it may have been in the past, is today dead or dying. The principal symptom which seems to support this belief is that no commanding work of political philosophy has appeared in the twentieth century. By a commanding work in the field of general ideas I mean, at the very least, one that has in a large area converted paradoxes into platitudes or vice versa'.ⁱⁱⁱ Berlin points to the C20th paradox of political theory having been largely invisible while the kinds of issues that are its *raison d'être* have been all too obviously centre stage.

Fast forward ten years to 1971 and John Rawls (a former Fulbright Fellow at Oxford and established Professor at Harvard) published *A Theory of Justice*. His stated aim is, 'to generalise and carry to a higher order of abstraction that traditional theory of social contract as represented by Locke, Rousseau and Kant. In this way I hope that the theory can be developed so that it is no longer open to the more obvious objections often thought fatal to it. Moreover, this theory seems to offer an alternative systematic account of justice that is superior, or so I argue, to the dominant utilitarianism of the tradition'.^{iv}

His starting point is the Role of Justice and he says:

'Justice is the first virtue of social institutions, as truth is of systems of thought. A theory however elegant and economical must be rejected or revised if it is untrue; likewise laws and institutions no

matter how efficient and well-arranged must be reformed or abolished if they are unjust. Each person possesses an inviolability founded on justice that even the welfare of society as a whole cannot override.^{iv}

This is powerful stuff and Rawls, working within the Kantian tradition as he readily acknowledges, states that 'the rights secured by justice are not subject to political bargaining or to the calculus of social interests'^{vi} He has no interest in trying to establish the principles needed to underpin a particular view of 'The Good Life'. His interest is in how the major social institutions assign fundamental rights and duties and shape the division of advantages that arise through social co-operation. Rawls is only too well aware that the major social institutions of society all too often determine and/or constrict individual outcomes. What he seeks to establish are universal principles which can serve as the moral underpinning for the basic structure of a just society. His focus is not on feasibility when it comes to the distribution of social primary goods, such as liberty and opportunity, income and wealth, and the bases of self-respect, but on what, in moral terms, is desirable and what we would choose for ourselves from an impartial standpoint.

He says in his final paragraph of *A Theory of Justice*, 'The perspective of eternity is not a perspective from a certain place beyond the world of transcendent being; rather it is a certain form of thought and feeling that rational persons can adopt within the world. And having done so, they can, whatever their generation, bring together in one scheme all individual perspectives and arrive at regulative principles that can be affirmed by everyone as he lives by them, each from his own standpoint. Purity of heart, if one could attain it, would be to see clearly and to act with grace and self-command from this point of view'.^{vii}

So how are these regulative principles to be arrived at? His purpose is not to create a specific contract for a real society but to identify the fundamental principles of justice 'that free and rational persons concerned to further their own interests would accept'.^{viii} Implicit in this is the assumption that such persons, having identified the principles, would then accept the institutional arrangements arising from and regulated by them. This acceptance is critical if a stable, and therefore enduringly just, society is to be created. But if the principles are to be the bedrock from which, in due course, a constitution, the institutions of civil society, legislation and the law are to proceed how then are the dangers of bias, individual self-interest and short-termism to be avoided?

Rawls invites us to consider, as a hypothetical starting point, the Original Position (OP) which, for the purposes of his theory, corresponds to the State of Nature in traditional social contract theory. In the Original Position autonomous, free and equal individuals behaving rationally and versed in the benefits of social cooperation, 'choose together, in one joint act, the principles which are to assign basic rights and duties and to determine the division of social benefits'^{ix}. While Rawls assumes that there will be no limitations on any general knowledge of how societies operate, the deliberations in the Original Position take place behind what Rawls calls 'a veil of ignorance'. This device means that individuals in the Original Position are unaware of their personal situation in terms such as race, age, social standing and natural assets and, as such, are incapable of developing principles which would favour their own self-interest because they have no idea where that interest lies. Moreover, insofar as the individuals are to be 'representatives of families' they cannot favour the short-term without potentially endangering the well-being of their own successors. Thus, in the absence of the knowledge needed to promote their own specific self-interest how, in fundamental terms, are their real interests to be secured?

Rawls invokes the maximin principle. It is a rule for decision making which recommends that, when dealing with policies with uncertain outcomes, we should consider only the worst possible outcome in each case and opt for the least worst outcome between them all. Rawls maintains that rational

people in conditions of uncertainty would always choose, in any given range of alternatives, the option whose worst outcome is superior to the worst outcome of any other. Thus, he believes that individuals in the Original Position and behind the 'veil of ignorance', but seeking to safeguard their own interests, would arrive at two fundamental principles.

First, the Liberty Principle that, 'Each person is to have an equal right to the most extensive total system of equal basic liberties compatible with a similar system of liberty for all'.

Second, the Difference Principle that 'Social and economic inequalities are to be arranged so that they are both: (a) to the greatest benefit of the least advantaged, consistent with the just savings principle [a device to protect unfair demands on future generations] and (b) attached to offices and positions open to all under conditions of fair equality of opportunity'.^x The critical word here is 'arranged'.

The principles are to be taken in *lexical order* which means that the first has to be fully satisfied before one can move on to the second. The first principle is the absolute guarantor of individual liberty. The second ensures that justice takes precedence over efficiency. Thus, the general conception of justice embodied by the two principles may be expressed as follows: 'All social primary goods — liberty and opportunity, income and wealth, and the bases of self-respect — are to be distributed equally unless an unequal distribution of any or all of these goods is to the advantage of the least favoured'.^{xi} This is Rawls' conception of justice as fairness. It provoked a wealth of comment and criticism in his lifetime which has continued to this day.

Before I look very briefly at three major areas of comment, the Libertarian Response, the Communitarian Response and the Feminist Response, it's worth noting that Rawls spent the rest of his life either defending or revising his original text in the light of the responses it generated. For example, in his preface to the revised 1995 edition of *A Theory of Justice* he points up what he regards as important revisions in a number of areas. His original account of primary goods said they were things that rational persons want whatever else they want. But this becomes, 'what persons need in their status as free and equal citizens, and as normal and fully cooperating members of society over a complete life'.^{xii} Or again, he revises his text to make a clearer distinction between the idea of a property-owning democracy and the idea of a welfare state. Over time he acknowledges that what he seeks are not universal principles but those which are appropriate for a Western, Liberal, Democratic state such as America. Likewise he comes to accept that the family is a powerful social institution in determining individual outcomes.

In terms of the Libertarian Response, whether from the political Left or Right, the starting point is the same. Namely, 'The socially just state is a minimal state, the only legitimate role of which is to enforce contracts and prevent theft, fraud and the use of force'.^{xiii} No tinkering here by Government with the social and economic order. What is sought for the individual is maximum freedom of choice, autonomy, political freedom, voluntary association and the primacy of individual judgement. Good Government is Small Government which, when taken to extremes on the Left, moves in the direction of no Government at all. The Left libertarians also point to the fact that Rawls, in tolerating inequality at all, 'subverts the aims of justice'.^{xiv} Or again, that since it is possible for grave injustices to exist even in a society with just laws, then the coercive rules of State institutions are insufficient in themselves for a just society and what is required is a fully-fledged 'ethos of justice'.

On the Right, Robert Nozick, (Oxford and Harvard and, perhaps, the best known modern Libertarian) argues, amongst other things, that the Welfare State is a form of theft and taxation not agreed to is tantamount to forced labour. He raises the question of just 'deserts'. Take, for example, a group of 10 students. They have to decide how to distribute 500 grade points on a scale of 0 to 100. Assume

that 50 points are needed to pass the class (and they all want to pass it). Assume, too, that although they have all done the work for the course, none knows how hard they have worked or how talented they are in a particular subject. In a sense they are behind their own 'veil of ignorance'. Now, as rational people who have assessed the least worst option, presumably they award themselves 50 points each. On the face of it, it's fair, it's equal and they all pass the course but not very well.^{xv} But, say the Libertarians, where is the justice in a just society if no account is to be taken of what individuals justly 'deserve'? If citizens own their natural assets — and if they don't, who can? - then how can it be just for individual characteristics to be ignored? For Rawls this is no argument at all. He regards natural assets as undeserved and therefore arbitrary. For him the moral issue is why should some benefit from mere luck while the unlucky stand to find themselves deprived?

For Communitarians, such as Michael Sandel, (Rhodes scholar and yet another Professor at Harvard) a fundamental problem lies in the fact that 'Rawls has asked that the practices of the community be examined in the cold light of the philosopher's reason, and evaluated against the abstract and unreal standards he has constructed and offered as principles'.^{xvi} Sandel's point is that we are 'partly defined by the communities we inhabit' and are, therefore, 'implicated in the purposes and ends characteristic of those communities'.^{xvii} And, I confess to having some sympathy with his position. Because, if we are all active learners from the moment we are born and it is through our social contacts that we develop the cognitive schema that enable us to function and to survive, (think kids in Romanian orphanages), then a self that was detached from its empirically acquired features — which is what Rawls requires — would be no self at all and hence would be incapable of the rational choice which is essential in Rawls' conception. Moreover, if Rawls regards natural talents as a common asset in which all must share in the benefits whatever the distribution turns out to be, then does that not treat some people as a means to an end and thereby undermine his idea that each individual is inviolable?

Rawls' position is also unsatisfactory to feminists. He writes as if patriarchal society is the norm and even when, as he finally allows, the family to be thought of as part of the basic structure of society, then its inner workings are to remain beyond the scope of the basic conception. But, as Susan Okin (Professor of Ethics in Society at Stanford University) and others have noted, it is 'the deeply entrenched social institutionalisation of sex difference' through the division of labour in the family and other social processes which 'work powerfully to reinforce roles for the two sexes that are commonly regarded as of unequal prestige and worth'.^{xviii} It would be good to think that nearly 40 years on from the Sex Discrimination Act, 1975 and the Equal Pay Act, 1976 the concerns raised by Okin and others are history. But I'm not so sure. In 2014 what do we mean by justice in a gendered society if the qualities and activities of any one social group can be routinely and systematically devalued by another? Equality? Equal opportunities? Positive discrimination?

I want to return now to the original question. Does Rawls' *A Theory of Justice* constitute a 'commanding' work in Isaiah Berlin's terms? If one takes into account the quality and quantity of the response that his 1971 book generated then I think that the answer has to be yes. Likewise, his ideas and influence have persisted in public policy-making. But there's something else that we also might want to consider.

Rawls began his academic career in the 1950s when the vogue amongst Anglo-American philosophers was for Logical Positivism with ethical and political reflection largely dormant. In Western liberal democracies there was also a high degree of political consensus- The market was fine in its place and that Government stepped in to make good its failures. In short, there was a distinct lack of a systematic thinking about the purposes of Government and Berlin knew whereof he spoke. Daniel Bell at Columbia University noted, 'The ideologies of the nineteenth century were universalistic, humanistic and fashioned by intellectuals. The mass ideologies of Asia and Africa are

parochial, instrumental, and created by political leaders. The driving forces of the old ideologies were social equality and, in the largest sense, freedom. The impulses of the new ideologies are economic development and national power'.^{xix} And yet, in liberal democracies and in challenging times, guiding principles still matter. And what John Rawls brought back to the table for consideration by reflective citizens was the idea that a person has a worth and a dignity that social structures should not be allowed to violate.

So I put it to you. John Rawls' A Theory of Justice — a commanding work of political theory or not?

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i Quoted in Kakathas C & Penit P. Raids, A Theory of Justice and its Critics. Polity Press, 1990. p1.

ii See berlin.wolf.ox.ac.uk/published-works-cc-polthe

iii Ibid p143

iv J Rawls, A Theory of Justice, (Harvard, The Belknap Press, 1999) p xviii

v Ibid.p3

vi Ibid. p4

vii Ibid. p514.

Viii Ibid. P10.

ix Ibid.p10.

x Kakathas & Penit op.cit p43.

xi Ibid. p44.

xii J Rawls, op cit. pxiii

xiii Taken from a lecture given by Prof T Hussey to Wycombe Philosophy Association, Autumn 2005

xiv Article in The Chronicle of Higher Education, 20/7/01 by Prof M Nussbaum p4

xv Paul Voice, Rawls Explained (Open Court e-book) Loc 1618/Loc1626

xvi Kakathas & Penit, p112.

xvii Ibid.,p113

xviii From OUDCE lectures 'Contemporary Theories of Justice' Op — Michaelmas 2007

xix Daniel Bell, The End of Ideology, (The Free Press, New York. Paperback edition 1965) p403