

A Theory of Justice Study Guide

A Theory of Justice by John Rawls

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Introduction

A Theory of Justice (1971), by John Rawls, is "one of the most influential works in moral and political philosophy written in the twentieth century," according to Samuel Freeman in the *Collected Papers of John Rawls* (1999).

A Theory of Justice is Rawls's attempt to formulate a philosophy of justice and a theoretical program for establishing political structures designed to preserve social justice and individual liberty. Rawls writes in reaction to the then predominant theory of utilitarianism, which posits that justice is defined by that which provides the greatest good for the greatest number of people. Rawls proposes a theoretical person who, shrouded in a veil of ignorance, must design a just society without foreknowledge of his or her own status in that society. Rawls asserts that from this objective vantage point, which he calls the original position, the individual will choose a system of justice that adequately provides for those positioned on the lowest rungs of society. The individual will do so because he or she may end up in such a disadvantaged position and will want to be adequately provided for. Rawls draws from earlier theories of political philosophy that posit a social contract by which individuals implicitly agree to the terms on which they are governed in any society. Rawls concludes that such a social contract, formulated from the perspective of the original position, will guarantee a just society without sacrificing the happiness or liberty of any one individual.

Rawls addresses issues of liberty, social equality, democracy, and the conflict of interests between the individual and society.

Author Biography

John Bordley Rawls is one of the most influential philosophers of the twentieth century. He was born on February 21, 1921, in Baltimore, Maryland, the son of William Lee Rawls and Anna Abel (Stump) Rawls. Rawls received a bachelor of arts degree from Princeton University in 1943. During World War II, he served in the military, stationed in the Pacific. He attended Cornell University for a year from 1947-1948 and earned a doctorate from Princeton in 1950. In 1949, he married Margaret Warfield Fox, with whom he had four children.

Throughout his academic career, Rawls held posts in philosophy departments at several prestigious universities in England and the United States, including Princeton University, Oxford University, Cornell University, and the Massachusetts Institute of Technology. He became a professor of philosophy at Harvard University in 1962, where he remained through his semi-retirement as professor emeritus. As an academic, Rawls was active in several national organizations, serving as president of the American Association of Political and Legal Philosophers from 1970-1972, and president of the American Philosophical Association in 1974. He also co-edited the journal *Philosophical Review* from 1956-1959.

Rawls's masterpiece of political philosophy, *A Theory of Justice*, was first published in 1971. Although he wrote numerous articles in academic journals, Rawls did not publish another book until the 1990s. *Justice as Fairness and Two Concepts of Rules* both appeared in 1991, followed by *Political Liberalism* in 1993. *John Rawls: Collected Papers*, edited by Samuel Freeman, was published in 1999, and Rawls's *Lectures on the History of Moral Philosophy*, edited by Barbara Herman, was published in 2000. Rawls was awarded the National Humanities Medal by the National Endowment for the Arts in 1999.

In a preface to *Collected Papers*, Freeman observes that Rawls's career as a philosopher has been "guided by a reasonable faith that a just society is realistically possible."



Plot Summary

Justice as Fairness

In *A Theory of Justice*, Rawls begins with the statement that, "Justice is the first virtue of social institution," meaning that a good society is one structured according to principals of justice. Rawls asserts that existing theories of justice, developed in the field of philosophy, are not adequate: "My guiding aim is to work out a theory of justice that is a viable alternative to these doctrines which have long dominated our philosophical tradition." He calls his theory aimed at formulating a conception of the basic structure of society in accordance with social justice justice as fairness.

Rawls sets forth to determine the essential principles of justice on which a good society may be based. He explains the importance of principles of justice for two key purposes: first, to "provide a way of assigning rights and duties in the basic institutions of society"; and secondly, to "define the appropriate distribution of the benefits and burdens" of society. He observes that, by his definition, well-ordered societies are rare due to the fact that "what is just and unjust is usually in dispute." He further notes that a well-ordered and perfectly just society must be formulated in a way that addresses the problems of "efficiency, coordination, and stability.'

Critique of Utilitarianism

Throughout the twentieth century, the dominant philosophical theory of justice in Western philosophy was utilitarianism. Utilitarianism was first developed in the nineteenth century by "the great utilitarians," whom Rawls lists as David Hume, Adam Smith, Jeremy Bentham, and John Stuart Mill. Utilitarianism essentially posits that a just society is one based on achieving the greatest good, or happiness, for the greatest number of people. However, many theorists have found this principle ultimately unsatisfactory because it implies that the happiness of a minority of people may be justly sacrificed to secure the happiness of the majority. Rawls defines the strict classical doctrine of utilitarianism in terms that capture the fundamental basis of the theory as one that seeks to evaluate societal good in quantitative, mathematical terms:

The main idea is that society is rightly ordered, and therefore just, when its major institutions are arranged so as to achieve the greatest net balance of satisfaction summed over all the individuals belonging to it.

Rawls's central critique of utilitarian theory is that it makes no distinction between the happiness of any one individual and the total sum happiness of society as a whole. He concludes: "Utilitarianism does not take seriously the distinction between persons."



Critique of Intuitionism

The other predominant school of ethical theory in the twentieth century, intuitionism, is, according to Rawls, equally unsatisfactory. Intuitionism, first developed in the eighteenth century, posits that humans possess an innate, intuitive, sense of justice and morality. Rawls admits, however, that one can never completely get away from a certain degree of intuitionism in developing his own theory of justice as fairness. However, he suggests several tentative means of at least reducing the degree of intuition involved in the process. Primarily, he addresses what he calls the priority problem, whereby intuitionism fails to establish a means of evaluating the relative importance of any one ethical principle over any other. Rawls suggests as a remedy to the priority problem that specific principles of justice be ranked in order of importance, so that the first would take precedence over the second, and so on.

The Social Contract

In formulating his theory of justice as fairness, Rawls draws from an earlier, long-neglected, theory of the social contract, as developed in the seventeenth and eighteenth centuries by Thomas Hobbes, John Locke, Jean-Jacques Rousseau, and Immanuel Kant. Social contract theory assumes that governmental leadership functions on the implicit assumption of an agreement, or social contract, between the ruler and the ruled, according to which the individual willingly sacrifices some personal liberties to secure the greater good of society. Rawls asserts that social contract theory "seems to offer an alternative systematic account of justice that is superior, or so I argue, to the dominant utilitarianism of the tradition."

The Original Position

To devise a system upon which a just society could be based, Rawls proposes a hypothetical man whose choices are made from the standpoint of a veil of ignorance. Rawls imagines a man who must design a society in which he does not know ahead of time what social or economic status he himself will hold. From the perspective of this veil of ignorance as to his own fate, Rawls argues, one can only seek to create a society whereby the least fortunate are provided with adequate means of happiness since one may find oneself in precisely that position. Rawls refers to this hypothetical perspective as the original position. He notes that the hypothetical person in the original position must be assumed to be a rational thinker.

The Two Principles of Justice

According to Rawls, the original position results in the successful achievement of two central principles of justice. The first principle assures that the liberty of the individual may be maximized, given that it does not impinge upon the corresponding freedoms of any other individual. The second principle assures that even the most economically and

materially disadvantaged members of society are provided for as best as possible. An important point of this second principle is that Rawls admits room for social and economic inequality, given that those at the lowest end of the spectrum are at least adequately supported.



Characters

Saint Thomas Aquinas

Thomas Aquinas (1225-1274) was an Italian theologian of the medieval era who was canonized in 1323. Aquinas based his theological arguments on the ideas of Aristotle. Rawls refers to Aquinas in a discussion of different theories about toleration of religious differences, asserting that Aquinas and the Protestant reformers believed that intolerance of other religions was "a matter of faith."

Aristotle

Aristotle (384-322 B.C.) was the third of the three great Greek philosophers (the others being Plato and Socrates) whose ideas have immeasurably influenced Western thought. Rawls refers to Aristotle in terms of his definition of justice and his concept of perfection. Rawls coins the term "Aristotelian principle" to describe Aristotle's philosophy regarding the relationship between happiness, activity, and enjoyment.

Jeremy Bentham

Jeremy Bentham (1748-1832) was an English philosopher and economist, known as the first and foremost proponent of utilitarianism. His major works include *An Introduction to the Principles of Morals and Legislation* (1789). Rawls contrasts Bentham's utilitarian theory with his own theory of justice as fairness.

F. Y. Edgeworth

Francis Ysidro Edgeworth (1845-1926) was an Irish economist and statistician, known for his work in applying mathematical principles to the fields of economics and statistics. He also tried to apply mathematics to the theory of ethics. His major works are *New and Old Methods of Ethics* (1877) and *Mathematical Psychics* (1881). Referring to Edgeworth as a utilitarian economist, Rawls discusses his ideas in contrast to those of justice as fairness. Rawls also criticizes Edgeworth's argument for the utility principle on the basis that his basic assumptions are "unrealistic" and "implausible."

Sigmund Freud

Sigmund Freud (1856-1939) is indisputably recognized as the father of psychoanalytic theory. He was an Austrian Jewish physician, whose theories of psychoanalysis form the basis of psychoanalytic theory. His major works include: *Interpretation of Dreams* (1900), *Five Lectures on Psycho-Analysis* (1910), and *The Ego and the Id* (1923). Rawls mentions Freud in a discussion of the psychology of morals. He argues against



Freud's theory of the origin of the sense of justice as rooted in feelings of envy and jealousy.

Thomas Hobbes

Thomas Hobbes (1588-1679) was an English philosopher who was an early figure in developing a utilitarian philosophy of morals. Hobbes's major work is *Leviathan* (1651). His theories regarding the social contract are taken up by Rawls in his own theory of justice as fairness.

David Hume

David Hume (1711-1776) was a Scottish philosopher and economist. He attempted to apply scientific method to an inquiry into human nature, particularly in terms of the concept of knowledge. Rawls mentions that Hume referred to justice as "the cautious, jealous virtue." He makes reference to Hume's works, *A Treatise of Human Nature* (1739) and *An Inquiry Concerning the Principles of Morals* (1751). Rawls discusses his own ideas regarding the circumstances of justice as based in those of Hume. He further mentions Hume in a discussion of the concept of a rational and impartial sympathetic spectator capable of determining the conditions of a just society.

Immanuel Kant

Immanuel Kant (1724-1804) was a German philosopher of the Enlightenment era whose ideas forever transformed philosophical thinking, particularly in the areas of ethics, knowledge, and aesthetics. His work was influential in the later theories of the idealists. Rawls refers frequently such works by Kant as *The Foundations of the Metaphysics of Morals* and *The Critique of Practical Reason*. He discusses Kant among the theorists who developed the social contract theory. He further mentions Kant in discussion of theories of the "good" and the concepts of envy and duty. In a discussion of moral learning, Rawls refers to Kant among several philosophers who believed that morality is a natural, innate quality of humanity. In a section entitled "The Kantian Interpretation of Justice as Fairness," Rawls provides an analysis of the philosophy of Kant in relation to his own theory of justice as fairness.

John Locke

John Locke (1632-1704) was an English philosopher of the Enlightenment era. His major work was *An Essay Concerning Human Understanding*. Rawls also refers to his *Second Treatise on Government*. Rawls states his intention to further develop and refine the theory of the social contract, as earlier discussed by Locke, among others. In a discussion of the basis of morality, Rawls points out that Locke's fundamental principal of morals assumes that God is the legitimate moral authority. He later mentions Locke's advocacy of a limited toleration of religious differences to maintain public order.



Karl Marx

Karl Marx (1818-1883) was a German Jewish economist, historian, and sociologist, whose extraordinarily influential analysis of political and economic history is known as Marxist theory. His major works include *The Communist Manifesto*, written with Friedrich Engels (1848), and *Capital* (three volumes, 1867, 1885, 1894). Rawls briefly mentions various interpretations of Marxist theory, particularly in terms of the relationship between the individual and society.

John Stuart Mill

John Stuart Mill (1806-1873) was an English economic theorist and philosopher known as an influential exponent of utilitarianism. Mill was an early advocate of women's suffrage and was one of the founders of the first women's suffrage society, later known as the National Union of Women's Suffrage Societies, in 1867. Rawls refers to Mill's book *On Liberty* in discussing his ideas about justice, liberty, values, voting rights, and morality. He focuses on Mill's arguments in favor of free institutions, meaning societies designed to allow for personal liberty among individuals. Rawls, however, points out that Mill believed men with greater education and more wisdom should be granted greater power within a democratic society, thus arguing for unequal freedoms among men.

Friedrich Nietzsche

Friedrich Nietzsche (1844-1900) was a highly influential German classical philosopher. His major works include *Thus Spoke Zarathustra* (1883-1885), *Beyond Good and Evil* (1886), and *On the Genealogy of Morals* (1887). In a discussion of the nature of goodness, Rawls mentions that Nietzsche, along with Aristotle, was a theorist of perfectionism, in the sense that he felt the goal of society is the realization of human excellence in art, science, and culture. Rawls observes that Nietzsche indicates "that mankind must continually strive to produce great individuals."

Jean-Jacques Rousseau

Jean-Jacques Rousseau (1712-1778) was a highly influential French philosopher and writer whose ideas were a major source of inspiration for the French Revolution of 1789. His major works include *The Social Contract* (1762). Rawls asserts that his aim is to develop and refine the theory of the social contract, as originally conceptualized by Rousseau and other theorists. In a discussion of the issue of religious toleration, Rawls observes that Rousseau, like Locke, advocated limited toleration of diverse religious beliefs. In a discussion of moral learning, Rawls notes that Rousseau believed moral feelings are a natural, innate quality of the mature adult.



Arthur Schopenhauer

Arthur Schopenhauer (1788-1860) was a German philosopher known as an advocate of pessimism. Rawls refers to his *On the Basis of Ethics* (1840) in a brief mention of Schopenhauer's critique of Kantian philosophy.

Henry Sidgwick

Henry Sidgwick (1838-1900) was an English philosopher and writer. His highly influential *Methods of Ethics* (1874) put forth a theory of ethics based on utilitarianism. Sidgwick attempted to define a rational method on which to base ethical decisions. He concluded that there are three possible methods for ethical decision-making: egoism, utilitarianism, and intuitionism. He formulated a theory of universal hedonism, by which the pleasures of the individual and the good of society could be reconciled. Rawls refers to Sidgwick's *Methods of Ethics* throughout *A Theory of Justice*, citing Sidgwick as one of the great classical utilitarian philosophers. Rawls discusses Sidgwick's ideas in contrast to his own theory of justice as fairness. He describes Sidgwick's ideas about institutions of formal justice, noting that Sidgwick maintained that "law and institutions may be equally executed and yet be unjust." Rawls further discusses Sidgwick's critical stance toward the theories of Kant, and his advocacy of the theory of universal hedonism.

Adam Smith

Adam Smith (1723-1790) was a Scottish political economist and social philosopher of the Enlightenment. His major work, *An Inquiry into the Nature and Causes of the Wealth of Nations* (1776), put forth the first systematized theory of political economy. During his lifetime, Smith was internationally recognized for his influence on both social science and economic theory. Rawls refers to Smith in terms of his theory of the invisible hand of market influences, as put forth in *Wealth of Nations*.



Themes

Individual Liberties

In formulating his theory of justice as fairness, Rawls makes clear that the guaranteed freedom of each and every individual is essential to the establishment of a just society. He thus determines that liberty is the first priority in a hierarchy of principles defining justice; he places limitations on individual liberty only insofar as it impinges on the liberty of others. The first principle is stated as: "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." In defining what he means by liberty, Rawls points out that there are different types of liberty and that some are more crucial to a just society than others. The most important liberties he describes as first, "freedom of thought and liberty of conscience," and second, "freedom of person and the civil liberties." Rawls further establishes three items that must be accounted for in any definition of liberty: a specification of which individuals are free, a specification of what restrictions they are free from, and a specification of "what it is they are free to do or not do." Rawls provides a list of the essential liberties, which includes: political liberty, freedom of thought, freedom from assault upon the mental or physical well being of the individual, the right to ownership of property, and freedom from arbitrary arrest and seizure. He states that, in accordance with the first principle of justice, all of the above listed liberties are to be guaranteed equally to all individuals.

The Individual versus Society

A central concern in defining a just society is always in regard to the potential for conflict between the interests of the individual and the interests of society as a whole. Rawls points out that the individual must be granted the maximum liberty, but only insofar as it does not have a negative effect on the liberties of others. He asserts that a central flaw in the theory of utilitarianism is that it assumes the benefit to a majority can justify restrictions on the liberties of any individual or group of individuals. Rawls, on the other hand, avers that there is no justification for limiting the basic liberties of any one individual (granted it does not interfere with those of anyone else). He takes, as an example, the issue of religious tolerance, concluding that a religion that cannot tolerate the co-existence of other religions must be limited, only to protect the fullest expression of all religions.

Social Equality and Inequality

Implicit in Rawls's idea of a just society is that it is one structured so as to maximize social equality. Rawls makes clear that a certain degree of inequality is tolerable, even in a just society. He focuses particularly on inequalities in the distribution of wealth and in the level of political power held by different individuals. He argues that these



inequalities are acceptable, given that those on the very lowest rungs of society are guaranteed at least a minimum of financial means, political influence (such as voting), and basic rights. His argument against utilitarianism is in part that it allows for the utter devastation of some members of society, as long as the prosperity and happiness of others is maximized. Rawls, as well as other philosophers before him, have pointed out that there is a degree of inhumanity in this aspect of utilitarian theory, which disregards any concern with social equality. Rawls, on the other hand, proposes a system that allows for limited social inequality.

Democracy

Rawls suggests that the principles upon which a just society is structured are particularly compatible with the form of government known as a constitutional democracy. He prioritizes what he calls the principle of (equal) participation, which "requires that all citizens are to have an equal right to take part in, and to determine the outcome of" the political and legal process. He elaborates that this includes the stipulation of one citizen, one vote, and the assurance that elections are fair and free, and regularly held. He adds that the principle of equal participation includes the right of all citizens to run for public office. In addition, "all citizens should have the means to be informed about political issues." Rawls assumes that a democratic society must be structured in accordance with the basic rights of freedom of speech and assembly, and liberty of thought and conscience. In a preface to the 1999 revised edition of *A Theory of Justice*, Rawls expresses his intentions in formulating the theory of justice as fairness, in regard to constitutional democracy:

The central ideas and aims of this conception I see as those of a philosophical conception for a constitutional democracy. My hope is that justice as fairness will seem reasonable and useful, even if not fully convincing, to a wide range of thoughtful political opinions and thereby express an essential part of the common core of the democratic tradition.



Style

Revision

The results of an ongoing revision process are an important element of Rawls's writing style. Critics frequently comment on *A Theory of Justice* as the representation of an ongoing process of philosophical theorizing on the part of Rawls, which has taken place over the course of some forty years. *A Theory of Justice*, first published in 1971, is actually made up primarily of revised articles Rawls had previously published in academic journals, some going back as early as 1958. Thus, it has been observed that the development and refinement of his ideas between 1958-1971 can be traced within the text of a single book. Furthermore, Rawls significantly revised *A Theory of Justice* in 1975, to prepare it for translation into other languages; however, these revisions were not incorporated into the English-language version of the text until 1999. Rawls points out that, until the 1999 edition, "the translated editions . . . have been superior to the original." Rawls continued, over the course of some twenty-eight years after the publication of *A Theory of Justice*, to respond to the questions and complaints of many of his critics; thus, the 1999 revised edition incorporates the culmination of these developments into the original 1971 book, in addition to the revisions made for the 1975 translation.

Voice: First Person

Rawls puts forth his argument in the narrative voice of both the *first person singular*—meaning that he uses the pronoun "I" to indicate the source of his ideas—and the *first person plural*—meaning that he also uses the pronoun "we" to express his ideas. This choice may be contrasted with an approach that assumes an objective, or *third-person* voice by which to put forth a philosophical argument. Rawls appropriately chooses the first person singular narrative voice, which allows him to articulate his ideas in the style of an individual working out a complex, admittedly imperfect, sometimes provisional, philosophy—rather than the definitive, objective conclusions of a *third person* omniscient (all-knowing) narrator. Although Rawls argues in philosophical abstractions, his use of the first person "I" is a means of presenting his ideas as the result of an ongoing thought process.

Rawls also uses the first person plural, the pronoun "we" in such phrases as: "We should do what we can to formulate explicit principles." In using the first person plural, Rawls draws the reader into his thought processes, inviting the reader to actively participate in thinking through the problems with which Rawls himself is grappling. His use of both singular and plural first person narrative voice represents Rawls's works as an ongoing process of developing and refining his theories in dialogue with both himself and his readers.

Tone

Rawls admits to the reader a certain degree of self-doubt as to whether or not he has succeeded in developing his theory; this is not a weakness in Rawls's writing style but an honest and realistic admission that he, like the reader, is merely one man attempting to make sense of the world—he does not pretend to be putting forth the answer to the timeless questions that he is addressing. Thus, he allows himself the opportunity to express doubts about his own ideas, or to admit that some of his ideas have not yet been fully developed. He indicates this in a tone of tentativeness, or self-doubt, throughout the book, using such phrases as: "I shall try to show"; "I wish to develop"; and "It seems desirable at this point . . . to discuss."

Abstract

Rawls opens each of the three main parts of *A Theory of Justice* with an abstract—a condensed description, or summary, of the ideas put forth in that section of the book. Abstracts are frequently included in the opening of academic articles and allow the reader to quickly assess the central argument that follows.

Historical Context

The Civil Rights Movement

The civil rights movement, which began in the 1950s, was a widespread effort throughout the United States to fight for greater equality for African-American citizens. The civil rights movement can be dated from 1955, when Martin Luther King, Jr., organized a bus boycott in Montgomery, Alabama, to protest segregation. African Americans had been required to sit in the back of buses and to give up their seats to white people. A series of federal actions and legislation designed to expand and protect the rights of African Americans followed throughout the 1950s and 1960s. In 1957, federal troops were sent to Little Rock, Arkansas, to protect the rights of African Americans to attend integrated public schools. In 1960, Congress passed the Civil Rights Act, which was designed to protect the voting rights of African Americans. The Civil Rights Act of 1964 further ensured far-reaching protection of civil rights to African Americans. The subsequent Voting Rights Act of 1965 even more strongly enforced the ability of African Americans to exercise their right to vote. Nonetheless, ongoing racial inequality provoked violent race riots in major cities throughout the country in the years 1965-1968. The civil rights movement received a tragic blow when Martin Luther King, Jr., was assassinated in the spring of 1968. However, the efforts of the civil rights movement continued, in addition to more radical movements for racial equality, such as the Black Panthers, founded by Huey Newton and Bobby Seale, and the black nationalism of Malcolm X. Inspired by the efforts of African Americans, other ethnic minority groups, such as Latinos and Native Americans, launched organizations to fight for greater equality as American citizens.

The Vietnam War

The Vietnam War took place between a communist North Vietnam and South Vietnam, which was backed by the United States. United States involvement in Vietnam was sanctioned by the passing of the Gulf of Tonkin resolution in 1964. A turning point in American public opinion of the Vietnam War came in 1968 when, as a result of the Tet Offensive, many Americans first perceived that the extent of the communist forces would not make for an easy victory. Massive anti-war demonstrations and large-scale draft evasion grew throughout the late 1960s and early 1970s. In 1970, during a non-violent student protest on the campus of Kent State University, in Ohio, four students were shot dead by the Ohio National Guard. In 1973, a cease-fire agreement was signed, whereby the United States withdrew forces from Vietnam, suffering military defeat after a decade of fighting and the loss of some 58,000 American lives.



The War on Poverty

During the 1960s, President Lyndon B. Johnson initiated extensive legislation designed to enact his declared War on Poverty, as part of his program for a great society. Many benefits were extended to the socio-economically disadvantaged, to ease the burden of economic inequality in the United States. The Housing and Urban Development Act of 1965 was passed to support programs for federal housing. The Medicare Bill guaranteed health care coverage for senior citizens. In 1966, the minimum wage was raised, and in 1967, social security pensions were raised. Many other reforms were enacted during this period, focusing on such concerns as educational aid, urban renewal, and mass transportation.

Women's Liberation

The women's liberation movement, inspired by the civil rights movement, was an extensive effort to gain greater equality for women in all areas of society and culture, including work, the family, and politics. The women's liberation movement has been referred to using a variety of terms, including women's lib, the feminist movement, or simply feminism. The women's liberation movement of the 1960s and 1970s is also referred to as second wave feminism, distinguishing it from the first wave feminism of the nineteenth and early-twentieth century women's suffrage movement. The feminist movement has been referred to as a "bloodless revolution" because of the extensive and far-reaching societal changes it accomplished without the use of violence. Early second wave feminists organized consciousness-raising groups, small, loosely organized groups of women, often meeting in private homes to discuss an entire range of concerns affecting women's lives. They were influenced by such early publications as *The Second Sex* (1949), by French writer Simone de Beauvoir, and *The Feminine Mystique* (1963), by Betty Friedan. The National Organization for Women (NOW) was founded in 1966, focusing on reform for women's rights at the public level. The widely circulated motto of the women's lib movement was "the personal is political" a statement that captured the extent to which feminists perceived that even the most personal experiences, such as family, sex, and relationships, had political implications in regard to women's status in society.

Gay Pride

The gay pride movement is generally dated from the night of June 28, 1969, when gay activists rioted in protest of the arrest of patrons of a gay bar called the Stonewall Inn, in Greenwich Village in New York City. This was the first time in which a public, semi-organized protest by homosexuals had come to national attention, and the organization of a widespread and far-reaching gay pride movement soon followed. Gay Pride Week is now celebrated annually in June, in commemoration of the watershed incident now referred to simply as "Stonewall."



Critical Overview

A Theory of Justice has had tremendous, far-reaching impact on twentieth-century philosophical thought. Rawls is widely credited with breathing new life into the field of political philosophy, which, by the 1950s, had nearly ceased to develop in any significant direction. Victoria Davion and Clark Wolf, in *The Idea of a Political Liberalism* (2000) assert, "By any account, the appearance of [*A Theory of Justice*] was a turning point for political philosophy," adding that it "could not have been more cataclysmic in its effect on the field." As Rex Martin avers, in *Rawls and Rights* (1985), *A Theory of Justice* "is widely regarded as an important and seminal treatise on some of the main topics of moral and political philosophy." Rawls's work also had an important effect on liberal thought. As A. P. Rao asserts, in *Three Lectures on John Rawls* (1981), "Rawls not only brought some freshness into the Anglo-American moral philosophy, but also rescued liberal thinking from sterility, and liberal ideology from impotence."

The book, however, inspired extensive criticism, as well as praise. Brian Barry, in *The Liberal Theory of Justice* (1973), claims, "Rawls's theory of justice does not work and . . . many of his individual arguments are unsound." Yet Barry is quick to add:

It is, quite simply, a work that anyone in the future who proposes to deal with any of the topics it touches must first come to terms with if he expects the scholarly community to take him seriously.

David Lewis Schaefer, in *Justice or Tyranny?* (1979), offers harsh criticism on the grounds that Rawls's work is not that of true political philosophy, but rather of political ideology. Schaefer asserts, "Rawls's writings . . . embody what I believe to be both a popular yet seriously deficient political ideology and a widely shared yet grossly inadequate understanding of the nature of political philosophy." He goes on to state, "the widespread acclaim that *A Theory of Justice* has received from the academic community despite the book's manifold defects is . . . a disheartening sign of contemporary decay, not only in political philosophy, but in scholarship."

Even Rawls's most ardent admirers find many weaknesses in this seminal work. Robert Paul Wolff, in *Understanding Rawls* (1977), opines that Rawls's central idea in *A Theory of Justice* is "one of the loveliest ideas in the history of social and political theory"; yet, he confirms, "The logical status of the claims in the book never becomes entirely clear."

Whether criticizing or celebrating his theories, none doubt the impact of his ideas on the field of philosophy. Rao notes that the sheer volume of critical response to *A Theory of Justice* has been enormous, remarking that, since the book's first appearance, "Rawls's studies have become a heavy industry." As Davion and Wolf point out:

Rawls has, for the most part, inspired philosophers not as disciples or followers but as critics and opponents. But even Rawls's most articulate critics have adopted argumentative methods that betray his deep influence. Critical attention of this sort is, we believe, the highest form of scholarly compliment.

They add that, despite the many legitimate criticisms of his ideas, "clearly it is to Rawls's credit that his books and papers continue to inspire controversy and productive disagreement and to generate articulate reasoned response instead of passive doctrinal adherence." Further:

Among political theorists, there is clearly no overlapping consensus on the success of any particular Rawlsian argument, or even on the idea of an overlapping consensus itself. There is much more agreement on the overwhelming significance of Rawls's contribution to the field and on his enduring influence: Rawls's work has redefined the central issues of political philosophy and raised the standard of rigor and argument for the entire field.

As Rao observes of his widespread and lasting influence, "Rawls has become an integral part of the general intellectual culture, and the ideology, of the Anglo-American world."

Criticism

- Critical Essay #1
- Critical Essay #2
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Critical Essay #1

Brent has a Ph.D. in American culture, specializing in film studies, from the University of Michigan. She is a freelance writer and teaches courses in the history of American cinema. In the following essay, Brent discusses the principle of equality of opportunity in Rawls's theory of justice as fairness.

A central concern for Rawls is the problem of how to regulate equality of opportunity, given that the potential for any person to succeed in life is in part determined by their inborn, innate talents and abilities, and in part by the social, material, and psychological conditions under which they are raised as children.

Rawls's second principle of justice of fairness states that:

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.

In other words, a certain degree of social inequality is acceptable, provided that it is ultimately to the benefit of all citizens; for instance, the president in a democratic society has more power than the average citizen, but the vesting of this power in one individual is considered to be beneficial to all citizens in facilitating the functioning of democracy. Rawls explains that there are several ways of interpreting this second principle; he chooses to interpret it in the sense he refers to as democratic equality: that equality means equality of opportunity—that everyone ought to be given an equal opportunity.

However, Rawls observes that fair opportunity cannot regulate the factor of what he calls the natural lottery—meaning the natural talents and abilities accorded to any given individual, merely by accident of birth. He points out that this unequal distribution of natural talents and abilities among individuals is "arbitrary from a moral point of view"; in other words, there is no moral basis for why any one individual should be born with greater intelligence, or greater musical talent (for example), than any other. Rawls makes clear that those with the good fortune to be born with greater natural talents and abilities must recognize that their status is simply the luck of the draw, and not an indication of superiority as a human being: "We do not deserve our place in the distribution of native endowments, any more than we deserve our initial starting place in society." He points out that the inequality of innate talents and abilities, which is the condition of the natural lottery, is not an indication that any one person deserves more in life than any other; these inborn inequalities "are simply natural facts." However, society has the ability to accommodate such innate inequalities to maximize the degree of social and material equality enjoyed by each and every citizen: "What is just and unjust is the way that institutions deal with these facts."

Rawls suggests that given that there will always be such innate inequalities in the potential of each individual, society can at least guarantee to each citizen "a formal equality of opportunity in that all have at least the same legal rights of access to all



advantageous social positions." He adds that, "all should have a fair chance to attain" any given desirable social position; for example, not only should every citizen be allowed the legal opportunity to become a doctor, but every citizen should be guaranteed a fair chance to achieve the education level necessary to become a doctor.

Rawls elaborates that the social status into which one is born should not hinder the opportunity to realize the individual's natural potential for success in whatever field his or her talents lie: he states "those who are at the same level of talent and ability, and have the same willingness to use them, should have the same prospects of success regardless of their initial place in the social system." He explains, "those with similar abilities and skills should have similar life chances." In other words, society cannot compensate for inequalities in natural talents and abilities—but society should ensure that those with equal talents and abilities be granted equal opportunity to realize their innate potential: "The expectations of those with the same abilities and aspirations should not be affected by their social class."

One of the most important factors in providing this equality of opportunity is "maintaining equal opportunities of education for all." Rawls asserts that the education system is central to establishing equality of opportunity for all citizens: "Chances to acquire cultural knowledge and skills should not depend upon one's class position, and so the school system, whether public or private, should be designed to even out class barriers."

When Rawls speaks of the value of education, he makes clear that it is not merely a matter of training the citizen for economic productivity; more importantly, education is a means of enhancing the quality of life of even the most disadvantaged members of society. He states, "The value of education should not be assessed solely in terms of economic efficiency and social welfare." Rather, "Equally, if not more important, is the role of education in enabling a person to enjoy the culture of his society and to take part in its affairs, and in this way to provide for each individual a secure sense of his own worth."

Rawls, however, admits that even these measures to guarantee equal opportunity cannot compensate for the natural lottery, whereby some are born with greater talents and abilities than others. In addition, he points out that, "the principle of fair opportunity can be only imperfectly carried out, at least as long as some form of family exists." He explains

The extent to which natural capacities develop and reach fruition is affected by all kinds of social conditions and class attitudes. Even the willingness to make an effort, to try, and so to be deserving in the ordinary sense is itself dependent upon happy family and social circumstances.

Thus, the ideal of fair equality of opportunity does not address the concern that "the internal life and culture of the family influence, perhaps as much as anything else, affect a child's motivation and his on, and so in turn his life prospects." Thus, "Even in a well-ordered society that satisfies the two principles of justice, the family may be a barrier to



equal chances between individuals." Equal opportunity in education for those with equal innate natural talents and abilities does not compensate for the home life of the child, which may limit his or her potential.

Rawls defines the concept of the natural aristocracy as referring to the greater endowment of natural talents and abilities to some than to others; in other words, this idea asserts that some individuals naturally occupy a greater social status, based on their inborn potential. Rawls asserts that the idea of a natural aristocracy is not necessarily unjust, as long as the elevated privileges awarded to those with greater talent are ultimately used to the benefit of all citizens, including those with lesser natural talent and ability. It is the responsibility of those with greater innate talents and abilities to use these advantages for the benefit of the less privileged members of society. Rawls argues that the natural aristocracy thus can be to the advantage of society as a whole, for "the opportunities of the least favored sectors of the community would be still more limited if these inequalities were removed." Thus, "those who have been favored by nature, whoever they are, may gain from their good fortune only in terms that improve the situation of those who have lost out." Further, any rewards that accrue from this initial vantage point should not be regarded as the natural due of those with the good fortune to possess superior advantages.

To compensate for the unequal distribution of natural talents and abilities, as well as the unequal circumstances into which different individuals are born, Rawls offers the principle of redress. He defines this as the principle that undeserved inequalities call for redress, and adds, "since inequalities of birth and natural endowment are undeserved, these inequalities are to be somehow compensated for." Thus, a greater portion of the resources of a society ought to be directed toward the least advantaged, so that "society must give more attention to those with fewer native assets and to those born into the less favorable social positions." Rawls again points to the education system as a central location for enacting the principle of redress: "In pursuit of this principle greater resources might be spent on the education of the less rather than the more intelligent, at least over a certain time of life, say the earlier years of school."

Rawls thus puts forth a theoretical perspective from which a society may be structured to maximize equality of opportunity while taking into account the inequalities afforded by the natural lottery whereby individuals are endowed with an unequal distribution of natural talents and abilities—as well as unequal family, social, and economic circumstances in which to develop these innate talents and abilities.

Source: Liz Brent, *Critical Essay on A Theory of Justice, in Nonfiction Classics for Students*, The Gale Group, 2002.

Critical Essay #2

In the following essay, Martin surveys Rawls's theories of rights

In this chapter I will first identify the various levels or stages at which Rawls has found talk of rights to be significant (i.e., rights *in* the original position, rights emerging *from* the original position in the principles of justice formulated there, etc.). I then go on to show how Rawls would regard rights at these various levels to be justified. The focus of our discussion will be on rights as embedded in the basic structure of a society. I will try to provide an interpretation of Rawls's claim that such rights are natural rights. Then, last of all, I will consider the implications of this conception of natural rights for global justice.



Critical Essay #3

We could conveniently divide Rawls's theory here into a four-part structure. The first and topmost part concerns the so-called primary goods. The second part concerns the formulation of the principles of justice and the choice of a particular set of such principles over alternative ones. (Rawls's preferred set, which he calls the "two principles of justice," would, he thinks, be chosen in the original position.) The next part concerns the institutionalizing of the (two) principles of justice in what Rawls calls the "basic structure" of a society. The last part, then, concerns the actual workings of a society so organized and, in particular, some of the institutions and subordinate arrangements that would crop up in such a society—or, at least, in any such society under modern conditions. Interestingly, Rawls refers to rights at each of these four levels.

The primary goods, as we might recall from chapter 1, are goods which, presumptively, any rational person would want, whatever his plan of life or value orientation might be. These goods, abstractly stated, are divided by Rawls into (a) the *social* primary goods—liberty, opportunity and powers, income and wealth, the bases of self-respect—and (b) the *natural* ones—health and vigor, intelligence and imagination. As I suggested in chapter 1, we can view the deliberations of persons in the original position respecting justice as an attempt to define and select preferred principles for allocating or arranging the social primary goods among individuals. It is interesting to note that sometime Rawls includes rights among these primary goods, but sometimes he does not.

In my judgment the listing of rights at this level is confusing and should be dispensed with. Rawls is obviously rather casual on this point. The matter may call for more attention than he has given it, however; for there are two quite distinct reasons why rights as primary goods would be a problematic notion in Rawls's theory of justice.

First, we had established in chapter 1 that the original position, as an arena for the formulation of the principles of justice, could have no features which in and of themselves would be strong enough to generate a principle of justice. For we wanted the eligible principles to follow, not deductively from any descriptive feature of the original position (or any elements initially included in it), but from the arguments that were deployed there. But rights, unlike the other primary goods, are overtly normative entities; moreover, a conventional principle of justice would assert that rights should be respected or that rights should not be violated. Thus, insofar as rights are among the social primary goods, we could generate a strong—albeit conventional—principle of justice almost immediately out of the primary goods. And there would be no need, then, for the elaborate mechanisms of the theory of justice to allow for the construction of some such principle in the original position. This would violate the constraint that there should be no normative elements of justice introduced into the theory prior to the construction of the preferred principles of justice.



Moreover, rights appear to be a moral category with which utilitarian thinkers have difficulty, as should be evident from chapter 1. So, if rights were to be included among the social primary goods, then this would strongly prejudice the deliberation in favor of a specific sort of moral theory. We would also simultaneously prejudice the event against a utilitarian solution, if it is true that utilitarians have a problem in accounting for basic rights. So, on grounds of the desired normative weakness—or non deductivity of the original position model and of the moral neutrality of that model with respect to the competing principles of justice, we should attempt to expunge rights from the list of social primary goods.

This brings me to the second point. To treat rights as primary goods is to regard them as both pretheoretical (i.e., as prior to the theory of justice) and as noninstitutional (since they would antedate the basic structure of a society and, for that matter, all other social institutions). But this seems to beg important questions about the nature of rights, which need to be expressly decided (a point that we shall return to in the next section).

Fortunately, Rawls's inclusion of rights among the social primary goods does not appear to represent anything deep-seated. It is relatively offhand and, apparently, relatively easily set aside. Let us treat rights as effectively purged from the list of such goods, although there is still the interesting question (to which we will return later in this section) of why Rawls would tend to include them.

This takes us to the second stage of our analysis in this section. Rawls argues that in the original position, under conditions of extreme uncertainty in which there are no objective bases for judging probabilities, the two principles would be formulated and selected as the preferred principles.

The important thing, for our purposes, is that the first principle is usually stated by Rawls as itself identifying a right. For example, in his standard statement of the two principles, the first is said to require 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." I would suggest, then, that on this reading the Rawlsian first principle states a basic moral right. And whatever justification attaches to the two principles, as justification through a choice procedure that is both fair and rational, attaches ipso facto to this basic moral right.

The second principle, however, is not formulated by Rawls as a right. Rather, it is characteristically rendered in somewhat different terms: "Social and economic inequalities are to be arranged so that they are both: (a) to the greatest benefit of the least advantaged . . . and (b) attached to offices and positions open to all under conditions of fair equality of opportunity.'

The two principles, as they emerge from the original position, are exceedingly abstract. Just as the primary goods belong to what Rawls calls a "thin" theory of the good, so the two principles constitute a "thin" theory of justice. They require to be embodied. Justice is, or should be, a virtue of society, specifically of its basic structure. The object of the two principles is the design or the normative analysis of the basic structure of a society.



Included in that structure is a society's political system and its economic system. Each of these, in turn, would be made up of a set of structural elements or institutions (as we saw in chapter 1), with some being described as main institutions (e.g., the political constitution or the supply/demand market) and others as background institutions (e.g., antitrust regulation as a control on the market).

The idea is that a just society would conform to the two principles by building them into its basic structure: institutions are set up which, when operating together, give results that tend to satisfy the two principles over time. These institutions, then, represent a set of middle principles standing between the two principles and the actual operation of a society. The background institutions check tendencies in the main institution which might over time take it away from its original seated disposition; they not only keep the main institution on track—and it, them—but also they remedy its deficiencies, as regards justice. The result is that the "ongoing institutional processes are . . . constrained and the accumulated results of individual transactions continually adjusted."

Rawls repeatedly talks of the two principles, in particular the first one (Equal Basic Liberties), as *assigning* rights and duties. But this is inexact. The two principles assign rights and duties by means of the basic structure. Rawls thinks, for example, that the inclusion of a bill of rights within the constitution is one important way in which the first principle of justice could be institutionalized in a given society. So, the constitution (or some other feature of the basic structure) assigns determinate rights to individual persons; what the first principle does is to "govern"—or better, to *justify*—the business of assigning equal basic rights to individuals. Basic structure rights, in particular those attaching to the main institution(s), are conceived by Rawls as analogous in a variety of ways to natural rights.

The last level in Rawls's theory of rights concerns the legitimate expectations of individual persons. We can assume that these expectations would include those established at the higher levels, as secured by justice. Thus, constitutionally protected political and personal rights as laid down in the basic structure of a society would be legitimate expectations of individuals in that society. And as well, other legitimate expectations would grow up in and around the operation of the various institutions in the basic structure (e.g., the highly detailed list of rights that have grown up around the institutions of trial by jury or of private ownership of property or of equality of opportunity).

But the basic structure is also a framework for the transactions of individuals and associations. Now, individuals do not merely interact (and associations—such as labor unions or corporations or universities—do not merely interact) with the embodied principles and subsequent workings of the basic structure. Individuals also interact with one another and with associations. (The same is true for associations: they interact with one another and with individuals.) Accordingly, rules and practices that are characteristic of these sorts of transactions could be formulated as well. Thus, we could follow a line of devolvement away from the institutions of the basic structure. And here we would encounter a vast variety of subsidiary institutions and practices, of private associations and cooperative ventures. Nonetheless, expectations would attach to the



operation of these subsidiary elements and, insofar as the institutions and practices in question were compatible with justice or loosely derivative from it, the expectations would be legitimate ones, as secured or enframed by justice. Thus we can speak of subsidiary rights, as distinct from basic structure rights, of many sorts: rights under this contract or that, of particular organizational structures, of individual family life (e.g., the Martin family), and so on. In general, Rawls encompasses these rights under the heading of fairness or fair play. They are all institutional rights that are justified primarily by their relationship to elements in the basic structure, rather than directly by the two principles of justice themselves. In the absence of reasonably just institutions, we would, of course, have to turn to the two principles; but these could cover only the clear cases (i.e., practices that were grossly unjust, such as slavery, or obviously fair, such as a nonexploitative and voluntary cooperative arrangement or agreement). Since my concern in this study is with basic moral and constitutional rights and their justification, I will have little to say about these subsidiary institutional (or practice) rights.

I have schematically represented Rawls's method of justification as proceeding from the top down. Thus, the top level (deliberation in the original position about the rational and fair distribution of social primary goods) is used to justify the basic moral right that is stated in the first principle of justice; and the first principle of justice is used in turn to justify the constitutional rights that are built into the basic structure of a just society; and these, in turn, play a role of sorts in the justification of all subsidiary rights. But Rawls adds an important control on this procedure by requiring that the justifying principle or theme be matched with certain considered judgments (either in the form of maxims or of paradigm cases) which exhibit or help to exhibit the moral character of that which is to be justified (the "subject" of justification). For example, determination of the constitutional right of persons to be free from the injuries of "cruel and unusual punishment" would involve not merely the first principle of justice and its grounds (the primary goods of liberty and opportunity and of self-respect—i.e., the bases of self-respect) but also considered judgments about punishment and practices that have been associated with it historically (including such matters as mutilation as a form of corporal punishment, public execution and other forms of capital punishment, harsh treatment of those who have not been judged guilty or of those who have been judged insane, the aims of punishment, relevant maxims as to what is legally just, etc.). Rawls calls this matching procedure the method of reflective equilibrium.

In the application of this method a certain amount of to-ing and fro-ing normally results, with adjustments being made in the initial formulation of the justifying principle (or in its range of extension) as well as in our considered judgments. The goal of the method is to bring the two levels—that of justifying principle and that of the practice to be justified (and the material relevant to it)—into alignment.

We can put this point more precisely now by distinguishing between a narrow reflective equilibrium and a wide one. Briefly, a *narrow* reflective equilibrium means that the justifying principle of justice (e.g., the first principle) is matched, more or less on its own, with the considered judgments. A *wide* reflective equilibrium, by contrast, involves matching these judgments not merely with the principle itself but also with the various elements that went into its construction. From chapter 1 we are familiar with these



elements as the ones that are organized around the original position "model" in the Rawlsian account of the deliberations about the principles of justice for the basic structure of a society. It is this peculiar sort of coherence between principles and their theoretical backdrop, on the one hand, and considered judgments, on the other, that satisfies the standard of justification in matters of justice and, hence, of rights.

Rawls's account of the justification of rights is subject to most of the criticisms that can be made, more generally, of his theory of justice. Some criticisms, however, can be made specifically of this theory of rights.

Rawls's conception of rights is opaque. He does not attempt an analysis of the concept, and though he uses the term 'rights' freely, he does so without explication. The context is usually unhelpful. Rawls's failure to deal with the analytic issues poses an obstacle to his program as a justification of rights.

Oddly enough, the best place to look for guidance is in Rawls's discussion of what I earlier called subsidiary rights and practices. Thus, although this material may be relatively unimportant to our main project (that of developing a Rawlsian theory of basic moral and constitutional rights), it may, nonetheless, have important implications for what Rawls conceived rights to be. Then, if we can assume that he consistently has meant by 'rights' the same thing throughout, we can epolate this discussion to more interesting contexts and thereby have the beginnings of the Rawlsian theory we seek.

I would suggest, then, that a right for Rawls is an individual's legitimate expectation as to what he would receive in a just institutional distribution of social primary goods. The justification of a right, then, would involve establishing the legitimacy of the expectation within the framework of higher-to lower-level justification under conditions of reflective equilibrium that have already been described, albeit briefly, in this section.

On this reading, liberties as social primary goods could be called rights—not in the original position but, rather, under institutional arrangements imposed by justice. One of Rawls's standard pairings of primary goods—the pairing of rights and liberties—would conform to this usage, though the pairing is confusing since it mixes those things that are primary goods in the original position (liberties) with things that could be included there only prospectively (rights). The pairing, then, is anticipatory (and should not be taken literally). It is also revealing—suggesting, as it does, a close tie (almost a conceptual one) between rights and liberties in Rawls's thinking, as if only liberties *could* be rights.

At the same time the reading gives us a reason why Rawls was not inclined to treat the *second* principle of justice as itself a basic moral right or to regard the pattern of just distributions of wealth and social position as a pattern of rights. The reason is this: though specific liberties can be secured to a determinate degree to any given individual (since all share in the basic liberties equally), specific economic or social standings cannot. In economic matters, individuals float between an upper and a lower limit (both of which are determined by the difference principle, the principle that inequalities of wealth and social position must be arranged so that the prospects of the least-



advantaged group are maximized). Thus, no given individual has a legitimate expectation of receiving any particular distributive share and, hence, cannot be said to have a right to a particular share. Even the minimum level established by the difference principle does not define the legitimate expectation of any given individual (not even those who form the group of the least advantaged); rather the expectation is that of a "representative," or ideal-type, individual. Accordingly, Rawls characteristically withholds the term 'rights' in his discussion of the second principle and its applications. And Rawls's approach here is markedly different from his handling of the first principle and its applications.

But what, exactly, does this Rawlsian conception of rights amount to? I would suggest that two main ideas are determinative here: first, the idea of something distributive or individuatable and, second, the idea of something the distribution of which can be guaranteed.

When it is said that something can be distributed, one means that it can be assigned or parceled out to the individuals in some target group or class. Thus, the towels in a locker room would be, in this sense, distributable to the members of the club, though probably the acoustical properties of the room would not be. Rawls is interested in universal rights, that is, basic moral and constitutional rights; so, the things that someone can have a right to in such cases would have to be things that could be distributed to everyone: that is, the same things to each and everybody in the relevant class (e.g., persons, citizens).

Now, the sand on the beach on some out-of-the way Pacific island would thus be distributable (assuming that no one owned it), but there is no readily available mechanism to achieve such a distribution; more important, there is no way to guarantee it. This is one reason—probably only one among several—why no one would be inclined to say that people had a right to grains of sand from this beach. Something is, or becomes, a right only when its distribution (we assume it to be a benefit) can be guaranteed, or at least reasonably assured within practical limits, to the individuals who are relevantly said to be the recipients.

Thus, when Rawls speaks of legitimate expectations, he can be interpreted to mean not only that an individual's claims are valid but also that they are reasonable expectations: the individual's receiving his share or his due can be counted on because it is built into the structure of things and, we might add, because it is normatively independent of the usual considerations (the public good or the general welfare) that might be urged against it. Rights, for Rawls, are not free-floating claims, of the sort often called moral. They are, rather, details of an institutional arrangement in which the claim and the means for delivering on it are linked closely together.

But at this point we begin to sense a certain amount of tension in Rawls's theory. I will try, in concluding this section, to make this unease explicit.

Some have claimed that Rawls has no place in his theory for moral rights. But the judgment here is hasty, since the first principle, the principle of equal basic liberties,



seems itself to be a right in Rawls's account. And since the first principle is developed in the original position, as a principle for the design of the basic structure of a just society, it is prior to any society; the first principle itself cannot, then, be regarded as an institutional right but rather as a prescription for institutional or political rights. And as a prescription, it is moral in character; or so it might be argued. Thus, if the first principle is a right at all, it must be a moral right.

Let us say provisionally, then, that the first principle states a basic moral right: namely, that each person ought to have available the most extensive system of equal basic liberties compatible with a similar system of liberty for all other persons. Having such liberties in a well-ordered society is the legitimate expectation of each person. But what are these liberties?

Now, one could reply that the first principle does not actually specify the liberties in question; it speaks merely of "equal basic liberties." The initial specification of liberties occurs at the point when the basic structure of a society is designed (perhaps with the help of the method of reflective equilibrium). But this is to suggest that the first principle has no essential content of liberties, leaving the determination of "equal basic liberties" to time and circumstance. The first principle becomes, then, merely formal; it says, in effect, once the basic liberties have been determined in the constitution, they are to be equal for all citizens. But if the meaning of "equal basic liberties" cannot be fixed initially, then the first principle offers inadequate guidance as to precisely what liberties are to be institutionalized. The first principle—and with it, the original position—ceases to be the "Archimedean point" (the phrase is Rawls's) for the critique and design of the basic structure of a society.

The issue that I have been examining is, I think, a serious one for Rawls's theory of equal basic liberties as rights. For if some or even a few basic liberties are by and large specified at a further stage—say, at the design of the basic structure—then the first principle to that degree lacks essential content and stability.

Let us put this point somewhat differently. If the liberties on the list lack specificity or, even worse, fundamental identity, then it is difficult to say that one could have a *right* to them. Rights are, for better or worse, fairly determinate things. There comes a point, as we relax and let go of detail and then of substance, when one can no longer be said to have a legitimate expectation. The thing loses the name of right and becomes something else—an aspiration, perhaps. This line of reply, then, has obvious defects.

Accordingly, one could reply instead that Rawls's first principle of justice establishes a particular "list" of basic liberties; it identifies a specific set of liberties which are to be acknowledged as being held equally by all. (This particular reading has been suggested by Hart.) It is, I think, the correct interpretation; this interpretation of the first principle as specifying a list of basic liberties is made clearer, Rawls says, in revisions that were made for the German edition of his book and in some of his later writings.

The relevant liberties are, Rawls tells us, rights of citizenship and of the person: such things as the right to vote; freedom of speech and assembly; liberty of conscience; the



right to own personal property; freedom from slavery, arbitrary arrest, and seizure; and so on. They are standard civil liberties (or rights).

So the tension in Rawls's theory, to which I referred earlier, can now be stated. If, on the one hand, the liberties are specified too loosely, then there is no clear sense in which a person can be said to have a legitimate expectation respecting them. Hence, there would be no *right* to them as defined in the original position but, rather, presumably only in the more determinate institutional setting provided by what Rawls calls the basic structure of a society. On the other hand, were one to say that the basic liberties are rights (as one would be licensed to do, presumably, in the basic structure), then it would appear to be otiose to say of *these* rights that one has a right to them.

So Rawls's way of putting his first principle seems to fail under either option. If the basic liberties lack specificity (in the original position), then one cannot be said to have a legitimate expectation regarding them there; the legitimate expectation arises, so to speak, in some subsequent institutional setting (where they have, presumably, the requisite specificity). Hence, there is no *right* to the basic liberties that is stated by the first principle. But where the liberties have the requisite specificity—as they would have in the basic structure of a society—then they have become rights themselves (i.e., each basic liberty is itself a right), and it is redundant to speak of an additional or supervenient right to such liberties.

The dilemma appears to be that if we feed enough substance into the basic liberties to have a legitimate expectation concerning them, then there's no point in identifying a general right (= the first principle, as stated) alongside them; and if we don't, then we won't have a legitimate expectation, hence no right (regardless of what the first principle states). The first principle, then, seems doomed either to be pointless and trivial or to be inaccurate if taken literally.

The problem here is, perhaps, deeper even than this. In his theory of justice, Rawls operates with two distinct but related categories of analysis: the original position and the basic structure of a society. The original position is quintessentially *moral*. It can be entered by anyone at any time. When people are in the original position they are there, all of them, as free, equal, rational, and moral persons. They are societyless. The original position is a forum for discussion and the formulation of principles. It is a noninstitutional context. The basic structure of a society is quite different in these respects. It supposes a limited and finite population of people whose entire lives will be lived together and who will bequeath, among other things, a set of institutional arrangements to their children. The people here are all inhabitants of some *particular* society and, hence, are co-citizens with one another; as fellow citizens, they are under the *particular* political (and economic and social) institutions which go to make up the basic structure of that one society, their society. The basic structure of that society is an arena for application, for the building of principles of justice into the ongoing life of that one society in particular. The citizens' principal concern is with institutional design and criticism. The basic structure is necessarily an institutional context.



It is not clear, however, that the notion of rights can flourish in both contexts. Rawls, and many others, have all too easily assumed that it can. Rawls has made it sound as if talk of rights is fluid and can shift effortlessly from the one context to the other. What I have been delineating is at bottom not so much a difficulty that is internal to Rawls's theory (though certain tensions within that theory have helped bring it to light) as it is a fundamental philosophical difficulty in how one talks intelligibly about rights. I will begin the next section with that issue primarily in view, as our main topic for discussion there.

Before we move to that point, however, let me very briefly summarize the main results of our brief introductory survey of rights in Rawls's theory. We have determined that two of the ways in which Rawls talked about rights are dispensable: any listing of rights among the social primary goods was seen to be deeply confused and misleading, hence dispensable for that reason; any reference to rights that individuals might have (toward other individuals or associations) in virtue of legitimate expectations that arose through the workings of institutions that are subordinate to the basic structure (e.g., rights of parishioners or clergy in a church) was seen to be peripheral to our primary concern with basic moral or constitutional rights. That left two main areas for further discussion: (1) the supposed *moral* right stated in the first principle of justice ("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") and (2) the basic liberties themselves as rights. And have suggested some reasons for saying that these two do not fit well together. If my suggestions were to be accepted—a point that depends on the argument of the next section—then we would drop the idea that the first principle states a right at all. We could reword it, for example, in language reminiscent of the second principle, to say that "political institutions are to be [or should be] so arranged that the most extensive justifiable system of liberties is to be available for each and all." We would concentrate then entirely on the idea that the basic liberties named, in effect, in the first principle are rights when embedded in the basic structure of a society. Our whole discussion of rights in Rawls's theory would lead out from that one point. We turn to the first stages of that project, then, in the next section.



Critical Essay #4

Rawls is one of the few contemporary philosophers who uses *natural rights* as his standard term (Hart is another). We will assume, though, that he means by natural rights roughly what others have meant by human rights. And I will treat these ways of talking as more or less interchangeable.

We can also assume that Rawls does not mean by natural rights what Thomas Hobbes and John Locke did; for them a natural right was any right that an individual had *in the state of nature*. Such a doctrine would have no appeal to Rawls. He rarely speaks of such a state, and when he does, it is, by and large, to distinguish his account of the original position from that of the state of nature in classical contract theory. In Rawls's view, one would reach such a state only if the participants in the original position failed utterly to achieve a decision on preferred principles of justice and then decided, in effect, that no principle on the short list could be preferred to having no principle at all. A state of nature, rather like the one Hobbes envisioned, would result from that failure; it marks for Rawls the point of "no agreement." There is a deep gulf, then, between natural rights in Rawls's theory, where they are identified by reference to the basic liberties that are listed in the preferred first principle of justice, and the idea in traditional contract theory that such rights are the rights an individual has willy-nilly in a state of nature.

Our main project in this section, then, is to provide an interpretation of what Rawls means by natural rights so understood. I will do this by sketching out an argument to show that the concept of rights (hence that of human or natural rights) implies certain practices or institutional arrangements; thus, the notion of a natural (or human) right as wholly noninstitutional, as logically prior to all practices of formulation and maintenance, is a mistake. It might appear from this that I am actually repudiating the Rawlsian idea of natural rights. But this is not so, for I do not believe Rawls's idea reproduces the traditional conception of natural rights at the crucial points where it breaks down.

Now, supposing my argument to be sound, we are able to settle one important issue raised in the previous section: whether, in Rawls's theory, the notion of rights takes hold at the point of the abstract statement of the first principle in the original position or at the point of *applying* that principle to the basic structure of a society. For I think my argument forces the latter conclusion.

It follows that it is idle to describe the first principle of justice itself as a right (even though Rawls's text can bear such an interpretation). I do not, of course, mean to say that the first principle is thereby pointless but only that the term *right* is dispensable in its formulation. The first principle can be put differently, without using the term *right* at all, and suffer no loss of essential content whatsoever—something that has already been suggested in the previous section.

My argument is designed to show, in short, that it is only when basic liberties are built into the basic structure of a society that they are properly called rights in any significant



sense. And this interpretation of natural rights in Rawls's theory—as basic liberties insofar as embedded in the basic structure—is one, I think, that can be gotten from Rawls's texts and that can be supported by sound arguments independently of those text.

My main contention here is that basic moral rights—natural rights—are basic structure rights (and in that sense constitutional rights). And now to the argument

Let us begin by turning to one of the main dimensions of what can be called legitimate expectations, that of claims *against* other persons. It is arguable such claims require there to be specific duties which fall on determinate or assignable individuals. Lacking these, claims-against could not take hold and would thereby be defective.

Rawls apparently concurs in this. For we note that Rawls frequently pairs rights and duties. It seems, moreover, that he regards rights as always being correlated with duties—at least in the sense that all rights as legitimate expectations imply duties of second parties (i.e., of persons other than the rightholder). And if this pairing—this correlation—were not in evidence, then the claim-to element (e.g., the claim to a particular liberty) would not in and of itself count as a legitimate *expectation* and, hence, would not be a right for Rawls.

The filling in of the requisite background here need not, however, involve creating new duties (or what have you); it may involve simply hooking on to existing ones. In both cases, though, a fully legitimate expectation, hence a natural or a human right, will combine a valid claim *to* something (e.g., a liberty) with a valid claim *on* or *against* someone.

Thus, a legitimate expectation includes these two elements (a morally justified claim-to and a morally justified claim-against); but can it be limited to them? The question is whether a legitimate expectation could be limited to being simply a valid claim (as defined by these two elements)—as that and nothing more—and still count as a legitimate expectation, still count as a right. Could one exist, in short, without any sort of social recognition or promotion whatsoever?

In order to answer this question we need to put a certain amount of logical pressure on the notion of a legitimate expectation. The existence of a legitimate expectation in Rawls's sense would probably require, in the simplest case, that there be duties actually incumbent on persons in a particular society and that these could be derived or endorsed in virtue of standards of critical morality. For duties that cannot be acknowledged in a given society—or that cannot be shown to follow, discursively, from accredited principles of conduct which are at least reflectively available to persons in that society—cannot be regarded as proper duties which could normatively bind conduct in that society.

Now, clearly, Rawls's theory is committed to the formulation and social recognition of principles of justice in the original position and to sound arguments, themselves certified



publicly there, connecting the principles to goods such as specific liberties and thence to the duties of individual persons.

But we would not want to restrict these possible acknowledgments to the original position, for then we would lose all hold on actual persons and on their duties and obligations. There must be some requirement that the duties specified in critical morality (in the original position, for example) carry over into the real world of human action. One cannot have an obligation (or a duty) of which one literally cannot be aware. An actual person's conduct cannot be determined by duty (or obligation) if it is not possible for that person, even upon reflection, to be aware of that duty as a duty.

Now, where the beliefs that people have (including their moral beliefs) effectively block acknowledgment of something as a duty, or as a claim on the doing of their duty, then we have precisely the unawareness of which I am speaking. Thus, if a duty is removed or a supposed moral reason for performing one's duty is removed, in a given time or place, through such unawareness, then the legitimate expectation dissolves and loses the name of right. For rights imply a significant normative direction of the conduct of others, and that would be missing in the case at hand.

A parallel argument could be developed to show that if a certain claim-to (e.g., to a specific liberty) was similarly unavailable in a given society or could not be understood in that society as following from principles of critical morality, then it could give rise to no legitimate expectation there. Hence it could not be a right, nor could it constitute an element in a right.

So there is an unexungeable element of "social" recognition built into the Rawlsian idea of rights as legitimate expectations. And I have argued that this factor of social recognition cannot end with the original position but must be extended into actual societies, insofar as they have any prospect of becoming well ordered. Accordingly, questions about basic rights must be addressed from this standpoint, as including both the original position and the basic structure of societies which are well ordered (or at least reasonably that way). This, of course, is Rawls's position' for he requires the elaboration of these would-be basic rights (or legitimate expectations) in the form of social institutions.

Now let us take this one step further, from recognition to maintenance. Here we will canvass the issue of what counts as an exemplification of a natural or human right.

Consider the case of innocent travel. I would argue that the right to travel would be vitiated *as a right* if it were not protected or promoted at all. In such a case the right would be a merely nominal one, a right that existed in name only but not in fact. An ideal-type nominal right is in principle never an enforceable one; enforcement simply does not belong to its nature. Its permanent "recognition" could be assured (the liberty put in writing, enshrined in a declaration or in a bill of rights, honored by lip service), but its perpetual nonenforcement would be equally assured. Such rights do not, as some have suggested, constitute a special class of full-fledged rights. Rather, they constitute a limiting case; they are rights only on paper and nowhere else.



Now, to be sure, nominal rights are rights. The point is, though, that we regard the total absence of promotion and maintenance as infirming a right, as rendering it defective. Nominal rights are rights *in one sense only* (that of recognition), but they fail to function as rights. A merely nominal right gives no normative direction to the conduct of other persons in fact; such persons act as if the right did not exist even on paper. No one of them takes the nominal existence of the right as a reason for doing, or not doing, as the right directs. The right here has in actual practice no justificatory or directive force. Where social recognition effectively counts for so little, the rightholder is without any effective guarantee respecting that which has been recognized and formulated as a moral right. Such a right—when merely nominal—has failed in a crucial respect. It represents at best a marginal and precarious example of a right. On the assumption that any right under serious discussion here is not merely nominal, then, for any particular moral right, there would have to be certain appropriate practices of promotion, protection, enforcement, and so forth, on the part of society, including at least forbearance by (other) private persons. The determination of what is appropriate for a basic moral right then becomes the exact point at issue.

The great natural- and human-rights manifestoes were intended to impose restraints upon governments. Individuals were involved as beneficiaries of these restraints but, for the most part, were not the parties to whom the manifestoes were addressed. The right to a fair trial, which is often given as an example of a natural right (by Rawls and others), is a right that one has against governments in particular, especially one's own. The example is by no means atypical. Whether we look at details of specific rights, as we find them in the great declarations of rights, or at the theory of natural rights (including its actual history), we find that government is in fact the principal addressee.

Thus, I would want to argue that, insofar as the claims-against implicated in natural or human rights are addressed to governments in particular, we have to regard practices of governmental recognition and promotion as being the appropriate form that such social recognition and maintenance must take. To that degree, governmental practices are included within the notion of natural rights. They are (or have become) a part of the concept in question. A natural or human-rights claim that lacks such recognition and promotion is still a valid claim, but it cannot qualify as a proper natural or human right.

And the issue of whether something is a natural right, or whether such rights "exist" or whether people "have" them, cannot be decided without consideration of the whole range of relevant practices, which include recognition in law and governmental maintenance of the claimed way of acting or of being treated. Such practices are ingredient in the very notion of what it is for something to be a natural or a human right, or so my argument is meant to show.

Now it may be, I would add, that for some universal moral rights the role of government is incidental or even nonexistent. These rights hold strictly between persons. The moral right to be told the truth (or at least not to be lied to) or the moral right to gratitude for benefits provided or, perhaps, the moral right to have promises kept are examples. Such rights differ from, say, the right not to be killed—even when we're talking about the latter right as held against individuals—in being rights that are maintained exclusively, or



almost exclusively, by conscience. They are moral rights merely and in no way claims against the government. Interestingly, though, it is often in these very cases that while we are willing to call such rights moral rights, we would tend to withhold the name of human (or natural) right.

There is a sound basis for saying, then, that natural-rights norms (i.e., valid claims) are addressed to governments primarily. And natural or human rights can be distinguished from other universal moral rights in this very circumstance.

There is an important reason, which needs bringing out, for precisely this restriction. In talk of specifically human or natural rights, it is assumed that human beings live in societies. The goods that are identified in claims-to are here conceived as goods obtained and enjoyed in a social setting. That is, such goods are conceived as provided peculiarly or especially through life in a society. They are not, in short, thought to be attained principally, if at all, on a mere individual-person-to-all-others basis. Here then, where the social context is emphasized, claims against others are for the most part addressed not to individuals as such but, rather, to individuals insofar as they exercise the powers of some assigned agency in that particular social setting. Such claims-against hold, not against everyone individually, but against an organized society; and it is of the institutions□or agencies□of that society that satisfaction is expected.

Admittedly, it is not so much governments as it is organized societies that are selected out by human- or natural-rights claims. The point, though, is that the basic structures of such societies are correctly regarded as being *politically* organized; and it is governments that typically play, and have played, a major role in such organization. Thus, government enters the natural-rights picture as the organizer, and as one of the major agencies, of the kind of society against which a natural-rights claim is characteristically lodged. Thus, the requirement that natural rights be lodged in the basic structure of a society, that their status as rights of this sort requires such incorporation, seems to follow naturally. And this I take to be the view that Rawls is advancing.

If my analysis is correct or even plausible, we have a reason for the central place that government occupies in our concept of natural or human rights; given this reason, we find it natural that recognition and maintenance by governmental action (the satisfaction principally sought in natural-rights claims) should be relativized to particular societies. For these claims, insofar as we have regard to their primary addressee, are satisfied by political devices (e.g., basic laws) having an appropriately universal scope within a particular society. Such a law would exist when, for example, a freedom to travel on the part of every citizen (or preferably, every person) was recognized in the law of that society and scrupulously enforced. We can call any such operative and universal right (i.e., universal within a given society) a general political or civil right□or, if you will, a constitutional right. The latter, which is the more conventional term, seems serviceable enough.

This particular notion of constitutional rights is easily inserted into Rawls's theory. The rights he has in mind are, on their claim-to side, universal and unconditional (in that a



valid moral claim holds good for everyone, or at least for everyone who is alive at a given time—for the ground of the claim is simply a title to something or other that is given to all persons, merely in virtue of their being persons, in accordance with moral principles). This is how I would interpret Rawls's contention that the basic liberties, as determined in the original position, are natural rights. That is, on their claim-to side they are like natural rights in the traditional sense. Such claims are explicitly accommodated in the basic structure of any well-ordered society; and they are, under the requirement of a public sense of institutional justice, not only formulated and acknowledged but also scrupulously maintained there by the particular government involved.

There is, I would note, though, an important asymmetry between the claims-to part and the claims-against part of a complete (or full) valid moral claim. The former may well be universal and virtually without restriction; yet it does not follow automatically here that the claim-against element will be similarly universal. For example, all human beings are, or were at one time, children and all have (or had) the appropriate claims to care and concern: to nourishment, upbringing, and so on. But these claims on the part of each child are principally addressed, not to anyone and everyone, but to that child's parents or guardians in particular. Rights that are thus restricted are called special (rather than general) rights. I want to suggest that something like this functions in the case of human or natural rights; they too are special rights. The claim-to element is unrestricted: it holds for every person (or for every person who is alive at a given time). But the claim against element is typically restricted: not all persons, but only some (namely, agencies of government), are addressed as principally having the moral duty in question. It is their job to arrange the basic structure so as to incorporate the substance of these claims-to for the benefit of their respective inhabitants.

Indeed, the term *basic structure* right, which I introduced in the previous section, seems to be singularly well suited to capture the peculiar sense of constitutional rights that we want to have in view. The turn to constitutional—or basic structure—rights reflects the fact that human rights typically are special rights and are claimed on moral grounds which hold good for all persons, simply in virtue of their being persons, against particular politically organized societies—specifically, against governments. (Or, as Rawls would probably prefer to say, against one's fellow citizens.) The question of whether a particular valid and universal moral claim has been appropriately responded to by government or by the members of one's society is answered by considering the class of active constitutional rights. Such rights, when molded under the influence of these claims, are the kind of right involved. Their existence is a necessary element in a morally valid claim's being (or becoming) a natural or a human right.

If a particular constitutional right is missing in a given country, then lacking this necessary ingredient, the incipient natural right will fail to jell or it will dissolve, for that country or for that time and place. And we are at best left with a moral claim (presumably valid) that something *should be* a constitutional right.

The basic contention, then, which forms the backdrop of this entire study is that natural or human rights necessarily have an institutional side and that, on this side, they would have in a given society the form of constitutional rights. We recognize, of course, that



even in a well-ordered society there may be some constitutional rights which do not have the sort of direct backing, in a valid and universal moral claim as determined from the perspective of the original position, that we have been discussing. These would not, then, be called natural rights. Natural rights are confined to those constitutional or basic structure rights that have the appropriate moral support. I will restrict my discussion in what follows to things that are natural rights in this precise sense.

It is often asked what something that is otherwise a human or natural right would be in a society in which the relevant constitutional right was lacking. The answer is that it would be merely a morally valid claim there. Or to be exact, it would be a valid claim that holds, insofar as practicable, for each and every person in that society, against the government there (and in many cases against private persons also). The claim would hold simply in virtue of its following from accredited moral principles. And the claim would be that the thing identified as the claim to element (e.g., a given basic liberty as specified in Rawls's first principle) should be established as an operating basic structure or constitutional right in that society.

Any such claim would have an important use insofar as it was or could be acknowledged by people in that society. (And it would most likely be if the conventional morality of that society is such that the first principle would be affirmed when that conventional morality was carefully reflected upon.) For it would provide a realistic and reasonable basis for criticizing the conduct of government or of people generally in that society. Thus, the government could be criticized for failing to promote and maintain a course of action, or a way of being treated, that was incorporated in law as something to be promoted and maintained. Or it could be criticized—that is, the society in question could be criticized—for having failed to take even the first step, that of incorporation into the basic structure and, hence, of authoritative recognition in law. These criticisms would be perfectly sound insofar as they followed from accredited principles (as developed in critical morality, e.g., in the original position) and insofar as they really could be made to connect up with the normative direction that was provided to people in that society by their existing morality or by their system of law.

Thus, for instance, on the assumption that there are morally sound arguments (in the original position, as incorporated in the first principle) against the practice of slavery, we could say that slaves (in the United States in the late eighteenth or early nineteenth century) had a morally valid claim to personal liberty despite what the United States Constitution said or implied (or despite what intellectual defenders of slavery, such as Aristotle, might have said). More important, there was a morally valid claim that this particular liberty should be embodied as a constitutional or civil right (specifically as a right not to be enslaved) for every human person in that society. The intended result of authoritatively acknowledging this claim in that society is that slavery would cease to exist there (but until it did so, the right established by that acknowledgment would be, to some degree, a nominal one). We could expect, then, that the personal liberty would become in time a proper or full-fledged right—that is, an active constitutional or basic structure right there.



The moral soundness of this criticism of slavery does not require that there be some right superordinate to conventional morality or to existing systems of law. Indeed, legally sanctioned slavery may violate no one's rights in those cases where the relevant liberties have not been incorporated as basic structure rights. Nonetheless, the crucial point remains that legally sanctioned slavery is always unjust (a point that I will argue more fully in the next chapter). But whether or not something is a right raises a somewhat different set of questions. Natural rights are not simply demands of justice, not even of distributive justice. Rather, as I have argued in this section, the crucial issue here is whether appropriate practices of recognition and promotion are in place for that kind of right. For without such social recognition and maintenance, whatever was said to be justified, on moral grounds, would not be a proper right.

There is, we see on reflection, an irreducible duality to human or natural rights. On the one side, they are morally validated claims to some benefit or other. On the other side, such rights require recognition in law and promotion by government of the claimed way of acting or of being treated. Neither side is dispensable in a human or natural right.

On its legal side a human or natural right would have the form of a constitutional right. If there are any natural rights at all, it follows that there are active constitutional rights in at least some countries. There will be such rights in all Rawlsian well ordered societies.

This concludes my line of argument and my use of that argument to interpret Rawls's notion of natural rights. One caveat is, perhaps, in order. Rawls says that "the liberties of equal citizenship must be incorporated into and protected by the constitution"; this is often interpreted as requiring their incorporation into a bill of rights. Thus, it might appear that Rawls's account requires, as a matter of justice, that a well-ordered society have a written constitution. But this is a considerable oversimplification. (Though we can say that, where there is a *written* constitution, it should incorporate the liberties that are listed in the first principle of justice.)

What Rawls's position requires, fundamentally, is the rule of law; with his emphasis on publicity it would follow that such rules will be explicitly formulated—or at least the more important ones are required to be. Among these important laws will be some that are regarded as basic (e.g., laws in a representative—parliamentary—democracy that set the term of a parliament, that identify the frequency of elections, that stipulate how or when a parliament may be dissolved, etc.). Thus, whatever counts as the basic laws in a society, those are to include laws that formulate and afford protection to the basic rights. Accordingly, a country like Great Britain, which has no written constitution, could incorporate universal political—that is constitutional—rights into its basic laws and thereby conform to Rawls's requirement.

It is even possible to imagine non legal sources of constitutional rights. Their principal formulation could occur in a religious book or code or in a work of philosophy (such as *Mill's On Liberty*). Or it could occur in some political document (such as the Declaration of Independence or the *Federalist Papers* or Lincoln's Gettysburg Address) which lies largely outside the law. And it could occur outside the usual legal context of explicit constitutional provisions or valid statutes (as, for one example, the United States



Supreme Court's assertion of a fundamental "right of privacy" does or, for another example, as does the considerable codification, by the Executive Branch, of rights to "affirmative action"). What is important is that basic rights be formulated, that some formulation be authoritatively recognized within the standard political and legal channels of a society, and that, within these channels, government bring its powers to bear so as to promote and maintain the rights that are authoritatively recognized. It is this kind of commitment to basic rights, which can control the political process and is never taken lightly by the political agencies, that Rawls had in mind. (And, we should hasten to add, many of these rights will also normatively direct the conduct of individual citizens as well.)

Rights that are so understood become, literally, a part of the basic structure. The way of thinking I have tried to portray here is very like the ancient Greek conception of a constitution (*politeia*) as that which concerns the principal parts of the *polis*—or of the state, as we would call it. If we keep in mind the Rawlsian idea that constitutional rights are basic structure rights, we will not depart too far from this fundamental conception.

This brings us back to the main contention that I have tried to advance in this section: namely, that for Rawls, basic moral rights—natural rights—are basic structure rights (and in that sense constitutional rights). And I have sketched out a rather complex argument, both to interpret Rawls's idea of natural rights and to support his insistence on the explicit formulation by government of rights in the basic structure and of the development there of attendant political institutions for the promotion and maintenance of these rights. I have argued that a theory of natural rights would fail insofar as it leaves out these latter features, of appropriate social recognition and protection, which are essential to any proper right. For without such measures, there could be no basic structure *guarantee* to an individual of what was justifiably claimed as his due, and he could not count on getting what was claimed. There would be no legitimate expectation, hence no true right as part of the basic structure, in the absence of such formulation and maintenance.

Admittedly, the basic liberties are understood as explicitly stated in the first principle of justice (though their formulation there is a rather loose one). This initial formulation does occur, and can only occur, in the original position. But there are no mechanisms for protection in the original position. It is merely anticipated that there will be some such devices. The original position exists simply so that the principles of justice can be *stated* (and can be seen, as stated, to be reasonable and well founded). Hence the liberties that are listed from the perspective of the original position can be, when in the original position, at best merely morally valid claims. Even if we were to waive the requirement of social recognition, letting the formulation of these liberties in the original position stand as surrogate, the rights there would still be analogous to constitutional rights that were merely nominal. This gives the reason, then, why it is empty to regard the first principle of justice, when merely formulated in the original position, as itself a basic right, or as listing basic rights, in any full and significant sense.

But the liberties, as listed in the first principle, can be built into the basic structure of a society, and when they are incorporated in the way I have specified, they become proper rights. They become constitutional rights, parts of the basic structure.



Critical Essay #5

For Rawls all natural or fundamental rights, insofar as they are rights, strictly conceived, are necessarily embedded in the basic structure of society—that is, of some *particular* society. The basic liberties are goods of all people, everywhere and at all times. But they are realized as goods only in society—and for any individual, that means in some specific society. Thus, when we look at basic liberties, not as liberties but as constitutional rights, there is an important sense in which they are not "globalized," not spread, as it were, to the four corners of the earth as a single blanket of rights covering all peoples. As proper natural rights such rights enjoy, and can only enjoy, a local existence, in the basic structure of a given society.

Why should this be? Because, as I argued in the previous section, Rawls apparently believes that the basic liberties are inadequately determined—not properly identified or distributed or guaranteed to individuals—in a setting that lacks mechanisms for defining rights: for setting their scope, for adjusting them one to another, for assuring that they will be distributed to actual individuals, for enforcing and protecting that distribution, and so on. Individual political societies—states—have such mechanisms. They are, given their relative independence and self-contained character, the largest such entities, and the most important ones, that do have the appropriate mechanisms. Thus, the same reason which underwrote Rawls's claim that the basic structure of a society is the first subject of justice also underwrites his housing of natural rights—basic liberties as constitutional rights—within discrete political societies.

The motivation is practical, not logical. The world itself could be the locus of natural rights if there were a world government. But there isn't. There is no basic structure—no political infrastructure—for the globe. The largest viable unit today is the nation state.

This does not mean that a larger, more inclusive political society would be inappropriate, nor does it mean that one should not work to achieve a larger framework. Indeed, if we take seriously the idea that the basic liberties should be rights of all people, then such a global framework might well be indicated. (Though, equally, it might be indicated that the liberties should be incorporated into the basic structure of every existing political society.) But the point is that the possibility of a global framework is very remote at present.

Suppose, though, that one wanted to work now to help globalize the basic liberties as rights at some future date. How should one best go about this? Rawls's answer seems to be—I am theorizing here—that a plausible procedure would be for individual states to strive (where their traditions and institutional development permitted) to conform themselves to justice in their basic structure. This might well constitute a necessary first step. After that, some further move might be possible—perhaps an international association of such states and the development of a new political infrastructure, acting directly on individual persons, within that association. Something like this further move is afoot in western Europe today, though what has resulted so far is much more like a confederation of states than like an individual state.



A good argument could be made, then, that direct moves to a global state—or to a large confederation of inevitably and radically unlike-minded states—from where we are today is not wise. Also, it would not be practical. Nor would it be likely to help achieve anything like the end in view: the globalization of basic liberties as rights for all people everywhere.

All this is useless speculation, however, if we lose sight of the main point. Basic liberties cannot be rights except in a suitable institutional context. They cannot be effective constitutional rights except in the basic structure of a political society. We must confine ourselves, then, to consideration of such basic structures. Insofar as we are interested in institutional design that has any prospect of practical application, we must not outrun the range of existing or feasible basic structures. Thus, we are necessarily concerned with the largest viable political societies—independent states—and their basic structures. This precludes, for the foreseeable future at least, any serious program for designing a global or even an ambitious confederative scheme of basic liberty rights.

The same inhibitions that I have just described, as existing for the basic liberties of the first principle, will also exist for the other primary goods as determined in the second principle (under its two main headings, fair equality of opportunity and the difference principle). The operation of these two features are equally meant to be confined to the basic structures of particular societies. And for the same reason: namely, that today the necessary political infrastructure exists only in these societies and not globally.

It could, of course, be urged that *economically* there is at present a great mutual interdependence among peoples of the earth. But even if global economic interdependence is a fact, two points remain germane.

First, we can speak from the perspective of the original position. The parties there would be concerned about the well-being of persons in *any* society—hence in *all* societies, whether or not these societies and these persons were economically interdependent. The whole point of formulating principles of justice, it seems to me, is to identify areas of appropriate concern for the well-being of persons everywhere insofar as that well-being is a matter of basic fairness. The fact of economic interdependence on a global scale is quite irrelevant to this concern. It can become relevant, but only depending on what the unit of application is. If the unit of application is the existing market (or the multinational firm or capitalist society), then the fact of global economic interdependence is clearly relevant. But if the unit of application of the difference principle is the basic structure of a *political society*, then equally clearly it is not.

The perspective of the basic structure of society is the second one that we can take and must take in order to determine which unit of application is the appropriate one. Suppose the basic structure is as we've already described it (in the earlier discussion in this section of basic liberties); one would have to say in such a case that there is no world-wide political structure that answers to the global economic community. Accordingly, there can be no world-wide application of the difference principle today. There cannot be; for that principle, in order to be applied, requires political mechanisms, not merely economic ones. The relevant political mechanisms exist, for now at least,



only in independent national states (or perhaps in certain federations of these) but not globally, not in any single, all-encompassing political regime. And what is true for the operation of the difference principle holds also for fair equality of opportunity: the political mechanisms required for its application do not now exist, to any practical degree, except in particular societies, in independent states.

So, the Rawlsian concentration on the basic structure of a particular society, which I have tried to bring out through my analysis of natural rights, limits the application of the preferred principles of justice in a very fundamental way. For direct global application is ruled out—once, that is, we take account of the actual character of the contemporary political world. And I will observe this limitation—in effect a limitation to the basic structure of some particular political society (or state)—throughout my discussion of the application of the two principles of justice.

In the analysis of this and the previous section, we have a setting for Rawls's discussion of basic liberties as rights. I will turn to a more exacting account of these liberties in the next chapter.



Topics for Further Study

To what extent do you agree or disagree with Rawls's theory of justice as fairness? Can you suggest an alternative theory?

Read one of Rawls's articles from the *Collected Papers* (1999). What is his argument? How does it fit in with his theory of justice as fairness? To what extent do you agree or disagree with Rawls's argument in this article?

Rawls makes reference to a number of influential philosophers (as listed in the Key Figures section of this entry). Pick one of these philosophers and learn more about his life. What were this person's contributions to philosophical thought?

A Theory of Justice was first published in 1971 during an era of great turmoil in American history. Learn more about one of the major events or series of events that took place in the United States between the mid-1960s and mid-1970s. In what ways did this event raise issues relevant to Rawls's conception of a just society?

Evaluate your own society in accordance with the principles of justice as fairness put forth by Rawls. To what extent is it a just society in its basic political and legal structure? In what ways do you consider it an unjust society? What measures could be taken to make it more just?



Compare and Contrast

1789: *Introduction to the Principles of Morals and Legislation*, by Jeremy Bentham, delineates the principle of utility, which posits that morality is determined by whatever results in the greatest good for society as a whole, regardless of the fortunes of any individual or group of individuals. This theory goes against intuitionism, a school of thought that implies that humans have an intuitive sense of right and wrong.

1971: *A Theory of Justice*, by John Rawls, transforms the fields of ethical and political philosophy, posing the first convincing challenge to the dominance of utilitarian thought.

Today: Ongoing critical response to Rawls, both supportive and dismissive, is a continuing measure of his influence on the field of ethics.

Mid-1800s: Legal, educational, and general social reform occurs in England as a result of corruption and dissatisfaction. A new legal system, largely based on utilitarianism, supplants a system more or less based on natural law.

1960s and 1970s: In the midst of much social and political upheaval, including the civil rights movement, women's liberation movement, gay rights movement, and a nationally declared "War on Poverty," many Americans concern themselves with social justice and its existence within a democratic society.

Today: Discrimination persists in many forms, despite being largely illegal. Welfare reforms attempt to reduce poverty.

Mid-1800s: The Civil War leads to the complete abolishment of legal slavery in the United States.

1960s and 1970s: Legislation is passed to end segregation in the United States. Affirmative action is conceived and is slowly instituted.

Today: Segregation is illegal. Affirmative action is widely instituted and is the subject of many political and legal disputes. The American attempt at civil equality is emulated by other countries, such as South Africa.

What Do I Read Next?

In *Rawls: A Theory of Justice and Its Critics* (1990), Chandran Kukathas and Philip Pettit provide analytical discussion of the central critical responses to Rawls's work.

In *Culture War and Ethical Theory* (1997), Richard F. Von Dohlen discusses Rawls's theories in relation to cultural conflicts facing the United States in the twentieth century.

In *Pluralism and Consensus: Conceptions of the Good in the American Polity* (1998), Christopher Beem discusses philosophies of liberalism and pluralism, including the theories of Rawls, in relation to American politics and government.

John Rawls: Collected Papers (1999), edited by Samuel Freeman, includes almost all of Rawls's publications (other than his books), arranged in chronological order.

Lectures on the History of Moral Philosophy (2000), edited by Barbara Herman, includes Rawls's lectures on the history of modern ethics from the seventeenth through the twentieth centuries.

Further Study

Alejandro, Roberto, *The Limits of Rawlsian Justice*, Johns Hopkins University Press, 1998.

Alejandro provides critical discussion of Rawls's theory of justice in relation to the American legal system.

Corlett, J. Angelo, ed., *Equality and Liberty: Analyzing Rawls and Nozick*, St. Martin's Press, 1991.

Corlett provides a collection of essays addressing the themes of justice, equality, and liberty in the works of Rawls and his primary critic, Robert Nozick.

George, Robert P., and Christopher Wolfe, eds., *Natural Law and Public Reason*, Georgetown University Press, 2000.

George and Wolfe provide a collection of essays that focus on the themes of natural law, liberalism, and reason in the work of Rawls.

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Schaefer, David Lewis, *Justice or Tyranny?: A Critique of John Rawls's "A Theory of Justice," Kennikat Press, 1979*, pp. ix, 105.

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Project Editor

David Galens

Editorial

Sara Constantakis, Elizabeth A. Cranston, Kristen A. Dorsch, Anne Marie Hacht, Madeline S. Harris, Arlene Johnson, Michelle Kazensky, Ira Mark Milne, Polly Rapp, Pam Revitzer, Mary Ruby, Kathy Sauer, Jennifer Smith, Daniel Toronto, Carol Ullmann

Research

Michelle Campbell, Nicodemus Ford, Sarah Genik, Tamara C. Nott, Tracie Richardson

Data Capture

Beverly Jendrowski

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Imaging and Multimedia

Randy Bassett, Dean Dauphinais, Robert Duncan, Leitha Etheridge-Sims, Mary Grimes, Lezlie Light, Jeffrey Matlock, Dan Newell, Dave Oblender, Christine O'Bryan, Kelly A. Quin, Luke Rademacher, Robyn V. Young

Product Design

Michelle DiMercurio, Pamela A. E. Galbreath, Michael Logusz

Manufacturing

Stacy Melson

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The Gale Group, Inc

27500 Drake Rd.

Farmington Hills, MI 48334-3535

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Introduction

Purpose of the Book

The purpose of Nonfiction Classics for Students (NCfS) is to provide readers with a guide to understanding, enjoying, and studying novels by giving them easy access to information about the work. Part of Gale's □For Students□ Literature line, NCfS is specifically designed to meet the curricular needs of high school and undergraduate college students and their teachers, as well as the interests of general readers and researchers considering specific novels. While each volume contains entries on



□classic□ novels frequently studied in classrooms, there are also entries containing hard-to-find information on contemporary novels, including works by multicultural, international, and women novelists.

The information covered in each entry includes an introduction to the novel and the novel's author; a plot summary, to help readers unravel and understand the events in a novel; descriptions of important characters, including explanation of a given character's role in the novel as well as discussion about that character's relationship to other characters in the novel; analysis of important themes in the novel; and an explanation of important literary techniques and movements as they are demonstrated in the novel.

In addition to this material, which helps the readers analyze the novel itself, students are also provided with important information on the literary and historical background informing each work. This includes a historical context essay, a box comparing the time or place the novel was written to modern Western culture, a critical overview essay, and excerpts from critical essays on the novel. A unique feature of NCfS is a specially commissioned critical essay on each novel, targeted toward the student reader.

To further aid the student in studying and enjoying each novel, information on media adaptations is provided, as well as reading suggestions for works of fiction and nonfiction on similar themes and topics. Classroom aids include ideas for research papers and lists of critical sources that provide additional material on the novel.

Selection Criteria

The titles for each volume of NCfS were selected by surveying numerous sources on teaching literature and analyzing course curricula for various school districts. Some of the sources surveyed included: literature anthologies; Reading Lists for College-Bound Students: The Books Most Recommended by America's Top Colleges; textbooks on teaching the novel; a College Board survey of novels commonly studied in high schools; a National Council of Teachers of English (NCTE) survey of novels commonly studied in high schools; the NCTE's Teaching Literature in High School: The Novel; and the Young Adult Library Services Association (YALSA) list of best books for young adults of the past twenty-five years. Input was also solicited from our advisory board, as well as educators from various areas. From these discussions, it was determined that each volume should have a mix of □classic□ novels (those works commonly taught in literature classes) and contemporary novels for which information is often hard to find. Because of the interest in expanding the canon of literature, an emphasis was also placed on including works by international, multicultural, and women authors. Our advisory board members□educational professionals□ helped pare down the list for each volume. If a work was not selected for the present volume, it was often noted as a possibility for a future volume. As always, the editor welcomes suggestions for titles to be included in future volumes.

How Each Entry Is Organized



Each entry, or chapter, in NCfS focuses on one novel. Each entry heading lists the full name of the novel, the author's name, and the date of the novel's publication. The following elements are contained in each entry:

- **Introduction:** a brief overview of the novel which provides information about its first appearance, its literary standing, any controversies surrounding the work, and major conflicts or themes within the work.
- **Author Biography:** this section includes basic facts about the author's life, and focuses on events and times in the author's life that inspired the novel in question.
- **Plot Summary:** a factual description of the major events in the novel. Lengthy summaries are broken down with subheads.
- **Characters:** an alphabetical listing of major characters in the novel. Each character name is followed by a brief to an extensive description of the character's role in the novel, as well as discussion of the character's actions, relationships, and possible motivation. Characters are listed alphabetically by last name. If a character is unnamed—for instance, the narrator in *Invisible Man*—the character is listed as "The Narrator" and alphabetized as "Narrator." If a character's first name is the only one given, the name will appear alphabetically by that name. Variant names are also included for each character. Thus, the full name "Jean Louise Finch" would head the listing for the narrator of *To Kill a Mockingbird*, but listed in a separate cross-reference would be the nickname "Scout Finch."
- **Themes:** a thorough overview of how the major topics, themes, and issues are addressed within the novel. Each theme discussed appears in a separate subhead, and is easily accessed through the boldface entries in the Subject/Theme Index.
- **Style:** this section addresses important style elements of the novel, such as setting, point of view, and narration; important literary devices used, such as imagery, foreshadowing, symbolism; and, if applicable, genres to which the work might have belonged, such as Gothicism or Romanticism. Literary terms are explained within the entry, but can also be found in the Glossary.
- **Historical Context:** This section outlines the social, political, and cultural climate in which the author lived and the novel was created. This section may include descriptions of related historical events, pertinent aspects of daily life in the culture, and the artistic and literary sensibilities of the time in which the work was written. If the novel is a historical work, information regarding the time in which the novel is set is also included. Each section is broken down with helpful subheads.
- **Critical Overview:** this section provides background on the critical reputation of the novel, including bannings or any other public controversies surrounding the work. For older works, this section includes a history of how the novel was first received and how perceptions of it may have changed over the years; for more recent novels, direct quotes from early reviews may also be included.
- **Criticism:** an essay commissioned by NCfS which specifically deals with the novel and is written specifically for the student audience, as well as excerpts from previously published criticism on the work (if available).

- **Sources:** an alphabetical list of critical material quoted in the entry, with full bibliographical information.
- **Further Reading:** an alphabetical list of other critical sources which may prove useful for the student. Includes full bibliographical information and a brief annotation.

In addition, each entry contains the following highlighted sections, set apart from the main text as sidebars:

- **Media Adaptations:** a list of important film and television adaptations of the novel, including source information. The list also includes stage adaptations, audio recordings, musical adaptations, etc.
- **Topics for Further Study:** a list of potential study questions or research topics dealing with the novel. This section includes questions related to other disciplines the student may be studying, such as American history, world history, science, math, government, business, geography, economics, psychology, etc.
- **Compare and Contrast Box:** an “at-a-glance” comparison of the cultural and historical differences between the author’s time and culture and late twentieth century/early twenty-first century Western culture. This box includes pertinent parallels between the major scientific, political, and cultural movements of the time or place the novel was written, the time or place the novel was set (if a historical work), and modern Western culture. Works written after 1990 may not have this box.
- **What Do I Read Next?:** a list of works that might complement the featured novel or serve as a contrast to it. This includes works by the same author and others, works of fiction and nonfiction, and works from various genres, cultures, and eras.

Other Features

NCfS includes “The Informed Dialogue: Interacting with Literature,” a foreword by Anne Devereaux Jordan, Senior Editor for Teaching and Learning Literature (TALL), and a founder of the Children’s Literature Association. This essay provides an enlightening look at how readers interact with literature and how Nonfiction Classics for Students can help teachers show students how to enrich their own reading experiences.

A Cumulative Author/Title Index lists the authors and titles covered in each volume of the NCfS series.

A Cumulative Nationality/Ethnicity Index breaks down the authors and titles covered in each volume of the NCfS series by nationality and ethnicity.

A Subject/Theme Index, specific to each volume, provides easy reference for users who may be studying a particular subject or theme rather than a single work. Significant subjects from events to broad themes are included, and the entries pointing to the specific theme discussions in each entry are indicated in boldface.



Each entry has several illustrations, including photos of the author, stills from film adaptations (if available), maps, and/or photos of key historical events.

Citing Nonfiction Classics for Students

When writing papers, students who quote directly from any volume of Nonfiction Classics for Students may use the following general forms. These examples are based on MLA style; teachers may request that students adhere to a different style, so the following examples may be adapted as needed. When citing text from NCfS that is not attributed to a particular author (i.e., the Themes, Style, Historical Context sections, etc.), the following format should be used in the bibliography section:

□Night.□ Nonfiction Classics for Students. Ed. Marie Rose Napierkowski. Vol. 4. Detroit: Gale, 1998. 234-35.

When quoting the specially commissioned essay from NCfS (usually the first piece under the □Criticism□ subhead), the following format should be used:

Miller, Tyrus. Critical Essay on □Winesburg, Ohio.□ Nonfiction Classics for Students. Ed. Marie Rose Napierkowski. Vol. 4. Detroit: Gale, 1998. 335-39.

When quoting a journal or newspaper essay that is reprinted in a volume of NCfS, the following form may be used:

Malak, Amin. □Margaret Atwood's □The Handmaid's Tale and the Dystopian Tradition,□ Canadian Literature No. 112 (Spring, 1987), 9-16; excerpted and reprinted in Nonfiction Classics for Students, Vol. 4, ed. Marie Rose Napierkowski (Detroit: Gale, 1998), pp. 133-36.

When quoting material reprinted from a book that appears in a volume of NCfS, the following form may be used:

Adams, Timothy Dow. □Richard Wright: □Wearing the Mask,□ in Telling Lies in Modern American Autobiography (University of North Carolina Press, 1990), 69-83; excerpted and reprinted in Novels for Students, Vol. 1, ed. Diane Telgen (Detroit: Gale, 1997), pp. 59-61.

We Welcome Your Suggestions

The editor of Nonfiction Classics for Students welcomes your comments and ideas. Readers who wish to suggest novels to appear in future volumes, or who have other suggestions, are cordially invited to contact the editor. You may contact the editor via email at: ForStudentsEditors@gale.com. Or write to the editor at:

Editor, Nonfiction Classics for Students
Gale Group
27500 Drake Road
Farmington Hills, MI 48331-3535