Reviews

Social Theory *Sub Specie Aeternitatis*: A New Perspective

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A Theory of Justice. By John Rawls. Cambridge: Harvard University Press, 1971. Pp. 607. \$15.00 (clothbound), \$3.95 (paperback).

John Rawls' *A Theory of Justice* is one of those relatively rare books that are "known" to be Very Important far in advance of their actual appearance. It has at last burst upon an altogether suspecting public consisting primarily of professional philosophers and secondarily of many others in a variety of fields who take an interest in social, political, legal, and moral theory. Stuart Hampshire has called it "the most substantial and interesting contribution to moral philosophy since the war, at least if one thinks only of works written in English."¹ Graduate students in dozens of universities, pens or typewriters at the ready, are even now poring through the book's massive 600-odd pages in search of dissertation topics.

All this is, at least in large measure, as it should be. *A Theory of Justice* is a very solid piece of work, the culmination of many years of Professor Rawls' thinking and of writing short, separately-published preparatory articles. He richly deserves the epithet that John Locke, one of his intellectual ancestors, applied constantly to his own forebear, Thomas Hooker: Professor Rawls is eminently "judicious." He is also a very generous scholar, acknowledging his debts to a large number of colleagues who have criticized or helped to clarify earlier drafts of portions of his tome. I think it valuable to begin by mentioning these facts in order to orient those readers whose own major interests are such as not to have made them acquainted with the

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1. Hampshire, *A New Philosophy of the Just Society*, THE N.Y. REV. OF BOOKS, Feb. 24, 1972, at 34.

present Rawls mystique, to the atmosphere in which Professor Feinberg and I are undertaking our pair of reviews.

My intentions are, first, to present a brief outline of the structure of Rawls' overall argument, as I understand it; second, to list some of the characteristics of the work, both in tone and in doctrine, that I personally consider most salient; third, to note some of the major areas in which I find considerable agreement with Rawls; and finally and most lengthily, to develop some general lines of criticism, both internal and external, to the set of assumptions with which Rawls operates.

I

Like Plato in the *Republic*, Rawls is concerned with giving us an elaborate definition of "justice"; sufficiently elaborated, this sort of "definition" becomes a theory. Like Plato, Rawls believes that justice occupies a very special, pre-eminent place among the social virtues. He is convinced that, as a moral philosopher, he can best serve the cause of justice by developing a conception of an ideally just society, characterized by universal compliance within the limits of the varied capacities of individuals. *A Theory of Justice* contains proportionately even less than does the *Republic* of what Rawls calls "nonideal theory."² The most extended instances of the latter appear in his discussions of civil disobedience and "conscientious refusal," and Rawls argues that such phenomena make sense only within *nearly* (but not wholly) just societies, as opposed to radically unjust ones. Rawls' book, then, is no practical handbook for achieving just resolutions of cases in contemporary civil or criminal law. The author appears to share the Platonic conviction that we can most fully comprehend the concrete only through the abstract, the imperfect only through the perfect, the immediately relevant only through the remote.

Rawls' fundamental divergences from Plato's approach are equally revealing. Plato began by considering the question of the just or righteous individual and justified his shift in emphasis to the social on the ground that the *polis* was the individual writ large; the inclusion of the Myth of Er at the end of the *Republic* seems to signify, among other things, that Plato was intent on elaborating a truly cosmic

2. Rawls explains the distinction between ideal and non-ideal theory as follows: "The intuitive idea is to split the theory of justice into two parts. The first or ideal part assumes strict compliance and works out the principles that characterize a well-ordered society under favorable circumstances. . . . Nonideal theory, the second part, is worked out after an ideal conception of justice has been chosen; only then do the parties ask which principles to adopt under less happy conditions." J. RAWLS, *A THEORY OF JUSTICE* 245-46 (1971) [hereinafter cited to page number only].

theory of justice. Rawls, by contrast, insists that he is only concerned with one special (though central) locus of problems of justice, namely, the basic institutional structure of an ideal human society, rather than with "the justice of institutions and social practices generally"³ or with international justice. Moreover, Rawls denies that we should think of the principles underlying individuals' choices of particular ends and a society's choice of its basic structure as being in any way identical.⁴ This constitutes one of his main grounds for implicitly opposing Plato's assumption of a continuity of principles and more explicitly rejecting utilitarianism, the rival theory to which Rawls devotes his most extensive criticism. Plato saw justice as forming a crucial part of a vast metaphysical scheme, the total knowledge of which would constitute possession of absolute truth. Rawls, more modest, admits only to having systematically elaborated *a* theory, one conception of justice among many. He does not fully develop the relationship of this conception to other moral values (although his suggestions along these lines constitute Part Three, "Ends," the book's final major division), much less does he fit it into a more general theory about the nature of reality.

But make no mistake: Rawls, despite his un-Platonic theoretical modesty, does affirm the superior worth of his scheme. He believes, at the very least, that his is the best (in the sense of being the most coherent, the most fully justifiable, and the most consonant with "our"⁵ conceptual frameworks, common-sense attitudes, and linguistic usages) theory of justice available at present. He admits that he can provide no deductive proof of his scheme and that he must often rely on what he frequently calls "intuition." But he looks to the day when, perhaps, it will be possible to "define necessary and sufficient conditions for a uniquely best conception of justice and then exhibit a conception that fulfill[s] these conditions,"⁶ and Rawls is clearly optimistic that his book will be seen as having constituted a major step in this development.

What, then, is the scheme that Rawls provides? In *A Theory of Justice*, it goes by the name of "justice as fairness," the title of a very well-known earlier article by the author.⁷ It is, as Rawls is happy to admit, an updated and somewhat more abstract version of the various

3. P. 7.

4. Pp. 28-29.

5. In Part III of this review, I shall briefly touch on the familiar problem, as it relates to Rawls' work in particular, concerning the exact identity of the "we" to whose ordinary intuitions the philosopher's appeals are addressed.

6. P. 123.

7. Rawls, *Justice As Fairness*, 67 *PHIL. REV.* 164 (1958).

theories of "social contract" that dominated early modern political thought. Attempting to avoid some of the conceptual difficulties into which Locke, Rousseau, and others are often alleged to have gotten themselves by mingling with their theoretical arguments elements derived either from the specific social institutions and practices of their own times or from imaginary reconstructions of the social life of primitive man, Rawls asks us to revert to what he calls "the original position." For this phrase, one might, quite obviously, read "state of nature," although one understands perfectly well the theoretical reasons why Rawls never invites us to do so. "The original position" is the situation of men as they would be found at any time in history if, abstracted from their own positions in society and the concrete events of their times, they were required to choose the ideally just social institutions for themselves and their descendants. To render plausible the conception of this hypothetical state of affairs, Rawls admits that certain assumptions must be made. Among the most crucial of these are that the individuals in the original position are rational (*i.e.*, what they choose must be consistent and coherent), self-regarding and mutually disinterested but concerned at least with the fate of their immediate descendants, fundamentally unenvious, and, perhaps most importantly of all, enshrouded in what Rawls calls "the veil of ignorance" concerning the past and the future. In other words, these hypothetical individuals are permitted to know neither the stage of historical development at which their society will be located once they enter into their social contract, nor the particular place within that society that any one of them will occupy. (They are, however, expected to know "the general facts about human society";⁸ I shall return to this point later.) The central problem of Rawls' inquiry, then, becomes the following: what basic principles *would* the contracting parties agree upon, under these circumstances, as being the most just to follow in constructing their society's institutions?

Considerations of space prevent reproduction here of even a representative sampling of the various arguments that Rawls employs to justify his set of imaginary conditions. In general, he is concerned to make these assumptions as minimal or weak as possible, in order to avoid the charge of arbitrariness. (For instance, he feels that he can dispense entirely with the assumption, made by Hume and many others in the general intellectual tradition upon which Rawls draws, of an inherent quality of "sympathy" in human beings that would help

8. P. 137.

to counterbalance their innate self-interest.) It must suffice here to report Rawls' conclusions concerning the nature of the principles to which his contracting parties would agree. They are, in essence, two:

First: each person is to have an equal right to the most extensive basic liberty compatible with a similar liberty for others.

Second: social and economic inequalities are to be arranged so that they are both (a) reasonably expected to be to everyone's advantage, and (b) attached to positions and offices open to all.⁹

This is Rawls' first, tentative formulation. Later, he explains that the principles must be ordered serially, so that a reduction in observance of the first principle, that of equal liberties for all, is to be considered impermissible even in the interests of furthering the implementation of the second. In addition, he stipulates with respect to his second principle that considerations of efficiency and welfare are to be secondary to those of justice in the overall distribution of "primary" social goods, so that an unequal distribution is allowable only if those with the fewest such goods will thereby be made better off than they would be if everyone's share were equal. He also takes account of the problem of *savings* posed by the possibility of one generation's exhausting the available goods to the detriment of future generations and by the fact that the members of societies in early stages of development must make greater material sacrifices than the members of societies at later stages; he concludes that "an excessive rate of saving must on balance mitigate the burden of those bearing this hardship."¹⁰ His final formulation of the "General Conception" underlying the principles of justice as he has elaborated them reads as follows:

All social primary goods—liberty and opportunity, income and wealth, and the bases of self-respect—are to be distributed equally unless an unequal distribution of any or all of these goods is to the advantage of the least favored.¹¹

This, then, is the core of Rawls' moral philosophy. Most of Part One and large segments of Part Two of the book's three principal parts are devoted to elaborating the rationale and meaning of these formulae and to defending them against alternative theories of justice,

9. P. 60.

10. P. 303.

11. *Id.* Rawls' usage with respect to the key term in this passage is inconsistent; sometimes he speaks of "social primary goods," at other times of "primary social goods."

in particular utilitarianism.¹² Part Two of *A Theory of Justice* is entitled "Institutions" and has the general purpose of indicating how the "Theory" that was the title and content of Part One can be implemented by the contracting parties of Rawls' hypothetical society through the establishment of just institutional structures. With the alleged aid of some inspiration provided by the early history of the United States Constitution,¹³ Rawls briefly imagines his contractants going through a sequence of events beginning with a constitutional convention and ending with the establishment of a representative legislature and of organs to apply the general laws that have been decided upon to specific cases; as this sequence is followed, the veil of ignorance of the facts about their world would be gradually lifted, until at last no matter of fact would any longer have to be hidden from the members of the society in order to guarantee their arriving at just outcomes.

In discussing "Institutions," Rawls is confronted with a certain problem of exposition. For he is unwilling, despite his reference to the United States Constitution, to jeopardize his theory's claims to generality by insisting that any existing set of political institutions in our world is uniquely successful in embodying his basic principles of justice. Thus, he maintains that "the choice between a private-property economy and socialism is left open"¹⁴ (although, interestingly enough, he clearly regards market socialism as the only fully rational form of socialism), and he acquiesces in the situation whereby "the question whether legislation is just or unjust, especially in connection with economic and social policies, is commonly subject to reasonable differences of opinion."¹⁵ He therefore leaves us, as he must, with a large

12. Basically, Rawls finds the exhortation to maximize pleasure, happiness, or general well-being that underlies the various versions of utilitarianism incompatible with an absolute commitment to preserve social justice. Justice, he points out, can be and is advocated by utilitarian thinkers as a practically indispensable quality of social orders governed by utilitarian ideals, since the existence of great injustices within a society seems as a matter of fact to create fatal disutilities; but this renders justice only accidentally valuable, and provides no firm ground for rejecting at least isolated acts of injustice if it can be shown that they will probably enhance the welfare of a vast majority.

13. Rawls refers to this in a footnote on p. 196. I do not find this very helpful in understanding his theoretical point, but I consider the fact that he makes this reference somewhat significant.

14. P. 258.

15. Pp. 198-99. The reason that he gives for this is that "in these cases judgment frequently depends upon speculative political and economic doctrines and upon social theory generally." Rawls has what appears to me to be a very narrow and eccentric conception of "social theory," which to him refers to such fields as economic price theory, but not to what he is doing. On p. 120, for example, he says the following: "By contrast with social theory, the aim [of the philosophically favored interpretation of the initial situation] is to characterize this situation so that the principles that would be chosen, whatever they turn out to be, are acceptable from a moral point of view."

degree of leeway concerning the possible forms of institutions that might be established in accordance with his initial principles of justice. Finally, at the end of Part Two, Rawls undertakes the previously-mentioned discussion of some topics in "nonideal theory," notably civil disobedience and conscientious refusal.

Part Three of *A Theory of Justice* is characterized by a structural diffuseness, as Rawls himself notes: "Sometimes in this part the overall direction of the exposition may seem less clear, and the transition from one topic to another more abrupt."¹⁶ Here, Rawls deals with the moral concept of "the good," which he has consistently held to be distinct from the justice-related concept of "the right."¹⁷ Rawls attempts to argue for a compatibility between the regulation of a society in accordance with his principles of justice and the characterization of that same society as a *good* one; the force of his argument depends on one's accepting a very pluralistic conception of "the good," according to which individuals are best off when allowed to develop separately according to quite divergent, though rational and internally consistent, life-plans. The truest and best form of community, Rawls further argues, is one in which such individuality in the pursuit of the good is most completely fostered. Among the other interesting features of this concluding section of *A Theory of Justice* are Rawls' suggestions (relying heavily on Rousseau's *Emile*, on Piaget's writings, and on Lawrence Kohlberg's theory of the development of moral thought in children) concerning the possibility of making the principles of justice, originally agreed to out of considerations of personal advantage by the mutually disinterested contracting parties, into objects of deep moral convictions. Also noteworthy is his renewed insistence on the desirability of assigning the practice of justice a logical priority over such possible alternative supreme social goals as happiness. Rawls is quite candid in stressing that his is not the type of theory that advocates the maximization of any particular social good, but rather that a society firmly rooted in the theory of "justice as fairness" ought logically to exhibit a very high degree of stability. On the final page of text, speak-

16. P. 395.

17. This is a conceptual distinction that Rawls has inherited, in part, from other philosophers, such as W.D. Ross. In addition, however, he seems to feel that it has intuitive plausibility: "It has seemed to many philosophers, and it appears to be supported by the convictions of common sense, that we distinguish as a matter of principle between the claims of liberty and right on the one hand and the desirability of increasing aggregate social welfare on the other." Pp. 27-28. Social welfare is a good, or a collection of goods. Much later, in Section 68, "Several Contrasts Between the Right and the Good," Rawls elaborates on this distinction in light of his completed contract theory, which, he always insists, is not dependent upon a full prior theory of goodness for its justification.

ing of "the original position" and the point of view that Rawls' moral philosophy gives us upon the social world, he concludes:

Thus to see our place in society from the perspective of this position is to see it *sub specie aeternitatis*; it is to regard the human situation not only from all social but also from all temporal points of view. . . . Purity of heart, if one could attain it, would be to see clearly and to act with grace and self-command from this point of view.¹⁸

II

Before undertaking to elaborate a few specific points of criticism, it would be useful to set down a few impressionistic comments about the book's overall tone and its socio-historical significance. I wish, as it were, to lay some of my cards on the table from the outset, so that readers may have a clearer perception of the general point of view from which I have approached the reading of Rawls' book, though I hope these remarks will not be taken to undermine the critical comments which follow.

Stuart Hampshire has claimed that Rawls' "noble, coherent, highly abstract picture of the fair society" provides the sort of solid theoretical underpinning that social democrats, particularly British Labor Party theorists such as Anthony Crosland and R.H. Tawney, have needed to ground their views of social justice.¹⁹ This seems roughly correct to me. British social democrats, by contrast with most of their Continental counterparts, have far less historical connection with the various traditions of radical social criticism that trace their ancestry to such diverse figures as Babeuf, Marx, or Bakunin. The notion that the working class has been treated "unfairly" by the rest of society, which must simply be prodded to live up to the ideals embodied in its own accepted slogans about "justice," has been a *leitmotif* of the more intellectual strands of British trade unionism (and, partly by heritage, of the less intellectually-oriented American labor movement). The contrasting, though perhaps not wholly contradictory, approach that begins by pointing to deeply-rooted antagonisms, unresolvable without some fundamental structural changes within the existing social order, has been less at home in such a climate. Rawls, by contrast, is squarely within this liberal tradition. The name of Marx, for example, seems to be mentioned in only four footnotes and one brief textual passage.

18. P. 587.

19. Hampshire, *supra* note 1, at 37.

Marx and Engels, the most profound and original thinkers in the modern tradition to which Rawls pays such scant heed, were highly skeptical of all theories of justice, as indeed they were of so-called moral philosophy in general. They felt that such abstract approaches to social issues had always tended in the past to constitute special pleading, albeit often of an intellectually sophisticated and aesthetically pleasing variety, for the maintenance of existing relationships of dominance and subordination. Moreover, they regarded this outcome as being unavoidable in the final analysis, given their complex but never fully elaborated conception of the relationships between forms of consciousness—such as the conceptual topology and linguistic usage surrounding such socially important words as “justice” in any particular historical era—and existing institutional structures and social practices. They did not hold that every appeal to justice was entirely meaningless—for they would have admitted that the social structures they were criticizing were indeed “unjust”—but they recognized clearly that to approach social theory through an analysis of the concept of justice was inevitably to render oneself at least partly dependent on the usage of the term that prevailed within these structures. Intellectual enterprises such as *A Theory of Justice* would have appeared to them as being ideological. They maintained, especially in *The German Ideology*, that any approach to problems of social theory that was based in a heaven of concepts rather than in the concrete analyses of human beings as they were to be found at actual historical periods was bound to be distorted.²⁰

To be sure, Rawls' book cannot be dismissed simply on the basis of this skepticism. He clearly believes that a highly general, universally valid theory of the kind that he is proposing may be elaborated without succumbing to the charge of its being ideological; one has only to reread the last paragraph of his book, excerpts from which I quoted above,²¹ to be assured of this. He believes that the goal of both theoretical and practical “purity of heart” is not an *ignis fatuus*. His effort has a certain dignity and even grandeur about it, and these qualities are rare enough. By the same token, however, *A Theory of*

20. Here is a typical passage: “In the Young Hegelians' fantasies the relationships of men, all their actions, their chains, and their limitations are products of their consciousness. . . . In no way are they attacking the actual existing world; they merely attack the phrases of this world. . . .”

“Not one of these philosophers ever thought to look into the connection between German philosophy and German reality, between their criticism and their own material environment.”—from *The German Ideology*, in WRITINGS OF THE YOUNG MARX ON PHILOSOPHY AND SOCIETY 407-08 (L. Easton & K. Guddat transl. 1967) [hereinafter cited as Easton].

21. See p. 987 *supra*.

Justice does not strike one initially as a book which belongs to our historical era.

Rawls situates himself within a broad spectrum on which he assumes most contemporary British and American political philosophers to be located. Throughout most of the twentieth century, positions on this spectrum have been occupied in large measure by philosophers who have shared a set of assumptions and a methodology known as linguistic analysis. Hampshire, in his review, makes much of the claim that *A Theory of Justice* shows that the techniques of linguistic analysis can be put to fruitful use in concrete social theory, rather than being as sterile as the critics of the analytic movement have claimed. But even ignoring the stale question of just what counts as a work of linguistic analysis and what does not, it seems obvious that Rawls' most important intellectual inspirations considerably pre-date analytic philosophy. Rawls mentions Hobbes, Locke, Hume, Bentham, and Mill, and most frequently invokes the name of the great late nineteenth century British utilitarian thinker, Henry Sidgwick. Even if Rawls had not directly mentioned him, the similarities between Rawls' work and Sidgwick's—in style, moral earnestness, carefulness and amplitude, and in aspiration to a position *sub specie aeternitatis*—would have suggested themselves. In addition, both Rawls and Sidgwick exhibit great talents for reconciliation, even when criticizing their opponents—for reconciliation, at least, within the limits of the tradition to which both belong.

That tradition, however, is one in which many British and American philosophers today no longer feel completely comfortable. Rawls has carried it, perhaps, to its conceptual limits. In developing his idea of justice he has gone beyond the classical liberal slogan of "equal opportunity"—a slogan mocked by the realities of unequal birth and persistent inequality within "free market" economies.²² The normative heart of Rawlsian moral philosophy, it will be recalled, is the principle that inequality is only permissible when it is more beneficial for the least well off than equality would be; consistent social decision-making in accordance with this principle would effect profound changes indeed in the legal and other social institutions of any contemporary society, certainly including our own.

But does the prospect of inducing "profound changes" within on-

22. Pp. 73-74. The terms in which Rawls rejects the more traditional interpretation of this slogan, it should be noted, are, in contrast to those that I have used, essentially a-historical, except for the use of the word "liberalism." This is consonant with his entire approach. In contrast to "Liberal Equality," the interpretation of fair opportunity that Rawls espouses is designated, not surprisingly, as "Democratic Equality."

going systems that we have provide us with intellectual horizons that are really adequate? As Professor Mazor points out at the beginning of his book review in this issue,²³ law and our other institutions are in a situation of full-fledged crisis. *A Theory of Justice* leaves us in a world in which we are in one sense very much at home, because it is essentially our own world—though defanged, purified, and rid of all crises. Even with his commitment of fairness, Rawls evidently expects his ideally just society to exhibit many of the differences of wealth, power, and status to which we are accustomed—though no doubt they would be diminished, differently distributed with respect to specific individuals, and experienced differently. But by stressing ideal justice and ignoring concrete injustice, Rawls' book seems strangely apart from the present crisis, and I for one find this aloofness very disquieting.

III

So much for impressions. Now let us consider more carefully a few of the basic tenets of "justice as fairness," beginning with some which are quite persuasive. First, Rawls has dealt effectively with utilitarianism as a rival moral theory. At least when he is discussing this rival, Rawls is able to recognize the fallacies of envisaging the whole of social choice in accordance with an individual consumer-preference model²⁴ and of being "enticed by mathematically attractive assumptions into pretending that the contingencies of men's social positions and the asymmetries of their situations somehow even out in the end."²⁵ It is yet another question whether Rawls' enthusiasm for the techniques of the market, and the importance of the role that the mathematical calculation of "advantages" and "disadvantages" must play within his framework of justice are compatible with this aspect of his critique of utilitarianism. I tend to doubt that they are, as I shall briefly explain later.

Second, there are features of Rawls' views on methodology that many readers are likely to find quite refreshing. He has long since eschewed the addiction to formalism that characterizes much of contemporary philosophy, since he recognizes the impossibility of deriving concretely-applicable social principles from a purely formal scheme.²⁶ He proposes *substantive* rules, albeit of a highly general sort,

23. See Mazor, *The Crisis of Liberal Legalism*, 81 YALE L.J. 1032 (1972).

24. P. 27.

25. P. 171.

26. In a somewhat similar vein, Chaim Perelman, repudiating the excessive formalism that characterized his own earlier (1945) reflections on the subject of justice, asks: "Is

for achieving a just society, rather than restricting himself to quasi-tautologous formulae regarding the equal treatment of equals, and the like. He stresses, as I have already noted, his expectation that the outcome of his analysis will be congruent with many of our ordinary, informal intuitions about what ideal justice is or might be. Moreover, he believes that in arriving at some conclusions on the subject we must accept certain basic features of the world "as it is," e.g., the fact of the relative scarcity of goods. This is all to the good, as far as it goes. Yet, Professor Rawls is insufficiently attentive to the problems of just what constitute "the conditions of human life"²⁷ and the world "as they are," especially in light of now-existing possibilities for fundamental change, through technology, in some of these underlying realities. The danger of such neglect is that instead of simply providing us with a useful if tentative methodological route to fundamental questions about the nature of justice, the theorist's observations concerning "our" ordinary intuitions about justice and the "facts" of the world as "we" know them may themselves turn out to be normative, in effect deciding the issue in advance. Rawls himself lends some credence to this concern when, reviewing his method of justifying his conclusions, he speaks of compiling a list of "representative theories from the tradition of moral philosophy which comprises the historical consensus about what so far seem to be the more reasonable and practicable moral conceptions."²⁸ Although he does not claim that any such list would be complete, a passage early in the book points to a certain bias in favor of the theories that would be included. Rawls says: "I shall take for granted that [the] principles [of considered judgment] are either approximately the same for persons whose judgments are in reflective equilibrium, or if not, that their judgments divide along a few main lines represented by the family of traditional doctrines that I shall discuss."²⁹ One must be disturbed that this impersonal but methodologically decisive "historical consensus" omits certain conceptions that moral philosophy ought to take into account, even if most moral philosophers in the tradition that Rawls considers important have not done so in the past. To take but one example, the

it really necessary to subscribe to the view of reason and of reasoning to which we have become accustomed by modern logic? Is it really true that deduction and generalization based on experience are the only acceptable bases for proof, and that it is impossible to reason on values?" C. PERELMAN, *JUSTICE* 56-57 (1967). Chapter III of this book also contains an interesting early critique of some of Rawls' initial articles on justice and on rules.

27. P. 257.

28. P. 581.

29. P. 50. My thanks go to Douglas MacLean for pointing out the connection between this passage and the one previously cited.

negative or critical conception of alienation seems never to receive mention in *A Theory of Justice*.

In a third area where Rawls' approach is basically attractive, the question of decision-making within a democratic framework, there appears a sane and firm repudiation of the very tendency to canonize a "consensus" that I have discerned in a few of Rawls' remarks about method. In considering the possibility of a collective decision by members of a society that will work to the deprivation of future generations, he formally acknowledges the justifiability of acting, either as a private individual "or even as a government official"³⁰ to circumvent the democratically-reached decision if it is sufficiently unjust. This anticipates the very sensible remarks, of particular interest to specialists in legal philosophy, that Rawls makes somewhat later concerning questions of legal obligation and civil disobedience. Rawls never falls into the indefensible stance of appearing to derive conclusions of normative import from the tautology, "the law is the law." He justifies the practice of civil disobedience, under appropriate circumstances, as a means of trying to restore to the majority, in a nearly but not perfectly just society, its misplaced sense of justice. (In a society that is even further removed from the sense of justice, Rawls admits,³¹ more militant forms of action may be called for.) Yet the purportedly ahistorical terms in which Rawls couches these aspects of his treatment of justice serve to highlight some of his self-imposed limitations; concerning societies that are characterized by more than a modicum of injustice, there is very little that Rawls can say other than to condone resistance to their institutions.

Much more could be said about the many admirable aspects of Professor Rawls' accomplishment. But the book is not without its weaknesses, perhaps the most notable of which are the starting point of Rawlsian justice, the so-called "original position," and the decisions that would allegedly emanate from individuals located in that position. In reading Rawls' description of that abstract "state of nature," one is somewhat whimsically reminded of a passage in Rousseau. Near the end of his *Discourse on the Sciences and Arts*, in which Rousseau considers the question whether the arts and sciences have contributed to social decline and answers with a resounding affirmative, he tries to imagine how the members of future generations, "unless they be more senseless than ourselves," will react if and when they read the dan-

30. P. 296.

31. P. 368.

gerous books that had presumably contributed so greatly to the corruption of his own society. Raising their hands to heaven, Rousseau suggests, they

will say in the bitterness of their heart: "Almighty God, . . . deliver us from Enlightenment and from the baleful arts of our fathers and restore us to ignorance, innocence, and poverty, the only goods which can make for our happiness and which are precious in thy sight."³²

This passage provides a source of important critical questions for Rawls' conception of justice under the headings of (a) ignorance and received doctrines, (b) innocence and interests, (c) poverty and primary goods, and (d) the sight of God and the world of man.

A. *Ignorance and Received Doctrines*

In contradistinction to Rousseau in the passage cited, Rawls regards ignorance as a good only at the stage of his hypothetical "original position." But at that stage, he considers it the only effective guarantee of a fair decision on the part of the contractants concerning the principles of justice that will be followed in their society. Rawls' "veil of ignorance" concept constitutes perhaps his single most important departure from traditional social contract theory. In Rawls' own words,

It is assumed, then, that . . . no one knows his place in society, his class position or social status; nor does he know his fortune in the distribution of natural assets and abilities, his intelligence and strength, and the like. Nor, again, does anyone know his conception of the good, the particulars of his rational plan of life, or even the special features of his psychology . . . More than this, I assume that the parties do not know . . . [their society's] economic or political situation, or the level of civilization and culture it has been able to achieve.³³

This is a condition of ignorance beyond Rousseau's wildest dreams.

But at the same time, paradoxically enough, Rawls encourages his hypothetical contractants to be thoroughgoing heirs of the Enlightenment in other respects. For although they may know practically nothing about themselves as individuals or about the place in history that they occupy, they seem to have read a great many books:

32. J. ROUSSEAU, *Discours sur les Sciences et les Arts*, in *DU CONTRAT SOCIAL* (Paris: Editions Garnier Frères) (translation mine).

33. P. 137.

It is taken for granted, however, that they know the general facts about human society. They understand political affairs and the principles of economic theory; they know the basis of social organization and the laws of human psychology There are no limitations on general information, that is, on general laws and theories³⁴

What is at issue here is not the justifiability of the hypothesizing method that Rawls employs; rather, it is the *meaningfulness* of these particular hypotheses. In this and his other occasional references to "the general facts about human society," one finds practically none of the intellectual sophistication that characterizes Professor Rawls' discussion of the principles of justice proper. Rather, what he takes unquestioningly for granted about these so-called "facts" is quite awesome. Rawls assumes that a clear conceptual distinction is possible between "general laws and theories" about human society and the particulars that are subject to the "veil of ignorance" condition. But while it is arguable that certain generalizations can legitimately be made about the entire course of human history, it is often maintained that one cannot talk about general principles either of economics or even of psychology without referring to particular periods of human history, and perhaps not even then. These are fundamental problems in the philosophy of the social sciences, and they seriously question Rawls' highly oversimplified references to "general laws and theories." Rawls appears to have been practically unmoved by the various assaults on the classical conception of trans-temporal natural social-scientific "laws";³⁵ his almost total failure to consider what light they may shed on the items about which his contractants are permitted to have knowledge casts considerable doubt on the meaningfulness of his hypothesis of "the original position."

Occasionally, it is true, Rawls concedes the possibility that what "we" now believe about such matters as psychology and economy may prove erroneous. On one such occasion he says:

If economic theory is used incorrectly or if the received doctrine is itself mistaken, I hope that for the purpose of justice no harm is done. But as we have seen, ethical principles depend upon general facts and therefore a theory of justice for the basic structure presupposes an account of these arrangements.³⁶

34. Pp. 137-38.

35. See, e.g., T. KUHN, *THE STRUCTURE OF SCIENTIFIC REVOLUTIONS* (2d ed. 1970); *CRITICISM AND THE GROWTH OF KNOWLEDGE* (I. Lakatos & A. Musgrave eds. 1970).

36. P. 265.

Rawls' emphasis on *economic* theory remains strong throughout his book—it is especially revealing that he refers to it as “the received doctrine.” Rawls argues vigorously in support of a market system of exchange, even if a society should opt for a socialist rather than a private-property regime. At the very least, the fact that Rawls feels compelled to *advocate* a market economy implies his recognition of the possibility of alternative economic systems.³⁷ Yet, as far as I can discover, all the writers to whom Rawls refers for the purpose of illustrating “the received doctrine” about “the principles of economic theory” operate within the assumptions of a market economy. It is perfectly legitimate for a theorist to do this, of course, as long as he clearly acknowledges the limits established by his hypotheses. What Professor Rawls seems to me to have done, however, is to elevate the laws of the market system to the level of absolute generality, and include them among the “facts” of which his hypothetical contractants “in the original position” are expected not to be ignorant. This, I submit, is *not* legitimate. Indeed, it smacks of what was referred to earlier, with considerable trepidation, as “ideological” thinking.

The same can be said about Rawls' assertion that his hypothetical contractants “understand political affairs.” It would seem that “political affairs” in a primitive tribe, a Greek *polis*, America of 1789, the present-day United States, and a possible future world “state” are better characterized by what is distinctive about each than by what is in common. If this suggestion is plausible, then the precise meaning of Rawls' assumption that the contractants “understand political affairs” becomes obscure and puzzling. And to the extent one can assign any clear meaning to it, the assumption appears to do exactly what the “veil of ignorance” was meant to avoid—it leads Rawls into false abstraction (*i.e.*, ignoring certain culturally relative social features while surreptitiously retaining others in the imagined “state of nature”), the error that has so frequently been assigned to the classical theorists of the social contract.

B. *Innocence and Interests*

In “the original position,” Rawls' hypothetical individuals are rather innocent. In a sense he forces them to be, since none of them has

37. I, for one, have many doubts about the concept of “market socialism” as a genuine alternative to capitalism. “Market socialism,” despite the fact that by definition it precludes private ownership of property, seems to me to preserve many of capitalism's most essential structural features—the dominance of commodities over human needs, the emphasis on competition over cooperation, etc. But this is not the place in which to discuss this matter in detail.

any idea of the exact status that he will have in the society they are about to establish. All are on good behavior. Moreover, demonstrating an excellent sense for avoiding possible impediments to truly rational decision-making on their parts, their chronicler has deprived them of the passion of envy. As I have already noted, however, Rawls does not assume his contractants to be bound (except between generations within the same family unit) by ties of affection or sympathy. Each is concerned to advance his own interests by agreeing to principles of justice that will be least likely to harm those interests, whatever they may turn out to be. Under the terms of Rawls' "veil of ignorance," it will be recalled that no one is permitted to know "his conception of the good." And I take it, though without having the benefit of much clarification of the term by Rawls himself, that when he speaks of "interests" he is referring to some general commitment that his contractants have to planning their lives in accordance with their individual, distinct conceptions of the good, even though they do not yet know the nature of these conceptions.

The difficulty with this formulation is that it imports many of the connotations that the concept of "interests" has in our society into an imaginary world in which the concept either would ultimately make no sense or would at least have a very different meaning. "Interests" are usually said to clash; that is their major importance in theories that emphasize them. And they are usually thought to be connected with such factors as an individual's status, the associations to which he belongs, the class of which he is a member, etc. Rawls, speaking of the importance of his requirement of unanimity for the contracting parties in "the original position," boasts that this requirement "enables us to say of the preferred conception of justice that it represents a genuine reconciliation of interests."³⁸ But one wonders just what, in his imaginary "position," there was to be reconciled. The parties presumably know that they generally differ from one another in assets and talents and hence that their conceptions of the good are also going to differ somewhat. They have learned this much by reading some general theoretical treatises. But I see no way of ensuring beforehand, without importing a great many debatable additional assumptions³⁹ into the description of the original position, that these

38. P. 142.

39. *E.g.*, the assumption that the scarcity of material resources in the world both is and always will be such that there will never be enough to satisfy all the members of society, even if their desires remain limited and modest. Another such assumption might be that even the members of a perfectly just society will be unable to limit their desires for material goods. And so on, until we find ourselves forced once again to rely upon an entire "received doctrine," albeit a highly disputable one, concerning "the nature of man."

differing conceptions and talents will necessarily lead to socially significant *conflict*, necessitating *resolution*.

Conflict is, indeed, a salient fact about the social world as we know it today. Theories diverge in trying to explain its principal bases; some hold that psychological factors favoring conflict are in large measure determined by the perpetuation and enforcement of relationships of dominance and subordination, between and among individuals, in society's basic institutional structures.⁴⁰ But Rawls, who will later go on to opt for the view that the cause of justice is best served by institutionalizing such relationships (*i.e.*, differences of status, wealth, and authority) within his ideal society, takes conflict as one of the given facts which the original contractants, who have no idea what their particular conceptions of the good will be, are fully aware of, accept, and resolve. The appearance of innocence, then, is an illusion, even if the wicked luxury of being envious is denied them. Once again, from a somewhat different perspective, the usefulness and meaningfulness of Rawls' methodological starting point must be put into question.

C. *Poverty and Primary Goods*

There is a kind of asceticism in Rawls' theory, especially if we compare his outlook with the dominant, materialistic values of his (our) society. At one point in his discussion of the problem of an earlier generation's saving resources for the sake of later generations, he suggests that "beyond some point great wealth is more likely to be a positive hindrance, a meaningless distraction at best if not a temptation to indulgence and emptiness."⁴¹ Unlike Rousseau in the passage that I have quoted, however, Rawls does not regard the maximization of happiness as the supreme criterion of social organization, nor does he see the absence of affluence as a good. Indeed, "wealth" always figures prominently in the various references he makes to so-called "primary goods."

Primary social goods (as distinct from "natural goods," such as talent, intelligence, etc.) figure prominently in the Rawlsian theory, because the theory must assume, in order to include the maximum pursuit of individual life-plans as a component of justice, that all men desire these goods. Rawls' basic formulation of social goods is the following: "rights and liberties, powers and opportunities, income and

40. See, *e.g.*, H. MARCUSE, *EROS AND CIVILIZATION* (1955); R. SAMPSON, *THE PSYCHOLOGY OF POWER* (1965); M. Keller, *The Movement Left: The Dialectics of Violence and Love* (1971) (unpublished Ph.D. dissertation, Yale Department of Philosophy).

41. P. 290.

wealth," as well as "self-respect," which is considered separately.⁴² From time to time, Rawls evinces a certain uneasiness with the assumptions regarding the universality of the desire for these goods, and with such problems as how mathematically to "weight" disadvantages for the least advantaged. On the whole, however, he feels that the assumptions are minimal and that the problems of serial ordering of advantages are smaller than, let us say, those faced by a utilitarian theorist.

Rousseau's description of "ignorance, innocence, and poverty" as "goods," and indeed as the only goods conducive to happiness, reminds us of the fact that even Rawls' deliberately vague and minimal list of primary goods would not win complete and universal acceptance. It is likely to seem intuitively plausible and commonsensical to the majority of his readers, no doubt, but that may simply be a function of the cultural milieu in which he is writing. The lack of immediate, universal agreement to a theorist's claims is not in itself indicative of a serious flaw, but the likelihood of disagreement with Rawls' claims about primary goods is somewhat more troublesome, since they are central both to his account of the original contract and to his formulation of the principles of justice.

The move that a Rawlsian must make in response to the simple point that not everyone would unquestioningly accept his list of primary goods is, of course, to claim that the rejection of them is inherently irrational, whereas it is assumed that parties to the Rawlsian contract are rational beings. This sort of move is made explicitly by Rawls in discussing the "difference principle," which accepts inequalities in the distribution of goods when this makes the least advantaged better off than they would be in a regime of equality. In the absence, *ex hypothesi*, of inter-personal determinants of individual satisfaction (envy is disallowed) it would be "shortsighted" for any individual in the original position not to concede the justice of these inequalities.⁴³

Among the difficulties entailed by this circumvention of social norms that are radically different from those Rawls expounds is the fact that the "goods" that he lists are inextricably *relational* in nature, rather than being purely individual. Rawls has attempted to avoid this problem through his stipulation, itself methodologically suspect, that parties in the original position cannot be envious. But I do not think that this ploy is sufficient. For even in the absence of envy and of any

42. Pp. 62, 92. See also Section 67, at 440-45.

43. *Id.* at 151.

concern for what others will consider to be their individual goals in life, a rational person's conception of "wealth" must include the acknowledgment that someone can only be termed "wealthy" on the basis of a comparison with other persons in some concrete social context. Consequently, a truly rational individual in Rawls' "original position" could not possibly fail to question the inclusion of wealth as a "primary good" for the society of which he is to be a member; to refuse to do so would, it seems to me, be truly irrational. Once wealth has been put into question in this way, a very good case could be made, if not on behalf of general poverty, at least in favor of limiting inequalities in the distribution of wealth—even at the price, if need be, of lessening the wealth of everyone in the society. I do not propose to try to make that case here, but I wish simply to point out that the possibility of doing so serves to undermine Rawls' claims both about the universality of his list of "primary social goods" and about the conception of justice at which parties in "the original position" would theoretically arrive.

Even more dubious than the role played by wealth in the Rawlsian scheme is that played by "power" or "authority."⁴⁴ Surely there is no disputing the relational character of these concepts, and in *A Theory of Justice* it is always assumed that power over other individuals, as well as over things, is intended when these words are used. It is not at all clear that power or authority over individuals is in itself a "good," although it is certainly sometimes necessary when dealing with those who are, in one way or another, incompetent to govern themselves. Attacks on the fetishization of "authority" of various political and social sorts, combined with arguments to show the possibility of minimizing the phenomenon, have been common to the writings of such otherwise diverse thinkers as Bentham, Marx, and some of the American legal realists.⁴⁵ Rawls' failure to take any account of these intellectual traditions, in his listing of "power" or "authority" among the primary goods that all men are assumed to want, has a totally predictable effect on the overall outcome of his inquiry: the perfectly just Rawlsian society is one in which authority relationships prevail just as much as they do in the world in which we actually live. In fact,

44. Rawls seems to equate the two, or at least to use the one term as a substitute for the other. On p. 94, for instance, he acknowledges that "greater powers and wealth" tend to go together, and also that "the least authority and the lowest income . . . also tend to be associated."

45. See, e.g., J. BENTHAM, *Fallacies of Authority*, in 2 WORKS OF JEREMY BENTHAM 388-95 (Bowring ed. 1843); J. FRANK, *LAW AND THE MODERN MIND* (1930); Marx, *On the Jewish Question*, in EASTON, *supra* note 20, at 216, and *Toward the Critique of Hegel's Philosophy of Law*, in *id.* at 249.

such relationships in the Rawlsian universe resemble very closely those of our own world, even to the institutional (political, legal, etc.) forms that they assume. There is one very important difference, however: the least advantaged inhabitants of Rawls' society are far more grateful than are the typical inhabitants of our own society for the status they occupy, for they know that they would be less well off if they were permitted to be more nearly equal. Indeed, as one should not be surprised to learn, *A Theory of Justice* contains a short but vigorous defense⁴⁶ of the principles of paternalism as being useful, for broader purposes than simply dealing with young children or the mentally incompetent, within a settled civil society.

The one sort of primary good listed by Rawls with which I have not as yet dealt is the one to which he attaches greatest importance, namely, "rights and liberties." To deal properly with the concept of liberty in Rawls' work would require an entire essay in itself. In general, Rawls' elevation of equal rights and liberties to a place of primary consideration in his finished conception of justice constitutes a very welcome contribution at a time when these concepts seem to be regarded with increasing contempt in our real social world. However, it should be no secret that the meaning of liberty is quite problematic, whereas Rawls often treats the subject as if it were not. At the end of his section "The Concept of Liberty," he makes an interesting distinction that does, indeed, give us some insight into the problems. He begins by admitting that "[t]he inability to take advantage of one's rights and opportunities as a result of poverty and ignorance, and a lack of means generally, is sometimes counted among the constraints definitive of liberty."⁴⁷ He rejects this view by distinguishing liberty or freedom as such, which he says is the same for all, from "the worth of liberty" for each individual, which may indeed differ even in a just society: "Some have greater authority and wealth, and therefore greater means to achieve their aims."⁴⁸

There is little further elaboration of this distinction, hence it is somewhat difficult to comment upon it. In any event, it seems clearly to signal Rawls' greater adherence, as one might have expected, to the traditional liberal conception of liberty than to one which views the reality of an individual's "rights" and "liberties" as being inseparable from what they concretely enable him to do. The inclusion of this very abstract conception of liberty on the list of "primary social goods"

46. Pp. 248-50.

47. P. 204.

48. *Id.*

that all men are assumed to want is, once again, highly problematic. Liberty of this sort is not incompatible with relegating some to a distinctly subordinate position within the overall social structure.

Like Rousseau before him, Professor Rawls has left us with many puzzles concerning the question of just what are rationally to be regarded as "goods" for men. Unlike Rousseau, of course, Rawls has tried very hard to avoid being paradoxical or outrageous and instead to invoke a consensus. He has not succeeded in doing so convincingly.

D. *The Sight of God and the World of Men*

In the passage I have quoted from Rousseau's *Discourse*, the happiness-producing "goods" of ignorance, innocence, and poverty were ultimately justified by the claim that they alone were precious in the sight of God, or in God's presence. *A Theory of Justice* contains no such invocation of the Deity, and it certainly lacks Rousseau's cynicism. Yet there is something religious about its overall message. Indeed, while many contemporary religions are characterized by considerable degrees of social commitment, *A Theory of Justice* for the most part remains on a plane far above the everyday social world of men, a plane on which eternal verities are collected and dispensed.

The final sentence of the book, quoted earlier,⁴⁹ makes reference to the ideal of "purity of heart." It is not an ideal to be lightly dismissed; it expresses a deep-rooted yearning of the human spirit. But it may be possible, in perilous times, to strive for purity of heart only by consciously turning away from a concern with the more hideous aspects of the world as it is. Hegel, a philosopher whom Rawls rarely mentions, expressed this resigned and Olympian view of the function of political philosophy as well as anyone:

To recognize reason as the rose in the cross of the present and thereby to enjoy the present, this is the rational insight which reconciles us to the actual, the reconciliation which philosophy affords to those in whom there has once arisen an inner voice bidding them to comprehend, . . . to possess subjective freedom while standing not in anything particular and accidental but in what exists absolutely.⁵⁰

Rawls, though lacking Hegel's systematic ontology and though living in a milieu in which the pressures to be "relevant" may be greater, says something strikingly similar:

49. See p. 987 *supra*.

50. G. HEGEL, *PHILOSOPHY OF RIGHT* 12 (Knox transl. 1942).

The acknowledgment of the difference principle redefines the grounds for social inequalities as conceived in the system of liberal equality; and when the principles of fraternity and redress are allowed their appropriate weight, the natural distribution of assets and the contingencies of social circumstances can more easily be accepted. We are more ready to dwell upon our good fortune now that these differences are made to work for our advantage, rather than to be downcast by how much better off we might have been had we had an equal chance along with others if only all social barriers had been removed. The conception of justice, should it be truly effective and publicly recognized as such, seems more likely than its rivals to transform our perspective on the social world and to reconcile us to the dispositions of the natural order and the conditions of human life.⁵¹

Though most of Rawls' language is very different from Hegel's, the central theme is the same in both: reconciliation. An acceptance of the social world more or less as it is, a transformation of our "perspective" on it rather than of those institutions and practices that serve to perpetuate relationships of dominance and subordination within it—this is the outcome that Rawls advocates. Of course, he expresses the wish that his conception of justice might be "truly effective"; but in the context of this passage and of the book as a whole, one doubts that his wish will be granted.

Along with this revealing passage, we ought to consider the tremendous amount of emphasis that Rawls constantly places on the value of institutional stability. Particularly in Part Three of *A Theory of Justice*, stability comes increasingly to play the role of a major value, almost on a level with Rawlsian justice itself: realization of the latter is the best means of attaining stability. By the same token, space, time, change, and history constitute very minor considerations in the Rawlsian philosophy. Some consideration is given to the historical concept of differing "levels of civilization," and in this context Rawls admits a possible justification for not fully implementing his primary major principle of equal liberty at an early stage, in order to facilitate its complete enjoyment at a later time. But "[e]ventually," he says, "there comes a time in the history of a well-ordered society beyond which the special form of the two principles takes over and holds from

51. P. 512. The context of these remarks is revealing. They appear in Rawls' discussion of the abolition of the family, an institution which leads to "unequal chances between individuals." Rawls' explanation of why he does not regard abolition as urgent illustrates the inevitable tendency of his approach. When established institutions are under vigorous attack, Rawls' emphasis on reconciliation and acceptance of inequalities makes him, though not a defender of the status quo, an advocate only of gradual change.

then on.”⁵² And so we are led to conclude that Professor Rawls believes that there *are* “well-ordered societies,” and that his principles, although perhaps never *perfectly* observed at any time up to the present, must be thought generally to obtain, along with the concept of justice itself, across space and time.

The perspective of the individual imbued with the Rawlsian philosophy is thus that of near eternity. We should not forget that there are other, less patient perspectives on the problems of justice in existing societies that have an integrity of their own and that also make claims on our attention, whether as lawyers or as philosophers.

IV

Students of law and of philosophy both are likely to derive tremendous benefit from the abundant resources of moral reasoning that *A Theory of Justice* has to offer. The book exhibits a high degree of internal consistency, and it is generally, though by no means perfectly, clear in defining its terms and in stating and carrying out its purposes. But readers, in the philosophical spirit of Socratic rather than of Rawlsian ignorance, should retain a certain skepticism concerning the ultimate validity and value of the book's project. Such skepticism is most meaningful in light of the possibility of some broader theory of society—a broader theory that would at once be less reliant upon alleged trans-temporal concepts such as “justice,” and less ready to accept uncritically the basic institutions and practices that characterize the present era.

52. P.541.