

Metaethics in Philosophy

Dr Madhu Prashar

Principal, Dev Samaj College for Women, Ferozepur City, Punjab

ABSTRACT

Rawls' idea of the 'veil of ignorance' and his assumption about rational and equal contractors present strong advantages from the moral point of view as conditions for the derivation of principles of justice. It is an attempt, as we now know, to imagine a situation in which our views on justice are not clouded by our actual real interests determined by our place in a distribution. In Rawls' words: 'The veil of ignorance prevents us from shaping our moral, view to according with our own particular attachments and interests'. But it is one thing to apply the test of the 'veil of ignorance' to particular individual persons to detect their views on justice; and quite another to claim, as Rawls does, that in a society the adoption of this perspective by all would lead to unanimous agreement about the principles of justice. In order to prove this second point Rawls would have to prove two important assertions. He would have to prove, first, that the conditions of the original position represent only the pure model of a rational choice situation and do not presuppose any substantial moral judgements (otherwise the argument would be circular). Secondly, he would have to prove that the same conditions of the original position cannot lead to the derivation of any other set of principles. Now, as a vast number of Rawls' critics have argued, both these propositions are untenable; the common strategy for refuting them is to show that it is necessary to appeal to intuition both in order to construct the original position and in order to derive principles of justice, and that this appeal to intuition conceptually precedes the derivation of principles of justice.

I. INTRODUCTION:

Interestingly, Rawls does not deny this. With a striking (and one would say: self-defeating) frankness, he admits: 'We want to define the original position so that we get the desired solution'. He also describes his aim as "to characterise this situation (that is, the original position) so that the principles that would be chosen, whatever they turn out to be, are acceptable from a moral point of view and he believes that his interpretation of the original position 'best expresses the conditions that are widely thought reasonable to impose on the choice of principles.

But all that implies that he has a view about a 'desired solution', about criteria of what is acceptable from a moral point of view' and a knowledge of 'conditions that are widely thought reasonable from a moral point of view' that are prior to the original position and the derivation of principles of justice. How can he reconcile these a priori moral assumptions with the general purpose of his method which is "to derive satisfactory principles from the weakest possible assumption" and with the methodological postulate that "the premises of the theory should be simple and reasonable conditions that everyone would grant?

If, as Rawls explicitly admits, the derivation of the principles of justice is tailored to suit some prior moral conceptions, the obvious question is: what are the justifying grounds of those prior moral judgements? It is certainly not the fact that they are 'widely thought reasonable'. The justification of moral principles is not a matter of counting heads; Rawls obviously does not hold a theory that whatever people think just, is just. He expressly states that 'for the purposes of this book, the views of the reader and the author are the only ones that count. But if, at the same time, the construction of the original position and the derivation of the principles must fit some prior moral judgments (even if only those of the reader and the author), the only way to interpret the nature of those judgments is to take them as a product of moral intuitions. But in that case the social contract has no independent justificatory force but is merely an expository or didactic device for explaining principles already held.

It can be asserted without dispute that one and the same contract situation can be a basis for any number of completely different sets of principles as a function of different prior evaluative assumptions. In Rawls' case, those are prior moral assumptions that cannot have any other source than intuition. Let us consider his idea of the lexical priority of liberty a rule saying that no amount of socio-economic gain (to which his second principle of justice applies) is a good reason for accepting less extensive or less than equal liberty (described by the First Principle). This priority rule is derivable from the original position only if some additional moral evaluations are accepted, which are not inherent in the initial contract situation itself. It does not follow solely from a rational choice situation with its "weakest possible assumptions". Although Rawls several times (inter-alia at promises that he will show why at a certain stage of socio-economic development,

after the most urgent material needs are satisfied, it becomes and then remains irrational from the standpoint of the original position to acknowledge a lesser liberty for the sake of greater material means and amenities of office', he actually does not honour this promise. Nowhere in the passages dealing with the priority of liberty does he explain why it would be irrational for the original contractors to design a scheme of trade-off between liberty and economic gain. Whenever he asks himself a question about the grounds of the priority of liberty, he answers by asserting that liberty (after basic needs are satisfied) is more important than material gains. Time and again he repeats phrases like this: "Increasingly it becomes more important to secure the free internal life of the various communities of interest", or stresses 'the central place of the primary goods of self-respect and the desire of human beings to express their nature in a free social union with others' etc. But this is simply the assertion of the moral primacy of the value of freedom over other values, and in particular, an assertion of the principle that no amount of economic gain can compensate any loss of liberty. Those assertions are no 'justification' of the priority of liberty in non-tautological terms- that is, in terms other than the supreme value of liberty. But Rawls repeatedly suggests that this principle would be adopted by the original contractors as the most reasonable and therefore, that it can be justified by appeals to values other than those directly postulated by this principle (otherwise the argument would be circular).

The most likely candidate for those other values would be rationality understood as prudence. In a characteristic 'justification' of the two principles of justice, Rawls says that

the two principles of justice have a definite advantage. Not only do the parties protect their basic rights but they insure themselves against the worst eventualities. They run no chance of having to acquiesce in a loss of freedom over the course of their life for the sake of a greater good enjoyed by others.

But again, it is a restatement of a position rather than an argument. The last two phrases justify a view of the 'advantage' of Rawlsian principles only if we assume that parties to the original position will absolutely prefer freedom to material gains in case of conflict between both. But perhaps they are less seduced by the vision of the most extensive possible freedom than by the possibility of some additional socio-economic gains; perhaps they prefer rather to 'run no risk' of sacrificing the most extensive possible economic benefits. In this case it would be reasonable for them to approve a loss of a portion of their freedom 'for the sake of greater good enjoyed by others' if the scheme satisfies the difference principle, that is if greater good is enjoyed by the worst-off. The priority of liberty is therefore being assumed rather than justified; it is one of the tacit evaluative assumptions of his theory that cannot be considered as the 'weakest possible assumptions'.

If that is correct, then it is hard to see why the original contractors would find this view necessarily the most reasonable view without making some prior judgments. But, in Rawlsian social contract, such prior judgments have no moral force. Rawls stresses that "in their deliberations the parties (to the original contract) are not required to apply, nor are they bound by, any antecedent given principles of right and justice' and thus that" there exists no standpoint external to the parties' own perspective from which they are constrained by prior and independent principles in questions of justice. If such prior moral constraints do not exist, the derivation of principles of justice from the original position (as the most reasonable set of principles derivable from this position) is untenable. This conclusion cannot but be strengthened by Rawls' own account of the original position in terms of 'pure procedural justice' in which there exist no independent criteria of just outcomes but only criteria of just procedures. With regard to a social contract in the original position 'this means that whatever principles the parties select from the list of alternative conceptions presented to them are just'. Now, if they are not bound by any prior constraints then there is no reason to believe that they will choose the priority of liberty or any other elements in his conception of justice. Everything of course depends on who presents to the contractors the list of alternatives and by what constraints he is bound. Now, if the original position is designed in such a way as to exclude the possibility of choice of some principle's contrary to prior moral judgments, then the parties to the original contract are nothing more than puppets moved by the invisible hand of the author and are bound by his moral constraints. But this only pushes back the matter of pre-contractual, substantive moral intuitions from the position of the 'contractors' to the position of their creator.

To be sure, there is in Rawls a device for establishing a coherence between intuitive moral judgments and principles of justice, as agreed to in the original position. This is a 'reflective equilibrium': a two-way deliberative movement between our considered convictions of justice and the principles derived from the original position. In order to achieve equilibrium, we may either change the circumstances of the original position (so that the principles derived from it match our intuitive judgments) or modify our convictions when we are not very confident about them. Therefore, in the case of very strong moral convictions (such as, Rawls says, that religious intolerance or racial discriminations are must) we would rather manipulate the conditions of the original position in order to derive principles that are consistent with these judgments. In other cases (such as, Rawls suggests, distribution of wealth and authority), we will look into already established moral principles to find some guidance in these matters. Equilibrium is achieved when our principles and judgments finally coincide.

This view seems to recognise the role of intuition quite expressly. In its "from judgments to principles"

part, the reflective equilibrium appeals directly to our strongly held judgments which cannot be derived from the original position because it is the latter that is scrutinised using those considered judgments:

We can check an interpretation of the initial situation... by the capacity of its principles to accommodate our firmest convictions and to provide guidance where guidance is needed.

So far as good; a problem arises over where the distinction between the judgments about which we are 'confident' (and which therefore serve as a test for the original position and principles derived from it) and those about which 'we have much less assurance' (and which are modifiable to comply with the principles) is to be drawn. The distinction between more and less strongly held direction of argument in the reflective equilibrium: in the first case it is 'from judgments to principles', in the second: from principles to judgements'. The evident appeal to intuition is only in the first type of reflective-equilibrium procedure; in the second type, the appeal to intuition is indirect, via the coherence argument (that is, the coherence of judgments about which we are uncertain with the principles that we have already firmly established). But the line between the first and the second type of judgments cannot be drawn but by an appeal to intuition. Rawls, as a matter of examples, considers the ban on religious intolerance and racial discrimination as strongly held moral convictions ('fixed points of our considered' judgments of justice') while views about the correct distribution of wealth and authority' give rise to moral doubts and are held without confidence. But we can very well imagine a person being in a quite different situation; confident about the morality of a certain type of political structure and wealth distribution, but hesitating about the justification and the scope of religious tolerance. To suggest therefore a moral system in which a line between those two of judgments can be drawn is again to rely intuition which would determine the different levels of certainty of various different judgments.

II. CONCLUSION:

There is probably nothing particularly revealing in showing that a conception of justice relies on moral intuitions. No philosopher is a magician who can derive substantive moral principles from more or less neutral assumptions. Rawls himself admits that 'any conception of justice will have to rely on intuition to some degree'. But if this 'degree' turns out to be very high, the justificatory power of the contract argument becomes questionable. Let us sum up: one half of moral reasoning ('reflective equilibrium') appeals directly to intuitions, the other half-indirectly (insofar as the conditions of the original position are tailored to fit moral intuitions). It is hard to see any room for a contract argument as an independent source of moral opinions. Rawls, however, very clearly attributes such an independent justificatory role to the contract: "Certain principles of justice are justified because they would be agreed to in an initial situation of equality'. But this 'initial situation' itself is constructed so that it matches our convictions; it cannot therefore serve as an independent justificatory device.

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