



Modern Liberalism and Justice Theory

History: Social Contract Theory

- ◆ Social contract theory posits that the natural state of human beings - the state of human being before the formation of the state - is freedom.
- ◆ In this “state of nature” there is no law and an individual’s actions are bound only by their personal power and conscience.

Social Contract Theory

- ◆ Social contract theory seeks to explain whether and why governments are “legitimate”. In other words, why people can rightfully be restrained from their natural “free” state.
- ◆ Social contract theorists believe that people rationally submit to some restrictions on their freedom to secure mutual benefit and safety.

Social Contract Theory

◆ Thomas Hobbes (1588-1679), John Locke (1632–1704) and Jean-Jacques Rousseau (1712–1778) are social contract theory's most famous proponents.

Social Contract Theory

- ◆ Thomas Hobbes famously argued that in a "state of nature", human life would be "solitary, poor, nasty, brutish and short".
- ◆ To avoid this, he argued, people should establish a social contract through which they will all gain security in return for subjecting themselves to a government.
- ◆ Hobbes argued that absolute government was the only viable alternative to the state of nature.

Social Contract Theory

- ◆ Locke and Rousseau agreed with Hobbes that a social contract (govt.) needed to be formed for the betterment of mankind but disagreed with Hobbes with respect to what the best form of government is.
- ◆ Locke argued that each person had certain natural rights that were god given and inalienable; and therefore these rights could not be justly taken by the government.
- ◆ Rousseau believed that democracy was the best way to ensure that the goals of the social contract would be met – that the right combination of individual freedom and rule of law would be arrived at in a society.

Social Contract Theory

- ◆ The notion of a “social contract” was revisited by John Rawls (1921–2002) in his most famous work “A Theory of Justice” which was published in 1971.
- ◆ In the 20th Century, before Rawls published “A Theory of Justice”, most intellectuals spoke in utilitarian or economic terms regarding the proper role of govt., arguing that maximizing wealth for everyone or some variant thereof was the government’s primary responsibility.

Utilitarianism Revised

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Recall that to the utilitarians, causing the greatest amount of human happiness is the ultimate goal:

◆ “A measure of government ... may be said to be conformable to or dictated by the principle of utility, when ... the tendency which it has to augment the happiness of the community is greater than any which it has to diminish it.

Jeremy Bentham, *An Introduction to the Principles of Morals and Legislation* [1789]

Utilitarianism Revisited

- ◆ One key criticism of utilitarianism is the impossibility of actually quantifying the principle of utility based on the greatest happiness idea.
 - ◆ This same criticism can be applied to evaluating a government on utilitarian grounds.
- ◆ If someone argues that a govt. that supports pure free market capitalism leads to the greatest happiness and someone else argues that socialism and a large safety net lead to the greatest happiness, who is to say which is right?

Utilitarianism Revisited

- ◆ Measuring utility or general human happiness is hard for economists because it is subjective and introspective. There is no instrument that allows Bentham's or Mill's "utility" function to be measured in a scientific sense.
- ◆ Many 20th century thinkers thought that utilitarianism was impractical to apply.

Example of the Difficulty in Measuring Utility

- ◆ In 1938, Paul Samuelson published a paper seeking to establish how economists can scientifically evaluate best outcome. He sought to replace the “utility” measure with something more scientific.
- ◆ Samuelson sought to strip the utility analysis of its subjectivism by his principle of ‘revealed preference’.

Utilitarianism Revisited

Samuelson's Revealed Preference Theory

- ◆ Preferences - those things that people want and (presumptively will make them happy) - are not regarded in subjective terms under his theory but defined purely by the behavioral choices that consumers make in a market.
- ◆ This led some policy-makers to the idea that measures of aggregate economic output or income could be used as proxies for the welfare (utility), i.e., greater consumption = greater happiness because if a society is getting more of what they prefer, they are better off.

Utilitarianism Revisited

What do you think?

- ◆ Should the government just be concerned with growing the economic pie? Or should the government also be concerned with how the pie is distributed?
- ◆ Should the government be concerned with other measures of human comfort and happiness? Can it justly use coercion to fix issues of inequality?

Free Market Capitalism and Milton Friedman

- ◆ Milton Friedman (1912-2006), an economics and advisor to Ronald Reagan and Margaret Thatcher argued that: “A society that puts equality—in the sense of equality of outcome—ahead of freedom will end up with neither equality nor freedom . . . On the other hand, a society that puts freedom first will, as a happy by-product, end up with both greater freedom and greater equality.”
- ◆ Friedman believes that government coercion should be rare and only done when absolutely necessary and therefore equality of outcome is not a policy the govt. should pursue.

Overview of Rawls

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- ◆ John Rawls wanted to address the idea that prevailed throughout the 1960s and 1970s in the West that maximizing wealth for everyone as a utilitarian goal should be a government's primary concern.
- ◆ Rawls believed that under utilitarianism, a government would, in certain circumstances, be permitted to restrict the liberties of some citizens for the sake of greater benefits to other citizens.
 - ◆ He thought that such a political system could not be ethical.

Overview of Rawls

- ◆ Rawls was critical of the notion that a society that provides equal opportunity alone can be just.
- ◆ He believed that in such a society those born with a mental or physical defect would be forced to live lives of poverty.
- ◆ Rawls sought to establish a criterion by which goods and services were distributed among the populace that was not merely utility or free market based.

Overview of Rawls

- ◆ Justice, for Rawls, had to do with fairness.
- ◆ In fact, he frequently used the expression **justice as fairness**.
- ◆ His concept of fairness was a political one that relied on the state to take care of the most disadvantaged.

Overview of Rawls

- ◆ In his book, “A Theory of Justice,” Rawls proposed a contractarian approach to moral philosophy (similar to the aforementioned social contract theorists Hobbes, Locke and Rousseau).
- ◆ He proposed a thought experiment for how, under a contract theory approach, a society could move toward justice as fairness.

Break time



A Theory of Justice

- ◆ Rawls' famous thought exercise asks us to imagine ourselves before birth in what he calls the “**Original Position**”.
- ◆ We know that we will be born but we don't know what sex, race, wealth, ethnicity, intelligence, or health we will be born with. I.e., we are structuring society from an original position behind a **veil of ignorance**.
 - ◆ Behind such a veil of ignorance all individuals are to be treated as rational, free, and morally equal beings.
 - ◆ We know that there will be a wide distribution of abilities, and differences of sex, race, and culture that will distinguish groups of people from each other.

A Theory of Justice

- ◆ Rawls' version of social contract theory states that rational people in this hypothetical "original position" would under the "veil of ignorance" set aside their individual preferences and capacities and agree to certain general principles of justice and legal organization for their society.

Justice as Fairness

- ◆ Rawls believed that if we take his thought experiment seriously, we won't discriminate against minorities or the poor because we won't take the chance that it is us who ends up suffering from political oppression or material poverty.
- ◆ Self-interest, then, would motivate us to insist that minimum levels of political and material largesse would be the birthright of all.

Justice as Fairness

- ◆ Of course, we can't return to our pre-birth stage and negotiate this sort of arrangement beforehand.
- ◆ Hence, the only way of creating this sort of world now would be to imagine that we are in the original position and deliberately build such a fair environment for all.

Justice as Fairness: First Principle

- ◆ To be fair, Rawls insisted, human justice must be centered on a firm foundation comprising a first and second principle.
- ◆ The first principle declared that “each person is to have an equal right to the most extensive basic liberty compatible with a similar liberty for others.”
 - ◆ These liberties included traditional ones such as freedom of thought and speech, the vote, a fair trial when accused of a crime, and the ownership of some personal property not subject to the state’s seizure.

Second Principle

◇ Second Principle consisted of two sub-points:

1. socio-economic inequality is permissible only to the degree that it brings the greatest benefit to the least advantaged members of society. (Rawls labeled this the *difference principle*.)
2. authority and offices are to be available to everyone competent to hold them. (Rawls called this *fair equality of opportunity*.)

◇ Additionally, the training to ensure that all may merit these offices must be available to all.

Controversy

- ◊ What Rawls advocated was an “at-least minimal” distribution of material goods and services to everyone, regardless of what inheritance he or she might come by or what work he or she might engage in.
- ◊ And this tenet has incurred a firestorm of controversy.

Controversy

- ◆ Many have embraced what they term Rawls' egalitarian perspective on the ownership of property.
 - ◆ Yet others have argued that he ignored the unlimited right to ownership of personal property specifically predicated on hard work and/or bequests from family.
 - ◆ On the other hand, pure Marxists have dismissed this principle as not going far enough to ensure that sizable estates, as well as the means of production, be extracted from the clutches of plutocrats.

The background is a black field filled with a complex network of thin, curved lines in green and red. Interspersed among these lines are numerous small white circles, some of which are slightly larger or more prominent than others. The lines and circles are distributed across the frame, creating a sense of dynamic movement and interconnectedness.

What do you think?

What do you think?

- ◊ Should everyone be given certain minimal good and services?
- ◊ Should people be allowed to inherit great wealth due to their luck in being born rich or should the state be able to seize inherited wealth?
- ◊ Is the goal for there to be equal distribution of wealth or only equality of opportunity?

What do you think?

- ◆ Under a Rawlsian approach could you restrict the religious liberties of a weak minority to the benefit of the majority? How about as a utilitarian?
- ◆ Could you require stores to be wheelchair accessible? Let's say it's very costly? What would a utilitarian say?



Lifeboat case

Rawls' Approach

- ◆ Rawls thinks that a person in the original position would not tolerate the prosecution of minorities even if it were justifiable on a utilitarian basis.
- ◆ Instead, people would find the possibility that they might be denied political or religious liberties intolerable, and instead secure equal liberties by choosing justice as fairness.
- ◆ He thinks people will not be willing to gamble turning out to a weak minority for utilitarian principles.

Is Rawls Realistic?

- ◆ Given human nature and its inherent selfishness, is it reasonable to expect human beings to make a concerted effort to create the structures needed for justice as fairness?
- ◆ Perhaps not. But people such as the Greek philosopher Plato, in *The Republic*., have been proposing idealized versions of society for millennia.
- ◆ Plato believed that even an attempt to build a perfect city-state would produce incalculable good. Perhaps the same can be said about pursuing Rawls' vision.



Thought experiments

FILOSOFIX

Philosophy animates

Veil of
ignorance

What do you think

- ◆ Do you think that if we accept Rawls' thought experiment in which we have no way of predicting our own real-life circumstances, we will agree to create a more just society?
- ◆ Are there any issues with applying Rawls' approach?

What would you do?

◆ Critical Thinking

- ◆ What are you willing to give up so that seniors—whoever they might be—are afforded care and security in their later years?
- ◆ Should you have to pay into a system that provides medical coverage to other people less health conscious than you? Why or why not?

Thought Experiment: The Case for Meritocracy, Michael Faust

- ◆ Inheritance. Imagine we could collect together all of the inheritable money in the world and to distribute this money in exactly the same way as in today's world but with one radical difference.
- ◆ We are going to distribute it by lottery rather than by family inheritance, i.e, anyone in the world can receive it.
- ◆ In these circumstances, how many people who support the current system of inheritance would go on supporting it?

Thought Experiment: Cutting a Cake

- ◇ You and your brother have been given a large brownie. It's a bit burned on the edges, and gooey in the middle. You both would eat the whole thing if the other wasn't there.
- ◇ In the past, you guys have always fought over which half is the best.
- ◇ What's the fairest way to split it?

Thought Experiment: Cutting a Cake

- ◊ Obviously there are a lot of ways to go about this. But an old a trick as any is the “you split, I pick” method where one brother splits the brownie and the other gets to choose which half he wants.
- ◊ With this rule the splitting brother has nothing to complain about because he had control over the situation and the other brother gets what he thinks is the better half.
- ◊ This method tends to lead to each side having relatively equal halves.

Cutting a Cake in the Real World

- ◇ In the real world, when considering whether to pass or support a law, a person can do a similar thought experiment.
- ◇ If I do not know if this law will directly affect me, would I still support it?
- ◇ Would I support a 5 year jail sentence for stealing if I might end up being the poor person stealing to feed his family?
- ◇ Would I set up the tax code the way it is if I didn't know how much money I would make next year?