

RAWLS' THEORY OF JUSTICE*

Moral philosophy in the Anglo-American world for far too long has been boring and irrelevant. If it is a little less so today, this is largely due to the continuous contribution of John Rawls of Harvard, who has been, from 'Justice as Fairness' published in the *Philosophical Review* (1958) to 'Basic Structure as Subject' appearing in the *American Philosophical Quarterly* (1975), persistently pursuing a problem of utmost importance to the liberal democratic societies. The response to his work during these two decades has been immediate and immense; and since 1971 — the year in which his *A Theory of Justice* appeared—Rawls studies have become a heavy industry. Professional journals devoted to philosophy, politics, and economics (it has a PPE flavour) must have consumed additional pulp to push through the ever growing Rawlsiana. Even if this academic exuberance is ignored, it cannot be denied that by now Rawls has become an integral part of the general intellectual culture, and the ideology, of the Anglo-American world. The intellectual community on either side of the Atlantic today is equifamiliar with Milton's *Paradise Lost* and Rawls' *A Theory of Justice*. If the *New York Review of Books* informed its readers that Rawls' was the "most substantial and interesting contribution to moral philosophy since the war", the *Encounter* was confident that "for better or for worse, all serious discussions of the principles of social justice will for years to come refer to, and be by action or reaction, shaped by (Rawls') ideas". All this is true; and it is also true that Rawls not only brought some freshness into the Anglo-American moral philosophy, but also rescued liberal thinking from sterility, and liberal ideology from impotence. That is why liberal conservatives, liberal radicals, and liberal liberals all are busy coming to terms with the new arch-priest of liberalism, or the arch-priest of new liberalism that Rawls has come to be.

The criticism levelled at Rawls, or the modifications suggested to his ideas, or the riders offered to his theses are no more than the belly-aches that the liberals are having in their attempts to internalise

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Rawls' new liberal ideology. From Robert Wolf to Brian Barry, or from C. B. Macpherson to A. K. Sen, all of them are in the liberal tradition; and hence their criticism of Rawls is intra-traditional. It is fortuitous that all of them are placed in the Anglo-American academies, but as such their criticism happens to be intra-regional too. From outside that tradition, and that region, there is hardly any comment on Rawls. Further, a critique of Rawls which is matching to his treatise in sweep and skill is yet to be written; and this is unfortunate. And this is unfortunate for several reasons. First, in matters theoretical to be right is not required to be great, just as in matters practical to be great is not to be flawless. Even if Rawls is wrong—and he is wrong on several counts—he undoubtedly is one of the greatest liberal thinkers, and is the greatest living liberal thinker. His book, surely, is the New Testament of liberalism. Secondly, in view of the significance which his work has gathered in liberal ideological documents, it is likely to become an instrument of a new deception, enabling the Anglo-American world first to deceive itself afresh, and secondly to deceive, once again, others on the fringe of that world, and who for historical reasons have intellectual affiliations and institutional affinities with that world. That, I believe, should explain my picking up Rawls as the subject of this series of lectures.

What I propose to do in these three lectures will nowhere be near the type of the critique which I said is yet to be written. If I am not attempting it, it is not just because no one could possibly accomplish it in a short series of lectures like this, but also due to lack of resources. Thus, in this series I will try to scrape through one small patch in the vast area which Rawls has surveyed and mapped. I will, to be more specific, comment upon some of the ideas and arguments from the first and the third chapters of Rawls' book. These, however, are central to his theory, and constitute the core of his theoretical insight. Rawls himself is sure of their centrality. Yet, these cannot be evaluated in isolation, as Rawls has written, after twenty years of sustained effort, a well thought out treatise. So though I intend to cover just two chapters of it, I will be touching upon the rest of it. Thus for the purpose of this series of lectures I will show major interest in those two chapters, pay minor attention to the second and the fourth chapters, and show ancillary interest in the remaining parts of the book.

And in the first lecture I will present the basic theses of Rawls, without a word either of criticism or comment. In this I will follow closely the footsteps of Rawls; indeed, I will allow Rawls to speak for himself. I will devote the second lecture to fix Rawls' place in the tradition of liberal ideology, and in the third lecture I will try to evaluate Rawls' contribution by juxtaposing it with an alternative to it. I reserve the Epilogue to hint at the relevance of Rawls' thought to us.

In order to understand the significance of his contribution, we may have to handle Rawls in the fashion suggested by the master liberal, namely Kant; this is desirable as Rawls is consciously trying to be a Kantian. This Kantian style of handling things theoretical, as Kant himself remarked in the *Preface* to the *Second Critic*, "is more philosophical and architectonic in character, namely to grasp the idea of the whole correctly and then view all parts in their mutual relations." Thus it is appropriate to approach Rawls through his master-plan.

From Monday morning to Sunday evening we find ourselves categorising several types of things either as just or as unjust. Individuals and institutions, legal systems and specific laws, rules of some procedure and results of some allocation, are judged to be just or unjust. And we pass similar judgements on societies at large; we talk about unjust societies and discourse about just societies as frequently, and apparently as indifferently, as we talk of just institutions and unjust individuals. It may not be the case that the predicate 'is just' is used precisely in the same sense in all these contexts, or it may be that all these different applications of that predicate are not unrelated. Now let us indulge in a bit of reflection and ask ourselves: what do we mean when we say that some thing is just? or variantly: what do we mean by 'justice'? In view of the variety of things to which the predicate 'is just' is applied, we can surmise the complexity involved in answering the question; so it may not be out of place to delimit our discourse, and first try to fix what we mean by 'justice' in one of its many possible uses, and then go to extrapolate the knowledge and skill acquired in handling this specific use of the term to handle issues covering the other uses of the term. Thus let us ask: what do we mean when we say that a society is just? The issue is intuitively clear; but how to handle it? To begin with let us take our intuitive understanding into

consideration. We know intuitively what we mean by a society, what we mean by justice, and what we mean when we say that a society is just. The final product of our inquiry need not be and it will not be, as will be shown a little later, doomed by these subjective clarities. Our aim is to arrive at an absolutely objective theory and find a rational justification providing an objective support to that theory. Our move from the intuitive intelligibility of the meaning of 'social justice' to a rational theory of social justice is like rebuilding a ship while keeping afloat on it. This methodological link-up between our intuitive notions and the corresponding theoretical concepts precludes our inquiry ending up either in an *a prioristic* phantasm or in an infutile utopia. (Platonism preempted!) These creatures, like the ever multiplying formal languages, might be having their own charm; and hence bringing them into existence might be an interesting game in itself. But if we intend to have a theory of the grammar of the language we use in our common parlance, and not indulge in the pastime of designing formal languages, however beautiful and elegant they may turn out to be, we need to start with our intuitive grasp of grammaticity in our own language. The way one ought to arrive at the principles of justice is the way in which the principles of grammar are (to be) arrived at, for they both are practical principles. Now consider a proficient user of a language; he has an intuitive grasp of what constitutes grammaticity with respect to the language in which he is proficient. Given any locution he can tell whether it is permissible or not. If not, he would speak ungrammatically, and hence will not be a proficient speaker of that language; but that contradicts the hypothesis. Yet, he may not be able to specify the principles determining grammaticity in the language in which he is proficient. This is to say that to use a language grammatically is one thing, and to specify and stipulate the principles of grammar of that language another. And a theoretical unification of such principles is a much more difficult task requiring a lot of theoretical sophistication. Similarly, any adult of average intelligence does have a sense of justice, and a notion of society; but he may not be able to formulate a theory of justice, or a theory of society, for whose validity his subjective surety and intuitive intelligibility are irrelevant. Yet, one who has such abilities, in order to achieve those ends, will have to start with those ultimate irrelevancies. The

isomorphism between theories of grammar and theories of justice goes beyond the foregoing. Both of these are feedback theories, in the sense that the theoretical concepts and principles of these theories may affect a revision in the corresponding intuitive understanding, as much as such an understanding affects the formulation of those principles. Further these principles are required to satisfy some conditions, falling short of which they stand in need of a revision. These conditions are:

1. The principles "should be general". "The predicates used in their statement should express general properties and relations", and no proper names and specific predicates should occur in them.¹

2. The principles are to be "universal in application"; this is to say that they should hold for everyone.

3. The principles must be public in the sense that there should be universal awareness and universal acceptance of these principles.

4. The principles must impose order on conflicting claims.

5. The principles should be final; they should constitute the final court of appeal.

These are constraints of the concept of *right* over the concept of justice. These constraints are not intended to define the concept of right; but any reasonable definition of the concept of right will incorporate their substance. The imposition of such constraints is reasonable. If the principles of justice (or of grammar) are to serve their intended purpose or role, such requirements "are natural enough".

Let us now attend to the more important task of hitting at the principle of justice. It seems that it is far more easier to arrive at the principles of grammar than the principles of justice. As every proficient speaker of a language has a sense of the grammar of that language, "if we can describe one (such) person's sense of grammar we shall know many things about the general structure of language". We can pick up that person arbitrarily; for instance, you can choose the first proficient speaker you meet after your first cup of tea tomorrow. (You can identify a proficient speaker on the basis of

your intuition and your proficiency in that language). But, in spite of the fact that every adult of average intelligence "has in himself a whole form of moral conception", we need to be much more careful in our choice, if the principles of justice are to satisfy the constraints of the concept of right. Herodotus cautioned us long ago that if a bull were to fashion God out of his own image, God will come out with a pair of beautiful horns. So in order to avoid the bull-God fallacy we need to impose constraints on our choice of persons whose moral sense we intend to use, such that neither what nature has endowed them, nor what their contingent social position has conferred on them, will adversely affect the principles to be arrived at. Since one's sense of justice is likely to be determined by one's social position and other specific contingencies of historical societies, we need to find a vantagepoint, or a secure position, where such contingencies are not only inoperative but also are non-existent.² That would constitute a preferred position where everyone's sense of justice is precisely the same as that of everyone else's. That position, to be designated as the original, need not have an historical locus. It, indeed, is a hypothetical position, where everyone is under a veil of ignorance in regard to all and only contingent properties.

In the original position "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 ". Let persons in the original position be called original persons. They do not have any knowledge of their good — individual or collective, nor do they have any information about their respective plans for life. They do not know the special features of their psychology, which means the same as to say that they are ignorant of their own inclinations and aspirations. They are also assumed to be unaware of " the particular circumstances of their own society ", namely its " economic or political situation or the level of civilisation and culture ". They " have no information as to which generation they belong to". But, and that is important, " they know the general facts about human society. They understand political affairs and the principles of economic theory; they know the basis of social organisation and the laws of human psychology ". Indeed, they know everything that is needed to frame the principles of justice, and nothing that might push the princi-

ples to a point where they may violate the constraints of the concept of right. In a word, the original person is a theoretical construct, whom you may call a *declassé*, or whom Hegel might have dismissed as an *abstract man*. I will return to him in the next lecture and note here that the theoretic need to bring him into existence is to allow the projected concept of justice generate its own legitimacy. These restrictions on the original person seem natural as Rawls would claim for "no one should be advantaged or disadvantaged by natural fortune or social circumstances in the choice of principles (of justice); it should be impossible to tailor principles to the circumstances of one's own case.. (So) one excludes the knowledge of those contingencies which sets men at odds and allows them to be guided by their prejudices." That legitimises the imposition of the veil of ignorance

Though the original person has neither self-knowledge, nor empirical knowledge, he has the necessary theoretical knowledge of society, man, and their relationship. (Assume that he had a Lent term course on welfare economics at the King's, and that during the Michaelmas he was at the LSE doing game theory; also assume that while holidaying during the Christmas he browsed through Arrow and Sen. One might wonder how this is possible, for sociology, economics, and politics are empirical sciences. I will take up this issue too tomorrow; so for the present let us be good Kantians, or Rawlsians, and hold that synthetic *a priori* knowledge is possible in these areas of inquiry, and then note in brief what such knowledge of the original person consists of.

We are now at the first tricky turn in Rawls' argument. He assumes a lot of things about the original person and creates the impression that the original person has the knowledge of those things, though he does not say that the original person knows those things. So what I believe I should do is to list the minimum things which the original person will have to know in order to be able to be one who has at least a nodding acquaintance with social, economic, and political theories, which Rawls says that he has. The original person knows "that a society is a more or less self-sufficient association of persons who in their relations to one another recognise certain rules of conduct as binding and who for most part act in accordance with them; .. (and) further that these rules specify a system of cooperation designed to advance the good of

those taking part in it", though none of them has any idea as to what his good is. That much about the original person's knowledge or ignorance. In addition, we know a few more things about him and his nature, such that we can safely predict how he would behave in a controlled situation. This is to say that we assume that he is rationally self-interested, and hence is non-envious, for "a rational individual does not suffer from envy". From this implication it should be clear that the meaning attached to rationality "is the standard one familiar in social theory"; it is essentially Anglo-American in its nature. The original person being British in his rational behaviour prefers a larger share to a smaller one, and has "a coherent set of preferences between the options open to him". Among the strategies available to him he chooses the one which will fetch him more, and is likely to fetch him that. Though he seeks more, he does not mind others too seeking more; and he will not settle for less, if only others have less. In short, he is a non-envious maximiser.

We gathered sufficient information about the original person, but, as yet, it is not clear why he should seek principles of justice; why cannot he play his maximising game without any further fuss? This is not a demand for a motivational explanation, though where reasons are absent, motives should be dug up. But being what he is, he cannot act from motives; so there must be reasons—objective and situational—compelling him to seek principles of justice. Then let us ask: what are the circumstances in which the original person would seek principles of justice? As a plausible answer we may note that there are three factors involved in any such set of circumstances. Two of them are contingent, and the third is necessary. I will first consider the latter. Though "society is a cooperative venture for mutual advantage, it is typically marked by a conflict as well as identity of interests as collective maximisation makes it possible for all to maximise than any would be able to maximise individually. And there is a conflict of interests as in the collective produce each would prefer a larger share to a lesser one." Of the two contingent factors one is objective, and the other subjective. The objective situations is the *sine qua non* for social cooperation; and it is a moderate scarcity of resources. This is to be called Hume Constant, as it is due to the Scottish sceptic David Hume. The subjective factors constitute the *sine qua non* for social conflicts.

Though each person may have a long-term rational plan for life, each of these plans may be oriented towards a different end.

Here is a pure possibility. This is likely because no original person has a conception of his good. (This is possible as the original person, being educated at some Anglo-American academy, does not have any substantive theory of his good). Thus the circumstances in which principles are needed—circumstances of justice, for short—“ obtain whenever mutually disinterested persons put forward conflicting claims to the division of social advantages under conditions of moderate scarcity ”. This is an articulate Cambridge (Mass.) argument; and at the same time it is a classic anomaly.

Let me explain how the anomaly crops up. Original persons would not seek principles of justice unless they know that the circumstances of justice obtain in their society; and “ this much ”, writes Rawls in *A Theory of Justice*, “ they take for granted about the conditions of their society. A further assumption is that the parties try to advance their conception as best as they can ” (p.128). But under the veil of ignorance they are deprived of all knowledge of their conception of their good (vide, *ibid*, p. 137). Further, Rawls emphasises that the “ principles of justice are chosen behind a veil of ignorance ” (see, *ibid*, p. 12). Thus if the choice of principles becomes rather shady, the concept of an original person is handled inconsistently. Intending to say more about this tomorrow I now ask: why does Rawls indulge in this sort of an (apparent ?) anomaly ? A plausible answer is that he wants to show, indeed prove, for the talks of “moral geometry”, that the original person *would* choose the principles of justice, which Rawls as a liberal has on his mind. Without allowing the original person the knowledge that the circumstances of justice obtain in his society, it can at most be shown that the original person *could* choose the Rawlsian principles of justice. But unless it is shown that the original person would choose principles—that is, his liberalism—Rawls' liberalism would not gain a substantive force, and would remain formal and schematic. Ignoring this for the present, I will move to consider Rawls' argument that the original person would choose his principles of justice, for *that* is the way in which Rawls is trying to convince us that the original person, like him, is a full-blooded liberal.

As yet the stage is not completely set to show that the original person would go for principles of justice, for any set principles of
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justice; that is, his knowledge that the circumstances of justice obtain in his society is only one of the reasons for his seeking the principles. There is another reason as well; it may even be the case that it is more important than the obtaining of the circumstances of justice, in the sense that it may be possible to show that the latter is derivative of and secondary to the former. And that is implicit in the knowledge of the original person, specifically in his knowledge of social theory. I will make it explicit. "A society", he knows, is "well-ordered when it is not only designed to advance the good of its members but when it is also effectively regulated by a public conception of Justice. That is, it is a society in which (1) everyone accepts and knows that others accept the same principles of justice, and (2) the basic social institutions generally satisfy, and are generally known to satisfy, the principles." These basic institutions, whose function is to "distribute fundamental rights and duties and determine the division of advantages from social cooperation" constitute the basic structure of the society. Legal protection of freedom, competitive markets, private property in means of production, monogamous family etc., are Rawls' examples of basic institutions; (and who likes these except the first!) Now what are the basic goods which the basic structure of society is designed to distribute? They are the things which "every rational man is presumed to want". They are either natural, like, health and intelligence, or social, like liberty, opportunity, income wealth, and self-respect. A distribution of natural goods does not, obviously, arise at all, for they are distributed by Nature herself. But they need to be taken into account as an unequal distribution of these should not affect a just distribution of the social goods. That is why they acquire importance in any theory of a well-ordered and just society.

All that is required is fairly well-set to ask what it means that the original person would choose a set of principles of justice or would subscribe to the concept of justice which those principles incorporate, and answer that it just means that his deliberation would result in those principles. Let us see how this happens. The veil of ignorance holds the key. It might be argued that the principles of justice must be "chosen in the light of all knowledge available" and not from behind the veil. This objection, however, is not reasonable as "the rationality of a person's choice does not

depend upon how much he knows, but only upon how well he reasons from whatever information he has, however incomplete." Further, behind the veil of ignorance, the original person is almost identical with his noumenal self. As such he is different from others only numerically. This is to say that, behind the veil, he is one among the many identical persons. There is thus equality of persons, and as a consequence of this, autonomy of persons. Among equals no one would be able to dominate over the other; otherwise they would cease to be equals. Equality implies that each treats the other as an end in himself. We have already noted about the rationality of the original person. Autonomy, rationality, and his mere numerical difference with others constitute the nature of a person in so far as he is taken to be the same as his noumenal self. Now as any of his choices not only cannot be contrary to his nature, but also will have to be consistent with it, an original person behind the veil would choose firstly right to liberty, and equal right to liberty for all. And being rational, that is being a maximiser, he would also go for more of it rather than less. "Since it is not reasonable for him to expect more than an equal share in the division of social goods, and since it is not rational for him to agree to less, sensible thing... is to acknowledge as the first principle of justice one requiring an equal distribution." Further, it hardly needs to be mentioned, in view of his nature, while choosing for himself he is choosing for all. Thus behind the veil an individual choice is really a collective choice. (Sen's duality is transcended!) Anyhow that would be his first choice; and that is Rawls' first principle of justice. As he formulates it,

"Each person is to have an equal right to the most extensive basic liberty compatible with a similar liberty for others".

What else would the original person choose? Being behind the veil, he does not know what his position would be in the set-up, nor does he know how much of the cake he would be able to get. He naturally would want and like more, but he knows that he would not be able to get all that he would like to have, for "the mere existence of others" precludes it. So he would settle for, as Rawls puts it, the following.

"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".

This is Rawls' second principle of justice.

Some clarification regarding the nature and the scope of these principles is in order at this stage itself. So I will attend to it before I take up the revisions of and modifications in the principles which Rawls suggests so as to make these pure procedural principles applicable to concrete situations requiring adjudication. First, it is not claimed that these are the only principles of justice; these are, at most, exemplars of the family of principles which together are intended to capture the richness of the concept of justice. But whatever may the other principles turn out to be, they are to be arrived at precisely the way in which these are arrived at.

“ The principles of justice are also categorical imperatives in Kant's sense. For by a categorical imperative Kant understands a principle of conduct that applies to a person in virtue of his nature as a free and equal rational being ”. If so, one might think that all those objections to Kant's categorical imperative hold good against Rawls' principles. The most important of these is the charge that the imperative is a mere formal principle which is of no or little value in use in concrete situations demanding judicious judgements. This is to say that there is nothing in the categorical imperative which tells us that we should, in a given situation, act in accordance with it and not contemplate of violating it, or act in accordance with some other principle. I do not want to enter here into Kant exegesis, nor do I propose to defend Kant; a genius like him hardly needs my defence. I concern myself with Rawls' principles, and Rawls has his own well-drawn defence which I will summarise using slices of two of his own sentences scattered in his text. According to Kant, and that is Rawls' exegesis, a person is said to be acting autonomously “when the principles of his action are chosen by him as the most adequate possible expression of his nature as a free and equal rational being”³. Further, “ to express one's nature as being of a particular kind is to act on the principles that would be chosen if this nature were the decisive determining element ”.⁴

The veil of ignorance guarantees the original person's nature as the only determining element of his choice, and in choosing from behind the veil he is acting autonomously. Then what is the import of the two half sentences quoted from Rawls ? It is, I believe, that

the original person's desire to act in accordance with his principles, in any given situation, is an integral part of his desire to fully express himself as a free equal rational being. He cannot but act in accordance with those principles unless and until he forgoes his self-expression, for which as a rational being he would not be prepared. Thus given the nature of the original person, his acting in accordance with those principles is, indeed, his nature. This is the same as to say that the original person is one who will necessarily act in accordance with the principles which he gives unto himself. (Your thoughts must have turned to Rousseau, but for the present I will divert mine.)

The concept of justice has several shades of meaning, and one of them is that of fairness. Rawls claims that his two principles capture the meaning of justice as fairness. But it should be noted that when he talks of justice *as* fairness, he is not saying that justice *is* fairness. His is a theory of justice as fairness; and he repeatedly claims that it is a contract theory. His argument sustaining this claim has a touch of a tropical jungle so I tried to impose on it some order, and deduced the two principles without using the contractarian concepts. The original person, I believe, need not be a contractarian just for the sake of arriving at those two principles; he may have all the knowledge available about contract theories, but that is a different matter. And I accomplished this task by projecting his theory from the point of view of the original person. If this holds good half of Rawls' archaic arguments, and two thirds of Rawlsiana-becomes irrelevant to note and evaluate the really important contribution of Rawls. Kantian moral philosophy and the basic tenets of welfare economics are sufficient to derive the central theses of Rawls. This should in no way undermine the importance or the greatness of Rawls as a thinker for advances in knowledge are much more difficult to bring about, than they usually appear to the initiated after they have been brought about. With this I now turn to the riders that Rawls suggested to the two principles.

The original person faces certain problems in handling these two principles. If he were to have a single principle—say like the Utilitarians—no difficulty would arise in stipulating it. Thus here is a problem which is unique to the kind of theories to which Rawls' theory belongs. All the important traditional theories of justice are free from it as the single-principle theories. But the original

person has to balance his two principles in stipulating them in concrete situations. So he has to assign weights to each of his principles, and should fix the principle which he would stipulate first. This is the same as to say that he has to solve the priority problem before he could go to apply them to make his society a little more just.

That brings us to Rawls' characterisation of the way the original person proceeds. Though I would try to be fair to Rawls, I would be able to give here only something like a one-word summary of a two-page argument. As by now we are well acquainted with the original person, we can easily surmise that the original person, by his nature, is one who treats "liberties of equal citizenship" as inviolable; he will not subject them to "bargaining or the calculus of interests". Further, as the principles of justice are not *a priori*, but are chosen by him, "we may find in the grounds for their acceptance some guidance or limitation as to how they are to be balanced". This implies that the principles of justice, and the principles for balancing them are to be arrived at precisely in the same way.

The original person intends his principles of justice to apply to the basic structure of his society. To use a grammatical metaphor, the basic structure is the subject, and the principles of justice the predicate. As any of his choices is a collective choice with all of its implications of liberty, equality, and fraternity he would contemplate of choosing, in Rawls' own words, the following :

" All social values, liberty and opportunity, income and wealth, and bases of self-respect are to be distributed equally unless an unequal distribution of any, or all, of these is to everyone's advantage ."

But when once he notes that the basic structure has two " more or less distinct parts ", one relating to "the assignment of rights and duties ", and the other relating to "distribution of social and economic advantages ", his choice becomes more specific. Thus he chooses two principles, one to govern one part of the basic structure, and the other to regulate the other part. He would go for the two principles which were stated earlier, and which are **only** special cases of the contemplated more general principle. These

two principles are hooked to the two distinct parts of the basic structure. Now, what are these parts? They are the economic and the political. Rawls' point is that the original person gives priority to the first principle over the second; this is to say that the order in which they were stated is indeed the order in which the original person would choose his principles, and hence the order in which he would stipulate them. In other words second principle will "not come into play until the first has been met fully". This is the same as to say that Rawls holds that the original person subordinates the economic under the political, or that he holds that the economic needs to be sublimated and subsumed under the political. This trite truth is kept by Rawls and Rawlsians under a thick veil of euphemistic rigmarales.

The original person is a subtle, and hence an involved thinker. Thus though he believes that "the claims of liberty are to be satisfied first" that is that right to liberty cannot be sacrificed for any other thing, he is well aware that he may have to, occasionally, sacrifice liberty for its own sake. This is so because he is a maximiser ignorant of the generation to which he belongs. Hence he seeks over all, that is net, maximum freedom. Though he is ignorant of the generation to which he belongs, he can think of the possibility of less extensive but equal liberties, or extensive but unequal liberties during his life-time. Anticipating it as a logical possibility, he would choose extensive freedom on balance and, more extensive freedom for those with less extensive freedom. Though he is ignorant of the state of his society, he can imagine the quality of its civilisation being in a poor state, or its being in a state in which even the basic wants of its members go unfulfilled. As such he will not be able to know how the priority of liberty can be "firmly decided in advance", that is in advance of the lifting of the veil of ignorance. Hence he will compromise, momentarily though, over less extensive and unequal liberties, provided that would ensure him that equal right to maximum freedom to all would be available in due course of time. This however, does not mean that the original person prefers liberty only when "all material wants are satisfied", but that these "are not so compelling as to make it rational for..(him) ..to agree to satisfy them by accepting a less than equal freedom". (There is an ambiguity here. It is not clear whether, by 'equal freedom',

Rawls means 'equal right to freedom'—an expression that occurs in the formulation of the first principle of justice—or equal sharing of the available freedom. Further, as it seems the entrails of the original person are not empty, he hopes that some day nobody's would be so. So he would hold that) beyond that day "it becomes and remains irrational...to acknowledge a lesser liberty for the sake of greater material gains." So on p. 302 of the 587 pages long treatise that he would write on social justice, he would arrive at a rider to the two principles of justice, and call it the First Priority Rule (The Priority of Liberty); and it would read as follows :

"The principles of justice are to be ranked in lexical order and therefore liberty can be restricted only for the sake of liberty. There are two cases: (a) a less extensive liberty must strengthen the total system of liberty shared by all; (b) a less than equal liberty must be acceptable to those with lesser liberty".

The two principles of justice, and the priority principle belong to the ideal part of Rawls' theory; the other part—that is, the practical part—constitutes judgements on existing institutions, "judged in the light of" the ideal part, "and held to be unjust to the extent . . they depart from it without sufficient reason". The original person construes his duty as the removal of injustice, with the proviso, *if he can*. In judging the departure of an institution from the ideal, he relies on his intuition. When his judgements and principles coincide, that is when the ideal and the practical converge, society is said to have reached a state of reflective equilibrium, and is believed to have attained stability. That, in short, is the original person's counterpart to our *desi* concept of *ramarajya*. (God forbid some jingoist Indian philosopher coming out with a comparative study of these.)⁶ To understand the original person's concept of *ramarajya*, we need to note about his second thoughts on the second principle of justice; so I move to that.

Rawls' characterisation of this assumes that the veil of ignorance has been partly lifted. But such an assumption is not needed. Here again, I would be fair to him. I would re-present his argument delinking it from the needeess assumptions. I would like, however, to point out that this part of Rawls' theory reveals its capitalist underpinnings. I would return to these in the next two lectures and, would confine myself here to the original persons' rational deliberations. He is rethinking about the second princi-

ple, which implies that the first principle has been fully met, in the sense that equal right to liberty to all has been made available in his society. But he is ignorant of the specific nature of the second part of the basic structure of this society, that is the economic part. This could be capitalist in its nature; a possibility! The economy might be a free market system, "although the means of production may or may not be privately owned". (To indulge in digressive comments, who does not know that for capitalist mode of production, private ownership of means of production is not indispensable! As early as Marx, marxists have noted that the institution of joint stock company was designed to keep the former intact while doing away with the latter.)

Having settled for equal right to freedom for all, having to have in the situation which is entertained as a possibility accept capitalism as a necessary evil, anticipating the likelihood of his being paralysed by a sense of inevitability of the state's being liberal democratic and having realized that liberal democracy and capitalism go together like Juno's swans, and also having construed his duty with a *ceteris-paribus* proviso, he starts his rethinking about the second principle. As he knows that there is hardly anything that he would be able to do, he would accept capitalist liberal democracy, and then behave rationally within that framework. This is his robust sense of reality, as when rape is inevitable, it would be better to lie down and enjoy it. So he would interpret the second principle in terms of the precepts of capitalist liberal democracy, (and being, perhaps, an academic he would not be interested in changing the situation).

In the first formulation of the second principle there are two cases, one relating to the advantage of everyone, and the other concerning the openness of positions and offices to all. The original person would, I believe, impose on them another priority principle such that their present order is their real order. But I will skip over this: Rawls too does not pay much attention to this. Moreover it is not of any radical importance. What is important to note is that the original person would interpret the first case in terms of the democratic principle, and the second case in terms of the liberal principle of fair equality of opportunity. To consider the former first, the first formulation is the result of his impatient, but passionate—as he is a firm believer

in formal equality—rejection of the utilitarian ideology. But quite a bit of that ideology has been internalised by market economy system. So the original person would come to terms with it, and sublimate the result of all this under the first principle. In the imagined (may be anticipated, but really accepted) social set-up inequalities are accomplished facts. Nothing can be done to them. In it, one is a son of non-taxpaying nobody, another a daughter of taxpaying nobody, and the third a grandson non-taxpaying somebody. It is not unjust “ that men are born into society at some particular position ”, just as much as natural distribution is not. That there is an Einstein and a Rao is neither just nor unjust; so is the case, as the original person would argue, with the fact that there is a Rao and there is a Birla. The original person being a student of the social sciences at the Anglo-American academies, would not pause to ask how Birla has come to have what he has, and Rao came not to have what he does not have. On the contrary he would simply accept that “ the unequal inheritance of wealth is no more inherently unjust than the unequal inheritance of intelligence ”. He would convince himself that these “ are simply natural facts. What is just and unjust is the way that institutions deal with these facts ”. This implies that, as it should be obvious, for the original person, the natural, by definition, is something before which we are just impotent. So he, as a maximiser would argue that “ if there are inequalities in the basic structure that work to make everyone better off in comparison with the benchmark of initial equality, why not permit them ? ” After some sifting and sorting he would conclude his argument with a beautiful proposition, namely that “ inequalities are permissible when they maximise, or at least all contribute to, the long-term expectations of the least fortunate group ”. (Yes, why not permit the Tatas to float a company to set up a huge petro-chemical complex in Bombay, if that would enable a Santhal in Birbhum to have a handful of *mudi* for his sole stumptuous supper ? That should not be unjust as the Santhal too is free to float such a company; there are no legal sanctions against his doing it.)

Further the original person would think in terms of long-term expectations, as firstly he is ignorant of his temporal position, and secondly as the market economy and welfare state syndrome requires a just savings principle, that is, a principle which governs the rate

at which a generation will have to curtail its consumption, so that capital formation may be kept at a certain chosen level, so that when invested...so...that...so that...Joking apart, the original person would thus arrive at a principle under which he would subsume the first case of the second principle. He would call it the Difference Principle; and, as Rawls formulates it, it would read as follows :

“ Higher expectations of those better situated are just if and only if they work as part of a scheme which improves the expectations of the least advantaged members of society.”

The original person would give a liberal interpretation of the second case, namely the openness of positions and offices to all. This would be necessitated by the market economy which requires efficiency too; so it needs to be accommodated. There is some socratic wisdom embedded in this, for when our shoes are worn-out, we would prefer to go to a good *cobbler* rather than a *good cobbler*. Anyhow, the Liberal Principle of Fair Equality of Opportunity is this :

“ Those with similar abilities and skills should have similar life-chances.”

(The last hyphenated word might revive one's memory of Weber, but it would be better to forget him for the present.) But chances to acquire “skill should not depend on one's class position”. This is the original person's sophisticated version of the doctrine of equality of equals. (It is not for nothing Europeans claimed Athenian ancestry of their culture and thought). And there is that proviso that other things being equal, all should have equal chances to be equal; only, as Bentham long ago noted, other things are rarely equal. In the light of these second thoughts, the original person moves to the second formulation of the second principle, which now would take the following shape :

“ Social and economic inequalities are to be arranged so that they are both (a) to the greatest benefit to the least advantaged, and (b) attached to offices and positions open to all under conditions of fair equality of opportunity”.

As yet the just savings principle is not incorporated; so the third formulation whose shape would be as follows :

“Social and economic inequalities are to be arranged so that they are both (a) to the greatest benefit of the least advantaged, consistent with the just savings principle and (b) attached to offices and positions open to all under conditions of fair equality of opportunity”.

The two principles of justice, the priority principle, the difference principle, the liberal principle of equality of opportunity, and the just savings principle together constitute the inner layer of Rawls' onion like theory of distributive justice. The outer layer contains another priority principle, establishing the priority of justice over welfare and efficiency. I will not touch upon it as I join Wolf (*Understanding Rawls*, Princeton, 1977) in believing that the fecundity of Rawls' philosophical insight lies in the part of his theory which I re-presented. But it may be noted that while developing his theory further, Rawls moves from macro-economic models to micro-economic models, and lifts the veil of ignorance allowing the phenomenal self of the original person come into play and make him a little more middle class. It may also be noted that Rawls does not claim that his theory is intended for society as a whole. He intends it to cover the basic structure of society. Nevertheless, he believes that it would be applicable to society as a whole, perhaps, with a twist here and a turn there. Nor does Rawls claim a global scope for his theory. He is primarily interested in a society, I presume, his society. Yet, he hints that it would hold good even for problems of distributive justice that arise between societies, may be with some minor modifications. He explicitly states that he is still at a programmatic stage; so in the next two lectures I will offer a programmatic critique of his theory.

What Rawls is aiming at is laudable, and he richly deserves everyone's gratitude for putting forth a stupendous effort in articulating that aim — all the more so when what he is aiming at is what humanity has been aspiring for since the French Revolution. Since then there has been more misery and more injustice in this part of the cosmos. And an end to this is unlikely unless and until there is a global realization of the three ideals which pre-occupied the French revolutionary mind. Rawls is just re-articulating those ideals taking into account our experience since then. He may have failed, but that should not matter. What should matter is that a fresh attempt is made to articulate the conce-

pts of liberty, equality, and fraternity. "Liberty corresponds to the first principle, equality to the idea of equality in the first principle together with equality of fair opportunity, and fraternity to the difference principle". And for having attempted at this articulation of the aspirations of the disadvantaged souls, Rawls richly deserves a permanent place in the Anglo-American thought.

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NOTES

1. All the passages and expressions occurring in quotes and without citations are of Rawls and are taken from his *A Theory of Justice*.
2. That constitutes Rawls' pre-emptive strike against a possible marxist attack on his theory in which relativity of ideas and economic determination of ideologies might be used; in the third lecture I will try to clinch Rawls' theory using these two weapons, and show how Rawls' strike is too weak to counteract the strike which he seems to be anticipating.
3. It may be noted that the emphasis is on the choice of principles and *not* on the choice of acts. Quite a lot of our actions are indeed due to *our* choices, but the principles behind them are *their* propaganda. Our freedom is our bondage; only this is unknown to us.
4. Having so chosen the principles, *not* to act in accordance with them is to be, as Hegel would say, *alienated*; for the alienated, their own chosen principles stand as mere *externalities* or *objectified entities*. How badly we score on that count !
5. This defence, as R. S. Bhatnagar of Rajasthan University, made me aware of, has in it more of Mill and less of Kant. But isolating the two components is not relevant to the issue at hand. Assuming that this is the case, we may note where Rawls stands in relation to these poles. It is well-known that since Mill, there has been a continuous attempt to absorb Kant into the British moral thought; Rawls' defence may be taken as the most recent attempt towards that end.
6. Already there exists in the literature a note by Vinod Haksar on Rawls and Gandhi on civil disobedience.

