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CHAPTER EIGHT JUSTICE

John Rawls: Justice as Fairness

The most complete argument for the theory of justice is possibly that provided by Rawls, who argues for his two principles of justice in “Theory of Justice” (1972). His theory is of justice as fairness, accepting those principles that would result from an ‘original position’ for the purpose of social cooperation.

In this original position the parties set out, subject to conditions considered reasonable (also under veil of ignorance) and fair, to agree the principles by which their society should be organized. The original position is thus a social contract position (remember natural rights theory?) although the contract is a hypothetical

Cont'd from Rawls

The conditions to be fulfilled before the contract are basic democratic freedoms (also known as pre-conditions for democracy) such as expression, demonstration, association, and vote and to be voted for. The 'veil of ignorance' requires parties to temporarily put aside their backgrounds such as envy, sex and status (social and economic) because those are unnecessary for the parties to reach agreement on reasonable and fair principles for all

Cont'd from Rawls

Rawls makes a distinction between the concepts of justice and conception of justice. He claims that any theory of justice must deal with both of these. By a concept of justice, Rawls means the role of its principles in assigning rights and duties and in defining the appropriate division of social advantage. It is essentially an objective phenomenon. By a conception of justice, he means the interpretation of the role of these principles in a particular situation; for example, equal distribution can be interpreted in many ways for many particular situations to provide us conceptions like liberal, utilitarian and so on. He acknowledges that this is much more subjective.

Cont'd from Rawls

Rawls' theory in its own terms is designed to cope with situations where mutually disinterested (self-interested) persons put forward conflicting claims to a division of goods and services under conditions of moderate scarcity. His theory is of no application in conditions of total scarcity.

The conception of justice for Rawls can be stated in the form of two principles as follows:

first, each person participating in a practice, or affected by it, has an equal right to the most extensive liberty compatible with a like liberty for all; and

Second, inequalities are arbitrary unless it is reasonable to expect that they will work out for everyone's advantage (especially for the least advantaged), and provided the positions and offices to which they attach, or from which they may be gained, are open to all.

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The first principle is about providing everyone with basic human freedoms such as freedom of thought, religion, belief, expression...etc. This principle highlights equality of liberty for all, which means nobody is entitled to more or less liberty.

The second principle is about equal distribution of primary social resources to everyone and inequalities are arbitrary but incentives should be provided to the least advantaged without sacrificing the interest of the rest.

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The first principle has absolute priority over the second. This means there cannot be a trade-off of liberty for the sake of distribution or economic development. However, Rawls admits that under scarcity or poverty this rule can be relaxed until a certain level of economic development is reached because the question is of survival rather than justice.

In addition, the question of justice does not arise among the community of saints but only between self-interested people. The parties in the contract treat each other in fairness, as reasonable person averting any risk since it means treating others as one wants to be treated. The contract affects not only those participating in it but also those affected by it or those benefiting from the practice. Consequently, the contract involves future generations and the parties will be saving, as they are self-interested on family basis too.

Will Kymlicka: Justice and Minority Rights

virtually, all liberal democracies are either multinational or Polytechnic, or both. The 'challenge of multiculturalism' is to accommodate these national and ethnic differences in a stable and morally defensible way. It is increasingly accepted in many countries that some forms of cultural difference can only be accommodated through special legal or constitutional measures, above and beyond the common rights of citizenship. Some forms of group difference can only be accommodated if their members have certain group specific rights. For example, a recent government publication in Canada noted that:

In the Canadian experience, it has not been enough to protect only universal individual rights. Here, the Constitution and ordinary laws also protect other rights accorded to individuals as members of certain communities. This accommodation of both types of rights makes our constitution unique and reflects the Canadian value of equality that accommodates difference. The fact that community rights exist alongside individual rights goes to the very heart of what Canada is all about. (Government of Canada 1991 a: 3)

Cont'd from KYLICKA

Such a combination exists in many other federal systems in Europe, Asia, and Africa. Even the constitution of the United States, which is often seen as a paradigm of individualism, allows for various group-specific rights, including the special status of American Indians and Puerto Ricans. There are at least three forms of group-specific rights: **(1) self-government rights;** **(2) Polyethnic rights;** and **(3) special representation rights.**

Cont'd from KYLICKA

- Self-government Rights

- In most multination states, the component nations are inclined to demand some form of political autonomy or territorial jurisdiction, so as to ensure the full and free development of their cultures and the best interests of their people. At the extreme, nations may wish to secede, if they think their self-determination is impossible within the larger state.

- The right of national groups to self-determination is given (limited) recognition in international law. According to the United Nations' Charter, 'all peoples have the right to self-determination'. However, the UN has not defined 'peoples', and it has generally applied the principle of self-determination only to overseas colonies, not internal national minorities, even when the latter were subject to the same sort of colonization and conquest as the former. They demand certain powers of self-government which they say were not relinquished by their (often involuntary) incorporation into a larger state. ***One mechanism for recognizing claims to self-government is federalism, which divides powers between the central government and regional subunits (provinces/ states/ cantons). Where, national minorities are regionally concentrated, the boundaries of federal subunits can be drawn so that the national minority forms a majority in one of the subunits. Under these circumstances, federalism can provide extensive self-government for a national minority, guaranteeing its ability to make decisions in certain areas without being outvoted by the larger society.***

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powers in Canada, the province of Quebec (which is 80 percent francophone) has extensive jurisdiction over issues that are crucial to the survival of the French culture, including control over education, language, culture, as well as significant input into immigration policy. One difficulty in a federal system is maintaining the balance between centralization and decentralization. While most Quebecois want an even more decentralized division of powers, most English Canadians favour a stronger central

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Self-government claims, then, typically take the form of devolving political power to a political unit substantially controlled by the members of the national minority, and substantially corresponding to their historical homeland or territory. It is important to note that these claims are not seen as a temporary measure, or as a remedy for a form of oppression that we might (or ought) someday eliminate. On the contrary, these rights are often described as 'inherent', and so permanent (which is one reason why national minorities seek to have them entrenched in the constitution)

Polyethnic Rights

Immigrant groups in the last thirty years have successfully challenged the 'Anglo-conformity' model, which assumed that they should abandon all aspects of their ethnic heritage, and assimilate to existing cultural norms and customs. At first, this challenge simply took the form of demanding the right freely to express their particularity without fear of prejudice or discrimination in the mainstream society.

These group-specific measures – which Kymlicka calls 'Polyethnic rights' – are intended to help ethnic groups and religious minorities express their cultural particularity and pride without it hampering their success in the economic and political institutions of the dominant society. Like self-government rights, these polyethnic rights are not seen as temporary, because the cultural differences they protect are not something we seek to eliminate. But, unlike self-government rights, polyethnic rights are usually intended to promote integration into the larger society, not self-government.

Special representation right

While the traditional concern of national minorities and ethnic groups has been with either self-government or polyethnic rights, there has been increasing interest by these groups, as well as other non-ethnic social groups, in the idea of special representation rights.

However, there is increasing interest in the idea that a certain number of seats in the legislature should be reserved for the members of disadvantaged or marginalized groups. Group representation rights are often defended as a response to some systemic disadvantage or barrier in the political process, which makes it impossible for the group's views and interests to be effectively represented.

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In so far as these rights are seen as a response to oppression or systemic disadvantage, they are most plausibly seen as a temporary measure on the way to a society where the need for special representation no longer exists - a form of political 'affirmative action'.