

Announcement: Discussion of exam next time

- I. An overview of John Rawls, *A Theory of Justice* ([1971] 1999)
- II. *A Theory of Justice*
- III. Applications to democracy of Rawls's "original position" analysis
- IV. Recap
- V. Themes of the course (for website)
- VI. What to look for in Foucault

# I. An overview of John Rawls, *A Theory of Justice* ([1971] 1999)

Free. Equal. Rational.  
Self-interested. No envy.  
High uncertainty,  
Bottom unacceptable.

## I. ORIGINAL POSITION



## II. PRINCIPLES

I. Basic  
Liberties

(lexically  
prior)

II

a. Fair equal opportunity

b) The Difference Principle  
(all inequalities to  
benefit the least  
advantaged)

WHAT IS  
JUST?

III. Institutions and duties



GOAL: A SOCIETY OF "WILLING COOPERATION"  
METHOD: "REFLECTIVE EQUILIBRIUM"

Subjunctive:

“If I were not to know what talents I had or into what station I would be born, what would I agree to?”

The concept of the hypothetical original position is a starting point for the discussion of justice in actual society. There is no discussion, deliberation, or negotiation in the original position because there are no real people in the original position.

Think always: “What would I agree to if I thought I might end up at the bottom?”

## II. John Rawls, *A Theory of Justice* (1971)

\*In the language of philosophy:

the “good”  
“consequential”  
Bentham/Mill

the “right”  
“deontological”  
Kant/Rawls

### 1. THE ROLE OF JUSTICE

Justice is the first virtue of social institutions, as truth is of systems of thought. A theory however elegant and economical must be rejected or revised if it is untrue; likewise laws and institutions no matter how efficient and well-arranged must be reformed or abolished if they are unjust. Each person possesses an inviolability founded on justice that even the welfare of society as a whole cannot override. For this reason justice denies that the loss of freedom for some is made right

Note difference  
from utilitarianism \*

I shall begin by considering the role of the principles of justice. Let us assume, to fix ideas, that a society is a more or less self-sufficient association of persons who in their relations to one another recognize certain rules of conduct as binding and who for the most part act in accordance with them. Suppose further that these rules specify a system of cooperation designed to advance the good of those taking part in it. Then, although a society is a cooperative venture for mutual advantage, it is typically marked by a conflict as well as by an identity of interests. There is an identity of interests since social cooperation makes possible a better life for all than any would have if each were to live solely by his own efforts. There is a conflict of interests since persons are not indifferent as to how the greater benefits produced by their collaboration are distributed, for in order to pursue their ends they each prefer a larger to a lesser share. A set of principles is required for choosing among the various social arrangements which determine this division of advantages and for underwriting an agreement on the proper distributive shares. These principles are the principles of social justice: they provide a way of assigning rights and duties in the basic institutions of society and they define the appropriate distribution of the benefits and burdens of social cooperation.

Applied to nation-state,  
not globally

goal of willing cooperation

"the circumstances  
of justice"

Thus the plans of individuals need to be fitted together so that their activities are compatible with one another and they can all be carried through without anyone's legitimate expectations being severely disappointed. Moreover, the execution of these plans should lead to the achievement of social ends in ways that are efficient and consistent with justice. And finally, the scheme of social cooperation must be stable: it must be more or less regularly complied with and its basic rules willingly acted upon; and when infractions occur, stabilizing forces should exist that prevent further violations and tend to restore the arrangement. Now it is evident that these three problems are connected with that of justice. In the absence of a certain measure of agreement on what is just and unjust, it is clearly more difficult for individuals to coordinate their plans efficiently in order to insure that mutually beneficial arrangements are maintained. Distrust and resentment corrode the ties of civility, and suspicion and hostility tempt men to act in ways they would otherwise avoid. So while the distinctive role of conceptions of justice is to specify basic rights and duties and to determine the appropriate distributive shares, the way in which a conception does this is bound to affect the problems of efficiency, coordination, and stability. We cannot, in general, assess a conception of justice by its distributive role alone, however useful this role may be in identifying the concept of justice. We must take into account its wider connections; for even though justice has a certain priority, being the most important virtue of institutions, it is still true that, other things equal, one conception of justice is preferable to another when its broader consequences are more desirable.

← Note underlying voluntarism

goal of willing cooperation

3. THE MAIN IDEA OF THE THEORY OF JUSTICE

My aim is to present a conception of justice which generalizes and carries to a higher level of abstraction the familiar theory of the social contract as found, say, in Locke, Rousseau, and Kant.<sup>4</sup> In order to do this we are not to think of the original contract as one to enter a particular society or to set up a particular form of government. Rather, the guiding idea is that the principles of justice for the basic structure of society are the object of the original agreement.

They are the principles that free and rational persons concerned to further their own interests would accept in an initial position of equality as defining the fundamental terms of their association. These principles are to regulate all further agreements; they specify the kinds of social cooperation that can be entered into and the forms of government that can be established. This way of regarding the principles of justice I shall call "justice as fairness."

Thus we are to imagine that those who engage in social cooperation choose together, in one joint act, the principles which are to assign basic rights and duties and to determine the division of social benefits. Men are to decide in advance how they are to regulate their claims against one another and what is to be the foundation charter of their society. Just as each person must decide by rational reflection what constitutes his good, that is, the system of ends which

4. As the text suggests, I shall regard Locke's *Second Treatise of Government*, Rousseau's *The Social Contract*, and Kant's ethical works beginning with *The Foundations of the Metaphysics of Morals* as definitive of the contract tradition. For all of its greatness, Hobbes's *Leviathan* raises special problems.

"hypothetical social contract"

← NOT a real one



- 1) free
- 2) rational
- 3) concerned to further own interests
- 4) equal

1. 2 ( " )

it is rational for him to pursue, so a group of persons must decide once and for all what is to count among them as just and unjust. The choice which rational men would make in this hypothetical situation of equal liberty, assuming for the present that this choice problem has a solution, determines the principles of justice.

In justice as fairness the original position of equality corresponds to the state of nature in the traditional theory of the social contract. This original position is not, of course, thought of as an actual historical state of affairs, much less as a primitive condition of culture. It is understood as a purely hypothetical situation characterized so as to lead to a certain conception of justice.<sup>5</sup> Among the essential features of this situation is that no one knows his place in society, his class position or social status, nor does any one know his fortune in the distribution of natural assets and abilities, his intelligence, strength, and the like. I shall even assume that the parties do not know their conceptions of the good or their special psychological propensities. The principles of justice are chosen behind a veil of ignorance. This ensures that no one is advantaged or disadvantaged in the choice of principles by the outcome of natural chance or the contingency of social circumstances. Since all are similarly situated and no one is able to design principles to favor his particular condition, the principles of justice are the result of a fair agreement or bargain. For given the circumstances of the original position, the symmetry of everyone's relations to each other, this initial situation is fair between individuals as moral persons, that is, as rational beings with their own ends and capable, I shall assume, of a sense of justice. The original position is, one might say, the appropriate initial

In what ways is Rawls a "liberal" in the sense of this course?

a) What is the role of liberty in his theory? b) How does he seem like Hobbes and Locke?

"original position"

"veil of ignorance"



7. 13

(12)

# THOUGHT EXPERIMENT – HYPOTHETICAL CONTRACT

hypothetical agreements we would have contracted into the general system of rules which defines it. Moreover, assuming that the original position does determine a set of principles (that is, that a particular conception of justice would be chosen), it will then be true that whenever social institutions satisfy these principles those engaged in them can say to one another that they are cooperating on terms to which they would agree if they were free and equal persons whose relations with respect to one another were fair. They could all view their arrangements as meeting the stipulations which they would acknowledge in an initial situation that embodies widely accepted and reasonable constraints on the choice of principles. The general recognition of this fact would provide the basis for a public acceptance of the corresponding principles of justice. No society can, of course, be a scheme of cooperation which men enter voluntarily in a literal sense; each person finds himself placed at birth in some particular position in some particular society, and the nature of this position materially affects his life prospects. Yet a society satisfying the principles of justice as fairness comes as close as a society can to being a voluntary scheme, for it meets the principles which free and equal persons would assent to under circumstances that are fair. In this sense its members are autonomous and the obligations they recognize self-imposed.

One feature of justice as fairness is to think of the parties in the initial situation as rational and mutually disinterested. This does not mean that the parties are egoists, that is, individuals with only certain kinds of interests, say in wealth, prestige, and domination. But they are conceived as not taking an interest in one another's interests.

Discussion of  
characteristics of humans  
in original position

voluntary = liberal

auto : self  
nomos : law

giving a law  
to oneself

no altruism, no envy

Which statement(s) accurately describes the original position?

- a) People in the original position **think about** what justice is and should be.
- b) People in the original position **discuss** what justice is and should be.
- d) People in the original position **try to achieve** justice.
- e) People in the original position **advocate** for justice.
- f) People in the original position **experience the state of nature**.
- g) People in the original position **discuss what is right** in contrast to what is good.
- h) People in the original position decide what system provides the **greatest good** to the greatest number.
- i) None of the above.

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- g) People in the original position **discuss what is right** in contrast to what is good.
- h) People in the original position decide what system provides the **greatest good** to the greatest number.
- i) **None of the above:** People in the original position **pursue their self-interests** and decide what society they would **agree** to enter **if** they might end up on the bottom.

Johanna Poutanen

Anything wrong with this picture?

Kevin Coleman

John Chambers

7. 14 (13)  
concept to some extent, as explained later (§ 25), but one must try to avoid introducing into it any controversial ethical elements. The initial situation must be characterized by stipulations that are widely accepted.

In working out the conception of justice as fairness one main task clearly is to determine which principles of justice would be chosen in the original position. To do this we must describe this situation in some detail and formulate with care the problem of choice which it presents. These matters I shall take up in the immediately succeeding chapters. It may be observed, however, that once the principles of justice are thought of as arising from an original agreement in a situation of equality, it is an open question whether the principle of utility would be acknowledged. Offhand it hardly seems likely that persons who view themselves as equals, entitled to press their claims upon one another, would agree to a principle which may require lesser life prospects for some simply for the sake of a greater sum of advantages enjoyed by others. Since each desires to protect his interests, his capacity to advance his conception of the good, no one has a reason to acquiesce in an enduring loss for himself in order to bring about a greater net balance of satisfaction. In the absence of strong and lasting benevolent impulses, a rational man would not accept a basic structure merely because it maximized the algebraic sum of advantages irrespective of its permanent effects on his own basic rights and interests. Thus it seems that the principle of utility is incompatible with the conception of social cooperation among equals for mutual advantage. It appears to be inconsistent with the idea of reciprocity implicit in the notion of a well-ordered society Or, at any rate, so I shall argue.

Yasmin Zaerpoor

vs. utilitarianism

(\* and loss of rights)

1.14  
(13)

I shall maintain instead that the persons in the initial situation would choose two rather different principles: the first requires equality in the assignment of basic rights and duties, while the second holds that social and economic inequalities, for example inequalities of wealth and authority, are just only if they result in compensating

1.15  
(13)

benefits for everyone, and in particular for the least advantaged members of society. These principles rule out justifying institutions on the grounds that the hardships of some are offset by a greater good in the aggregate. It may be expedient but it is not just that some should have less in order that others may prosper. But there is no injustice in the greater benefits earned by a few provided that the situation of persons not so fortunate is thereby improved. The intuitive idea is that since everyone's well-being depends upon a scheme of cooperation without which no one could have a satisfactory life, the division of advantages should be such as to draw forth the willing cooperation of everyone taking part in it, including those less well situated. Yet this can be expected only if reasonable terms are proposed. The two principles mentioned seem to be a fair agreement on the basis of which those better endowed, or more fortunate in their



1) "liberties"

2) "difference principle"

Isabel Vasconez Naranjo

persons in the original position recognize that they should consider the priority of these principles. For if they wish to establish agreed standards for adjudicating their claims on one another, they will need principles for assigning weights. They cannot assume that their intuitive judgments of priority will in general be the same; given their different positions in society they surely will not. Thus I suppose that in the original position the parties try to reach some agreement as to how the principles of justice are to be balanced. Now part of the value of the notion of choosing principles is that the reasons which underlie their adoption in the first place may also support giving them certain weights. Since in justice as fairness the principles of justice are not thought of as self-evident, but have their justification in the fact that they would be chosen, we may find in the grounds for their acceptance some guidance or limitation as to how they are to be balanced. Given the situation of the original position, it may be clear that certain priority rules are preferable to others for much the same reasons that principles are initially assented to. By emphasizing the role of justice and the special features of the initial choice situation, the priority problem may prove more tractable.

A second possibility is that we may be able to find principles which can be put in what I shall call a serial or lexical order.<sup>23</sup> (The correct term is "lexicographical," but it is too cumbersome.) This is an order which requires us to satisfy the first principle in the ordering before we can move on to the second, the second before we consider the third, and so on. A principle does not come into play until those previous to it are either fully met or do not apply. A serial ordering avoids, then, having to balance principles at all; those earlier in the ordering have an absolute weight, so to speak, with respect to later ones, and hold without exception.

"lexical priority"

P. 42  
(37)

P. 43  
(38)



## 11. TWO PRINCIPLES OF JUSTICE

I shall now state in a provisional form the two principles of justice that I believe would be chosen in the original position. In this section I wish to make only the most general comments, and therefore the first formulation of these principles is tentative. As we go on I shall run through several formulations and approximate step by step the final statement to be given much later. I believe that doing this allows the exposition to proceed in a natural way.

The first statement of the two principles reads as follows.

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.

I.

liberty principle (prior)

II.

→ "difference principle"

b) → "fair equal opportunity" (prior)

7. 6. (53)

the second to the other. They distinguish between those aspects of the social system that define and secure the equal liberties of citizenship and those that specify and establish social and economic inequalities. The basic liberties of citizens are, roughly speaking, political liberty (the right to vote and to be eligible for public office) together with freedom of speech and assembly; liberty of conscience and freedom of thought; freedom of the person along with the right to hold (personal) property; and freedom from arbitrary arrest and seizure as defined by the concept of the rule of law. These liberties are all required to be equal by the first principle, since citizens of a just society are to have the same basic rights.

## I. Liberty

★ Note : not  
"doing what you  
desire."

Daniel Cnossen: Rawls does not spell out the criteria for the "best total system of liberty" (p. 178)?

Christophe Nedopil

Amit Tambade

Zhijian Lim

Alejandra Jimenez →



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Note : not  
"doing what you  
desire."

Alejandra Jimenez: "First generation human rights" = US and France Bills of Rights (1789 ← i. "ancient rights" + ii. "natural rights"). "Second generation human rights" = UN Declaration of Human Rights (1948), which includes right to marry and to found a family, right to work, right to equal pay for equal work, right to reasonable limitation of working hours and periodic holidays with pay, right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services; right to education.

7. 61 (53)

# I. Liberty

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★ Note : not "doing what you desire."

\* "It is only when social circumstances do not allow the effective establishment of these basic rights that one can concede their limitation, and then only to the extent...necessary to prepare the way for the time when...[the limitations are] no longer justified." p. 132

The second principle applies, in the first approximation, to the distribution of income and wealth and to the design of organizations that make use of differences in authority and responsibility, or chains of command. While the distribution of wealth and income need not be equal, it must be to everyone's advantage, and at the same time, positions of authority and offices of command must be accessible to all. One applies the second principle by holding positions open, and then, subject to this constraint, arranges social and economic inequalities so that everyone benefits.

lexical priority of liberty

\* except

These principles are to be arranged in a serial order with the first principle prior to the second. This ordering means that a departure from the institutions of equal liberty required by the first principle cannot be justified by, or compensated for, by greater social and economic advantages. The distribution of wealth and income, and the hierarchies of authority, must be consistent with both the liberties of equal citizenship and equality of opportunity.

↳ equal opportunity also prior to difference principle<sup>18</sup>

(54)

27 (18 1)

WHY IS LIBERTY PRIOR?

Now it seems that equal liberty of conscience is the only principle that the persons in the original position can acknowledge. They can not take chances with their liberty by permitting the dominant religious or moral doctrine to persecute or to suppress others if it wishes. Even granting (what may be questioned) that it is more probable than not that one will turn out to belong to the majority (if a majority exists), to gamble in this way would show that one did not take one's religious or moral convictions seriously, or highly value the liberty to examine one's beliefs. Nor on the other hand, could the parties consent to the principle of utility. In this case their freedom would be subject to the calculus of social interests and they would be authorizing its restriction if this would lead to a greater net balance of satisfaction. Of course, as we have seen, a utilitarian may try to argue from the general facts of social life that when properly carried out the computation of advantages never justifies such limitations, at least under reasonably favorable conditions of culture. But even if the parties were persuaded of this, they might as well guarantee their freedom straightway by adopting the principle of equal liberty. There is nothing gained by not doing so, and to the extent that the outcome of the actuarial calculation is unclear a great deal may be lost. Indeed, if we give a realistic interpretation to the general knowledge available to the parties (see the end of § 26), they are forced to reject the utilitarian principle. These considerations have all the more force in view of the complexity and vagueness of these calculations (if we can so describe them) as they are bound to be made in practice.

"an axiomatic principle"  
(this would be an "outcome that one can hardly accept.")

7-207  
(182)

Moreover, the initial agreement on the principle of equal liberty is final. An individual recognizing religious and moral obligations regards them as binding absolutely in the sense that he cannot qualify his fulfillment of them for the sake of greater means for promoting his other interests. Greater economic and social benefits are not a sufficient reason for accepting less than an equal liberty. It seems possible to consent to an unequal liberty only if there is a threat of coercion which it is unwise to resist from the standpoint of liberty itself. For example, the situation may be one in which a person's religion or his moral view will be tolerated provided that he does not protest, whereas claiming an equal liberty will bring greater repression that cannot be effectively opposed.

therefore  
liberty lexically  
prior. (But  
note: only one  
kind of liberty.)

73 (63)

The liberal interpretation, as I shall refer to it, tries to correct for this by adding to the requirement of careers open to talents the further condition of the principle of fair equality of opportunity. The thought here is that positions are to be not only open in a formal sense, but that all should have a fair chance to attain them. Offhand it is not clear what is meant, but we might say that those with similar abilities and skills should have similar life chances. More specifically, assuming that there is a distribution of natural assets, those who are at the same level of talent and ability, and have the same willingness to use them, should have the same prospects of success regardless of their initial place in the social system, that is, irrespective of the income class into which they are born. In all sectors of society there should be roughly equal prospects of culture and achievement for everyone similarly motivated and endowed. The expectations of those with the same abilities and aspirations should not be affected by their social class.<sup>11</sup>

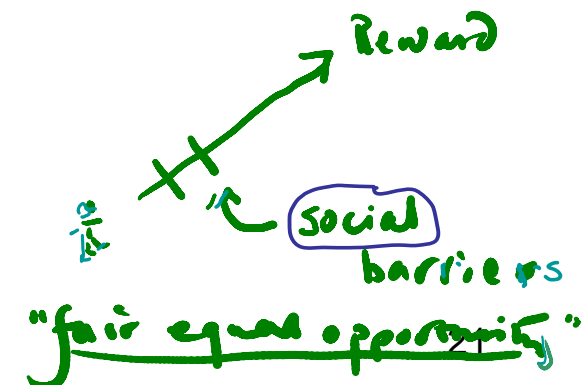
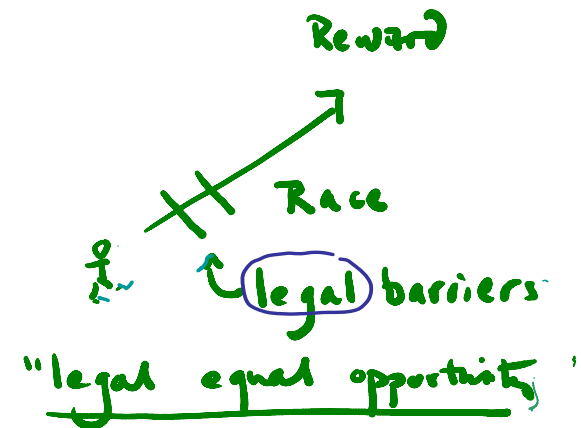
Wei  
Luo

The liberal interpretation of the two principles seeks, then, to mitigate the influence of social contingencies and natural fortune on distributive shares. To accomplish this end it is necessary to impose further basic structural conditions on the social system. Free market arrangements must be set within a framework of political and legal institutions which regulates the overall trends of economic events and preserves the social conditions necessary for fair equality of opportunity. The elements of this framework are familiar enough, though it may be worthwhile to recall the importance of preventing excessive accumulations of property and wealth and of maintaining

Helene Sow

## Ila (lexically prior): Fair equal opportunity

fair equal opportunity





p. 74 (64)

## IIb (second in priority): "The Difference Principle"

natural lottery

(in genes and helpful family)

perfectly fair  
equal opportunity  
not possible with  
families

∴

ALSO NEED

"Difference  
principle"

COMBINE fair  
equal opportunity  
with difference  
principle for  
democratic equality

to be determined by the natural distribution of abilities and talents. Within the limits allowed by the background arrangements, distributive shares are decided by the outcome of the natural lottery; and this outcome is arbitrary from a moral perspective. There is no more reason to permit the distribution of income and wealth to be settled by the distribution of natural assets than by historical and social fortune. Furthermore, the principle of fair opportunity can be only imperfectly carried out, at least as long as the institution of the family exists. The extent to which natural capacities develop and reach fruition is affected by all kinds of social conditions and class attitudes. Even the willingness to make an effort, to try, and so to be deserving in the ordinary sense is itself dependent upon happy family and social circumstances. It is impossible in practice to secure equal chances of achievement and culture for those similarly endowed, and therefore we may want to adopt a principle which recognizes this fact and also mitigates the arbitrary effects of the natural lottery itself. That the liberal conception fails to do this encourages one to look for another interpretation of the two principles of justice.

Before turning to the conception of democratic equality, we should note that of natural aristocracy. On this view no attempt is made to regulate social contingencies beyond what is required by formal equality of opportunity, but the advantages of persons with greater natural endowments are to be limited to those that further the good of the poorer sectors of society. The aristocratic ideal is applied to a system that is open, at least from a legal point of view, and the better situation of those favored by it is regarded as just

Eugenio Zegers: effort not *only* a matter of social conditions. Poor can work hard, rich not.

if it is necessary to raise the level of civilization so that in due course these freedoms can be enjoyed. Thus in adopting a serial order we are in effect making a special assumption in the original position, namely, that the parties know that the conditions of their society, whatever they are, admit the effective realization of the equal liberties. The serial ordering of the two principles of justice eventually comes to be reasonable if the general conception is consistently followed. This lexical ranking is the long-run tendency of the general view. For the most part I shall assume that the requisite circumstances for the serial order obtain.

It seems clear from these remarks that the two principles are at least a plausible conception of justice. The question, though, is how one is to argue for them more systematically. Now there are several things to do. One can work out their consequences for institutions and note their implications for fundamental social policy. In this way they are tested by a comparison with our considered judgments of justice. Part II is devoted to this. But one can also try to find arguments in their favor that are decisive from the standpoint of the original position. In order to see how this might be done, it is useful as a heuristic device to think of the two principles as the maximin solution to the problem of social justice. There is an analogy between the two principles and the maximin rule for choice under uncertainty.<sup>18</sup> This is evident from the fact that the two principles are those a person would choose for the design of a society in which his enemy is to assign him his place. The maximin rule tells us to rank alternatives by their worst pos-

## WHY THE DIFFERENCE PRINCIPLE ?

“maximin rule”

[E.g., one child cuts the cake; the other takes the first piece]

p. 53 (133)

## "maximin rule" continued

### 26. The Reasoning for the Two Principles

sible outcomes: we are to adopt the alternative the worst outcome of which is superior to the worst outcomes of the others. The persons in the original position do not, of course, assume that their initial place in society is decided by a malevolent opponent. As I note below, they should not reason from false premises. The veil of ignorance does not violate this idea, since an absence of information is not misinformation. But that the two principles of justice would be chosen if the parties were forced to protect themselves against such a contingency explains the sense in which this conception is the maximin solution. And this analogy suggests that if the original position has been described so that it is rational for the parties to adopt the conservative attitude expressed by this rule, a conclusive argument can indeed be constructed for these principles. Clearly the maximin rule is not, in general, a suitable guide for choices under uncertainty. But it is attractive in situations marked by certain special features.\* My aim, then, is to show that a good case can be made for the two principles based on the fact that the original position manifests these features to the fullest possible degree, carrying them to the limit, so to speak.

(vs. "Some people are natural risk-takers." Is there an "implicit assumption that people are risk-averse"?)

against the worst outcome

- \* 1) knowledge of likelihoods is impossible
- 2) the rejected alternatives have outcomes that one can hardly accept



p. 54:

Injustice, then, is simply inequalities that are not to the benefit of all.

p. 13: It is not just that some should have less in order that others may prosper. But there is no injustice in the greater benefits earned by a few provided that the situation of persons not so fortunate is thereby improved.

Isabel Vasconez Naranjo

State of Society / Person	Person A	Person B	Person C
World 1	3	3	3
World 2	4	5	6
World 3	5	90	100

Juan Domingo Riesco Urrejola: Which world would you agree to enter in the original position?

Colin Brown

Eugenio Zegers

## Conclusion:

...the public recognition of the two principles gives greater support to men's self-respect and this in turn increases the effectiveness of social cooperation. (155)

...shared understanding of the arbitrariness of natural contingencies... (156)

### III. What can we take from Rawls for democracy today?

1) **To be effective**, coercion must be “legitimate enough” and supplemented by **public spirit**, which ← only from “good enough” justice.

Rawls’s goal: a society of “willing cooperation.”

## **2) Applications to democracy of Rawls's “original position” analysis:**

A. As a technique of analysis, helps answer questions, e.g.,:

1. What are “human rights”? A: The rights one would agree to in the original position.

2. What are “natural duties”? (E.g. the duty to obey a just law and the duty to do one's part in a collective action situation).

A: The duties one would agree to in the original position

3. What should be the rules of democratic legitimacy?

A: The rules one would agree to in the original position.

**In short, to any meta-normative question, one asks, “What would a rational person agree to in the original position?”**

B. Helps us decide what kind of governance is appropriate:

What kind of government would one choose in the original position?

The original position is in theory neutral.

No conception of the good. No religion.

C. Makes **justice** central to democratic action. E.g. civil disobedience.

1. Is the society “**nearly just**” or “**unjust**”? (or where, along this spectrum, does it lie?)
2. If **unjust**, disobeying any law (that does not enforce a natural duty) is justified, as is war vs. the government.
3. If **nearly just**, disobeying the law is justified only if one:
  - i. Has exhausted other remedies
  - ii. Does the act publicly
  - iii. Takes the penalty.

D. Rawls does **not** intend for you to use this analysis to judge **specific policies**. He intends it to be an instrument for judging only the justice of ***basic institutions***.

BUT: Sometimes it's hard to distinguish between a broad policy and an institution.

SO: Sometimes I just go ahead and apply it to specific policies anyway.

## IV. Recap:

1. Free, equal, self-interested, instrumentally rational, no envy
2. Would hypothetically agree (for self-interested reasons)
3. Why difference principle? (maximin)
4. Why liberty prior? (maximin)
5. Make sure you get the priorities:
  - a. **First**, you would make sure that everyone got the **basic liberties**.
  - b. **Then** you would institute ***fair* equal opportunity** (as much as practicable)
  - c. **Then** you would institute the **difference** principle.
6. Rawls is a “liberal” in the sense that we have been using that word in this course because he:
  - a. Starts with free and equal individuals;
  - b. Uses a form of social contract;
  - c. Makes basic liberties prior (rights are trumps).



## V. Six themes of the course:

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A. Resistance to power (not relevant in today's class)

B. Common good vs. Self-interest

1. Common good

**Rawls:** Common good at base: The goal is a community of “willing cooperation.” “Society is a “cooperative venture for mutual advantage, ...marked by a conflict as well as an identity of interests.”

2. Self-interest:

**Rawls:** Persons in the *original position* are “concerned to further their own interests.” Individuals in *actual society* have mixed motives.

C. Development of the faculties (not relevant in today's class)

## D. Liberty:

**Hobbes:** “For all men equally are by nature free.” Liberty = “absence of external impediments” to motion. “A free man is he that...is not hindered to do what he has a will to do.” (Doing what you desire)

**Locke:** “Men being...by nature all free, equal, and independent, no one can be put out of this estate, and subject to the political power of another, without his own consent.”

**Rousseau:** Liberty as autonomy (self-rule)

**Marx and Engels:** “Freedom” is a bourgeois concept; reduces to meaning only the freedom to sell yourself on the market – “free trade.” Concludes that in the communist society, “In place of the old bourgeois society, with its classes and class antagonisms, we shall have an association, in which the free development of each is the condition for the free development of all.”

**Rawls:** Individuals in the hypothetical original position are “**free** and equal.” Justice as he conceives it “comes as close as a society can to being a **voluntary** scheme, for it meets the principles which free and equal persons would assent to under circumstances that were fair. In this sense its members are **autonomous** and the obligations they recognize self-imposed.” Liberty = “**basic liberties** of citizens.”

**Liberty is “lexically prior.”** (i.e., these liberties are lexically prior.)<sup>34</sup>

## E. Equality:

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**Hobbes:** Men equal in state of nature

**Locke:** Men equal in state of nature

**Mill:** “A” voice, not an “equal” voice

**Marx:** No mention of equality per se. Equal distribution is a bourgeois idea.

**Habermas:** The principle of equal access is crucial to the public sphere. Status should not count; only the “force of the better argument.”

**Pateman:** first to bring up *political equality* explicitly and analytically; first to define it as *equality of power* (Note: means equal *coercive* power. Equal coercive power arises when interests conflict. Does not mean equal persuasive power when interests are identical.)

**Rawls:** Individuals in the hypothetical original position are “free and **equal**.” In actual society they would *not* agree to equality of economic outcome but only to 1) “**fair**” **equal opportunity** (equal opportunity means equal liberty to reach inequality; “fair” equal opportunity means the removal of social barriers) and 2) the **amount** of inequality overall that would produce good for all (including the least advantaged), which he calls “the difference principle.”

## F. Social contract

**Aristotle:** Against the social contract theory of his time.

**Manegold of Lautenbach:** First extant written social contract theory

**Machiavelli:** Social contract

**Vindiciae Contra Tyrannos:** Social contract (sources: Bible, reason, etc.)

**Hobbes:** Social contract (hypothetical construct based on self-interest)

**Locke:** Social contract the basis of legitimacy. Sees it in reality, e.g., among the Mayflower Pilgrims. You can go to “America” if you don’t want to contract. If the king breaks the contract (by not promoting the common good) → right to right to rebellion (theory of American revolution)

[Some U.S. state constitutions mention the social contract]

**Rousseau:** Social contract makes morality possible. [Unclear whether hypothetical]

**Rawls:** explicitly **hypothetical** contract. A thought experiment.

## VI. What to look for in Foucault:

- Pep talk: Foucault is hard to read and abstract, but in my view worth it.
- Foucault is a **critic of liberal democracy** from a **post-Marxist**, “post-structuralist” perspective. [“Structuralist” = world has (eternal) structures]
- Marx assumed a “species being” repressed by capitalism; Freud assumed a free spirit repressed by the demands of civilization (e.g. toilet training). For both, remove the repression and you find the authentic being underneath. Anarchism also assumed that if you removed the power of the state you would find the free being underneath. Against these versions of the “repressive hypothesis” (or what he called “Reich’s hypothesis”), Foucault argued that **power was everywhere**, that it **constituted** people (necessarily helped create them, helped make them what they were), not just repressed them.
- Foucault implicitly challenged the idea, therefore, that you could ever have “free consent.” He also challenged the idea that you could have a contractual exchange in which an individual ceded power, or traded power, like a commodity.

- In particular, Foucault saw **knowledge** as necessarily inhabited by power.
- Thus “**discourses of truth**” were also **riddled through with power**, as were “rules of right” and concepts of “fundamental right.” The **fantasy of trying to “efface the domination intrinsic to power”** through bills of rights, separation of powers, or a communist regime etc. was futile and directed attention to the wrong place (the top).
- He saw power exercised by psychiatry, by science, by bureaucracy, with their “methods of observation, techniques of registration, procedures for investigation and research, apparatuses of control” (102) and “normalization” (107). In this analysis **power is everywhere** (not just at the top.)
- This power was **not necessarily connected with conscious intent** to dominate. Indeed, **each of us** is an “element of the articulation of power” and the “vehicle of” power (98)
- For an expanded version of this summary, see Mansbridge, “What to look for in Foucault” on class website.