

UDK 1Rawls, J.

340.114

[https://doi.org/ 10.53745/bs.91.5.3](https://doi.org/10.53745/bs.91.5.3)

Received: 11. 3. 2021

Accepted: 31.3.2021

Review article

RAWLS' THEORY OF JUSTICE AS FAIRNESS: PHILOSOPHICAL – THEOLOGICAL INTERPRETATION

Anton JAMNIK

Faculty of Theology, University of Ljubljana
Poljanska c. 4, 1000 Ljubljana, Slovenia
anton.jamnik@teof.uni-lj.si

Summary

John Rawls is one of the greatest philosophers in the field of moral theory and a representative of moderate liberalism. The main idea behind his work *A Theory of Justice*, published in 1971, is justice as fairness, or rather establishing a society in which social security of each individual would be guaranteed, with special emphasis on the care of those who are less privileged (social principle). In forming his moral theory he leans on Kant a great deal, on the tradition of social contract, and he places the deontological moral against the utilitarian (teleological) one. The fact that in his theory he included a number of virtues typical of the Judeo-Christian tradition – fairness in choosing the principles of a just society, dignity of every human, the original position which means an ideal position (the Garden of Eden), the social principle (poor Lazarus), emphasizing mutual agreement (Babylon or Pentecost) – has encouraged a lively discussion among theologians. The absence of metaphysics, the fact, that these virtues are present in Rawls' liberal theory in their secularised form, points to a certain ambiguity or even contradiction: on the one hand it means a certain search within the liberalism itself (in a way scared of itself), while on the other hand liberalism with its method and starting points denies the possibility of recognising certain virtues and their arguments.

Key words: justice, liberalism, virtue, theology, secularization

Introduction

In the 1970s, John Rawls, one of the most typical representatives of modern liberalism, published his fundamental work, *A Theory of Justice*, which marked an important turning point in moral philosophy. John Rawls was born in 1921

in the USA. Today, he is one of the greatest philosophers in the field of moral theory and moderate liberal theory. After finishing his studies at Princeton he was a lecturer at Cornell and Harvard. His most famous work is *A Theory of Justice*, published in 1971, whose main idea is justice as fairness or rather establishing a society in which social security of each individual will be guaranteed and where some people will not be more privileged on account of others. All this emphasis makes Rawls' liberalism moderate. In forming his moral theory he leans mainly on Kant and the tradition of social contract, and places deontological moral against the utilitarian (teleological) one. After his *Theory of Justice* Rawls published several discussions and replies etc., all of which in a way summarise his work, *Political Liberalism*, published in 1993. In this article, we focus on Rawls' early period and the soundness of the arguments presented in the article – unless explicitly stated otherwise – should be evaluated against the position of early Rawls.

The interest for normative ethics was sparked. For a very long time, utilitarianism had prevailed, which states that morality of a certain action or the rules to perform it derive from the means of the action. Rawls sets out an alternative to this so-called teleological ethics with his deontological ethics.¹ Certain rules are obligatory, some things have to be done, because they are right, and not because of the consequences of the action. The basis of this theory is Kantian constructivism² and the stress on the autonomous, equal and rational subject.³

Rawls' theory, despite frequent differences of opinion, contains many elements which are interesting to theologians as well. Firstly, Rawls gives priority to justice as fairness. In his opinion we must not neglect the problems of justice in the name of efficiency and economic growth. Justice is the main link within a decent society. Secondly, Rawls assumes human equality and insists on it. Even though in this principle we can recognise the echo of liberal societies, it is actually a principle which is deeply rooted in the Judeo-Christian tradition. Christians could help Rawls with his experiment of transforming faith into equality. R. H. Tawney, a Christian moralist and historian, once said: »In order to believe in human equality, we have to believe in God!«.⁴ Thirdly,

¹ Mark OLSEN, *Liberalism, Neoliberalism, Social Democracy*, New York, 2010, 1–23.

² John RAWLS, Kantian Constructivism in Moral Theory, in: *Journal of Philosophy* 77 (1980) 9, 515–572.

³ Daniel A. DOMBROWSKI, *Process Philosophy and Political Liberalism*, Rawls, Whitehead, Hartsmore, Edinburgh, 2021, 23–27.

⁴ Jay WINTER – David JOSLIN (eds.), *R. H. Tawney's Commonplace Book*, Cambridge 1972, 53.

every Christian theologian would definitely like to confess that Rawls' difference principle at least partly reflects the option which stresses the care of the poor. The care of the less privileged which Rawls has included in his theory is very admirable. Inequalities are only excusable when they benefit the less privileged members of a society.⁵ Here we deal with another idea from the Judeo-Christian tradition which is so deeply rooted in the Western culture that we definitely take it for granted. But would Christians not more thoroughly explain the difference principle with much deeper content than this is allowed by the Rawls' system?⁶

And lastly, we need to agree with the meaning of fairness as the basic component of any theory of justice; at the same time we could add that equating justice and fairness or claiming that honesty is the only form of fairness which suits the public life narrows and distorts the understanding of justice. If justice, as according to Rawls, is »the first virtue of social institutions« it is also the basic principle of social cohesion and good society. However is fairness capable of preserving this role? Is it not, despite its importance, only one of the aspects of the entire theory of justice?

1. Essential features of Rawls' theory and its impact

In the field of ethics, Rawls is mainly dedicated to social ethics: how to establish actual social relationships on the basis of justice as fairness. The core of social justice is basic goods which are of vital importance for realising every person's life plan: liberty, equal opportunities, income, wealth etc. Above all, the core of justice is moral equality of all people, but inequalities in other areas (at material level, in natural resources etc.) can of course never be entirely avoided.

Rawls formulated the two basic principles of his theory of justice originally as follows:

»First Principle

Each person is to have an equal right to the most extensive total system of equal basic liberties compatible with a similar system of liberty for all.

⁵ John RAWLS, *Political Liberalism*, New York, 1993, 6–7.

⁶ Paul WEITHAM, *Rawls, Political Liberalism and Reasonable Faith*, Cambridge, 2016, 193–195.

Second Principle

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 opportunity⁷.

The basic two principles could be divided into three principles with respect to the social primary goods:

1. The liberty principle (liberties: economic, personal, intellectual and political)
2. The principle of fair equality of opportunity (opportunity to achieve the desired position)
3. The difference principle (income and welfare)

The second principle is divided into two by Brown.⁸ This division even more exposes the priority of liberty before the equality of opportunity. Thus Rawls tried to define the virtue system of what could be called social democracy or general-welfare liberalism.

In order to have a proper idea of equality of people and life choices, Rawls suggests to consider a situation where one was able to choose the society into which one was born, at the moment of choice not knowing what one's abilities, wishes and interests would be. This would relieve one from a particular perspective and place him in the position of various abilities being presented as one's own. Rawls calls this the original position. In the original position, partners know a lot about people in general, but nothing at all about themselves. From the knowledge of what one will be like when one ends up in the chosen position, one is separated by the veil of ignorance which guarantees the conditions of fairness in the choice of principles.

First priority rule (the priority of liberty):

The principles of justice are to be ranked in lexical order; thus liberty can be restricted only for the sake of liberty.

⁷ John RAWLS, *A Theory of Justice*, Cambridge, 1971, 302.

⁸ Alan BROWN, *Modern Moral Philosophy*, London, 1990, 58.

There are two cases:

- a) a less extensive liberty must consolidate the total system of liberty shared by all;
- a) a less than equal liberty must be acceptable to those citizens with the lesser liberty.

Second priority rule (the priority of justice over efficiency and welfare):

The second principle of justice is lexically prior to the principle of efficiency and to that of maximizing the sum of advantages; and fair equality of opportunities is prior to the difference principle.

There are two cases:

- (a) an inequality of opportunity must enhance the opportunities of those with the lesser opportunity;
- (b) an excessive rate of saving must on balance alleviate the burden of those who bear this hardship.⁹

Both principles and particularly their application from the point of view of political philosophy are very thoroughly discussed by Pogge. His discussion is actually closer to political economy as it very precisely processes the economic possibilities of an individual within the society, particularly the one who is in the least advantaged position. He also draws an analogy between biblical morality – »Verily I say unto you, Inasmuch as ye have done it unto one of the least of these my brethren, ye have done it unto me« (Mt 25:40) and the vision opened by Rawls who attributes the leading role to those in the least advantaged position. According to Pogge, Rawls with his two principles of justice provides the best answer to the question of social justice.¹⁰

The second principle includes the social dimension of Rawls' theory which at the same time means that his theory can be considered moderate within various liberal attempts of creating ethical theory. The first principle emphasizes the importance of man's liberty and the second solves the problem of inequality, particularly stressing the importance of fair equal opportunity and of course, the position of those in the least advantaged position. By means of the rule of priority he tries to prevent the possibility of various conflicts when it comes to the application of the basic principles. Thus, first comes liber-

⁹ John RAWLS, *A Theory of Justice*, 302.

¹⁰ Thomas POGGE, *Realizing Rawls*, Ithaca and London, 1991, 110.

ty which can only be restricted for the sake of liberty; followed by the principle of justice before the principle of maximizing the sum of advantages.¹¹

It is very obvious that Rawls with this theory opposes the utilitarian calculation of the sum of advantages. Every person matters, every person is equal and must not be sacrificed for the common good of utilitarianism where a person is completely disadvantaged. Rawls' principles are very interesting, almost Platonically universal and widely applicative, which is why they have triggered numerous discussions, various interpretations, objections and scruples. What is especially interesting with Rawls' theory is how he had acquired the basic principles in the first place. The principles emphasize that all people are equal which means that they must be treated equally. He also claims that human dignity and the right to choose one's own life plan are sacred. Rawls' special feature is that he found an incredibly original way, a special method to demonstrate his point of view. Rawls originates from a certain a priori moral behaviour, we could even say from certain virtues (fairness, for instance), when he describes his original position in which he gathers the principles of justice as fairness. The conditions of choice are emphasized, fairness, enabled by the veil of ignorance and all other circumstances in this position. The role of the original position is therefore mostly heuristic.¹²

This new way of forming the theory of justice, based on fairness, and Rawls' implicit integration of certain basic virtues into his liberal theory provoked a heated discussion and very different views and evaluations of his theory in both philosophy and theology. »Justice as fairness« is therefore a slogan chosen by the American social ethicist and representative of moderate liberalism, John Rawls, in order to summarize the essence of his theory in a simple way. The sophisticated argument of his work *A Theory of Justice* that justice is fairness has proven to be extremely influential and powerful. Rawls stimulated an extensive, still popular academic discussion and at the same time proved that English social philosophy had not died out yet, as many had presumed. In dialogue with many colleagues Rawls convincingly advocated and developed his theory.¹³

Rawls' ideas are influential not only within the academic forum. In America they talk about the so-called »Rawls' generation« represented by politicians, political theorists and those who form public opinion; in short,

¹¹ Daniel A. DOMBROWSKI, *Process Philosophy and Political Liberalism, Rawls, Whitehead, Hartsmore*, 52–70.

¹² *Ibid.*, 23–52.

¹³ Mark OLSEN, *Liberalism, Neoliberalism, Social Democracy*, 1–23.

everyone who finds Rawls' theory a convincing secularised concept of justice, approved by many albeit not necessarily by the general public, and which strongly affects public opinion. Rawls' ideas have been widely accepted in England as well, they have been part of the Commission of Social Justice report established by the late John Smith, with the intention of setting priorities and guidelines for the Labour party and also the state.¹⁴

Despite the simplicity of the core concept, Rawls' theory is very complex and intellectually demanding. It opens various possibilities of interpretation. Stuart Hampshire labelled it as Christian, Anthony Flew as Hobbist, according to Robert Nozick it is individualistic, according to Daniel Bell it is unliberal and socialist.¹⁵ One of the reasons for its popularity may have been the increasing unconvincingness of the Marxist ideology, particularly after 1968. In Rawls, many recognized the alternative theory of equality, which indeed was radical and reformatory, but it never demanded its world view to be accepted as a whole. In Rawls, a great many Christians have recognised certain elements of a secularized Gospel message. They were convinced that Rawls had offered a wonderful opportunity for people from various social environments to accept the theory which in an untheological way articulates basic virtues of the Judeo-Christian tradition. This was followed by partial »adoption« of Rawls by the Christians. On the other hand there were many, Christians and non-Christians, who claimed that Rawls' ideas were unsatisfactory for various reasons. We will discuss the Rawls Christian reception in more detail below, in the sixth part of the article.

In this discussion we will take a closer look at some possible interpretations and applications of Rawls' theory of justice which is extremely important for the new social thought and has had considerable influence on public life. We will try to answer the question whether this theory or any of its versions are rich and firm enough to establish the foundations of a society which strives for justice. The reasons for the attraction of Rawls' theory are diverse. Rawls is a penetrating thinker who presents his views with enthusiasm and sharpness. Like Plato, Rawls considers justice the priority of social order. »Justice,« he writes, »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

¹⁴ Daniel A. DOMBROWSKI, *Process Philosophy and Political Liberalism, Rawls, Whitehead, Hartsmore*, 53–71.

¹⁵ John W. CHAPMAN, Rawls's Theory of Justice, in: *American Political Science Review* 69 (1975) 2, 588.

and well-arranged must be reformed or abolished if they are unjust.¹⁶ Rawls advocates the primacy of justice and admits that it is the people's instinct for justice that enables safe coexistence. Justice is essential, it must be the priority when establishing social order as without it everything would fall apart.¹⁷

Rawls' typical view of justice is attractive because it coincides with man's primal instinct – we all believe that justice is good. In a way, his theory confirms our instinctive intuition that justice is necessary and it provides it with intellectual dignity; at the same time it offers a certain degree of ideological agreement to our pluralistic society as it is much more widely supported than any other alternative in the market.¹⁸

2. The two readings of Rawls' theory

At first, a reading of Rawls was possible in two different ways. Rawls himself understands two »stages in understanding justice as fairness ... on the first stage justice as fairness stands for an independent political concept expressing great virtues, appropriate for the special domain of politics as defined by the basic social structure«. ¹⁹ The second stage defines a report on the stability of justice which is capable of supporting itself.

The first case involves an understanding of Rawls' project as an experiment to shape the universal, rational and ahistorical theory of justice which can be used anywhere and anytime. In the *original position*, this reading opens the vision of human nature which is reduced to its timeless basic characteristics; individuals behind the *veil of ignorance* have abandoned their interests, along with any perception of their status, culture, historical and geographical position, and any relationship to a certain community or tradition. As such they should more or less act as any rational human being in any circumstances. These people should then be assigned a task to choose the principles of justice which should rule their society. Rawls admits that people in the *original position* have a »certain psychology« which derives from »various assumptions made about their beliefs and interests«²⁰, nevertheless this reading gives us the impression that justice contains the sort of objectivity determined by ob-

¹⁶ John RAWLS, *A Theory of Justice*, 3.

¹⁷ Paul WEITHMAN, *Rawls, Political Liberalism and Reasonable Faith*, 27–82.

¹⁸ Daniel A. DOMBROWSKI, *Process Philosophy and Political Liberalism, Rawls, Whitehead, Harstmore*, 33–47.

¹⁹ John RAWLS, *The Domain of the Political and Overlapping Consensus*, in: *New York University Law Review* 64 (1989) 2, 233–255.

²⁰ John RAWLS, *A Theory of Justice*, 121.

ligation to certain ontology, a certain understanding of the nature of things, and is therefore able to maintain critical distance towards circumstances and tendencies which distort the principles of tolerance in order to adjust them to self-interests.²¹

The second reading, according to Rawls, is that which reflects the purpose of his writing. In accordance with this reading, Rawls supposedly formed a theory which »matches the fixed points of our considered convictions«²², meaning the convictions of the majority. It is not only the destillation of unreflected prejudices though; justice as fairness is based on »our« carefully considered judgements; and »we« are typical representatives of modern liberal democracy. Rawls' theory is a sort of »dogmatics« of liberalism – researching and perfecting the system of convictions, basically from the inside. Rawls does not refer to any preformed moral order. The principles of justice should »match our considered convictions of justice or extend them in an acceptable way«²³. Between the theory and our convictions there should be »reflective equilibrium«. The theory does not only reflect public opinion but it interacts with considered convictions which are liable to a certain inner critic. In accordance with this reading, Rawls' theory cannot refer to any deeper or universal moral order. The principles »should match our considered convictions and be appropriately regulated and adapted«.²⁴ And on what basis should they be regulated and adapted? What makes this theory more fruitful after this regulation? What if the cut-off branches are of vital importance for the health of the trunk? According to Paul Ricoeur²⁵, we are dealing with the »complex process of mutual adaptation of convictions and theory«. What if this degenerates into plain reorganization of prejudices?

The basic problem of the second reading is that in this theory it is difficult to recognize anything more apart from the conventional wisdom of our time. However, it is attractive because it offers an example of an open, tolerant discussion about justice and as such it can be an effective means of social cohesion in a pluralistic society, marked by the rich diversity of world views and religions.²⁶ Perhaps this is why Rawls persistently emphasizes the second reading of his theory. In an article from 1985 Rawls decisively rejects the thesis

²¹ Paul WEITHMAN, *Rawls, Political Liberalism and Reasonable Faith*, 62–67.

²² John RAWLS, *A Theory of Justice*, 279–280.

²³ John RAWLS, *A Theory of Justice*, 19.

²⁴ John RAWLS, *A Theory of Justice*, 7.

²⁵ Paul RICOEUR, *Oneself as Another*, Chicago, 1992, 237.

²⁶ Paul WEITHMAN, *Rawls, Political Liberalism and Reasonable Faith*, 3–27.

that *Theory of Justice* should refer to a universal truth.²⁷ He avoids various philosophical and metaphysical statements as »in constitutional democracy, public conception of justice should be, as far as possible, independent of controversial philosophical and religious doctrines«. ²⁸ Justice as fairness, claims Rawls, is not based on either liberalism or general moral doctrine but on »basic intuitive ideas found in the political culture of a constitutional democratic state«. ²⁹ His theory is not a metaphysical doctrine but a matter of politics, meaning that it is the basic principle of a political order supported by the great majority of citizens of a modern constitutional democracy, regardless of their different moral, religious and philosophical convictions. Therefore, justice is the reflection of most people's choice; but it cannot function as the criticism of these choices. The possibility of »considered convictions« being unfair is completely excluded.³⁰

3. The original position and the Garden of Eden

The first reading of Rawls' theory leans on a hypothetical scenario of the *original position* within which human beings are reduced to their basic characteristics and are obliged, from behind the *veil of ignorance* and in accordance with their abilities, status and means, to choose the principles of justice which are supposed to be applied in their society. It is a sophisticated version of a known procedure used by the majority of social contracts to shed some light on the basic intentions and principles behind the formation of the society and government. In all its variations, it emphasizes the priority of an individual before the society; the society and its government are meant as the means to encourage and protect individual's basic interests. At the same time it is about the way of describing and understanding human nature: if human beings are indeed such-and-such they will choose such-and-such life within the society with such-and such-government structure.³¹

Human beings we study have appeared from basically nowhere, »just emerged from the earth ... like mushrooms«, if we use the picturesque Hobbes' analogy.³² They have no past, no emotional ties, no special interests. They

²⁷ John RAWLS, *Justice as Fairness: Political not Metaphysical*, in: *Philosophy and Public Affairs* 14 (1985) 3, 223–251.

²⁸ *Ibid.*, 223.

²⁹ *Ibid.*, 246.

³⁰ Daniel BELL, *Communitarianism and its Critics*, Oxford, 1993, 214–215.

³¹ Paul WEITHMAN, *Rawls, Political Liberalism and Reasonable Faith*, 213–218.

³² Susan MOLLER OKIN, *Justice, Gender and Family*, New York, 1989, 21.

are simply natural beings. With further development, the author's assumptions become more explicit hypothetical situations and the reader is invited to match the story according to his experience: »Is this really what human beings essentially are and if so, what sort of society should they live in?« According to his conviction that human beings are essentially competitive and antagonistic towards each other, Hobbes teaches us that the natural state is the state of warfare in which human existence is nasty, poor, brutish and short. Within this scenario people, in fear of other humans, renounce their liberty and accept the authoritarian leader. Similarly, Locke observes how people agree to certain deals in order to ensure the best possible security of their lives and possessions for themselves. In order to do that, they form a government which would act as their representative with limited power. Rousseau understands social contract as an experiment of a methodical order and articulation of the general will as the opposite of the will of an individual. The will of an individual is selfish and divisive which is why the society should be formed by the general will.³³

Rawls' people from the *original position* are rational, self-centred human beings, capable of choosing what is good for them, and establishing and maintaining a coherent life plan throughout their lives. They are not prone to risks, they have no religious convictions, they are not attached to their families. Despite the supposed self-importance, the mechanism of the *original position* is thought to encourage a limited form of empathy as every participant must be able to imagine how to walk in someone else's shoes, the shoes of an individual who has been put into an unpleasant situation by the social processes or has been affected from his birth. The *original position* can be our foundation of the golden rule: do unto others as you would have them do unto you. In reality the principles of justice set by people in the *original position* are based on fear that they themselves can fall to the bottom of the social scale, in need of help and protection. Similar to Hobbes, fear is an effective stimulation in search of a society which would eradicate the reasons for such fears.³⁴

For Rawls, the *original position* is the means of ensuring objectivity in discussing justice and exceeding the narrowness and short-termism of personal interests. Rawls follows Hobbes in the search of moral theory which is *more geometrically* shaped: »We should strive for a kind of moral geometry with all the rigor which this name connotes.« At the same time he admits that his

³³ Daniel A. DOMBROWSKI, *Process Philosophy and political Liberalism*, Rawls, Whitehead, Hartsmore, 23–52.

³⁴ Paul WEITHMAN, *Rawls, Political Liberalism and Reasonable Faith*, 194–198.

work is highly intuitive and does not achieve the ideal he has in his mind.³⁵ Rawls' ideal of distanced, logical thinking which does not care about data or empirical facts is educational but open to discussion. It is interesting that such a large part of his argument is based on an original position which is thought of as a story, fiction, in which people with all sorts of typical modern liberal needs and expectations – worryingly similar in this respect – co-shape their demands for the society whose members are »willing to submit to a similar fate«. ³⁶ The *other* with whom we are dealing in the *original position* is no longer a certain person with all his peculiarities and eccentricities which define an individual. The *other* is rooted out and immaterial.

As a contrast, it would be informative to consider the answer to the question of justice offered by Jesus. A man who believes he has observed the laws of justice wants Jesus to proclaim him as »just«. He asks: »But who is my neighbour?«³⁷ and most likely expects the answer coming from the *veil of ignorance*: your neighbour is someone who is the same as you and one day you can find yourself in his place. However, Jesus answers with a story, a parable, in which all characters have specific roles and expectations. According to him, the demand for justice, which is always definite, should be placed before the veil of ignorance. Our neighbour, realising his demand for justice, is a hated stranger, a heretic, pushed to the edge of society. He is the one who acts justly when helping the beaten Jew, left half dead alongside the road. The priest and the Levite, who as two experts should know what justice is and what it expects from us, are not capable or even ready to act justly out of fear. Fear and self-appreciation together conspire *against* justice. Jesus instructs the person who wants to be declared just to go and do what the Good Samaritan did. The parable offers a tangible example of just treatment, of demands for justice (ex. Lk 10: 25–37).

Rawls' procedure involves formation of principles within the hypothetical *original position* and implementation of these principles in practice and politics. What if reality has true priority? Is Rawls in danger of succumbing to the harsh criticism of R. H. Tawney, that »defining principles without testing them in practice is irresponsible and incomprehensible«?³⁸ It is much easier to explain the demand for justice by means of actual examples, stories or parables.

Judeo-Christian tradition offers an alternative, actual description of the *original position* in the story of the Garden of Eden and the fall. In it, the origi-

³⁵ John RAWLS, *A Theory of Justice*, 121.

³⁶ *Ibid.*, 121.

³⁷ Lk 10: 29.

³⁸ John RAWLS, *A Theory of Justice*, 121.

nal and true state of the human being is described as the state of justice, realised in an intimate and loving relationship to God, other people and nature. Adam and Eve make a wrong decision from behind their *veil of ignorance*, fear and shame enter into their world, they are expelled from the Garden with the knowledge of good and evil (ex. Gen 2:4 – 3:24). The original harmony is destroyed, the world is marked by sin and in the rotten world justice of the *original position* is only present in the form of memory and hope. Despite the constant presence of demands for justice we can never truly comprehend the nature of justice.

In order to understand justice it is probably essential to hear the story about the *original position*, on condition that it would help us focus on particular demands of justice and try to understand what a just society should or would look like. Considering the Christian and not Rawls' understanding of justice William Blake stressed the priority of the particular in a rather teasing poem: »He who would do good to another must do it in Minute Particulars; 'General Good' is the plea of the scoundrel, hypocrite & flatterer; For Art & Science cannot exist but in minutely organized Particulars, And not in generalizing Demonstrations of the Rational Power«. ³⁹ Only through individual actions and only in such a society whose moral order creates concern for the actual man can justice be recognised and its demands responded to. ⁴⁰

4. Mutual agreement: Babylon or Pentecost?

As we have seen, Rawls particularly stresses that his theory of justice does not refer to any universality or truth; it is »political, not metaphysical«, and based on consensus or rather than on convictions, shared by most people of the modern liberal democracy. ⁴¹ Consensus on justice is the condition for a society to exist. The task of the social theorists is to critically consider such consensus, show its internal coherence and recommend it to the society. Thus, the limits around the scene of the public political discourse are set, as the latter should be linked to the area of the consensus and without any accessories to judge what lies outside the limits of the discourse, or the virtues of society which operate on radically different suppositions. Theorists, for example, must not judge the understanding of justice in a caste system society in which there is

³⁹ William BLAKE, Jerusalem, in: *The Complete Poems*, New York, 2007, 781–782.

⁴⁰ Daniel A. DOMBROWSKI, *Process Philosophy and Political Liberalism*, Rawls, Whitehead, Hartsmore, 79–108.

⁴¹ John RAWLS, *Justice as Fairness*, 230.

common consensus that people *are not* equal. The foundation of such judgments is the generally accepted principles of liberal democracy which are not necessarily final.

Rawls develops an understanding of the consensus in his later work *Political Liberalism*. In it, he openly admits the existence of a number of diverse »reasonable general worldviews« within the liberal society.⁴² The condition for a well-ordered society is the essential generally accepted political principle of justice: »It is a society in which everyone accepts and knows that the others accept the same principles of justice, and the basic social institutions generally satisfy.«⁴³

Within the liberal society there are and there should be diverse worldviews which the society accepts and tolerates, perhaps even encourages, as they contribute to the rich diversity of the society. »Justice as fairness,« writes Rawls, »definitely renounces the ideal of a political union if under this ideal a political society is understood which is linked by only one (partly or completely) accepted religious, philosophical or moral teaching.«⁴⁴ There are of course downsides to attributing such importance to consensus. If we in principle renounce the possibility of the moral order it is more difficult to establish a critical distance towards conventional wisdom. The consensus on justice can prove to be wrong. Most people would agree that the consensus on justice built by the Nazis in Germany was wrong, but based on Rawls' assumptions this could hardly be claimed. It could only have been claimed different from the one prevailing in the liberal democracies.

Rawls developed the idea that there was a mutual consensus between various rational general teachings in which the political and social concept of justice as fairness could find its place.⁴⁵ Public political discussion can be based *only* on this consent. Mutual consensus has several important characteristics. The idea of justice, protected by the consensus, is »the concept of politics, not of the entire life.«⁴⁶ This means that the concept of justice as fairness is not a general scientific teaching, but can and should co-exist with the rich diversity of concepts on what is good and what is real. Justice should be prioritized, which means that it should define the limits of the permitted way

⁴² John RAWLS, *Political Liberalism*, 59.

⁴³ *Ibid.*, 35.

⁴⁴ John RAWLS, The Priority of Right and Ideas of Good, in: *Philosophy and Public Affairs* 17 (1988) 4, 251.

⁴⁵ John RAWLS, *Justice as Fairness*, 246.

⁴⁶ John RAWLS, The Priority of Right and Ideas of Good, 253.

of life in a society, »acceptable concepts of good should respect the limits of the political concept of justice and serve their purpose within this frame«. ⁴⁷ The concepts of good which are not compatible with justice as fairness are not considered.

Thus the society, linked by the mutual understanding of justice, takes care of the different worldviews. The boundary between general worldviews and a mutual consensus is not always clear. Seyla Benhabib, for example, doubts that we can defend liberalism only on the grounds of a mutual consensus without considering the generally accepted understanding of the human being. ⁴⁸ There are radically different opinions on human nature and destiny which are generally accepted in democratic societies, which makes these more or less »communities of people who are attached to each other by force of argument« and not in the way Rawls would approve. ⁴⁹ In such societies the state should be neutral or impartial in managing rational general systems of teachings and diverse understandings of the nature of good; its own principles are »autonomous of any general teaching«. ⁵⁰ Nevertheless, justice as fairness includes a certain understanding of good and it is its duty to encourage virtues such as cooperation, good manners, tolerance, rationality and sense of duty. ⁵¹

A certain problem occurs here. In facing diverse worldviews and understandings of good the government sometimes has to, in order to be as tolerant as possible, decide on matters on which justice as fairness does not provide any guidelines. A good example is abortion where public opinion is radically polarized, where there is no mutual consensus and where any decision is linked to the disputable question about the status of a foetus. There is a number of other examples as well. To make adequate decisions in these cases means acknowledging the convictions outside or beyond justice as fairness.

Rawls' understanding of the mutual consensus is linked to a number of other problems. Nevertheless, Rawls insists that all rational general teachings in a well-managed liberal democratic society should defend fairness as the understanding of justice which can be applied to public life. No rational general teaching on its own is capable of demonstrating »contents of public opinion

⁴⁷ *Ibid.*, 254.

⁴⁸ Seyla BENHABIB, *Situating the Self: Gender, Community and Postmodernism in Contemporary Ethics*, New York, 1992, 77.

⁴⁹ Don S. BROWNING, *Habermas, Modernity and Public Theology*, Francis Schussler Fiorenza (ed.), New York, 1992, 161.

⁵⁰ John RAWLS, *The Priority of Right and Ideas of Good*, 256.

⁵¹ *Ibid.*, 256.

about the basic political questions,« claims Rawls.⁵² Only mutual consensus enables that. The share of those rational general sciences which is left outside the mutual consensus is the source of alternative ideological arguments of justice as fairness⁵³; he firmly believes that all these teachings, despite their differences, support justice as fairness as the only understanding of justice which can function in the public sphere.

But which part of the share of rational general sciences which we deal with and which are outside the mutual consensus on justice as fairness does Rawls consider? Could not this share help perfect, improve, enrich justice as fairness? When reading Rawls it seems that such positions are not considered in public political discourse. Many interesting and significant contributions to the understanding of justice from the church tradition are not considered, which means that public political discourse is not as rich as it could be. Specific views which do not support justice as fairness are taken out of the public political discourse. Religion as such is pushed into the private sphere and its voice in public life is only welcome when it approves of the already approved worldviews. Religious talk and reference to specific sources of a certain tradition in public life are not desired. According to Stephen Carter, religion in such theories is only worth as much as a »hobby« which is not really relevant for public life, and lately has not provoked any hostilities.⁵⁴ All this trivialises the nature of a religion such as Christianity and it disables it from contributing its own genuine part to the public life. In the past religion helped in decision-making, maintaining and re-shaping the political virtues of a liberal state. Today this would only be possible on condition that the part of the religious system is acknowledged which lies outside the consensus, meaning that it is not generally accepted by the majority. If we remove metaphysics and theology from public life we are left with nothing which could replace them. We should agree to a limited understanding of justice and the nature of our society. And this removal of metaphysics and theology, typical of Rawls' theory, which at the same time, as we have seen, includes a number of virtues from the Judeo-Christian tradition, is one of the most problematic and at the same time contradictory points of his theory of justice.⁵⁵

It seems that Rawls has very much changed his view of religion. In his early writing he labels religion as dividing in itself and thus a destructive

⁵² *Political Liberalism*, 134.

⁵³ *Ibid.*, 12.

⁵⁴ Stephen CARTER, *The Culture of Disbelief*, New York, 1994, 21–22.

⁵⁵ Paul WEITHMAN, *Rawls, Political Liberalism and Reasonable Faith*, 231–242.

force within public life. Now, he accepts religious arguments, on condition that they are compatible with the generally accepted criteria of public opinion and can be translated into secular language. Hence religion can strengthen the commitment of believers to the ideals of manners and liberal democracy. Nevertheless it seems that this, still slightly reluctant acceptance of religion in the sphere of the public discourse, does not signify a considerable change in Rawls' position.⁵⁶

Establishing the concept of justice on the mutual consensus and not on a certain ontology or ideas of reality consequently leads to a very limited understanding of justice, such as it is most likely incapable of restraining selfishness and building personal endeavours for justice. Rawls' consensus is based on assumptions that it serves the interests of all people and that the demand for justice does not require a great limitation of personal interests. Thus, if we satisfy the principle of justice this will »benefit everyone«. ⁵⁷ According to Rawls, humans by nature try very hard to promote their own interests. It seems that this assumption is based on his understanding of consensus: justice which benefits everyone; it does not claim victims; it does not oppose interests of an individual. The main motivation of people in the *original position* is not a well-meaning care for the interests of others but due to specific circumstances these individuals are forced to abide by the interests and well-being of others.⁵⁸ Self-interest should encourage the sense of justice and a certain measure of altruism. Even the difference principle, which will be discussed later, benefits everyone.

In connection with this type of consensualism let us add two further ideas: firstly, it has very little to do with the visionary theories of justice which motivated a number of large movements for social change and reforms; secondly, it seems that it does not take into account man's selfishness, sin and man's ability to distort justice into the weapon of the powerful and the defence of the set interests. Any theory of justice which – as Rawls would have wanted – is »the first virtue of social institutions, as truth is of systems of thought« (3) should be stable enough to be able to face actual conflicts of interests and opinions and visionary enough to be able to arouse personal enthusiasm willing to sacrifice and a challenge to personal interests.⁵⁹

⁵⁶ Daniel A. DOMBROWSKI, *Process Philosophy and Political Liberalism Rawls, Whitehead, Hartsmore*, 79–85.

⁵⁷ John RAWLS, *A Theory of Justice*, 80.

⁵⁸ *Ibid.*, 147–148.

⁵⁹ Paul WEITHMAN, *Rawls, Political Liberalism and Reasonable Faith*, 191–193.

The idea of the mutual consensus is meant as a means of establishing criteria in public discourses in a pluralistic society, endangered by becoming a Babylon of disagreements. Rawls' goal is a sort of »political Pentecost« where authentic communication and political dialogue about the social order could come to life. This goal is remarkable but we doubt that the mutual consensus, based on fear and self-interests, closing itself into immanentism, could actually exceed the Babylon and lead to the »new Pentecost«.

5. The difference principle and poor Lazarus

Rawls claims that out of the *original position* we perform three coordinated principles of justice. These are: the liberty principle, the fair equality of opportunity principle, and the third, which Rawls defines as the difference principle:

»Supposedly, given the rider in the second principle concerning open positions, and the principle of liberty generally, the greater expectations allowed to entrepreneurs encourages them to do things which raise the prospects of laboring class. Their better prospects act as incentives so that the economic process is more efficient, innovation proceeds at a faster pace.«.⁶⁰

»If we imagine a frame of institutions demanded by the liberty principle and the fair equality of opportunity principle, then the better situated have the right to greater expectations only on condition that they cooperate in a project which strives to better the position of the less privileged members of the society. Behind this principle there is an intuitive idea that the purpose of a social order is not to protect the expectations of the rich unless this benefits the poor.«.⁶¹

Caring for the less privileged, those in the worst possible position, which Rawls incorporates into his theory, is a true novelty amidst the liberal theories and the second key element of his theory (next to the *original position* which should secure fairness). Differences are allowed if they benefit the poor.

Where does the difference principle originate? It is not quite clear whether it originates from the *original position* whose members have no proper reason to protect the interests of the weaker members, the least of all at times when this would in any way limit the equality of liberty and the equality of opportunity of its other members. When reading Rawls' theory we take it for granted that the difference principle originates from the Judeo-Christian tra-

⁶⁰ John RAWLS, *A Theory of Justice*, 75.

⁶¹ *Ibid.*, 75.

dition⁶² and is now so firmly incorporated in the Western culture that we take it for granted either way. Rawls himself admits that the formation of »considered convictions« is influenced by diverse factors, including religious convictions. Although he rejects direct reference to metaphysical and religious convictions, he still considers them providing they are mutually accepted within a society.⁶³ »What justifies the justice principle is not its loyalty to order, either preceded or inherited, but the fact that it coincides with our deeper understanding of ourselves and our aspirations and that it seems, considering our history and traditions, rooted in public life, the most sensible teaching.«⁶⁴

According to some (for instance Wieslaw Lang) Rawls' difference principle reveals a deep conservatism of his theory and is only relevant to those social classes which are based on inequality. It contains a slightly reformist attitude within the acknowledgement of the existing order of things accepted as common good.⁶⁵ As far as we know Rawls has never been labelled as a revolutionary, but that does not diminish the meaning of his insistence upon protection and promotion of the interests of the weaker members of any society which considers itself fair.

Is the difference principle a secularized transcription of what we today call the option for the poor? Would it revenge poor Lazarus being laid at the gate of the rich man (ex. Lk 16: 19–30)? In all seriousness, the difference principle would be the foundation of the acknowledgement of Lazarus' interest. However, it would not, as we can deduce on the basis of Rawls' theory, encourage (make) the rich man to answer the emergency call of his neighbour unless this benefitted his own interests. Timothy Jackson was probably right when he said that »Rawls' contractualism systematically undermines moral motivation.«⁶⁶

6. What is the Christian understanding of Rawls?

Some Christian theologians, e.g. David Tracy, have welcomed Rawls' work with the argument that he introduces authentic public discourse on justice to

⁶² Just think of the option for the poor. See also THE HOLY SEE, Catechism of the Catholic Church, 1928–1942, 2425–2449, 2832 (11. IV. 2003), https://www.vatican.va/archive/ENG0015/_INDEX.HTM (Accessed 17. VIII. 2021).

⁶³ Paul WEITHMAN, *Rawls, Political Liberalism and Reasonable Faith*, 197–198.

⁶⁴ John RAWLS, *Kantian Constructivism in Moral Theory*, 519.

⁶⁵ Duncan B. FORRESTER, *Christian Justice and Public Policy*, Cambridge, UK, 1997, 130, n. 47.

⁶⁶ Timothy JACKSON, *To Bedlam and Part Way Back: John Rawls and Christian Justice*, in: *Faith and Philosophy* 8 (1991) 4, 433.

which theologians are invited as well.⁶⁷ Others have accepted Rawls' theory of justice as fairness as the only possible form which Christian understanding of justice occupies in the public sphere of the modern democratic pluralist state. Harlan Beckley has considered the possibility of coordinating Christian beliefs and ethics with the secularized understanding of justice. He has particularly stressed that the Christian concept of love is a confirmation of Rawls' position so that Christians and all others can find a common interest and strive for the same goal on Rawls' foundation. Beckley has considered Outka's rather dull description of Christian charity which he describes as »same care« in order to prove the vocation of Christians to acknowledging fairness as integrity.⁶⁸

If we examine this standpoint we come across a number of serious problems. Christian charity demands readiness to sacrifice one's own interests for the good of the other. Even Reinhold Niebuhr used to remind of the »meaning of the impossible ideal«, saying that the theory of justice which is not revived by charity can soon degenerate into less than justice.⁶⁹ Rawls himself taught that »the sense of justice goes hand in hand with the love of humankind«, explaining that the principles of justice should serve as guidelines of charity, particularly in situations when we are faced with many opposing requirements of charity.⁷⁰ In his theory, Rawls puts justice first, leaving charity as a bonus. If Jackson is right when claiming that Rawls' theory of justice cannot be understood in any different way than as an »immoral personal interest (of caution in its narrowest meaning)«⁷¹ then the division between any suitable theory of charity and Rawls' theory of justice is more than evident.⁷²

Rawls' theory comprises assumptions about man and human society which in many elements are founded on the Christian tradition and presented in a secularized form. On the other hand, Rawls' society does not have any history, it is linked by the common understanding of justice, more like a sort of commitment to common good. Rawls assumes that only rational moral beings can participate in making decisions in the *original position* and become responsible members of society.⁷³ In his work *Political Liberalism* Rawls confirms this

⁶⁷ David TRACY, *The Analogical Imagination*, New York, 1981, 9–10.

⁶⁸ Harlan BECKLEY, A Christian Affirmation of Rawls's Idea of Justice as Fairness: Part 1, in: *Journal of Religious Ethics* 13 (1985) 2, 210–242; Harlan BECKLEY, A Christian Affirmation of Rawls's Idea of Justice as Fairness: Part 2, in: *Journal of Religious Ethics* 14 (1986) 2, 229–246.

⁶⁹ Henry B. CLARK, Justice as Fairness and Christian Ethics, in: *Soundings* 56 (1973) 3, 365.

⁷⁰ John RAWLS, *A Theory of Justice*, 476.

⁷¹ Timothy JACKSON, To Bedlam and Part Way Back, 431.

⁷² Paul WEITHMAN, *Rawls, Political Liberalism and Reasonable Faith*, 213–214.

⁷³ John RAWLS, *A Theory of Justice*, 142–150.

standpoint: »I have always believed and will continue to do so that citizens do not have the same abilities but they do have at least the minimal amount of moral, intellectual and physical capabilities which allow them to fully live as participating members of society their entire life«. ⁷⁴

What about the senile, the intellectually disabled and the like? Are they still citizens or members of a certain society? What can we say about people who have learning disabilities or physical injuries? Do we still consider them citizens or members of our society who contribute their part and have every right to be treated as human beings and respectable members of society? It seems that Rawls does not know the way to judge the demand for equality and privileged handling of the senile, children, foreigners and people with learning disabilities, as, despite his difference principle, he cannot fully acknowledge them in the absence of metaphysics. This is why Gregory Jones decidedly claims that »Rawls' theory represents progressive subordination to a different vision of human personhood and political union from the one supported by the Christians ... It is contrary to the Christian understanding of what it means to be human and part of society«. ⁷⁵

»The theory of justice by John Rawls is decidedly based on the assumption that people compete with one another for the goods and resources and that the task of the moral theory is not to try and limit this competitiveness and replace it with mutual care and community, but simply to provide a frame to ensure that despite human greed the distribution of goods would be as fair as possible«. ⁷⁶ Grace Jantzen warns us that justice is more than just fair treatment within unchanged and basically unjust structures. A society in which the understanding of the basic principle of justice is limited only to fairness, in which justice is no longer an expression of love, is impoverished and inhumane.

⁷⁴ John RAWLS, *Political Liberalism*, 183.

⁷⁵ Gregory JONES, Should Christians Affirm Rawls' Justice as Fairness?, in: *The Journal of Religious Ethics* 16 (1988) 2, 258–259.

⁷⁶ Grace M. JANTZEN, Connection or Competition – Identity and Personhood in Feminist Ethics, in: *Studies in Christian Ethics* 5 (1992) 1, 12.

Sažetak

RAWLSOVA TEORIJA PRAVEDNOSTI KAO PRAVIČNOSTI: FILOZOFSKO-TEOLOŠKA INTERPRETACIJA

Anton JAMNIK

Teološka fakulteta, Univerza v Ljubljani
Poljanska c. 4, 1000 Ljubljana, Slovenija
anton.jamnik@teof.uni-lj.si

John Rawls jedan je od najvećih filozofa u području moralne teorije i predstavnik umjerenog liberalizma. Glavna ideja njegovog djela Teorija pravde, objavljenog 1971. godine, je pravednost kao pravičnost, odnosno uspostavljanje društva u kojem bi bila zajamčena socijalna sigurnost svakog pojedinca, s posebnim naglaskom na brigu o onima koji su manje privilegirani (socijalna načelo). Pri formiranju svoje moralne teorije mnogo se oslanja na Kanta, na tradiciju društvenog ugovora, a deontološki moral stavlja nasuprot utilitarnom (teleološkom). Činjenica da je u svoju teoriju uključio brojne vrline tipične za judeokršćansku tradiciju – pravičnost u odabiru načela pravednog društva, dostojanstvo svakog čovjeka, izvorni položaj koji znači idealan položaj (rajski vrt), socijalno načelo (siromašni Lazar), naglašavajući međusobni dogovor (Babilon ili Pedesetnica) – potaknulo je živu raspravu među teolozima. Odsutnost metafizike, činjenica da su ove vrline prisutne u Rawlsovoj liberalnoj teoriji u njihovom sekulariziranom obliku, ukazuje na određenu dvosmislenost ili čak proturječnost: s jedne strane to znači određeno pretraživanje unutar samog liberalizma (na neki način uplašenog od sebe), dok s druge strane liberalizam svojom metodom i polazištima poriče mogućnost prepoznavanja određenih vrlina i njihovih argumenata.

Ključne riječi: pravednost, liberalizam, vrlina, teologija, sekularizacija