# Pragmatic Elements of Rawls's Theory of Justice

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In this article, in order to demonstrate the pragmatic elements of Rawls's viewpoint, the developmental path of his A Theory of Justice shall first be investigated. This development has two phases: In the first phase, justice has an ethical-philosophical basis. In A Theory of Justice, this phase is specifically shown under the title of theory of justice. In the second phase, justice has no philosophical basis, but, as Rawls says, political justice is included. The main purpose of this article is to show the path of Rawls's theory of justice from an ethical viewpoint to a political one. Rawls, himself, points out this transition, but the main problem is how Rawls arrives at a pragmatic viewpoint. In Rawls's time, this viewpoint was brought to life by Richard Rorty in a particular way. Rawls is not interested in this viewpoint, but these elements indicate the above-mentioned transition. These elements are pluralism, society as a fair system of cooperation, public reason, and overlapping consensus. Although these elements are implied in A Theory of Justice and have Kantian basis, in his Political Liberalism, Rawls articulates these elements and eliminates metaphysical, religious, or any kind of doctrine from principles of justice and arrives at a practical viewpoint on justice.

**Keywords**: Rawls, political justice, Rorty, pragmatism, pluralism.

## Introduction

Rawls's theory of justice is one of the most important theories on justice, so much so that Thomas Nagel, one of the interpreters and analyzers of Rawls's thought, refers to him as the most important philosopher of the twentieth century (Nagel 1989, 10). Robert Nozick describes Rawls's *A Theory of Justice* as a powerful and deep writing in political thinking and also in the philosophy of ethics (Nozick 1971, 183).

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Considering the importance of Rawls's theory of justice, the main challenge of this article is to follow the path of its development and to identify the pragmatic elements of Rawls's thought. In order to do so, the main structure of this article would be as follows: First, we study the first phase of Rawls's theory of justice, which has an ethical and philosophical basis. The important element of this phase is "The original position." Then we discuss the second phase of Rawls's theory of justice in which the philosophical and ethical basis is put aside. The elements of this phase are pluralism, society as a fair system of cooperation, public reason, and overlapping consensus. Although the original position is also presented in the second phase of Rawls's theory, there is an important different between them. The original position in *A theory of justice* has a metaphysical base, but Rawls in his latest work, *Political liberalism*, has no commitment to any metaphysical doctrine.

The elements of the second phase of Rawls's theory of justice are indicative of Rawls's pragmatic point of view. To demonstrate this conclusion, we refer to Rorty's important viewpoint on "recognition," and we show how Rawls's point of view compares to Rorty's. The main point in his book *Consequences of pragmatism* is that a pragmatist theory "says that truth is not the sort thing one should expect to have a philosophically interesting theory about. For pragmatists, 'truth' is just the name of a property which all true statements share" (Rorty 1980, 8). Having put the "truth" to one side and having deduced the pragmatist view, Rorty proceeds to note the consequences of this theory.

## 1. The First Phase: Philosophical and Ethical Basis

Rawls's important theory about justice can be divided into two phases. The first phase takes shape in Rawls's book titled *A Theory of Justice*. In this book, the theory of justice has a philosophical and ethical foundation, which is specifically inspired by Kant. Rawls believes that the theory of justice as fairness offers the best ethical foundation for a democratic society.

To arrive at this ethical foundation, Rawls uses the conventional theory of social contract. Of course, his theory has major differences with the theory of social contract, as he does not seek to explain government.

> [W]e 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. (Rawls 1972, 11)

In this contract, those who engage in social cooperation choose to put together, simultaneously, the principles which assign basic rights and duties, and to determine the division of social benefits (Rawls 1972, 11).

For Rawls, social contract is a device of representation and also a mental evaluation. Social contract is a device, because, with that, one arrives at the principles of justice. It is also like a mental evaluation, because, accordingly, judgments shall be made according to wisdom (Rawls 1972, 19). Rawls calls this device "original position." To reevaluate ethical and philosophical fundamental views of Rawls, this condition must be further discussed.

## A. Original Position

To arrive at the principles of justice, Rawls uses a hypothetical situation with simulated parties. "It is understood as a purely hypothetical situation characterized so as to lead to a certain conception of justice" (Rawls 1972, 12). This situation, which is extensively described and discussed in *A Theory of justice*, shall be briefly presented here.

In the original position, all parties of the agreement are sound, rational, and have good intentions. These individuals are equals, and therefore everyone has equal judicial rights. They are in situations where they cannot make any personal decisions. In such a situation, Rawls speaks of a condition which he names the veil of ignorance.

> To represent the desired restrictions one imagines a situation in which everyone is deprived of this sort of information. One excludes the knowledge of those contingencies which sets men at odds and allows them to guide by their prejudices. In this manner the veil of ignorance is arrived at in a natural way. (Rawls 1972, 19)

Rawls seeks to establish a fair condition in which all agreed principles are just. "The idea of the original position is to set up a fair procedure so that any principles agreed to will be just" (Rawls 1972, 136). To accomplish this, all parties of the contract, in this hypothetical case, are assumed to be under a veil of ignorance and have no

knowledge of certain facts, such as their place in society, their class position or social status, their fortune in the distribution of natural assets and abilities, their conception of the good, or the particulars of their rational plan of life. They do not know their society's economic or political situation or its level of civilization. They have no information as to which generation they belong to. The parties must not know the contingencies that set them in opposition (Rawls 1972, 137). The only particular facts the parties know is that their society is subject to the circumstances' justice and whatever this implies. They know the general facts about human society. They are presumed to know whatever general facts affect the choice of the principles of justice (Rawls 1972, 37).

In this situation, the parties of the contract must select their best choice from a list offered to them and come to an agreement regarding the principles of justice. The list is comprehensively offered in chapter 3 of *A Theory of Justice*. According to Rawls, the principles of justice must meet the following criteria. First, the principles of justice should be general. "That is, it must be possible to formulate them without the use of what would be intuitively recognized as proper names, or rigged definite description" (Rawls 1972, 131). They must be universally inclusive of all individuals as ethical human beings. "Thus I assume that each can understand these principles and use them in his deliberation" (Rawls 1972, 132). They also must be public.

> The publicity condition is clearly implicit in Kant's doctrine of the categorical imperative in so far as it requires us to act in accordance with principles that one would be willing as a rational being to enact as law for a kingdom of ends. (Rawls 1972, p 133)

And they must be final. The parties must evaluate the system of the principles, just as the final court of appeal in practical reasoning (Rawls 1972, 131-36).

## B. Pure Procedural Justice

Rawls calls the procedure described under the original position as pure procedural justice. "Thus justice as fairness is able to use the idea of pure procedural justice from the beginning." (Rawls 1972, 120). This is the same procedure that has the Kantian description and analysis, which is "an interpretation of it in its use to select general principles" (Mason 2003, 1:360).

> The principles of justice are also analogous to categorical imperatives. For by a categorical imperative Kant understands a principle of conduct that applies to a person in virtue of his nature as a free and equal rational being. The validity of the principle does not presuppose that one has a particular desire or aim. (Mason 2003, 1:253)

Therefore, the original position can be considered as procedural description and analysis of what Kant conceived as autonomy and categorical imperative. "Kant held, I believe, that a person is acting autonomously when the principles of his action are chosen by him as the most adequate possible expression of his nature as a free and equal rational being… To be sure the argument for these principles does add in various ways to Kant's conception" (Rawls 1972, 252).

Rawls's method of arriving at the principles of justice in the first phase is influenced by Kant's ethical views. The important points which specifically show Kant's influence on Rawls, are deontology, autonomy, opposition to utilitarianism, and the priority of right over good. "We may note also that the motivation assumption of mutual disinterest accords with Kant's notion of autonomy, and gives another reason for this condition" (Rawls 1972, 253). All of these cases come under the spotlight in the original position, which, as described, provide just conditions for arriving at the principles of justice. Individuals in the original position are rational and very similar to Kant's rational being.

> [F]or that there must be such is self-evident from the common idea of duty and of moral laws. Everyone must admit that a law, if it is to be valid morally, i.e., as the ground of an obligation, has to carry absolute necessity with it; that the command 'You ought not to lie' is valid not merely for human beings, as though other rational beings did not have to heed it … and even a precept that is universal in a certain aspect, insofar as it is supported in the smallest part on empirical grounds, perhaps only as to its motive, can be called a practical rule, but never a moral law. (Kant 2002, 2)

Kant's deontology means that ethical goodness of a behavior is the result of its compliance with duty. This leads to a deontological attitude towards the principles of ethics. In his opinion, no action has ethical value unless it is motivated by duty. Rawls develops deontology as a

hypothesis in *A Theory of Justice* and maintains that the theory of justice as fairness is a deontological theory.[1]

Rawls provides for the individuals conditions in which they are unaware of their self-interests. Therefore, they cannot make any decision based on their personal interest. Under such conditions, utilitarian views are negated because they consider goodness and good intentions prior to righteousness.

While Rawls was writing his book, utilitarianism was dominating liberal justice, and he intended to "work out a theory of justice that represents an alternative to utilitarian thought generally and so to all of these different versions of it" (Rawls 1972, 22).

In contrast to the utilitarian point of view, Kant and Rawls believe that ethical principles are chosen rationally and not according to benefits; therefore, justice is prior to goodness. In Rawls's view, utilitarianism is the idea that there is nothing inherently unjust, there is no ethical principle that is inherently credible, and all of the ethical principles and judgments regarding the principles of justice depend on the existing conditions of the society; whereas in Rawls's opinion, every member of a society considers justice as undeniable so much so that even the overall wellbeing of a society cannot dominate it, and the loss of freedom for some cannot be justified by a larger sum of satisfactions (Rawls 1972, 24).

In the first phase of Rawls's theory of justice, philosophical ethics is clearly visible. In this phase, as mentioned earlier, the condition is dominant. "The conditions of the initial situation and the motivation of the parties are intended to set out the necessary premises to achieve this end" (Rawls 1972, 185). Without considering the philosophical basis influenced by Kant, one cannot talk about Rawls's theory of justice.

## 2. Second Phase of Rawls's Theory of Justice: Putting Aside Philosophical and Ethical Basis

Developing his theory of justice, in his *Political Liberalism*, Rawls speaks of certain concepts implied in *A Theory of Justice*, which end up in a political conception of justice. These concepts are pluralism,

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1. Rawls defines deontological theories as non-teleological theories, "not as views that characterize the rightness of institutions and acts independently from their consequences. All ethical doctrines worth our attention take consequences into account in judging rightness. One which did not would simply be irrational, crazy (Rawls 1972, 30).

society as a fair system of cooperation, public reason, constructivism, and overlapping consensus. They are the constitutive elements of Rawls's pragmatic viewpoint. "One thing I failed to say in *A Theory of Justice*, or failed to stress sufficiently, is that justice as fairness is intended as a political conception of justice" (Rawls 2000, 224). In *Political Liberalism*, the conception of justice is political and not metaphysical when it is neutral toward conflicting worldviews (Habermas 2003, 1:381).

Before discussing these concepts, it is necessary to mention that in his *Political Liberalism* and *Justice as Fairness*, Rawls considers the differences between society, community, and association. In Rawls's viewpoint, the democratic society is not, and is impossible to become, a kind of community. In his view, community is made of the sum of the parts, which everyone accepts as a comprehensive or nearly comprehensive doctrine. Similarly, political society is not a kind of association, because in an association the individuals share a purpose and final end. In contrast, all individuals in a society do not have a common purpose. In other words, a democratic society is a closed social order, which one enters by birth and leaves at death (Habermas 2003, 1:4). Rawls points out several important facts in this social order, which we will review briefly in the following section.

## A. Pluralism

In Rawls's view, pluralism is the persisting identity of democratic culture. He identifies this understanding as the first fact of a democratic society; it means that the multitude of religious, philosophical, and ethical teachings is not only a historical condition that may easily disappear but also a permanent feature of modern democratic societies. Along with the first fact, Rawls mentions another fact named oppression (Rawls 1996, 64). One can see this fact during the middle ages in the approval of Catholicism (Rawls 1996, 69).

The third fact is that a democratic order must be freely supported by a considerably large majority of citizens that are politically active. The democratic order must recognize the variety of views presented by the majority of politically active citizens; otherwise, such an order will not remain stable (Rawls 1996, 38). Another fact is that the political culture of a democratic society which has rationally performed well in a considerable period of time includes some fundamental ideas on the

basis of which one may form a political conception of justice that is appropriate for a constitutional order (Rawls 1996, 72).

> Political liberalism represents an advance in its attention to social group difference and in its theorizing of a pluralist solution to the political challenges posed by such difference. (Young 2003, 4:20)

The last fact shows Rawls's deviation from his philosophical and ethical foundations. In *A theory of Justice*, Rawls emphasizes that the existence of the original position is necessary for achieving the principles of justice, whereas in his *Political Liberalism* and thereafter, he emphasizes on the hidden ideas in a democratic society. The most important of these ideas is "society as a fair system of cooperation."

## B. Society as a Fair System of Cooperation

According to Rawls, the principles of justice determine the fair conditions of social cooperation. This is accompanied by two other ideas: the idea of citizens as free and equal individuals, and the idea of an orderly society which becomes orderly through a general understanding of justice. According to Rawls, these ideas are familiar to the democratic society and they mean that the citizens in such a society consider their order as neither a kind of natural fixed order nor a structural foundation that could be explained by religious teachings (Rawls 2000, 5).

## C. Public Reason

In *A Theory of Justice*, public reason is discussed as a public idea, such that it becomes an integral part of theory of justice as fairness. After *A Theory of Justice*, Rawls tries to find a common ground on which individuals are able to coexist despite their deep religious and ethical differences. Rawls believes that practical implementation of justice brings about the support of individuals in the society. Rawls uses public reason to distinguish it from private reason. In his opinion, the reason associated with churches, universities, and many other associations is not public. Therefore, in dictatorial societies, there is no public reason. Public reason is the reason of citizens. Its subject is public goodness—what the political essence of justice expects of the society's basic structures and of the goals the citizens must achieve (Rawls 1996, 99). "In particular, justice as fairness is framed to apply to what I have called the 'basic structure' of a modern constitutional democracy" (Rawls 2000, 224).

## D. Overlapping Consensus

Rawls thinks that citizens approve a uniform understanding of justice, but they do not do this for the sake of uniformity. As mentioned earlier, Rawls considers pluralism as one of the facts of democratic societies. Considering the fact that individuals in a society have different philosophical, ethical, and religious points of view, he emphasizes that there is no comprehensive doctrine according to which citizens would be able to agree on the fundamental problems of political justice. On the contrary, he thinks that political understanding of justice is approved by what he names overlapping consensus. And this is the final phase of his theory of social justice. In the first phase, Rawls seeks a philosophical and ethical doctrine with a Kantian viewpoint, but it is in the final phase that he concludes that when there is a multitude of doctrines, it is not possible to protect one of them by the power of government, and therefore the theory of justice is not universal (Rawls 2000, 138-40).

In *Political Liberalism*, the principles of justice that Rawls arrives at appear as the values of a specific independent political field. This is where Rawls sees it the duty of every citizen to demonstrate the relevance of his or her thought about political values (i.e. principles of justice) to his or her own values learned in the philosophical, religious, and ethical fields.

With an overlapping consensus on constitutional principles, groups can cooperate together in the same polity without any of them needing to abandon their own specific culture or commitments (Young 2003, 4:20).

The political values, in Rawls's point of view, are great values and one cannot easily overlook them. These values, including political and social freedom, equal opportunities, free economical trade, and so on come from the heart of a democratic society.

## 3. Rawls's Arriving at Rorty's Points of View

At the beginning of this part, we take a look at Rorty's views on epistemology. Rorty is a pragmatist philosopher, who criticizes philosophy and states his pragmatic viewpoints on knowledge and truth in his *Philosophy and the Mirror of Nature*, a book whose moral is "historicist, and the three parts into which it is divided are intended to put the notions of 'mind,' of 'knowledge,' and of 'philosophy,'

respectively, in historical perspective" (Rorty 1980, 10). He names his viewpoint on knowledge epistemological behaviorism. Knowledge, in his view, needs verbal communication and social action. In his *Philosophy and the Mirror of Nature*, Rorty investigates the views of philosophers on knowledge and truth to demonstrate his point of view on these two concepts.

In his historical investigation, he says, "Other problems concern the legitimation of claims to know, and are crystallized in questions concerning the 'foundations' of knowledge" (Rorty 1980, 3). He believes that all philosophers have searched for these foundations. He also presents different methods used by philosophers to arrive at these principles; and to show their mistakes, he discusses the discontinuity of knowledge in philosophical paradigms, and selective models of recognition (Rorty 1980, 3).

Rorty shapes his views under the influence of Thomas Kuhn. In the picture Rorty draws of the history of philosophy, the permanency of philosophical problems is considered as the philosopher's hallucination. Searching for the reasons, Rorty finds the mistakes in using the philosophical problems and concepts of one paradigm with the same meaning in another paradigm—while in his view, every philosophical problem is about its own paradigm and completely selective.

Rorty presents himself as a "therapeutic" philosopher, who thinks that the most fundamental philosophical problems must be put aside instead of being mentally solved. In the preface of his *Philosophy and the Mirror of Nature*, he attributes his therapeutic antecedent to people like Austin and Wittgenstein, but he believes that his curing methods are different from theirs in respect of his insistence on the historical origin of the problems. In Rorty's point of view, "philosophical problems" are not permanent; rather, the present philosophical problems are made up of a sum of concepts that are historically possible, and therefore optional. The outstanding concepts of philosophy are knowledge, representation, and truth. In Rorty's view, the outstanding superiority of analytical philosophy has been the criticism of those concepts. But, this criticism has resulted in the destruction of its most basic suppositions. Therefore, it has surpassed its limit and consequently has destroyed itself (Rorty 1980, 3-11).

Rorty offers a descriptive-historical explanation of the development of philosophy with the aim of destroying the confidence of the reader in three things: (1) "mind" as something about which one should have a "philosophical" view, (2) "Knowledge" as something about which there ought to be "theory" and which has a "foundation," and (3) "Philosophy" as it has been conceived since Kant's time (Rorty 1980, 7). Thus, it becomes clear that Rawls's theory of justice develops in a path that ultimately comes to Rorty's point of view.

By talking about pluralism and its effects, Rawls shows that the foundations of epistemology lose their meanings. In other words, if we want to arrive at principles of justice, we cannot start from a single starting point, whether philosophical or ethical. Otherwise, we arrive at the fact of suppression, in the sense that everyone must believe in a single principle, which is not acceptable in Rawls's opinion.

As was mentioned, Rawls in the second phase of his theory of justice explains the idea of society as an order of social cooperation. In the society that Rawls describes, he shows an order which, as Rorty says, is not a natural but a man-made order; that is to say, 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 individuals concerned about furthering their own interests would accept in an initial position of equality as defining the fundamental terms of their association. (Rawls 1972, 11). Rawls shows how this order is built by public reason and overlapping consensus. In this section, again, the emphasis is on the lack of any specific fundamental philosophy. The citizens of an orderly society have different points of view. In such a society, no special point of view is preferred and citizens accept the principles of justice for a variety of reasons. Thus, Rawls arrives at Rorty's viewpoint in the second phase.

## 4. Conclusion

The main purpose of this article was to show the pragmatic elements of Rawls's theory of justice. In order to do so, we first reviewed Rawls's *A Theory of Justice*. It was shown that the first phase of Rawls's theory of justice has ethical and philosophical foundations and is influenced by Kant. To arrive at the principles of justice, Rawls used a device called "preconditions," which made it possible for those who choose the principles of justice to have, at the same time, ethical and

philosophical fundamentals and thus make them available to all generations. In other words, the principles of justice in this phase had vast and universal applications.

In the second phase of his theory, Rawls keeps away from Kant's point of view. Here, he realizes that to make the principles of justice practical, he must eliminate the philosophical basis of justice. In his important book *Political Liberalism*, Rawls points out the reality of pluralism. He believes that pluralism is a reality that if we accept it, we cannot regard any viewpoint as absolute in the society. In other words, if we accept a universal and well-developed viewpoint and negate other viewpoints without considering that the plurality of views in the society is a fact, we arrive at the fact of suppression. Rawls had well understood this point, and this was the reason why in the second phase of the development of his theory he speaks of ideas that draw him to a pragmatic viewpoint on justice. These ideas include pluralism, society as a fair system of cooperation, public reason, and overlapping consensus. Each of these ideas shows the fact that there is no pre-established or pre-determined order. Whatever we want in order to arrive at justice in a society must be fitting to that society. In contrast to his intentions, this phase in the development of his theory comes close to a pragmatic point of view.

Rorty is a pragmatist philosopher. He states his views on knowledge and truth in his *Philosophy and the Mirror of Nature*. He reviews the history of knowledge in philosophy and shows that philosophical problems are not eternal and permanent; rather, they are completely selective. Each paradigm has its own special problems, so we cannot expect a fixed reality. This pragmatic view can be seen in the second phase of Rawls's justice, in which he searches for not an eternal and permanent order but a man-made one, different and completely selective during each period.

# References

Habermas, Jurgen. 2003. "Reconciliation through the Public Use of Reason." In *John Rawls*, *Critical Assessments of Leading Political Philosophy*, edited by Chandran Kukathas. London and New York: Routledge.

Kant, Immanuel. 2002. *Groundwork for the Metaphysics of Morals*. Edited and translated by Allen W. Wood. New Haven and London: Yale University Press.

Mason, H. E. 2003. "On the Kantian Interpretation of Rawls's Theory." In *John Rawls*, *Critical Assessments of Leading Political Philosophy*, edited by Chandran Kukathas. London and New York: Routledge.

Nozick, Robert. 1971. *Anarchy*, *State*, *and Utopia*. Oxford: Blackwell.

Nagel, Thomas. 1989. "Rawls on Justice." In *Reading Rawls*, edited by Norman Daniels. Stanford: Stanford University Press.

Rawls, John. 1972. *A Theory of Justice*. Cambridge: Harvard University Press.

———. 1996. *Political Liberalism*. New York: Colombia University Press.

———. 2000. *Justice as Fairness*. Cambridge, MA: Harvard University Press.

Rorty, Richard. 1980. *Philosophy and the Mirror of Nature*. Princeton: University of Princeton Press.

Young, Iris Marion. 2003. "Rawls Political Nature." In *John Rawls*, *Critical Assessments of Leading Political Philosophy*, edited by Chandran Kukathas. London and New York: Routledge.