

Rawls and Feminism

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Philosophy

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In his *Theory of Justice*, John Rawls uses what he calls “The Original Position” as a tool for defining the principles of justice in an ideal society. In this essay, I will present a brief description of the ideal person in Rawls’ Original Position, focusing on his conception of them as both rational and mutually disinterested. I will then show how this specific abstraction of the ideal person is insufficient for explaining human relations using Virginia Held’s examples of the non-contractual relationships between mothering persons and their dependents. I’ll also use Held’s description of the “economic man” to inform my argument that the rational, mutually disinterested man in the Original Position chooses principles of justice that focus primarily on distributive justice and are therefore not equipped to remedy the injustices that arise from unreasonable social expectations.

Because social contract theory has a history of leaving the questions of familial justice unanswered, by relegating them to the private sphere, Rawls’ defenders and even Rawls himself have conceded that the problems of “justice of the family, the equal justice of women and how these things are to be achieved” are particularly

difficult ones for liberalism.¹ In fact, it is not at all surprising that Rawls' Justice as Fairness focuses primarily on economic injustices and therefore does not have the capabilities to recognize and rectify the injustices caused by social hierarchies, specifically those within the family that often place unreasonable social expectations on women.

Abstraction

Because "abstraction" is a recurring theme in feminist critiques of Rawls and liberalism more generally, it is necessary to establish an operational definition for the sake of clarity. As Lisa Schwartzman points out, there is a distinction to be made between a critique of abstraction as simply the action of "selective omission of certain predicates" and a critique of the particular omissions made by specific liberal theories.² Because I recognize the pragmatic necessity of the former, my references to "abstraction" are references to the ways in which a supposedly "abstract ideal" reflects and reinforces existing hierarchies.

As mentioned, the first example I will use to demonstrate this potentially problematic abstraction is Rawls' assertion that parties in the Original Position are to be purely rational. In Section 25, he elaborates on this further explaining what he means when he talks about the rationality of the parties. He says of the rational persons here that "while they are permitted to know *that* they have some rational plan of

¹ Martha Nussbaum, "Rawls and Feminism," in *The Cambridge Companion to Rawls*, ed. Samuel Freeman (Cambridge, UK: Cambridge University Press, 2003). p. 488

² Schwartzman, Lisa H. *Challenging liberalism: feminism as political critique*. University Park, PA: Pennsylvania State University Press, 2006. p. 80-81

life, they do not know the details of this plan,”³ The purpose of this is to allow for principles of justice to be chosen that accommodate for a multiplicity of different *rational* conceptions of the good and plans of life. However, he also makes the assumption that in this Original Position, “it is rational for the parties to suppose that they do want a larger share [of primary social goods.]”⁴ This conception of rationality as the primary motivating factor for those in the Original Position is problematic because it overlooks very important factors that are not necessarily rational, like empathy for example. Arguably empathy should be just as relevant of a factor when considering the most just arrangement of society, because it often plays an important role in the decisions people make and the way they relate to one another. Rawls’ focus on pure rationality excludes this from appropriate consideration. This is important because so many of our most fundamental social relationships are *not* based on, or dependent upon pure rationality. Many of them like familial relationships, romantic relationships, and loving friendships are in fact based on empathy, mutual recognition and dependence, and love. A well-structured society should not only consider its members as rational autonomous agents, but also interdependent members of different communities. Rawls portrays rationality in a way that Held finds troubling, she says that “leading current conceptions of rationality begin with assumptions that human beings are independent, self-interested or mutually disinterested, individuals”.⁵ She’s highlighting that this conception of rationality is

³ Rawls, John. *A Theory of Justice*. Cambridge, MA: Belknap Press of Harvard University Press, 1997. p. 123

⁴ Ibid.

⁵ Held, Virginia. (1987) *Non-Contractual Society: A Feminist View*. In M.P. Hanen and K. Nielsen (eds.), *Science, Morality, and Feminist Theory* (Calgary: University of Calgary Press).

especially problematic because it has an implication that to engage in true rational deliberation, a person would only consider the outcomes for him or herself.

This idea of only being concerned about one's own ends is the second important abstraction he makes in his description of persons in the Original Position; they are mutually disinterested. He says, "The assumption of mutually disinterested rationality, then, comes to this: the persons in the Original Position try to acknowledge principles which advance their system of ends as far as possible...The parties do not seek to confer benefits or to impose injuries on another; they are not moved by affection or rancor."⁶ Now it's important to note here that he understands that this type of person is not a universal model of people in real life. He says "The motivation of persons in the Original Position must not be confused with the motivation of persons in everyday life who accept the principles of justice..."⁷ However, my concern here is with the implications of using this narrow conception of humans to decide on the basic structure of society.

Alternative Conceptions of Human Relations

Virginia Held articulates these concerns when she offers an alternative paradigm for considering human relations. She suggests that by considering the relationship between a mothering person and his/her child, it can be shown that structuring society around the concept of the rational, mutually disinterested "economic man", is problematic. She points to the involuntary and unequal aspects of these relations. First, the presumption of mutual autonomy does not apply here because the child is completely dependent on their caretaker and that caretaker is

⁶ Rawls, John. *A Theory of Justice*. Cambridge, MA: Belknap Press of Harvard University Press, 1997. p.125

⁷ Ibid. p. 128

obligated to interact with the child in certain ways to prevent it from starving or rapidly harming itself.⁸ Therefore non-interference or mutual disinterest in this case does not apply. She also highlights how considering all relationships as ones of equality does not make sense in the context of dependents and their caretakers. Of course, a child or a senile person should not have equality with their caretakers; they do not have the same level of self-sufficiency Rawls presumes all people have.

She says “If the dynamic relation between child and mothering person is taken as the primary social relation, then it is the model of ‘economic man’ that can be seen as deficient as a model for society...”⁹ I am not proposing that we consider the person in the Original Position to be a mothering person as an alternative, because that would create its own set of problems. Rather, I am suggesting that we use the contrast to understand how the economic man, as described in Rawls’ Original Position, established a primarily distributive conception of justice in a society and analyze the weaknesses in seeing justice in this way.

The Principles of Justice

To see the ways in which the principles chosen by the “economic men” of the Original Position construct a system that primarily focuses on economic inequalities, an explication of the two principles themselves is necessary. The first principle that Rawls claims will be agreed to by the parties in the Original Position is that “each person is to have an equal right to the most extensive scheme of equal basic liberties compatible

⁸ Held, Virginia. (1987) *Non-Contractual Society: A Feminist View*. In M.P. Hanen and K. Nielsen (eds.), *Science, Morality, and Feminist Theory* (Calgary: University of Calgary Press). p. 3

⁹ Held pg. 5

with a similar scheme of liberties for others.”¹⁰ This is a fairly universally accepted principle for a just society to agree to. The second principle recognizes and accepts that, upon implementation into the real world, there are necessarily going to be social and economic inequalities. He places two requirements on these inequalities that they must meet in order to be considered just. The first requires that they result from holding positions or offices that are open to all under conditions of fair equality of opportunity.¹¹ Meaning that every person who is “similarly endowed and motivated” should have equal access to positions whether or not they are rich or poor.¹² It is worth noting that there is a lot of ongoing dialogue about whether or not this type of fair equality of opportunity is even pragmatically possible when dealing with real world circumstances as opposed to ideal theory. Nevertheless, it is primarily the second part of this principle that is concerning. The difference principle asserts that whatever inequalities remain, must “be to the greatest benefit of the least-advantaged members of society.”¹³ This seems to work from a purely economic standpoint, if we allow huge wealth disparities that benefit the poorest too, it’s just. But this trickle-down approach does not work for issues of social justice. Take for example the just response to something like the gender pay gap; in 2015 Pew Research Center found that women earned only 83% of what men earned “of median hourly earnings of both full and part-time U.S.

¹⁰Rawls, John. *A Theory of Justice*. Cambridge, MA: Belknap Press of Harvard University Press, 1997. p. 53

¹¹Wenar, Leif, "John Rawls", *The Stanford Encyclopedia of Philosophy* (Spring 2017 Edition), Edward N. Zalta (ed.)
<<https://plato.stanford.edu/archives/spr2017/entries/rawls/>>.

¹² Rawls, John. *A Theory of Justice*. Cambridge, MA: Belknap Press of Harvard University Press, 1997

¹³ Ibid.

workers.”¹⁴ The statistics vary, of course, depending on field/ type of work, full/part-time status, and education levels, but generally women make 80 cents for every dollar men earn.¹⁵ Clearly fair equality of opportunity is being satisfied because the women who are getting paid less are already in their positions, so the only qualification for this inequality to be deemed fair is if it benefits the least well off, according to the difference principle. Benefiting the least well off, in this case, could be simply paying the people who happen to get paid less, 85 cents on the hour as opposed to 80. Yet this purely economic solution is not a just one at all because it does not solve or even address the problem of systemic sexism in the workplace and social norms that result in women getting paid less. It isn't just a random selection of people getting paid less, and it isn't the people who perform below average, it is women. Allowing for this injustice by claiming they are better off being paid slightly more when the injustice is a result of their gender still seems unjust. It is trying to provide social justice by compensating women for being born into a world in which men are privileged, which might only mean that women just get paid less less.

Including Recognition

In *Redistribution or Recognition*, Nancy Fraser highlights the contrasts between economic responses to injustices in the form of redistribution

¹⁴ Brown, Anna, and Eileen Patten. "The narrowing, but persistent, gender gap in pay." Pew Research Center. April 03, 2017. Accessed December 14, 2017. <http://www.pewresearch.org/fact-tank/2017/04/03/gender-pay-gap-facts/>.

¹⁵ Vasel, Kathryn. "5 things to know about the gender pay gap." CNNMoney. Accessed December 14, 2017. <http://money.cnn.com/2017/04/04/pf/equal-pay-day-gender-pay-gap/index.html>.

and other injustices that she claims requires recognition. At first, she challenges the common understanding of these paradigms as class and identity politics, respectively. She argues that both offer “a *distinctive perspective on social justice*,” and that neither has the ability to completely subsume the concerns of the other.¹⁶ Her goal is to synthesize these concepts that are usually presented as a dichotomy or thought of as mutually exclusive to “envision social arrangements that can redress both economic and status subordination.”¹⁷

She highlights how each of these two paradigms have different conceptions of injustice and therefore different remedies for addressing it. “The redistribution paradigm focuses on injustices it defines as socio-economic and presumes to be rooted in the economic structure of society.”¹⁸ As a result, the remedy for this type of injustice is very similar to the principles chosen by Rawls’ economic men, redistributing wealth or social goods to the extent that inequalities benefit the least well off.

But what about the injustices that the recognition paradigm is concerned with? These injustices are culturally embedded and much more difficult to remedy. A particularly troubling example is being stereotyped and having to deal with the social injustices that come from having a non-white sounding name or being a woman and having to deal with the social expectation that you will stay at home with the kids?

These types of injustices require more than a tax overhaul or a changing of basic economic structures; they require a cultural change. This kind of cultural change has to happen on a systemic level and

¹⁶ Fraser, Nancy, and Axel Honneth. *Redistribution or Recognition*. New York, NY: Verso, 2003. p. 12

¹⁷ *Ibid.* p. 94

¹⁸ *Ibid.* p. 13

requires the remedy for injustice that the recognition paradigm provides. This is, of course, a tall order for a government because cultural change is not something that can be easily enforced legislatively, however Fraser's commitment to both of these remedies might illuminate a solution. In the case of the gender pay gap, paying every person in the same job the same amount of money, despite possible differences in skills and abilities would not suffice either. However, recognizing that the disparity is caused by sexism and recognizing that sexism is fundamentally unjust, as opposed to simply attempting to pay them slightly more, is why Fraser's connection with recognition is important

The reason Rawls' theory does not have the capacity to provide the kind of remedy misrecognition requires is because it is fundamentally structured to offer redistributive solutions. This can be seen by the fact that he does not make any sort of distinction between the two types of injustices. "Rawls' negative thesis starts with the idea that citizens do not deserve to be born into a rich or a poor family, to be born naturally more or less gifted than others, to be born female or male, to be born a member of a particular racial group, and so on"¹⁹. Lisa Schwartzman highlights how "he frequently lumps together in his writing the 'distribution of natural talents' and the 'contingencies of social circumstance' without any suggestion that there may be important differences between them."²⁰

While he is correct in his assertion that it is morally arbitrary which specific subject position one is born into, Schwartzman is

¹⁹ Wenar, Leif, "John Rawls", *The Stanford Encyclopedia of Philosophy* (Spring 2017 Edition), Edward N. Zalta (ed.)

²⁰ Schwartzman, Lisa H. *Challenging liberalism: feminism as political critique*. University Park, PA: Pennsylvania State University Press, 2006. p. 70

challenging us to consider the systems and structures that maintain a society in which certain positions are privileged over others at all. She asserts that these structures of power are not “governed by luck or accident.”²¹ In fact “lumping the effects of socially generated hierarchies with the effects of natural endowment makes it seem as if these structures were not produced by social and political forces”²² This is a problem for Rawls because he does not account for the ways in which misrecognition is not a product of maldistribution. In these cases, the distributive paradigm fails to account for the injustice. The example I mentioned before is that of the social expectations placed on women, specifically that they be the caretaker or the mothering person. If they decide that their rational plan of life is to pursue a career outside the home, they might have economic equality of opportunity to do that, but they have to deal with the social expectations that come along with being a woman in the workplace. Instead of deconstructing these systems and challenging these cultural norms, Rawls’ theory ends up simply trying to compensate for those who happen to be born with the disadvantage of being a woman whose rational plan of life is to work outside the home. Even if this solution proves effective, feminists are unsatisfied because, as Schwartzman puts it, “Feminist change requires envisioning of some other alternative society- one where the institutions of the basic structure do not take gender oppression, or other forms of unjust hierarchy, as a given.”

Problems with the Distributive Paradigm

Rawls even provides his “conception of justice as providing in the first instance a standard whereby the distributive aspects of the basic structure of society are to be assessed,” he is explicitly concerned

²¹ Ibid.

²² Ibid.

primarily with a just distribution.²³ Iris Marion Young writes about her concerns with the distributive paradigm, in *Justice and the Politics of Difference*, and points out the problems with considering questions of justice solely or even primarily on the basis of distribution. She claims that Rawls, and many others in the liberal tradition, tend to focus only on the “inequality of wealth and income as the primary questions of social justice. They usually subsume the second set of questions, about the justice of the distribution of social positions, under the question of economic distribution, since “more desirable” positions usually correspond to those that yield a higher income or greater access to resources.”²⁴ This is not to say that questions of distribution are not important or relevant, in fact, they are a large part of what any theory of justice will do, but not at the expense of ignoring non-distributive social justice issues. Some examples that Young highlights include the “claim that the television industry is guilty of gross injustice in its depictions of Blacks,” the rallying of the “citizens in a rural Massachusetts town organize against a decision to cite a huge hazardous waste treatment plant in their own town.”²⁵ These are the types of things, that have and continue to be overlooked or ignored, even in the legislative phase, and they are concerns relevant to the basic structure of society. In her critique of the distributive paradigm Young says that “The general criticism I am making of the predominant focus on the distribution of wealth, income, and positions is that such a focus ignores and tends to obscure the institutional context within which those distributions take

²³ Rawls, John. *A Theory of Justice*. Cambridge, MA: Belknap Press of Harvard University Press, 1997.

²⁴ Young, Iris Marion. *Justice and the Politics of Difference*. Princeton, NJ: Princeton University Press, 1990.

²⁵ Young, Iris Marion. *Justice and the Politics of Difference*. Princeton, NJ: Princeton University Press, 1990.

place, which is often at least partly the cause of patterns of distribution of jobs or wealth.”²⁶

We have seen the way that the representatives in Rawls’ Original Position resemble the “economic man” described by Virginia Held and how this abstraction is simply not an accurate or comprehensive understanding of human relations. An analysis of the principles of justice shows that deciding on the basic structure of society from the subject position of this rational mutually disinterested “economic man,” one conceives of all injustices as able to be remedied through redistributive means. Young warns about the dangers of understanding nonmaterial social goods through the distributive paradigm. “When metaphorically extended to nonmaterial social goods, the concept of distribution represents them as though they were static things, instead of a function of social relation and processes.”²⁷ Indeed as we have seen the social injustices that arise from misrecognition are fundamentally different from those that are merely economic inequalities, and it is clear that simply widening the concept of distribution is not going to suffice.

Admittedly, some of the issues raised here and the problems highlighted do not have a simple solution. Many of them are especially difficult problems precisely because of the fact that they are problems that come from issues that we cannot legislate or enforce. However, if we avoid allowing the questions of redistribution to subsume the concerns of the questions of recognition, we might be able to create a slightly more just societal structure than what John Rawls suggests.

²⁶Rawls, John. *A Theory of Justice*. Cambridge, MA: Belknap Press of Harvard University Press, 1997. p. 21-22

²⁷ Young, Iris Marion. *Justice and the Politics of Difference*. Princeton, NJ: Princeton University Press, 1990.16

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