

Rawls' Theory of Justice II: study guide

Terms & Key Ideas in Rawls' Theory of Justice

Term	Definition
<i>Concept of Justice</i>	Justice is about treating like cases alike; no arbitrary distinctions should be made.
<i>Conception of Justice</i>	A characteristic set of principles for assigning basic rights and duties and for determining what they take to be the proper distribution of the benefits and burdens of social cooperation.
<i>Basic Structure of Society</i>	The institutions that define the various social positions that determine one's expectations in life. (This is the primary subject of justice).
<i>Primary Social Goods</i>	The things that every rational person, no matter their particular aims, is presumed to want. (Examples: rights, liberties, opportunities, income, wealth, self-respect)
<i>Institutions</i>	A public system of rules which defines offices and positions with their rights and duties, powers and immunities, and the like.
<i>Perfect Procedural Justice</i>	There is an independent criterion for what is a fair result, and a procedure that is sure to deliver that result.
<i>Imperfect Procedural Justice</i>	There is an independent criterion for what is a fair result, but there is no feasible procedure that is sure to deliver it.
<i>Pure Procedural Justice</i>	There is no independent criterion for what is a fair result; instead there is a fair procedure such that its outcome, whatever it happens to be, is thereby fair. (Rawls thinks the agreement made in the Original Position, behind the Veil of Ignorance, is one such procedure).

The Two Principles of Justice

JUSTICE AS FAIRNESS

1. **Equal Rights:** Each person is to be granted an equal right to the most extensive basic liberty compatible with a similar liberty for everyone else.
2. **Social Inequality:** Social and economic inequalities are to be arranged so that they are ...
 - (a) ... attached to positions and offices open to all under conditions of fair equality of opportunity (*Equal Opportunity*);
 - (b) ... to the greatest expected benefit of the least advantaged (*The Difference Principle*).

1. > 2.
 - 2.(a) > 2.(b)
- (Where '>' means *lexically prior*)

These principles express an *egalitarian conception of justice*. And the Difference Principle captures what seems right about the following principles:

1. **The Principle of Redress:** undeserved inequalities call for redress.
2. **The Principle of Reciprocity:** principle of mutual benefit.
3. **The Principle of Fraternity:** there's an equality of social esteem.

"The difference principle represents ... an agreement to regard the distribution of *natural talents* as in some respects a *common asset* and to share in the greater social and economic benefits made possible by the complementarities of this distribution." [87]

Examples of **Equal Basic Liberties**: Political liberty (right to vote, right to hold public office); Freedom of Speech & Assembly; Liberty of Conscience & Freedom of Thought; Freedom of Person; Right to Property; Freedom from Arbitrary Arrest and Seizure; ...

How To Understand the Second Principle of Justice

INTERPRETATIONS OF THE SECOND PRINCIPLE

"Equally Open"	"Everyone's Advantage"	
	<i>Principle of Efficiency</i>	<i>Difference Principle</i>
<i>Careers Open to All Talents</i>	System of Natural Liberty	Natural Aristocracy
<i>Fair Opportunity</i>	Liberal Equality	Democratic Equality

Liberal Equality & Natural Aristocracy are *unstable*:

- o If one's life chances shouldn't be determined by social circumstance beyond one's control, then, because how one fairs in the natural lottery is also beyond one's control, one's life chances shouldn't be determined by their natural assets either.
- o If one's life chances shouldn't be determined by how one faired in the natural lottery, then, because one's social circumstances are also morally arbitrary, one's life chances shouldn't be determined by social circumstance.

If *Fair Opportunity* > *Careers Open to All Talents*, then *Difference Principle* > *Principle of Efficiency*.

If *Difference Principle* > *Principle of Efficiency*, then *Fair Opportunity* > *Careers Open to All Talents*.

The Argument From the Original Position

The Original Position is hypothetical bargaining situation in which we are tasked with picking the principle of justice that will guide us in setting up the basic structure of society. It has the following features:

- **Constraints on the Principles up for Consideration.** We will only consider principles that have the following formal features:
 1. *Generality.* "[I]t must be possible to formulate them without the use of what would be intuitively recognized as proper names, or rigged definite descriptions." [113]
 2. *Universality.* "They must hold for everyone in virtue of their being moral persons." [114]
 3. *Publicity.* "The parties assume that they are choosing principles for a public conception of justice. They suppose that everyone will know about these principles all that he would know if their acceptance were the result of an agreement." [115]
 4. *Ordering.* Because the principles of justice should offer guidance in adjudicating between competing demands, the principle must impose an ordering on conflicting claims.
 5. *Finality.* "The Parties are to assess the system of principles as the final court of appeal in practical reasoning."

We are deciding only between a set of principles, general in form and universal in application, that is to be publicly recognized as a final court of appeal for ordering the conflicting claims of moral persons. [117]
- **The Veil of Ignorance.** We are behind a veil of ignorance, so no one knows: . . .
 1. One's place in society, one's class position, or one's social status;
 2. One's fortune in the distribution of natural assets and abilities (e.g., intelligence, strength, agility);
 3. One's conception of the good (e.g., the particulars of his rational plan of life).
 4. Anything about the special features of one's psychology (e.g., one's aversion to risk, whether one is an optimist or a pessimist).
 5. The particular circumstances of their own society (e.g., its economic or political situation, the level of civilization and culture).

Throughout the course of the book, Rawls ends up making some additional assumptions about the veil of ignorance and rationality. In particular, he says . . .

- "I have assumed that the parties regard themselves as having certain fundamental interests that they must protect if they can; and that, as free persons, they have a **highest-order interest in maintaining their liberty to revise and alter these ends** (§26). The parties are, so to speak, persons with determinate interests rather than bare potentialities for all possible interests, even though the specific character of these interests is unknown to them." [158-9]
- "They have . . . **no objective grounds for relying on one probability distribution rather than another**, and the Principle of Insufficient Reason cannot be invoked as a way around this limitation." [159]

The first assumption helps Rawls secure the priority of his first principle over his second. The second assumption is part of the justification for using the MaxiMin rule in deciding on the principles of justice in the Original Position.

What *is* known behind the Veil of Ignorance: society is subject to the circumstances of justice and general facts about human society (economics, political science, psychology, etc.)

- **Rationality.** All parties in the Original Position are assumed to ...
 1. ... prefer more primary social goods to less;
 2. ... be instrumentally rational (i.e., "taking effective means to ends with unified expectations and objective interpretation of probability");
 3. ... not suffer from "envy" ("He is not downcast by the knowledge or perception that others have a larger index of primary social goods.");
 4. ... be mutually disinterested*;
 5. ... be capable of a sense of justice (and this is public knowledge among them);
 6. ... only make agreements they know they can follow through on.
- **Agreement Condition.** We must settle on the principles of justice by coming to a *unanimous* agreement.

*The Assumption of **Mutually Disinterested Rationality**: "the persons in the original position try to acknowledge principles which advance their system of ends as far as possible. They do this by attempting to win for themselves the highest index of primary social goods, since this enables them to promote their conception of the good most effectively whatever it turns out to be." [125]

Claim 1: Rawls thinks that those principles that we would all agree to in the Original Position are guaranteed to be just.

Claim 2: Rawls thinks that *his* two principles of justice are the ones that we would all agree to in the Original Position.

Defending Claim 1: what's so special about the original position?

"The idea of the original position is to set up a fair procedure so that any principles agreed to will be just. The aim is to use the notion of *pure procedural justice* as a basis of theory." [118]

- ***Hypothetical Social Contract.*** If you and I agree to the terms of a contract, we thereby have reasons to uphold those terms and our compliance with them is voluntary. The principles agreed to in the the original position are the terms of the social contract that we *would* agree to as free and equal persons under conditions that are fair.

[A] society satisfying the principles of justice as fairness comes as close as a society can to being a **voluntary scheme**, for it meets the

principles which free and equal persons would assent to under circumstances that are fair. [12]

Here's the idea. Call the principles that would be agreed to in the original position *P*, and suppose that our social institutions satisfy principles *P*. It's not the case that we all, as a matter of fact, *actually* agreed to *P* — "[n]o society can, of course, be a scheme of cooperation which men enter voluntarily in a literal sense;" [12] — but it *is* true that we are cooperating on terms which we all *would* agree to *if* we were **free and equal persons** whose relations with respect to one another were **fair**.

- **No Irrelevant Factors.** Why think that the principles agreed to in the original position are what free and equal persons under conditions that are fair would assent to? Because of the Veil of Ignorance:

Coming to an agreement behind the Veil of Ignorance "ensures that no one is advantaged or disadvantaged in the choice of principles by the outcome of natural chance or the contingency of social circumstances. Since all are similarly situated and no one is able to design principles to favor his particular condition, the principles of justice are the result of a **fair agreement or bargain**." [11]

The principles agreed to in the original position are fair because the conditions under which they are agreed to are fair. The conditions are fair because the Veil of Ignorance "excludes the knowledge of those contingencies which sets men at odds and allows them to be guided by their prejudices." [17]

A Special Feature of the Original Position: If principle *P* is unanimously agreed to in the Original Position, a society organized in accordance with principle *P* will be one all reasonable people will find acceptable.

Defending Claim 2: why would Rawls' principles be agreed to in the original position?

Why would we agree to Rawls' two principles? Here's the rough idea:

1. **Step 1: egalitarianism.** In the original position, no one is able to win any special advantages. Also, no one has any reason to accept special disadvantages. This is obvious to everyone in the original position, so "the parties start with a principle requiring equal basic liberties for all, as well as fair equality of opportunity and equal division of income and wealth." [130]

Do you have to abide by the terms of principle *P*? You didn't *actually* agree to them! You never, for example, actually signed some actual contract saying you would.

But, Rawls thinks, if you *would* agree to the terms of principle *P* in the original position, then you are committed to abide by the terms.

But why?

Answer: "The answer is that the conditions embodied in the description of the original position are ones that we in fact accept. . . . Each aspect of the contractual situation can be given supporting grounds. Thus what we shall do is to collect together into one conception a number of conditions on principles that we are ready upon due consideration to recognize as reasonable. These constraints express what we are prepared to regard as limits on fair terms of social cooperation." [19]

2. **Step 2: allowing inequalities.** If there are inequalities in income and wealth (and differences in authority/degrees of responsibility) that work to make everyone better off than they would be were things distributed equally, these inequalities would be acceptable to everyone.

"Thus the basic structure should allow these inequalities so long as these improve everyone's situation, including that the of least advantaged, provided that they are consistent with equal liberty and fair opportunity." [131]

Why Equal Liberty & Why is it Given Priority?

Rawls' view of justice involves understanding his first principle as being *lexically prior* to the second. Rawls offers a brief argument for why parties in the Original Position would give priority to the first principle over the second.

1. The parties in the Original Position "regard themselves as having a highest-order interest in how all their other interests . . . are shaped and regulated by social institutions."
2. The parties view themselves as *free persons*: "beings who can revise and alter their final ends."
3. They recognize that certain basic liberties are necessary for pursuing their ends, whatever they happen to be, and for protecting their ability to revise and alter these ends.

Because they must secure these ends (and leave open the possibility of changing their ends), and they realize that the first principle guarantees the protection of the basic liberties necessary for doing this, they will rank the first principle prior to the second. [131]

Justice as Fairness & MaxiMin

Rawls says that we can "think of the two principles as *the maximin solution* to the problem of social justice."

In other words, Rawls thinks that *if* we were to use the MaxiMin Rule in choosing the principles of justice in the Original Position, we would choose his two principles.

DECISION IN THE ORIGINAL POSITION			
	Person X	Person Y	Person Z
Society A	10	10	10
Society B	12	13	14
Society C	11	13	25
Society D	2	9	100

MaxiMin Rule: rank each alternative in terms of its worst possible outcome; select the alternative whose worst possible outcome is superior to the worst possible outcomes of all the other alternatives.

According to the *MaxiMin Rule*, we should select **Society B**.

Furthermore, Rawls thinks that mutually disinterested rational people behind the Veil of Ignorance would, insofar as they are rational, use the MaxiMin rule when selecting the principles of justice.

Rawls *doesn't* think that the MaxiMin rule is *in general* a good rule for making decisions under uncertainty. Rather, he thinks that special features of the Original Position justify using the MaxiMin rule in this case.

CONDITIONS IN WHICH IT'S REASONABLE TO MAXIMIN

- Insecure Probability Information:** "the situation is one in which a knowledge of likelihoods is impossible, or at best extremely insecure." [134]
- Sharply Decreasing Marginal Utility:** "the person choosing has a conception of the good such that he cares very little, if anything, for what he might gain above the minimum stipend that he can, in fact, be sure of by following the maximin rule." [134]
- Unacceptable Outcomes:** "[T]he rejected alternatives have outcomes that one can hardly accept." [134]

Rawls argues that the nature of the decision in the Original Position has these three features — and, so, it's a choice situation in which using the MaxiMin rule is appropriate:

- "To begin with, **the veil of ignorance excludes all knowledge of likelihoods**. The parties have no basis for determining the probable nature of their society, or their place in it. Thus **they have no basis for probability calculations**. . . . Not only are they unable to conjecture the likelihoods of the various possible circumstances, they cannot say much about what the possible circumstances are, much less enumerate them and foresee the outcome of each alternative available." [134-5]

Why isn't the MaxiMin rule a good rule for making decision under uncertainty. Consider the following example (for any $n \in \mathbb{N}$):

	S ₁	S ₂
A	0	n
B	$\frac{1}{n}$	1

No matter the value of n , the MaxiMin rule will always recommend alternative B. However, for suitably large values of n , (unless you know for certain that S₁ obtains) it looks like A is the better choice.

Note: according to Rawls, the problem isn't *merely* that you have no idea of your place in society (and no objective grounds for assigning probabilities to the various possibilities); in addition, your radical ignorance means that you cannot even entertain what all of the different possibilities would be in a way that would allow you to assign probabilities in a non-*ad hoc* and arbitrary way.

2. "[I]f we can maintain that these principles provide a workable theory of social justice, and that they are compatible with reasonable demands of efficiency, then this conception guarantees a satisfactory minimum." [135]
 - In a society governed by a conception of justice that is **stable**, the least well off are doing well enough that, when deciding in the Original Position, one would care little for what one might gain above this minimum.
3. "[T]he third feature holds if we can assume that other conceptions of justice may lead to institutions that the parties would find intolerable." [135]
 - Conceptions of justice that allow some to be sacrificed for the good of others will have possible outcomes that are unacceptable. A conception of justice that is **stable** guarantee that, no matter where in society one ends up, the outcome will be acceptable.

Rawls thinks that the choice-situation in the Original Position has features 2 & 3, in part, because JUSTICE AS FAIRNESS is *stable*:

A conception of justice is **stable** when the public recognition of its realizations by the social system tends to bring about the corresponding sense of justice. [153]

Rawls' society is stable because "each person's basic liberties are secured and there is a sense defined by the difference principle in which everyone is benefited by social cooperation." [153] Other conceptions of justice, however, are not guaranteed to be stable in this way.

Constraints of Agreement: "[F]or an agreement to be valid, the parties must be able to honor it under all relevant and foreseeable circumstances. There must be a rational assurance that one can carry through." [152]

Publicity: "When the basic structure of society is *publicly known to satisfy its principles* for an extended period of time, those subject to these arrangements tend to develop a desire to act in accordance with these principles and to do their part in institutions which exemplify them." [153]

Self-Respect: "[T]he sense that one's plan is worth carrying out." [154]

Rawls' JUSTICE AS FAIRNESS conception is stable because:

1. *Constraints of Agreement:* the parties in the Original Position will be able to honor their choice of Rawls' principles no matter how things turn out.
2. *Publicity:* "it generates its own support." Everyone will "acquire inclinations to uphold the scheme."
3. *Self-Respect:* it upholds and affirms everyone's self-respect, and publicly expresses everyone's respect for each other.

Other conceptions of justice — notably, Utilitarianism — are not stable in this way, so says Rawls.

Why Not Utilitarianism?

Rawls points out that — setting aside the problem of interpersonal comparisons of utility — if the parties in the Original Position (i) are risk-neutral, (ii) use the Principle of Insufficient Reason to assign subjective probabilities, and (iii) choose the conception of justice that would maximize expected utility, the parties would unanimously agree on *the Principle of Average Utility*: the basic institutions of society are to be arranged so as to maximize average utility (per capita).

PROBLEMS WITH THE PRINCIPLE OF AVERAGE UTILITY

1. **No Objective Probabilities.** There are no objective grounds to justify assigning one probability distribution over another.
2. **Too Important to Gamble with Subjective Probabilities.** Even if there are no objective grounds for assigning one probability distribution over another, one can appeal to the Principle of Insufficient Reason ("When we have no evidence at all, the possible cases are stipulated to be equally probable." [146]). But the parties should "discount likelihoods arrived at solely on the basis of this principle." So, given the importance of the decision, we should be reluctant to take the risk of maximizing expected utility.
3. **Utilities are Not Appropriate.** In order for expected utility to have meaning, there must be a neutral perspective from which to evaluate all goods ("... everyone thinks of themselves as having the same deep utility function"), but that "assumes that the parties have no definite character or will, that they are not persons with determinate final interests, or a particular conception of their good, that they are concerned to protect." (151)

And so, for these reasons, *expected utility* is not well-defined in the decision problem in the Original Position.

Nozick's Objections to Rawls

Nozick disagrees with Rawls' account of justice — as well as Rawls' way of conceiving of the problem — for several reasons, some more serious than others.

1. Social Cooperation.

Rawls says that the problem of distributive justice is to determine how the benefits of social cooperation are to be allocated. Let S_i be the payoff (income, wealth, etc.) that person i would receive were she to live solely by her own efforts.

$$S = \sum_{i=1}^n S_i$$

Suppose that by cooperating together, we can generate a sum total $T > S$. Nozick asks the following question:

- Is the problem of distributive justice *how is the total T to be allocated?*
- Or, is the problem of distributive justice *how are the benefits of social cooperation $T - S$ to be allocated?*

Nozick accuses Rawls of answering the former question when, according to Nozick, he should be addressing the latter question.

2. Terms of Cooperation and the Difference Principle.

Rawls argues that his principles "seem to be a fair agreement on the basis of which those better endowed or more fortunate in their social position . . . could expect the willing cooperation of others when some workable scheme is a necessary condition of the welfare of all."

That's all well & good, thinks Nozick, "... But is this a fair agreement on the basis of which those *worse* endowed could expect the *willing* cooperation of others?"

Nozick thinks this question is particularly pressing because he thinks it's plausible to assume that **the less well endowed gain more than the better endowed do from the scheme of general cooperation**. And so he is suspicious "of imposing, in the name of fairness, constraints upon voluntary social cooperation (and the set of holdings that arises from it) so that those already benefiting most from this general cooperation benefit even more!" [195]

Here's what Nozick has in mind.

Let b be the better endowed individual and let l be the less well endowed individual. Let S_i be the payoff that person i would receive were i to live solely by her own efforts. Suppose by cooperating together, person b and l can generate a sum total of T . Because b is better endowed relative to l , we can assume that $S_b > S_l$. And so . . .

$$T - S_l > T - S_b$$

Which is to say: person l is benefiting *more* from social cooperation with person b than person b is benefiting from the cooperation with person l .

So a society in which the benefits of social cooperation are distributed in accordance with the Difference Principle is one that "rewards" person l twice over.

And so person b would have ground for complaint.

3. The Original Position & End-Result Principles.

Nozick argues that Rawls' Original Position — by imposing a Veil of Ignorance that deletes any and all information about one's identity and personal history — *guarantees that end-state principles of justice will be taken as fundamental.*

[N]o historical principle, it seems, could be agreed to in the first instance by the participants in Rawls' original position. For people meeting together behind a veil of ignorance to decide who gets what, knowing nothing about any special entitlements people may have, will treat anything to be distributed as manna from heaven. [199]

Because the Original Position is set up to guarantee that only an end-state principle will be chosen, we should be suspicious that what would be agreed to in such a situation is thereby just.

4. Natural Assets and Arbitrariness.

Nozick disagrees with Rawls about the "natural lottery": the distribution of natural abilities might be morally arbitrary, but people are entitled to their natural assets nonetheless.

Nozick thinks that "*morally arbitrary*" is ambiguous:

- (a) There is no moral reason why the fact ought to be that way.
- (b) The fact's being that way is of no moral significance and has no moral consequences.

NOZICK'S "ACCEPTABLE" ARGUMENT G

P1 People are entitled to their natural assets.

P2 If people are entitled to something, they are entitled to whatever flows from it (via specified types of processes).

P3 People's holdings flow from their natural assets.

C People are entitled to their holdings.

Nozick *agrees* that natural assets are morally arbitrary in this first sense. But he disagrees that one's natural assets are morally arbitrary in the second sense: one's natural assets *do* have moral significance because they play a role in justifying why one is entitled to one's holdings.

"Whether or not people's natural assets are arbitrary from a moral point of view, they are entitled to them, and to what flows from them." [226]