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# An Explanation of John Rawls's Theory of Justice with a Defense of the Veil of Ignorance

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Claremont McKenna College

**An Explanation of John Rawls's Theory of Justice with a Defense of the Veil of Ignorance**

submitted to  
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and  
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## Abstract

John Rawls was a political philosopher who proposed a theory centered around the idea of justice as fairness. His primary concern was social justice, so more specifically, he proposed a basic structure for society that ensures major social institutions like the government fairly distribute fundamental rights and duties and optimally divide advantages brought about by social cooperation. His theory is based on the idea that the correct principles to use for the basic structure of society are those that free and rational people would agree to in attempt to advance their own self-interest from a fair and equal starting position. Rawls proposes three principles that he believes people would agree to in this situation and describes what a society based on these principles would look like. Throughout this paper, I will attempt to explain Rawls's "Theory of Justice" and defend various aspect of the theory against common objections.



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## Chapter I: Introduction to Political Theory and Rawls

### Background Information on Political Theories

A political theory is a set of principles that tells the government how to best and fairly manage society. Political theories are meant to help the government make decisions about policies—things like taxes, welfare programs, and laws. Therefore, anyone who is a member of society should care about political theories because the policies that one must abide by are dependent on them.

Political theories are created by identifying basic moral principles and developing these principles into a framework that can be used to make decisions about specific political issues such as the legality of abortions or implementation of welfare programs. This might be hard to picture, so here is a simplified example to help clarify: “the government should do whatever makes the most people happy.”<sup>1</sup> This political theory would suggest the government should legalize abortion if it is the option that makes the most people happy. Please note that while political theories influence policies that directly affect individuals, they are not meant to be applied to individuals. Rather, they are meant for big institutions. To clarify, the theory I mentioned above states the *government* should do whatever makes the most people happy, not that *you* should do whatever makes the most people happy.<sup>2</sup> This distinction is an important one, but easy to forget. Please try to keep it in mind while reading this essay.

Political theories are necessary because while most of us agree that the government should do what is right or fair, it is often hard to determine what exactly the right or fair action is. For example, is it fair to legalize gay marriage? While the correct answer might seem obvious to

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<sup>1</sup> Alex Rajczi, “Rawls Reader,” Collection of Alex Rajczi, Claremont McKenna College, p. 4

<sup>2</sup> (Rawls) Section 2

you, whichever side you land on, there are plenty of people who would argue and truly believe the opposite is true. Because the government creates laws for everybody, it needs a way to determine which beliefs and preferences take precedent when there is a direct conflict. While a political theory could tell the government how to handle this question, one does not simply want *any* answer, but the *right* or *fair* answer. We therefore don't want any old political theory, but the right one.

### **Considered Judgements and the Process of Political Theorizing**

In determining how to handle policies where there is disagreement, one can first turn to policies that people agree on. While many of us have differing views on specific moral beliefs (abortion, gay marriage, etc.), there are certain moral principles that almost all of us agree on. These beliefs are called “considered judgements.” More specifically, they are widely-held political beliefs that almost all of us agree on and that we feel most confident in. Rawls describes considered judgements as “those judgements in which our moral capacities are most likely to be displayed without distortion.”<sup>3</sup> For example, the idea that all people have a right to freedom of speech is a considered judgement because a majority of people believe it and are confident that it is true. The hope is that if we start with the policies that the majority of society agrees on, we can use those beliefs to make fair decisions about the policies that society disagrees on or is unsure about. A political theorist then takes these considered judgements and attempts to find a political theory that best fits them.<sup>4</sup>

The process of political theorizing might be hard to conceptualize, so I will provide an example. Suppose you live in a state that has banned the consumption of refined sugar because it

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<sup>3</sup> (Rawls) p. 42

<sup>4</sup> (Rajczi) p. 4

is one of the leading causes of obesity. You understand that the government is trying to help people by preventing them from getting a life threatening disease, but you're not sure if this is a fair law or not. You look to a political theory to help determine the answer.

You start from a premise that most people agree on. For example, you believe and recognize that most people agree it is wrong for the government to ban people from practicing a certain religion. However, you and most people also believe that it is okay for the government to prevent religious groups from sacrificing other people. You ask yourself what the difference is between these laws that makes one fair and the other unfair. You realize in the case of people practicing religion, that practice does not pose an imminent threat to someone else's life. However, sacrificial practices involve hurting other people. You conclude that your political theory is "the government should interfere only to stop people from hurting other people." (This principle is much too simple and only for the sake of the example.) This theory would lead us to the conclusion that the government should not ban sugar, because while it is not good for you to consume it, you do not hurt other people by doing so.

One problem you might find while engaging in political theorizing is that upon consideration, you realize some of your opinions on certain topics don't coincide. In other words, when you try to sum up your beliefs into a political theory, you find that your opinions on specific issues contradict each other at a more basic level. For example, perhaps you agree that the government should ban children under the age of 18 from buying cigarettes because cigarettes cause lung cancer. However, you don't think the government should ban children under the age of 18 from buying refined sugar. According to the American Cancer Society, 158,080 people will die in 2016 due to lung cancer. Scientific studies link cigarette smoking to lung cancer, so you develop a political theory that involves the government banning minors from

buying things that increase their chances of developing a deadly disease. However, according to the National Institutes of Health, 300,000 people will die in 2016 due to obesity. Scientific studies link refined sugar to obesity. Therefore, you can't believe that the government should ban minors from buying things that increase their chances of developing a deadly disease and also believe the government should not ban minors from buying refined sugar. Those beliefs are logically inconsistent. In other words, it's impossible to believe all of them are true at the same time.

To solve this dilemma, you must come up with a different theory that explains why the government should ban minors from buying cigarettes, but not refined sugar, or concede to the idea that it is not fair for the government to ban minors from buying one, but not the other. For the sake of the example, assume the latter. If your belief that the government should ban minors from buying cigarettes is stronger, perhaps you admit that it is fair for the government to ban minors from buying refined sugar as well. If your belief that the government should not ban refined sugar is stronger, perhaps you claim the government should not ban cigarettes either. The point is either you don't believe the government should ban minors from buying all things that increase their chances of developing a deadly disease or one of your applied moral beliefs was incorrect.

### **Reflective Equilibrium**

Given the example above, perhaps you are now worried that some of your considered judgements are wrong. After all, for years, many Americans believed and felt confident that laws requiring different treatment for people with different color skin was morally acceptable. In fact, one might claim that is was (way back when) a considered judgement. Rawls explains that while

an important process of political theorizing is creating a theory that best fits with all our considered judgements and refining that theory to account for as many considered judgements possible, there could also be times when a political theory that accounts for many considered judgements contradicts another, more basic considered judgement. In these times, it might be appropriate to throw out the contradictory considered judgement, as many Americans did when they realized it was not in fact morally acceptable to treat people differently based on the color of their skin. Rawls calls this careful process of attempting to refine a political theory based on considered judgements and occasionally refining our considered judgements based on our political theory “reflective equilibrium.”<sup>5</sup> According to Rawls, we must constantly work back and forth between political theory and considered judgements and tweak each accordingly to arrive at a logically consistent argument.

Perhaps you are now wondering why we should trust any considered judgements at all. After all, just because something is logically consistent does not necessarily mean that it is correct or even moral. One of the reasons Rawls thinks we can use considered judgements is because if the process of reflective equilibrium is done correctly, it should reveal which considered judgements are at odds with other considered judgements and therefore might be biased. Furthermore, ethical beliefs that have survived thousands of years of scrutiny and that most people agree on are more likely to be unbiased. Think about it—if people of all different backgrounds, time periods, ethnicities, and societies think a particular considered judgement (for example, murdering innocent people is wrong) is true, it is less likely that belief stems from a biased nature. However, it is important to note that it is possible, which is why it is important to constantly refine this process.

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<sup>5</sup> (Rawls) Section 4, p. 18

## Rawls's Starting Points

We now know that Rawls has a political theory and that most philosophers start their theories from “considered judgements.” Rawls is no different. He mentions several throughout “A Theory of Justice.” They are the following:

1. All people have unalienable “basic rights” such as freedom of speech, religion, and association.<sup>6</sup> (The right to association refers to the right to freely join or leave groups of a person’s own choosing.) These basic rights take precedent over other rights, for example, the right to drive without a seatbelt.<sup>7</sup>
2. All people have the right to formal equality of opportunity.<sup>8</sup> This requires all people have the same legal rights and have equal access to superior social positions. According to formal equality of opportunity, the applicant who is most qualified according to the appropriate criteria is offered the position and people can’t be discriminated against for arbitrary traits like race, gender, or sexual orientation.<sup>9</sup> For example, formal equality of opportunity would tell us that it is wrong to choose one applicant over another solely because of someone’s race or gender.
3. All people are free and equal.<sup>10</sup>

These are the considered judgements Rawls believes that almost all of us will agree on. He also makes two assumptions about the nature of government and society.

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<sup>6</sup> (Rawls) Section 1, p.4

<sup>7</sup> (Freeman) p. 45-46

<sup>8</sup> (Rawls) Section 12, p. 62

<sup>9</sup> Rawls puts forth this considered judgement as the minimum standard for equality of opportunity. There are many people (Rawls is one of them) who favor substantive equality of opportunity, which is similar, but more demanding principle.

<sup>10</sup> (Rawls) Section 3, p. 11

4. Because the purpose of the government is to create laws and policies that best manage society, their laws and policies should act in accordance with and protect the rights listed above.
5. Society is based on a “social contract.”<sup>11</sup> I will explain what this means in the next section.

### **Social Contract Theory**

Social Contract Theory (the fifth considered judgement) is a popular philosophical view that a person’s moral beliefs should determine how they act in the society that they live in.<sup>12</sup> It originated with Hobbes’s idea of a “state of nature,” which refers to a time when humans existed, but had not yet come up with the concept of society. Individuals in this state have no obligations to each other and no rules. Imagine a lawless world where people could freely murder each other and steal from each other among other horrible things. The result would be a life of constant chaos and fear. This is obviously not the type of world any rational person would want to live in. To prevent this world from occurring, people enter a mutually beneficial contract in which they consent to be governed by laws. One important idea here is the fact that everybody benefits by engaging in this contract because all participants escape the state of nature. The only reason people choose to engage in this social contract is because they are better off with it than they are without it. Therefore, when a person lives in society (as we all do), the mere act of living in a society represents a form of consent to live by the laws that govern it. Because society exists as an alternative to the state of nature and because entering the social contract involves individuals’

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<sup>11</sup> (Rawls) Section 4, p. 16

<sup>12</sup> (Cudd)

consent, the laws that should govern society are ones that people agree to when given the option of entering the society or living in the state of nature.

Rawls points out two problems with this line of thinking. The first problem has to do with the idea of consent. As it works today, people are born into a society and they are expected to follow certain laws, but no consent to join society ever takes place. Therefore, the laws that should govern society are the ones that its members *would* consent to when given the choice to enter society or remain in the state of nature.<sup>13</sup>

The second problem that Rawls points out has to do with the situation in which the members of society would consent to these laws. Rawls notes that people would consent to an infinite number of things if parameters are not put on the situation where the consent takes place. For example, if someone asked a brunette to consent to a law that gave blondes higher salaries, a rational brunette would probably not consent to this. However, if someone offered a brunette a million dollars to consent to this law, the brunette might indeed agree. Consider another example: if someone demanded you give them \$100,000, you would probably say no. If that person had kidnapped your family member and asked for \$100,000 in exchange for your family member's safe return, you would probably say yes. This demonstrates that in order to reach a fair agreement, the circumstances under which people give consent must be taken into account. In other words, people must be in a fair bargaining position.

Although it seems intuitive, classic social contract theory as I have described thus far does not contain an argument for why laws should be fair. It assumes only that they should improve people's lives to the extent that they are better off with the existence of laws than they are in the state of nature. Rawls provides an argument for why the principles selected for the

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<sup>13</sup> (Rawls) Section 3, p. 11

basic structure of society should be fair and why the situation in which people consent to laws must be properly controlled. His logic is the following: people have a natural duty (moral obligation) to support a society governed by law because the alternative, the state of nature, promotes immoral actions.<sup>14</sup> Implicit here is the idea that humans have a natural obligation to promote moral actions over immoral actions. Therefore, humans have a natural obligation to support fair laws over unfair laws because fair laws are moral and unfair laws are immoral. This idea comes from the considered judgement (widely held beliefs about morality) that all people are free and equal. Therefore, one can determine which principles should be used for the basic structure of society by asking which laws *free and equal* people would agree to when given the option between entering a social contract or remaining in the state of nature. In the next chapter, I will describe what Rawls proposes this fair bargaining position looks like.

## **Chapter II: The Original Position and Veil of Ignorance**

### **The Stage**

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<sup>14</sup> (Rawls) The information in this paragraph is based primarily on Section 18

In Chapter I, we learned that the right principles to use for the basic structure of society are the ones that free, equal, and self-interested people would consent to in a fair bargaining position. We also learned the principles produced in this situation must act in accordance with our considered judgements. Rawls thinks he knows what this situation looks like. He calls it the original position.

Rawls introduces the original position as “the appropriate initial status quo.”<sup>15</sup> Here, he attempts to mirror the conditions under which people in the state of nature first consented to follow laws because he think the situation in which they gave their consent can lead us to conclusions about which laws are just.

Before I continue, try to imagine what this looks like. Think of the original position as a meeting or convention where representatives of the all the members of (soon to be) society gather to debate, suggest, and argue for different possible principles. Remember that society does not exist yet, so they are starting from scratch. One might imagine something that resembles modern day senate, but the “senators” are perfectly representative of the people and do not make side deals or anything of that sort to advance their own careers.

### **Circumstances of Justice and Constraints on the Concept of Right**

Rawls introduces something he calls the “circumstances of justice,”<sup>16</sup> which explain why we have this debate about which policies to enact in the first place. Natural resources are not so plentiful that collaboration is unnecessary, nor so scarce that collaboration cannot produce all that we need to live comfortably. Rawls points out that while all parties recognize social

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<sup>15</sup> (Rawls) Section 3, p. 11

<sup>16</sup> (Rawls) This section of the essay is based on the information found in Section 22 of TJ

cooperation is mutually beneficial, people have different interests, so there will be conflict over how to distribute the benefits brought about by this social cooperation. We need principles to determine how to distribute these benefits and advantages in a fair way.

Rawls specifically identifies circumstances (which are essentially just observations about human nature) that apply to people working together.<sup>17</sup> He points out that people have similar needs and interests (we all need things like shelter and food and have an interest in getting these things), but have different preferences, plans for life, and conceptions of the good. Therefore, when people think about what constitutes a good life, each person will have a slightly different answer. For example, one person might feel they need \$50,000 and a loving family to be well off while another might feel they need \$100,000 to be well off or perhaps one person needs a loving family to be well off and another person needs job satisfaction. Regardless of where one falls, the things people need in order to be “well off” will be slightly different for everybody and therefore lead to differing views on the best way to distribute resources and benefits.

Rawls claims that the desire to advance one’s own plans or conception of the good does not make people selfish or bad, but simply makes them human. In fact, this capacity to form a conception of the good is one of two moral qualities which Rawls believes are the foundation of moral equality, the reason people have special moral standing over other animals and should all be treated as free and equal.<sup>18</sup> Because there exists a diversity of preferences, we need a principle that tells social institutions how to fairly manage these differing interests.<sup>19</sup>

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<sup>17</sup> These are subjective circumstances, as opposed to objective circumstances. See p. 109-110 for further detail.

<sup>18</sup> To clarify, Rawls argues that the existence of two moral qualities are the foundation for moral equality, rather than things like skin color, gender, etc.

<sup>19</sup> Rawls is referring to long term interests and plans. For example, if a person wants to be happy, Rawls would not promote a policy legalizes the use of illegal drugs because while they may produce

In his build up to his description of the original position, Rawls also points out that men suffer from various shortcomings such as incomplete knowledge, lack of patience, ability to focus, etc. Similarly, their reasoning abilities and memories are imperfect. Rawls lists a few more characterizations of this nature, but the main point is that these various shortcomings and differing interests lead to “a diversity of philosophical and religious belief, and of political and social doctrines.”<sup>20</sup> In other words, this explains why people have different opinions, despite all being rational, moral beings.

Rawls spends hundreds of pages describing the original position, so naturally, there are certain considerations that I have not mentioned. However, I do not think that I have ignored any that would significantly influence the outcome.

With the “circumstances of justice,” Rawls has pointed out what the people choosing the basic principles of society are like. In doing so, he has demonstrated what they know about their society.<sup>21</sup> He then moves on to discuss their knowledge of the types of principles they will select.<sup>22,23</sup>

The people in the original position are aware that the principles they agree to will be applied to the basic structure of society. It follows that they should not be tailored to any specific institution. People are also made aware that the principles will be universal in application. This is meant to limit the complexity of the principles and prevent people from choosing ones that are self-defeating.

## **The Veil of Ignorance**

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<sup>20</sup> (Rawls) Section 22

<sup>21</sup> (Rajczi) p. 31

<sup>22</sup> (Rajczi) p. 31

<sup>23</sup> (Rawls) Next few paragraphs are based on information in Section 23

Recall that the whole purpose of the original position is to set up a fair process to ensure the resulting principles, which are to be used for the basic structure of society, are fair. The knowledge of this purpose does not guarantee that people will act accordingly. Humans are naturally tempted to exploit both social and natural circumstances to their own advantage.<sup>24</sup> Should these temptations be too strong for someone to resist, nothing is currently stopping them from rigging the system for themselves. Rather than voting for the policies they believe are fair, someone could vote for policies that favor people with the types of traits that they, themselves possess. For example, a person who is physically strong might want a system that allocates money and power to people based on their level of physical strength. Someone who is tall might want a system that allocates resources based on height. The point here is that they might vote for policies they know are not fair because they want to do what is best for themselves.

Rawls is not willing to take that risk. He argues that in order to make the process truly fair and in turn, know which principles are right, the representatives in the original position must be completely impartial. To ensure this, Rawls removes their “knowledge of particulars,”<sup>25</sup> which is their knowledge of facts about themselves and their preferences. He calls this removal the veil of ignorance. Under the veil of ignorance, “no one knows his place in society, his class position or social status, nor does anyone know his fortune in the distribution of natural assets and abilities, his intelligence, strength, and the like. Nor, again, does anyone know his conception of the good, the particulars of his rational plan for life, or even the special features of his psychology such as his aversion to risk or liability to optimism or pessimism. More than this, I assume that the parties do not know the particular circumstances of their own society. That is, they do not know its economic or political situation, or the level of civilization and culture it has

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<sup>24</sup> (Rawls) The information in this section comes from Section 24, unless otherwise stated

<sup>25</sup> (Rawls) Section 24 p. 118

been able to achieve. The persons in the original position have no information as to which generation they belong.”<sup>26</sup> He essentially suggests the removal of any fact that could even possibly hint at who the representative is, what his preferences are, or what his social status is. Once again, the point is to combat the natural human desire to pursue one’s own good at the expense of another person’s freedom and equality. Please note that the resulting principles do not suggest a completely equal distribution of resources, but a decent minimum and fair way to determine who gets more or less. I will explain this further in the coming chapter.

Consider what type of knowledge Rawls wants grant the representatives under the veil of ignorance.<sup>27</sup> The representatives have complete access to general facts about human society. For example, they know intricacies of economic policy, basic societal organizational structure, and facts about human psychology. They know that society is subject to the circumstances of justice and are aware of all the implications this holds. They are also aware of their purpose for being in the original position, so they know that they are selecting principles for the basic structure of society.

With the veil of ignorance, Rawls has obviously eliminated the worry that people will tailor principles to their own advantage. That is one benefit. Another benefit is that because the people in the original position have no idea who they are, they must consider the outcome of each principle for each group in society as if it were the outcome that would happen to them (because it could be!). Therefore, the veil of ignorance ensures equal consideration and equal respect for persons. This seems like a reasonable suggestion, particularly if one seeks fairness. That being said, Rawls gives two reasons beyond the obvious why the veil of ignorance is not only necessary, but the only possible way to determine which principles are fair and therefore the

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<sup>26</sup> (Rawls) Section 24 p. 118

<sup>27</sup> (Rawls) The information in this paragraph is based on Section 24

right ones to use for the basic structure of society.<sup>28</sup> The explanation is a bit long, so bear with me.

We have determined that the goal of the representatives in the original position is to produce a set of principles that will be used to determine the basic structure of society. We have also determined that the right principles to use for the basic structure of society are ones that free and equal people would consent to in an attempt to advance their own self-interest. In order to determine what these principles are, people must be put in a situation that allows them to act in a free, rational, and self-interested way.

The quality that makes all people equal and constitutes their equal treatment and consideration is the existence of two moral capacities. The first is a capable sense of justice and the second is a capacity to form a conception of the good.<sup>29</sup> Notice the latter involves a set of personal preferences (as mentioned previously, each person's idea of a good life differs slightly). Because these personal preferences are directly linked to an individual's conception of the good and therefore linked to their beliefs about morality and justice, it is impossible for equal and moral people to determine what is fair because the very qualities that constitute their equality also cause them to be biased.<sup>30</sup> In other words, because all humans are equal, one person's good life is not more "right" than another person's, making it impossible to determine whose conception of the good the principles should favor. If, however, there was a way to temporarily remove a person's preferences without also taking away their moral capacities which make them equal, it would create a situation in which individuals are unbiased and also moral equals, which is the situation we have previously decided is necessary to determine the right principles for

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<sup>28</sup> (Rawls) These next few paragraphs are based on material in Section 25

<sup>29</sup> (Rawls) Section 22

<sup>30</sup> (Rawls) This paragraph is based on information in Sections 24 and 25, unless otherwise noted

society. The removal of the knowledge of particulars will create a situation in which people can unanimously agree on what is fair. This is exactly the situation Rawls creates with his veil of ignorance when he removes people's knowledge of particulars. Therefore, not only is the veil of ignorance necessary to determine which principles are truly fair, but it is the only way to determine which principles are truly fair. We can conclude that the principles of justice proposed by the representatives in Rawls's original position under the veil of ignorance are the right principles to use for the basic structure of society and the principles proposed in any other situation are wrong.

Furthermore, the use of the veil of ignorance provides a way to test whether or not the basic principles decided on by the representatives in the original position are indeed the correct ones. Since each person is acting in their own self-interest (no one wants to be starving, homeless, etc.), but biases no longer cloud their judgement and because the representatives know all of the same facts, agreement on which principles to use for the basic structure of society should be unanimous. Each representative should be able to individually come up with the same principles. If the principles each individual comes up with are the same and if agreement is unanimous, one can be certain they have found the right principles.<sup>31</sup>

### **An Objection and Defense of the Veil of Ignorance**

Despite its necessity, many remain skeptical about Rawls's use of the veil of ignorance. Their logic is the following: we know that Rawls is a social contract theorist, so he needs the people participating in the contract (us) to agree with his principles of justice. However, in order

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<sup>31</sup> (Rawls) The material in this paragraph and the one above comes from Section 25

to get us to agree with his principles, he requires us to not know anything about ourselves and essentially reason as if we aren't ourselves. This is strange because if we are not ourselves, it seems that we did not actually agree to his principles in the first place. It defeats the whole purpose of the social contract. In other words, if the concept of society (and therefore laws) was created to serve people's self-interest, people should be able to choose laws that do just that: serve their self-interest. However, under the veil of ignorance, people cannot act in their own self-interest because they do not know who exactly they are, thus defeating the purpose of the social contract in the first place.

I will attempt to prove this objection wrong by arguing that use of the veil of ignorance is the only way to ensure that people are acting in their own self-interest and therefore the only logical way to determine which laws are just according to social contract theory.

Admittedly, it seems counter-intuitive to suggest that the principles an individual selects without a complete knowledge of self will be the principles that best serve that individual's self-interest. In order to see why this is so, think back to the purpose for creating laws in the first place: to improve people's lives. This notion of self-interest involves the idea that someone's life can go better or worse based on certain events or circumstances. Things like murder, stealing, and fear are associated with people's lives going worse. That is what the creation of society and laws attempts to avoid. Similarly, things like safety, comfort, and happiness are associated with people's lives going better. That is what people hope to achieve with the creation of society. The idea that someone's life can go better or worse is the foundation for what Rawls calls a "conception of the good."<sup>32</sup> A person's "conception of the good" is essentially their long term idea of what a good life consists of. A person acts rationally when they act in a way that

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<sup>32</sup> (Rawls) This information comes from Section 22

promotes their conception of the good. Present here is the idea that certain human desires are more important than others and acting in accordance with one's conception of the good often involves the sacrifice of short term, less important desires in order to achieve the more important ones. For example, if part of someone's conception of the good involves good health, that person should not smoke a cigarette even if they suddenly feel the urge. The choice to resist the urge to smoke is an example of acting rationally because according to that person's conception of the good, it is in their best interest to resist.

Social contract theory asserts that society (and therefore its laws) was created due to our human ability to form a conception of the good. It was created because people recognized not acting on every impulse and desire might make for a better life. Furthermore, the concept of society is dependent on the fact that all humans share the ability to form a conception of the good. If other people did not possess this quality, they would not agree to enter society and follow its laws because they would not see the rationale behind rules. Likewise, if following societal law was not in people's best interest or did not bring them closer to their conception of the good, people would not enter, opting rather to remain in the state of nature. Society would not exist.

People who object to Rawls's veil of ignorance fail to recognize that society could not exist without the existence of other people's conception of the good. Because all people share certain qualities, we can be certain that all rational people would opt to enter society so long as the proposed laws promote their conception of the good. Because society ultimately exists to advance people towards their conception of the good and because without other people's participation, society could not exist, in order for an individual to promote their own self-interest, they must also promote the interests of others. In other words, the concept of society does not

allow one person to advance their own self-interest without also advancing the interests of others. Because of this dependency, it would be illogical to only consider one's own conception of the good when considering which principles should be used govern society. However, because it is impossible to know everyone's individual conception of the good, but all people's conceptions of the good share certain qualities, the only way to ensure the advancement of one's own self-interest is to propose principles that advance the interests that all people share. In other words, social contract theory suggests the only rational action for people in the original position is to decide which principles to use for the basic structure of society under the veil of ignorance because it is the only way to ensure the principles they come up with are ones that everyone will agree to and therefore the only way to ensure the formation of society and a better life.

The reason the veil of ignorance remains necessary despite the presence of this knowledge is because while all humans have a conception of the good and desire to act accordingly, all humans are also subject to natural biases that often prevent us from acting rationally and in accordance with our considered judgements. To illustrate this point, I will borrow an example from Peter Singer.<sup>33</sup> Most of us, if we saw a baby drowning on our walk to work, would save the baby even if it meant ruining the nice clothes we were wearing. In fact, one might claim that if we did not save the baby, we have acted immorally. However, the majority of us do not donate the same amount of money we would have spent on replacing our clothes to feed starving children in Africa. Singer asks, if all people are created equal (as our constitution states we are and as many of us believe we are), why do we save the baby on our way to work, but not the starving children in Africa?

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<sup>33</sup> (Singer)

Despite our belief that all humans are created equal (as explained by the existence of our two moral capacities) and therefore deserve equal consideration, we constantly value human life inconsistently. We see the baby drowning. It is a problem that we can immediately fix and we can measure our impact. On the other hand, we do not see the starving children in Africa. That does not mean we do not feel bad for them, but there is a large physical distance between us that causes an emotional distance. This is furthered by the fact that we probably won't see the results of our efforts. Despite the fact that donating money would save more lives, it might feel like we are doing less because the problem is so large. Note that in doing this, we are placing a greater value on the nearby baby's life despite the lack of rational justification. It is human nature to feel differently about problems that we cannot see or do not directly involve us and therefore it is also human nature to act in a way that is contradictory to our own beliefs (in this case, the belief that all people are created equal).

A study conducted by Deborah Small, trained psychologist and professor at University of Pennsylvania's Wharton School, George Loewenstein of Carnegie Mellon University, and Paul Slovic of Decision Research supports the claim that I have made above.<sup>34</sup> Small and her colleagues examined people's decision process surrounding charitable donations. They separated charities into two categories: the first was charities with "identifiable victims." These focus on the plight or story of an individual. For example, when "Baby Jessica" fell into a well near her home in Texas, someone created a charity for her and the public donated nearly \$700,000 to get her out. The second was charities with "statistical victims" which focus on populations of people in need. For example, in 2015, 15% of children in Zambia were underweight. Please donate to help feed these children.

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<sup>34</sup> (Small, Loewenstein and Strnad)

Small and her team conducted a series of four field experiments. They gave average citizens \$5 in one-dollar bills and a letter containing a charity request. They were then asked to donate whatever amount of money they wanted (\$0-\$5) to a charity by placing money anonymously in an envelope. Small found that people are more likely to donate (and donate more) to charities with “identifiable victims.” She noted that “money is often concentrated on a single victim even though more people would be helped if resources were dispersed.” The people in the experiment were American, so they very likely believe in the equality of all persons. However, their actions seem to contradict this belief, demonstrating once again that humans do not value lives consistently, although many of us think we do and intend to.

This natural, human tendency to let our experiences and emotions skew our rational thinking is the reason the veil of ignorance is necessary to determine which principles are the right ones to use for the basic structure of society regardless of whether or not one agrees with Rawls’s claim that humans have a natural obligation to do what is moral over what is immoral. As I have explained in previous paragraphs, the concept of a society requires an individual to advance the interests of others if they wish to advance their own self-interest, which all rational people want to do. However, I have just demonstrated that humans are subject to various natural biases brought about by personal experiences or preferences that often cause them to make irrational decisions, or decisions that are inconsistent with their fundamental beliefs. Therefore, if one wants to be certain that they are acting rationally or acting in their own self-interest, one must remove all knowledge that could cause these biases, or their knowledge of particulars. Therefore, not only is the veil of ignorance necessary if one wishes to determine which laws are moral or just, but it is also necessary if one wishes act in a way that ensures the promotion of one’s own self-interest, which all rational humans do.

## Chapter III: Rawls's Principles of Justice

### The Principle of Basic Liberties

Rawls claims that the principles we should use to determine the basic structure of society are those that we would consent to in the original position, which was the situation explained in the previous chapter. He calls these principles “Justice as Fairness.” They are lexically ordered, which means that in a situation where principles one and two conflict, we should maintain the first principle rather than the second.<sup>35</sup> In a situation where the second and third conflict, we should maintain the second. The principles are the following:

1. Each person is entitled to equal basic liberties that cannot trump another person's basic liberties. This principle accounts for ideas such as freedom of speech, religion, association, the right to vote, hold public office, etc. It also accounts for the idea that certain rights and liberties are more “basic” than others and therefore warrant special protection. For example, people care more about freedom of speech than they do about the freedom to drive at whatever speed they want.<sup>36</sup>

Rawls divides his second principle into two distinct parts. Because of this, I will write them out as two separate principles so that there are a total of three principles.

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<sup>36</sup> (Rawls) Section 3, p. 13

## **Fair Equality of Opportunity**

2. Social and economic inequalities exist in positions that are open to all under conditions so that “those with similar abilities and skills should have similar life chances. More specifically, assuming that there is a distribution of natural assets, those who are at the same level of talent and ability and have the same willingness to use them, should have the same prospects of success regardless of their initial place in the social system.”<sup>37</sup>

This principle refers to what philosophers call substantive equality of opportunity.<sup>38</sup> It asserts not only that all qualified candidates be allowed to apply for a job and assessed solely on their ability to perform that job, but also that all people with equal talent and motivation have equal opportunity to develop their skills. Consider the following example: person A and person B are equally smart and equally motivated and both dream of becoming a neurosurgeon. Person A grows up in an underprivileged neighborhood with an inadequate school system. She isn't even allowed to take her textbooks home with her to study. Person B comes from an affluent family and attends a top school in the suburbs. Person A and B spend equal amounts of time studying for their MCATS, but despite their equal ability and effort, person B scores much higher on her MCAT and gets into her top choice medical school, while person A is forced to give up on her dream of becoming a neurosurgeon. Fair or substantive equality of opportunity suggests that discrepancies in opportunity like the one I have just described should not exist. Rawls explains that “...those who are at the same level of talent and ability, and have the same willingness to use them, should have the same prospects of success regardless of their initial

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<sup>37</sup> (Rawls) Section 12, p. 63

<sup>38</sup> (Rawls) The information in this paragraph comes from Section 12

place in the social system...<sup>39</sup> This requires, among other things, that institutions are restructured so that people have equal access to a good education regardless of their socioeconomic background.

### **The Difference Principle**

3. Social and economic inequalities exist only under the condition that they are to the maximum advantage of least advantaged people in society.<sup>40</sup>

This principle is known as the difference principle. It is frequently misunderstood, so I'll start by explaining what it is **not**. Rawls does **not** intend this principle to suggest we give the least advantaged people in society more and more free money and goods until everyone has an equal amount. In fact, Rawls thinks that would lead to complete and utter economic disaster. If everyone was given the same amount of money no matter how hard they worked, people would have no motivation to work hard. This would cause a decrease in productivity and likely a collapse in the economy. Even though there would be a higher percentage of redistribution, the amount of money being redistributed would decrease and everyone's quality of life would deteriorate.<sup>41</sup>

Rawls actually thought the difference principle explains why it is perfectly fair to pay people different amounts of money for different jobs. Rawls points out that social and economic inequalities must exist for society to function properly because people need incentive to work hard and produce more. The incentive necessary to boost economic production is higher economic status, which means allowing people to keep for themselves a larger percentage of the

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<sup>39</sup> (Rawls) Section 12, p. 63

<sup>40</sup> (Rawls) Section 3 p.30

<sup>41</sup> (Rawls) The information in this paragraph comes from Section 12

money they earn and rewarding people different amounts for different levels of productivity. Despite the fact that a smaller percentage of people's income is redistributed, the amount being redistributed is greater because overall economic productivity is higher, making the least advantaged people better off with less redistribution of wealth and higher economic inequality.<sup>42</sup>

Recall Rawls's principles of justice are meant to be applied to institutions rather than individuals.<sup>43</sup> When Rawls refers to the least advantaged people in society, he does not suggest we seek out each individual in society and design policies for each person. Rather, we should divide society into major socioeconomic groups and design policies that provide the greatest benefit to groups who are least well off as we look at their lives over time. While the difference principle will indeed have implications for the individual, it applies only indirectly to individuals.<sup>44</sup> This means that the difference principle does not suggest any one consumer has a moral obligation to buy a certain product or shop at one store over another, but should be used as a tool to make large-scale economic policy decisions, like whether or not to enact minimum wage laws. If they do indeed benefit the least advantaged people, the difference principle would tell us to enact them.

The difference principle also requires the government implement certain social safety nets, like health insurance and food stamps. This is because health insurance (how it exists right now) is often far more expensive for people with serious health problems. Often times people who have these health problems are not well enough to work, leaving them unable to afford proper healthcare. Because these people are usually among the least advantaged, the difference principle would suggest the government provide care for them. That being said, if a person in

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<sup>42</sup> (Rawls) The information in this paragraph comes from Sections 11 and 12

<sup>43</sup> (Rawls) Section 11

<sup>44</sup> (Freeman) p. 100

need of a social safety net, for example, food stamps, were to run out of food because they were irresponsible and spent the money on expensive items they could not afford, Rawls does not want to provide more help to those people. If they were given the means to have a decent minimum and used those means irresponsibly, Rawls does not think we have an obligation to make up for their own foolishness. Likewise, the difference principle does not suggest the government provide economic help to people who are capable of working, but choose not to. The benefits of the system should apply only to those who follow the rules of the system.

### **Justification of the Principles**

To start, note that people in the original position are making a comparative choice.<sup>45</sup> They are not just asking themselves if Rawls's principles are good or bad, but deciding if they are the best principles out of all of the options that currently exist.

He focuses primarily on the comparison between "Justice as Fairness" and the "Principle of Average Utility"<sup>46</sup> The principle of average utility, in its simplest form, tells us that when faced with uncertainty about which course of action to take or which policy to implement, one should take an expected value calculations of each situation and choose the option with a positive or the highest value. This means that out of all the possible options, the principle of average utility yields the highest level of average utility (or happiness) per person. This seems appealing because under this principle, a greater number of people have a higher level of happiness. That being said, if you happen to wind up below the average, you will be worse off

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<sup>45</sup> (Rawls) Section 4, p. 16

<sup>46</sup> (Rawls) The information in this paragraph is based on Section 26

than you would have been under Rawlsian society, which lays out a clear, decent minimum for all members.

Rawls's main argument for why people in the original position would choose his principles of justice over the principle of average utility is based on the idea of risk aversion.<sup>47</sup> Rawls reminds us that in the original position, people do not know their place in society and therefore must consider the fact that if they select the principle of average utility, they could wind up as one of the people whose wellbeing is sacrificed to improve the average utility for everyone else. Rawls claims this potential loss of a decent minimum standard of living and the potential loss of basic rights is not a risk that any rational person would take.

Rawls's claim about risk taking is supported by many examples in today's society. Consider the game of Russian Roulette. A participant in this game puts a single round in a revolver, spins the cylinder of the revolver, and fires the gun at their own head. If the participant dies, they lose. The probability that they die depends on how many chambers the gun has, but is usually 6, so the probability that they die is usually 1 in 6. This is similar to the "game" one would be playing if we used something like the principle of average utility to determine our basic structure of society. Even if the chances of dying in Russian roulette were 1 in 100, a rational person still would not play. Even if the "winner" received large amount of money, no rational, mentally stable person would take that risk, just as no rational person would risk their basic rights, just as no rational person would risk oppression due to socioeconomic circumstances, and just as no rational person would risk a system that does not give food, shelter, or healthcare to those who truly need it. The implications are as severe as the implications of losing Russian roulette. No increase in utility is worth the risk of life below a decent minimum just as no

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<sup>47</sup> (Rawls) The information in this paragraph is based on Section 26

amount of money is worth the risk of playing Russian roulette. Plus, your chances of being disadvantaged is much greater than 1 in 100 or even 1 in 6.

Evidence in support of Rawls can also be found in societal views on gambling. People who gamble and risk their money on a constant basis are considered addicts and put in rehabilitation facilities because they are considered to have a problem. They are not considered to be thinking rationally when they choose to risk their money. This further supports Rawls's point that society does not equate rational thinking with serious risk taking. Because people in the original position are rational, they would choose the safer option, which is Justice as Fairness. Since you don't know who you are in the original position, you don't know which socioeconomic category you fall under. Therefore, you pick principles that protect you under any circumstance you are born into. Justice as Fairness ensures you have a decent quality of life even if you wind up being a minority or in the least advantaged socioeconomic group. The first principle ensures you will have basic liberties, the second ensures you will have access to a good education regardless of your socioeconomic group, and the difference principle protects against poverty because you would be made as well off as you can be.

Rawls believes there are reasons beyond the "maxim" that people in the original position would choose the principles of justice over the principles of average utility. The first reason he gives is that because all parties in the original position have a capacity for justice, they must adhere to the principles that they choose in the original position. It would be unjust to do otherwise and would defeat the whole purpose of the thought exercise. Because people in the original position have a capable sense of justice and know that the other people in the original position do as well, they can expect all participants will adhere to the chosen principles as well. Rawls points out that because of this, people in the original position should not accept principles

which, under the worst possible circumstances, might lead to consequences that they cannot accept.”<sup>48</sup> Rawls thinks people would therefore have to choose the principles of justice because one of the principles ensures the protection of each parties’ basic rights, whereas the principle of average utility might require those who are least advantaged to sacrifice their freedoms for the sake of the greater good. Rawls thinks that in practice, many people would not be willing to sacrifice their freedoms because it “exceed[s] the capacity of human nature.”<sup>49</sup> Therefore, the people in the original position would have to choose the principles of justice.

The second reason Rawls thinks that people in the original position would choose his principles of justice over the principles of average utility has to do with people’s natural tendency to love and support whatever promotes their own good.<sup>50</sup> With the principles of justice, people’s basic rights are protected and due to the difference principle, everyone benefits from social cooperation. People would therefore support this system because it promotes everyone’s own good. However, the principles of average utility require an individual or group of people to sacrifice their own good if it increases the overall good of society. Therefore, the people whose good is not promoted, but sacrificed, would probably not support the institution that mandates this. The principle of average utility would create a fragmented society, which would (as it does in our current society) decrease people’s cooperation when working together. This would ultimately decrease overall productivity, decreasing people’s quality of life. Recall that the argument in favor of the principle of average utility was based on the belief that it would lead to a more productive society. Rawls has just pointed out that this is not actually true.

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<sup>48</sup> (Rawls) Section 29, p. 153

<sup>49</sup> (Rawls) Section 29, p. 154

<sup>50</sup> (Rawls) Section 29, p. 154

The third reason people would choose the principles of justice over the principles of average utility is because they give greater support to man (or woman)'s self-respect. Rawls points out that self-respect is present in everyone's conception of the good because people need a sense of self-worth to feel satisfied and take pleasure in its fulfillment.<sup>51</sup> He also points out that our own self-respect is dependent on the respect of others because without it, it would be difficult to stay motivated and feel that our projects are worth pursuing. Because the principles of justice give all people equal basic liberties and the difference principle suggests we treat people not only as a means, but as an end in themselves,<sup>52</sup> they, by design, respect all persons. In other words, the two principles of justice require that all people are treated with respect. When the principle of average utility demands certain people are made worse off to increase the overall good of society, it uses those people as a mere means rather than an end in themselves. The use of a person as a mere means requires an absence of respect for their personhood. In other words, the principle of average utility promotes a disrespect of certain individuals. Rawls points out that a society where people respect each other will result in more productivity than its alternative, once again suggesting that that the principles of justice might, in practice, produce a higher level of average utility than the principle of average utility.

Due to the risk averse nature of rational beings and the likelihood that Rawls's principles will produce a society with a higher average utility than the principle of average utility while still maintaining a decent minimum for all its members, we have reason to believe that Rawls's Principles of Justice are indeed the correct one to use for the basic structure of society.

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<sup>51</sup> (Rawls) Section 29, p. 155

<sup>52</sup> Rawls takes a Kantian view of morality. Here, he is specifically referring to Kant's second formulation of the Categorical Imperative, which states "Act in such a way that you always treat humanity, whether in your own person or in the person of any other, never simply as a means, but always at the same time as an end." This suggests that we have a fundamental moral obligation to respect people.

## **Conclusion**

This thesis has attempted to explain and strengthen various aspects of John Rawls's Theory of Justice. It has tried to shed light on the relationship between the origin of society and the use of the original position as the right situation to determine which laws are should be used for the basic structure of society. It has also tried to respond to an objection about the necessity of the veil of ignorance as it relates to social contract theory. Lastly, it has attempted to provide further evidence as to why Rawls's principles are the ones that people in the original position would agree to.

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