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University of Economics

Prague

Rawls' two principles of justice: their adoption by rational self-interested individuals

Alexandra Dobra



Abstract

The present paper aims in a first stage, to exploit succinctly the cardinal argument – the contract argument - acquainted in “A Theory of Justice”, which provides incentives for the two principles' general adoption. In a second stage, a discussion appraising the feasibility of these two principles and their subsequent empirical adoption will be dealt with. This contributes to the provision of counter-arguments and the highlighting of weaknesses.

Keywords: Two principles, contract argument, original position, veil of ignorance, difficulty, feasibility.

Introduction

In "A Theory of Justice", Rawls offers a theoretical justification of social democratic principles of a *justitia omnibus*, a justice universally valid and implementable. This justice is ensured through developing the principle of equal liberty and the principle of difference and equality of opportunity. With the aim to persuade free and rational persons to adopt these two principles, Rawls invokes the contract argument. This latter is mainly supported by the original position and the subsequent veil of ignorance. According to Rawls, the original position is not supposed to be a realistic situation. *Ipsa facto*, the veil of ignorance is a hypothetical normative representation of the types of reasons and information that are relevant to a decision on principles of justice. But since fiction has no absolute worth, then its axiological value is confined to the convictions it shapes and to a certain normative frame, so how can the principles of justice be adopted in practice? Herein, after an overview of the Rawlsian contract argument, we will focus on one difficulty related to the invoked argument, though without making an exhaustive analyse because of the limited words.

Rawls' contractual argument for the adoption of the two principles

The contract argument has its origin in an intuitive idea. The traditional version of the state of nature is inherently unjust because certain individuals have more negotiation capacities than others, e.g.: more aptitudes, greater amount of resources or more physical force. This innate difference of capacities arranges that weaker individuals will have to do concessions to favour the stronger ones. The incertitudes of nature are affecting every individual, but some are better equipped for facing them, and they would not consent to adhere to the social contract from the moment on this latter does not ratify their advantages. Rawls considers this classical version of contract as departing from an unjust situation. *Dixit* Rawls his two principles are not dependent on a contingent manner on existent desires or social conditions. Hence, through supposing that some desires are generally valid and while taking as basis the accord concluded in a fair initial situation, it follows that the principles of justice are independent from circumstances.

The contract argument is supported by two instruments: the original position (*locus contractus*) and the veil of ignorance. For Rawls, the hypothetical contract highlights the right way to think about and identify what principles justice requires. The original position is a heuristic procedure of justification in which, *dixit* Rawls, each individual can put himself at any moment, while the veil of ignorance is a dispositive assuring impartiality.

The *locus contractus* is a system, of premises of reasoning, favourable to the adoption of the two principles. It corresponds to an initial position of equality which guarantees equity of deliberation on the principles of justice. In this position, the individuals are endowed with an instrumental rationality: they have preferences which are coherent and ordered according to a conception of the good. They are also mutually disinterested, through their *amour de soi*, which in the Rousseauist terminology corresponds to a passion anterior to the social ones. In addition the consequence of their rationality is that they accede to reasonability. Individuals are reasonable, in the sense that they are endowed with a sense of justice, a capacity ensuring that they will respect the terms of the social cooperation. So, the original position specifies the required conception of the individual for the contract procedure. With this aim, the *locus contractus* prescribes the implementation of the veil of ignorance. This latter filters particular information related to the individual's identity, their inscription in the socio-economic arena, their own conception of the good and the level of civilization of the society, in order to neutralize contingencies, to neutralize the effects of natural lottery. Rawls's two principles ensure equity of the original position and equity of distribution (Bernardi, 1999): there is no positional advantage and no unequal bargaining power. Personal endowments cannot constitute a factor in the participant's bargaining position.

Hence the mechanism which leads the parties to adopt the two principles is as following. In the original position parties seek to promote their own interest, but as they ignore their concrete situation and identity - because of the collective public perspective (Rawls, 1996) of the *locus contractus* - they adopt an impartial and universal standpoint. Each particular situation has an equal importance and the pursuit of self-interest is the pursuit of a general interest. So, first the parties do not know in advance their concrete life projects - they are not endowed with a *thick* conception of the good - but have a *thin* conception of the good, hence they choose the first principle for ensuring that they will be able, *à posteriori*, to realize their own conception. Second, parties have no knowledge of probabilities (which position they will occupy), in addition they have an innate sense of justice hence they will consider some concrete situations as unacceptable. So, they will choose the second principle in order to protect themselves from the less advantaged positions. The original position enables unanimity to be effective.

However, because the contract argument is hypothetical, the two principles are contained within an autarkic normative and non-prescriptive fiction. Its *telos* is not practical in character. Now, justice is a practical concept which requires that contemporary societal - especially the reality of actors - are taken into account.

One main difficulty related to the in vivo implementation and adoption of Rawls' two principles

On a theoretical and rhetoric ground, the theory of justice and the two principles are perfectly conceivable to be adopted. However, in practice, the two principles face several difficulties (one of these will be treated below), since the parties deliberate rationally within a normative specification. "*A hypothetical contract is no contract at all*" (Dworkin, 1987) and can have no binding force, so there is no commitment for the parties to adopt the two principles. The difficulty is related to the premise that each rational individual is projecting himself in the reality. Henceforth, the feasibility of the theory of justice must be measured. If it is not a *modus vivendi*, the rational and self-interested parties will not adhere to the two principles.

Let us consider more closely the exigency that parties must deliberate in "*circumstances, characterized by psychological and cognitive constraints, suitable to the exercise of rationality*", (Rawls, 1972). Summarily, the parties have no particular knowledge and hence no psychological character (Sandel, 1984), they are only aware of general facts, like $F = m \cdot a$. However, the epistemology requires that this symbolist consecution has a sense because it is a precise interpretation; each symbol refers to a domain of the reality. So, the understanding of this general fact by an individual is possible only if this latter has previously had an intuition of the elements of reality he refers to. An individual, who has no psychological character, cannot technically apprehend the sense of such a general fact. In other words, Rawls substitutes to the *lambda* individual a *transcendental* individual. This substitution emerges from the argumentative imperative derived from his assumption that the two principles will be adopted. Indeed, in the case of the absence of the veil of ignorance, partners are not enough *purified* and would fall into the *opinion lane* (individuals would not be able to choose the best principles).

The consequence of the lack of knowledge, highlighted by Hayek (1945) can also be used in order to reinforce the above argument. "*Every individual has some advantage over all others because he possesses unique information of which beneficial use might be made, but of which use can be made only if the decisions depending on it are left to him*". Any attempt to impose order upon a society would fail because of the fact that the planners involved would not have the knowledge to sufficiently design a social order. Instead, it is the individual who knows what is in his best interests and how to pursue them. To declare any distribution *just* is erroneous due to the fact that it presupposes knowledge of what is the optimal distribution. The decentralized nature of knowledge in society and the resulting impossibility of planning a social order annihilate any distributive theory of justice. The optimal distribution can only be the result of free and rational individuals who have each, complementary, global and particular knowledge necessary to make the best decisions possible. This is well crystallized in MacIntyre's quotation: "*Two incompatible demands of the social contract:*

he wishes it to be the foundation of all shared and common standards; but he also wishes it to be a contract, to be so shared and common standards must already exist.” (MacIntyre, 1968)

Although Rawls began by posing a problem of collective choice, ultimately the problem is reduced to the reasoning of a single person. If we exclude “*knowledge of those contingencies which set men apart....*” then since “*everyone is equally rational and similarly situated, each is convinced by the same argument*”, (Rawls, 1972). This construction by lacking the representation of a plurality of parties differently equipped, which pursue specific goals contributes to cancel the contract argument. The contract argument is raising a dilemma (Sandel, 1996) which highlights its circular character. With the veil of ignorance, there is an absence of plurality (individuals are indiscernible) so there is no common deliberation. Without the veil of ignorance, the plurality is safeguarded but the deliberation is subjected to prejudices – because interests enter in conflict due to the rivalrous mimetic founding mode - contradictory to the conditions of a free contract. In both cases there is no contract, in the second especially, it follows that there is no binding force and no adherence to the two principles.

So, the original position is a logically impossible circumstance and the supposition that deliberation can occur among pre-social individuals is incoherent. The general knowledge is too vague, so the context and the process by which outcomes are determined are forsaken. The laws of such abstract generality are destitute of predictive or explanatory potency and any choice is difficult to make.

Conclusion

Although Rawls' contract argument is powerful, in the sense that it constitutes a strong mainly rhetoric plea, the idea that the two principles could be chosen in practice by rational and self-interested individuals fails. The contract argument is mainly supported by the original position and the subsequent veil of ignorance. But, if individuals are defined as rational and self-interested then it implies that they have *self-knowledge*. This latter enables them - with our without the veil of ignorance - to make interpersonal comparisons and calculate the probabilities they will have to occupy different positions within the institutional and social arena. Therefore, Rawls' conception of the individual does not correspond to the reality of how individuals are formed by their goals (Sandel, 1984). The veil of ignorance is not plausible and the two principles would, in practice, not be accepted.

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