

## Chapter 2: Rawls' theory of justice

### Learning outcomes

By the end of this chapter, and having completed the Essential readings and Activities, you should be able to:

- ✓ describe Rawls' principles of justice and his arguments in their defence
- outline some important criticisms against both the principles of justice and Rawls' methodology
- ✓ identify reasons why you agree, or disagree, with Rawls or some of the criticisms we will examine here.

### Essential reading

Rawls, J. *A Theory of Justice*. (Cambridge, Mass.: Belknap, 1999, revised edition), Part I (all section and page numbers in this chapter refer to this book, unless otherwise stated).

Cohen, G.A. 'The Site of Distributive Justice', *Philosophy and Public Affairs* 21 (1997): 3-30.

### Recommended reading

Dworkin, R. 'The Original Position' in Norman Daniels (ed.) *Reading Rawls* (Oxford: Blackwell, 1975).

Mulhall, S. and A. Swift, *Liberals and Communitarians*. (Oxford: Blackwell, 1996), Introduction and ch. 5-6.

Okin, S.M. *Justice, Gender and the Family*. (New York: Basic Books, 1989), ch. 5.

Rawls, J. *Political Liberalism*. (New York: Columbia University Press, 1993).

Sen, A. 'Equality of What?', in *Tanner Lectures on Human Values* (Cambridge: Cambridge University Press, 1980).

### Introductory remarks

#### Content and aims

In 1971, the American philosopher John Rawls published a book, *A Theory of Justice*, which was to change the way political philosophy was conducted in the Anglo-American world. In this book, Rawls argues that a just society is one which is governed according to two principles. According to the first principle, also known as the liberty principle, all individuals ought to enjoy basic liberties such as freedom of association and freedom of speech. According to the second principle, inequalities in income and wealth are legitimate if, and only if, they benefit the worst off members of society. In addition, such inequalities should attach to jobs and positions open to all members of society.

The novelty of Rawls' theory lies, first, in its commitment to normative arguments: Rawls' project is not to **describe** how existing societies are organised. Rather, it is to **argue** how a **just** society **should** be organised. As we saw in the introduction to this guide, until Rawls published his book, political philosophy was taught mostly as history of ideas. Nowadays, it is taught both as history of ideas and as normative theory. Second, Rawls argued that his two principles of justice should apply to all societies: in that sense, his theory, as developed in *A Theory of Justice*, is universal in its aspirations. Between 1971 and his death in 2002, Rawls

published a number of articles and books, and considerably refined, some would say changed, *A Theory of Justice*, so much so that specialists talk of an early and late Rawls. In this chapter, I will concentrate on the early Rawls, on *A Theory of Justice*. The aim of the chapter is to introduce you to Rawls' key ideas, and enable you to assess their validity.

## Against utilitarianism

As we saw, Rawls aims to defend principles for a just society; but he does so against the background of another, important, intellectual tradition, namely utilitarianism (of which J.S. Mill is one of the main proponents). There are many different interpretations of utilitarianism, but roughly speaking, according to utilitarianism, individuals ought to act in such a way as to maximise their individual welfare, and society ought to maximise social utility (where social utility is understood as the aggregation of individual welfare). Now, according to Rawls (as per section 5 of *A Theory of Justice*), utilitarianism dictates that, in some cases, the interests of some can be violated for the sake of greater advantages for others, and more specifically, some people will be denied freedom for the sake of social utility. Suppose, for example, that a serial killer is on the loose. People are getting extremely worried, are scared of leaving their homes, become distrustful of their neighbours, and so on. It would be in the interest of society as a whole to think that the killer has been caught. Knowing this, the police decide to capture an innocent person and to announce that they have caught the killer, for the sake of reassuring everybody: the freedom of that particular person, who is innocent, is sacrificed for the sake of social utility.

According to Rawls, however, this is not what a just society should be like. For a just society is one which protects and promotes individual rights, even at the expense of social utility (so that no innocent person should be thrown into jail for the sake of alleviating the fear of the population). Rawls' theory of justice rests on the view that each individual is self-interested, has projects to pursue and goals to implement, and cannot be asked to sacrifice themselves for the sake of the greatest number (p.24).

In contrasting his position with utilitarianism, Rawls says the following (pp.27-28): utilitarians have an understanding of the **good**, that is, of what it is good to achieve, and that is the maximisation of individual and collective welfare. The **right** action – that is, the action which we must perform – is the action which promotes the good: so for utilitarians, what is right is defined in relation to what is good, and what is right is instrumental to the good. In other words, once we have defined the good – maximising individual and collective welfare – we know what the right thing to do is. By contrast, in Rawls' theory, the right is prior to the good. That is, we each understand that we have different conceptions of what is good: some of us might want to maximise our welfare, others might not. The right action – the action which we must do – is that which lets people pursue their conception of the good, provided that they act in similar ways towards others. A just social system provides a framework of rights and opportunities within which individuals can pursue their conception of the good life. The question is how to define and articulate those principles of justice (those principles which distribute rights, as it were, amongst individuals).

2

### Activities

1. Try to imagine cases where sacrificing the rights of one individual would maximise social utility. What does your intuition tell you about those cases? That sacrificing that individual's rights is morally acceptable? That it isn't?
2. Do you think that there can be ways of reconstructing utilitarianism which rescues it from Rawls' criticism?

## The original position

### What is the original position?

For Rawls, then, the task is to defend acceptable principles of justice. And this task is itself divided into several components.

1. First, it is necessary to delineate the **scope** of those principles, that is, to what exactly they are meant to apply. As Rawls argues, they apply to society, understood as a scheme of social cooperation where we can each advance our good. We live together, impose burdens on each other and create benefits: we need principles to allocate those burdens and benefits, and those principles are principles of justice (p.4). More specifically, principles of justice apply to the **basic structure** of society, namely to its main political, economic and social institutions (p.6).

In addition, the goods and benefits they are distributing are **primary goods**, namely goods that we all need, whatever our conception of the good life is: 'rights, liberties, opportunities, income and wealth' (p.79). To give an example, we need freedom of religion in general whatever religion we believe in, indeed, even if we are atheists (for freedom of religion means not merely the freedom to practice one's religion, but also the freedom **not** to have any religion). Similarly, we need job opportunities irrespective of the kind of job we want to have. And we need money, irrespective of our specific conception of the good life. It is in that sense that those goods are called **primary goods**.

2. Second, it is necessary to identify **who** chooses the principles of justice. According to Rawls, **we** do, together, as rational beings concerned to promote our own interests (10), aware that others have similar concerns, and not taking an interest in other people's interests (that is, we mind our own business). Note, though, that although we are self-interested, this self-interest motivates us to accept as just the principles that emerge from the original position.
3. Why do **we** choose those principles? Rawls endorses what one may call the ideal of fundamental equality, whereby all human beings are worthy of equal concern and respect, and are autonomous moral agents. That is, they know right from wrong, and they have the capacity to frame, revise and pursue a conception of the good. Accordingly, the coercive power of the law can be used against such individuals only if they consent to it (otherwise, they would be treated like children, rather than like individuals with the capacity for rational and moral agency). In that respect, Rawls is heir to the social contract tradition as expounded by Thomas Hobbes and John Locke.
4. How do we choose principles of justice? It is on this particular point that Rawls' theory is most original. As he puts it, we are very different from one another, we have different ideas as to how to lead our lives, have different talents and skills, and come from different backgrounds. Moreover, we are self-interested, that is concerned with maximising our own good. If we were to choose principles of justice in full knowledge

3

of these facts, we would in fact choose principles which would systematically advantage us, at the expense of others. There are two reasons as to why that would be wrong. First, we would obtain those advantages on the basis of social and natural contingencies (p.17). For example, if we know that we are talented (that is, we have a high earning power), we will choose a tax system solely on the basis that it advantages us. But (according to Rawls) there is something deeply wrong about this: why should I gain from something as arbitrary as the fact that I am lucky enough to be talented? After all, we are all moral equals, and such contingencies, such factors which are traceable to bad brute luck, should not affect how we lead our lives. This is why we do not know anything about our talents and skills in the original position.

Second, the most important thing about us is that we are autonomous agents, that is, we have the capacity to frame, revise, and pursue a conception of the good life. And what matters to us is that we should be able to implement whatever conception of the good we happen to have. If we were to know what our conception of the good is, when choosing principles of justice, we would focus on those rights and freedoms which are necessary to us, to the cost of rights and freedoms which are necessary to others. For example, if we know that we are, say, Catholic, we might be tempted to protect freedom of religion for Catholics only. But what about other religious groups? Don't they deserve protection too?

In order to ensure that primary goods are distributed in such a way as to nullify the impact of bad brute luck in our lives, and enable us to implement whatever conception of the good we have, we must put ourselves in a hypothetical situation and imagine how we would allocate primary goods if we did not know who we are, where we come from, in short, if we were behind a veil of ignorance. This contractual situation is called the original position: it is a position of equality, since natural and social inequalities between us do not factor into the determination of the principles of justice. In that sense, the principles we choose are the product of a fair agreement. That is why Rawls' theory is called justice as fairness.

5. Now, which principles do we choose in the original position, according to Rawls?

We choose two principles:

1. The liberty principle: each individual has a right to enjoy basic liberties, consistent with a similar and equal right for others (53).
2. The second principle: social and economic inequalities are permitted provided they benefit the worst off members of society, and that they attach to positions and offices open to all (72).

### The original position as a social contract: Dworkin's criticism

Now, as we saw, the original position is a **hypothetical** social contract whereby we assess how we would allocate the burdens and benefits of cooperation if we did not know anything about ourselves (p. 104). Some commentators, most notably Ronald Dworkin, have objected to the original position as follows. According to Dworkin, a hypothetical contract cannot generate an obligation to obey. Suppose I have a painting you want to buy: if you had offered 100 dollars yesterday, I would have accepted. But this morning I discovered that it is worth 1,000 dollars, and I sold it to you for 1,000 dollars; the fact that I **would** have agreed to 100 dollars yesterday does not mean that I can be forced (for example, by courts) to sell it to you for 100 rather than 1000 dollars.

4

Dworkin's criticism fails, but its failure is interesting because it teaches us something about the original position. Dworkin assumes that we are bound to accept the principles of justice because we **chose** them in the social contract. But in fact, in Rawls' view, the social contract is a device which enables us to **discover** what justice requires: it does not in itself justify our duty to obey the principles of justice. In that sense, Rawls' social contract is different from traditional accounts of the contract. In Hobbes and Locke, the contract itself creates an obligation to obey: if I undertake to relinquish the exercise of my natural rights, you must do the same, and we must each respect our promise. For Hobbes and Locke, the point of the contract is not to establish principles of justice, it is to create conditions for peace by binding people in an agreement. For Rawls, the point of the contract is to decide what justice requires: the obligation to obey the principles of justice does not stem from the fact that we would have contracted to choose those principles behind a veil of ignorance; it is grounded in the fact that these principles are just. So, Rawls is not vulnerable to Dworkin's criticism here.

### More serious problems about the original position

1. Individuals in the original position are described as individuals who want to avoid taking risks. Rawls' reasoning goes like this: if individuals do not know whether, for example, they are Catholic or atheists, they will choose to respect freedom of religion. This is because if they decide, for example, that only Catholicism should be protected, they would risk being oppressed if they turn out to be atheists. As they do not like taking risks, they will go for freedom of religion.

But it is arbitrary to describe individuals in such a way. They could decide to gamble. After all, some individuals do gamble, on a regular basis, or at least take risks on a regular basis. So there is no reason to suppose that individuals in the original position would not take risks.

2. Individuals are said to be members of a scheme of social cooperation (for that is how society is described by Rawls, as we saw above). The central idea here is that of reciprocity: if I contribute and if you benefit, and have agreed to receive those benefits, then you should contribute too (p.96). However, there are two difficulties with this: first, in so far as individuals to whom the principles of justice apply are contributors; non-contributors are excluded from the scope of justice (severely mentally ill people, severely physically disabled people, etc.)

Second, the idea of reciprocity supposes that we all benefit from the arrangements. But do we? Suppose I get out of the original position: I realise that I am a religious fundamentalist: what do I gain from living in a tolerant society? Suppose that I am a very talented person, or someone from a very rich background, and that I would gain more if I lived under a regime where natural and social advantages command greater material gains than what I would get in Rawls' society: why should I abide by the principles? More dramatically still: why should I stay in that society? Why should we not – we the advantaged people – expel those who drag us down, indeed, why should we not secede? If self-interest and the expectation of gain is what drives people to respect the terms of cooperation, then, in so far as Rawls' principles of justice do not yield the highest benefits for some people, they have no reason to accept them once they know what their situation is like.

Rawls might say, at this stage, that we have to abide by those principles, because they are just: and we know that they are just because we chose them under the veil of ignorance. But that would miss the point of the objection: for the objection says, precisely, that

if self-interest is what guides us behind the veil of ignorance, then it should also be able to guide us once the veil is lifted. And once the veil is lifted, if our self-interest dictates against the principles, then we are allowed not to obey them.

#### Activities

1. Imagine yourself in the original position: you know nothing about yourself, neither your gender, nor your race, nor your religion, nor your family and social background. Is Rawls right to think that you would choose his two principles of justice?
2. Ask yourself whether it even make sense to suppose that individuals could think of themselves in that way, with no knowledge of their particular circumstances.

## The two principles of justice

So far we have critically discussed how, for Rawls, the choice of the two principles of justice is made, and by whom. In this section, we examine those two principles in greater detail.

### The first principle of justice

According to the first principle of justice, also known as the liberty principle, each individual has a right to enjoy basic liberties, consistent with a similar and equal right for others. Rawls does not say much more than that, but we can surmise that he has in mind, apart from liberty of conscience (§33), freedoms such as the freedom of moving around freely, private property, etc.

Thus, the liberty principle captures the essential rights and freedoms of a liberal society. According to Rawls, it also leads to the idea of **state neutrality** between different conceptions of the good. That is, the state must let people pursue their ends, and not discriminate against some of these ends, or actively encourage them, on the grounds that some ends are more worthy than others. For example, the state must not have an established church, since it would, in effect, privilege one particular religion over another. Now, the idea of state neutrality sounds appealing, but it does raise the following issues. First, if it is pursued fully, it is in fact quite radical. Take contemporary legal systems, most of which only allow for marriage between a man and a woman. That is discriminatory to homosexuals, and deliberately so: the idea is that a sexual partnership between a man and a woman is more worthy, more deserving of legal protection, than a partnership between two men, or two women. A just society organised along Rawlsian lines could not condone that.

More problematically, the idea of state neutrality raises the question of distribution. It is one thing to say that all members of society should be allowed to live by their religious beliefs (freedom of conscience as guaranteed by the liberty principle), and that the state should not privilege one religion over another. But suppose that one religious group needs extra funding (because, for example, it is a minority religion which cannot generate the resources it needs to maintain its churches or temples). Does state **neutrality** require that it give no special funding to that group? Does even-handedness in the distribution of liberties imply even-handedness in the distribution of resources required to exercise those liberties? We shall address this issue in greater detail when dealing with multiculturalism in Chapter Seven. Meanwhile, the second principle of justice (the difference principle) gives us some elements to begin to answer that question.

### Activity

Ask yourself whether you agree with Rawls that the state should be neutral towards different conceptions of the good. If so, why, and if not, why not?

## The second principle of justice

The second principle of justice comprises two parts: equal opportunities, and allocation of material resources. That is, social and economic inequalities are permitted provided that

- a. they benefit the worst off members of society, and
- b. they attach to positions and offices open to all (p.72).

The first part of the second principle is also known as the difference principle, and the second part is known as the equal opportunity principle.

### The relationship between the two principles of justice

It is important to grasp the relationship between the two principles of justice. According to Rawls, the liberty principle has priority: first, we ensure that liberties are secured, and then we implement the difference principle. In other words, liberty can be restricted only for the sake of liberty itself (p.214), it cannot be restricted for the sake of material equality.

But there is a problem with this claim: why would individuals do that, in the original position? Rawls seems to describe what he assumes people do choose in stable liberal democracies: perhaps it is true that in the UK, for example, individuals would rather have freedom of speech than a good national healthcare system. But it may not even be true: in fact, there are reasons to think that people care less about the erosion of civil liberties in countries such as the UK than they care about their standard of living. Moreover, empirical evidence suggests that in many countries outside the 'West', many individuals would prioritise something like the difference principle over the liberty principle.

### Equal opportunities

As mentioned, the second principle of justice has two parts. The second part is about equality of opportunity on the job market: it says, in effect, that people should not be discriminated against, when they apply for jobs, on arbitrary grounds such as race and gender. Notice that this seems to rule out affirmative action programmes whereby other things being equal, a firm would hire a woman over a man, or a black applicant over a white applicant, on the grounds that women and blacks have suffered from discrimination in the past and should be given greater opportunities now.

### The difference principle: distributing to the worst-off

The first part of the second principle of justice, also known as the difference principle, and which has attracted a lot of attention, says that income and wealth ought to be distributed equally, **unless** inequalities would benefit the worst off members of society. This is quite a radical view, since it says, in effect, that equality is the default position, in other words, that **inequality**, and not equality, stands in need of justification. Still, Rawls believes that, as a matter of fact, resources will be distributed unequally. This is because (according to Rawls), talented people will not work to the full of their capacities if resources are distributed equally, with the effect that fewer resources will be available, through tax returns, for the worst off; but if the talented are rewarded more than the untalented

whilst working at full capacities, then they will have an incentive to work to the full, and that will yield extra resources for the worst off. In so far as the latter would have more under an unequal distribution than under an equal distribution, it would be rational for them to accept inequalities.

#### The difference principle and the issue of responsibility for choices

However, the content of the principle is problematic in two ways. First, it does not distinguish between income inequalities that are due to bad brute luck, and income inequalities that are due to choices. Suppose that we both, you and I, own a patch of land. I am an aspiring tennis player, so I decide to have my land transformed into a grass tennis court, even though I have no other source of income and I know that it is very unlikely that I will be able to earn a living playing tennis. You, on the other hand, are very good at gardening, and you know that if you grow fruits and vegetables on your land, you will earn a lot of money. A few years later, I end up with much less income than you do. According to the difference principle, I should have as much as you do, thanks to a strong redistributive policy, unless a material inequality between us would benefit me. But why should you agree? After all, I knew that, by choosing to have a tennis court, I was taking a big risk. So why should you subsidise me? The central point, to which we shall return in Chapter Five, is that I am responsible for the fact that I end up with less than you, and that you should not be made to compensate me for it.

#### Sen's criticism of the difference principle

Another problem with the content of the difference principle has been highlighted by the economist Amartya Sen. The difference principle says: 'distribute equally unless the worst-off would benefit from an unequal distribution'. More concretely: give individuals equal amounts of wealth and income, unless the worst off would benefit from inequalities. The problem, according to Sen, is that an equal distribution of income will not bring about the kind of equality that really matters (i.e. equality of functionings). Functionings are states of being such as being well fed, being warm, relating to people, etc. People differ in their functionings; they also differ in what it takes for them to reach the same level of functionings as others. Take, as an example, food distribution. If you give all individuals the same amounts of food each, some will end up better fed than others, since they will need less food than others to reach the same level of 'being fed'. Given that what matters is whether they have equal levels of functionings, we must accept that an **unequal** distribution of food is necessary. A similar point can be made about income: people achieve different things and reach different levels of functionings with similar incomes, so if we want equality of functionings, we have to accept an unequal income distribution.

It might seem as if Rawls would agree with this: for after all, is he not saying that income and wealth should be distributed equally **unless an unequal distribution would benefit the worst off**? He is indeed saying this, but the difference with Sen is that for Sen, equality of income is **not** the default position.

#### Rawls' argument for the difference principle

So far we have focused on the content of the difference principle; we haven't said anything about Rawls' argument for it. According to Rawls, individuals in the original position choose the difference principle out of a combination of self-interest and Pareto optimality (see below). Parties in

8



the original position are self-interested: that means they want more, rather than fewer, resources. So, in the original position, it makes sense to choose an unequal distribution which would get you more resources than an equal distribution which would give you less. Consider the following table, describing two possible distributions, D1 and D2. At D1, individuals A and B have the same amount of income. At D2, B has more than A:

	A	B	Total wealth
D1	5	5	10
D2	6	8	14

The move from D1 to D2 is justified by Rawls as follows: if you give the more talented incentives to work harder, (i.e. higher rewards,) they will contribute to a greater extent to the total wealth to be distributed, and a greater share of that wealth will revert to the worst-off. (This is known, in policy-making and non philosophical terms, as the trickle down effect). The parties in the original position do not know whether they are potential high-earners (talented) or not, and so it is rational for them, interested as they are, to go for D2, rather than D1.

There is a related reason in support of D2: Pareto optimality. Rawls is clear that a theory of justice must be compatible with Pareto optimality. A state of affairs is Pareto-optimal when it is impossible to change it so as to improve the lot of at least one person without worsening the situation of at least another person.

Now, if a state of affairs is such that at least one person in it is better off than in another state of affairs, and no one is worse off in the former than in the latter, then we can say that the former is Pareto superior to the latter: it is rational for each and every individual to choose it, and Pareto-efficiency thus requires that society choose it. Go back to D1 and D2 above: D2 is clearly Pareto superior to D1, since at least one person is better off (in fact, it is strongly superior to D1, since everybody is better off in D2 than they are in D1). And so each and every individual rationally ought to choose D2, and society as a whole ought to choose D2.

#### Cohen's objection to Rawls' argument for the difference principle

Now, there is a fundamental problem with this argument, as discussed by G.A. Cohen. The difference principle states that inequalities are permitted only if they benefit the worst off; this supposes that inequalities must be **necessary** to benefit the worst off. Inequalities that are not necessary in order to benefit the worst off are unjust. But why are inequalities necessary? As we saw, this is because (according to Rawls), talented people will not work to the full extent of their capacities if resources are distributed equally, with the effect that fewer resources will be available, through tax returns, for the worst off; but if the talented are rewarded more than the untalented whilst working at full capacities, then they will have an incentive to work to the full, and that will yield extra resources for the worst off.

But Rawls' response will not work. For as Cohen points out, he himself says that for society to be just, everybody has to recognise principles of justice, and has to uphold them in their daily life. So the talented themselves must hold that unnecessary inequalities are unjust. Yet, they themselves render those inequalities necessary by choosing to work less hard under equality. And yet, they could make other choices: so it would be wrong for them to say that those inequalities are strictly necessary, and therefore just. So equality is mandated.

9

To see this, go back to the distributions we looked at earlier:

	Worst-off	Talented	Total Wealth
D1	5	5	10
D2	6	8	14

The move from D1 to D2 is justified by Rawls as follows: if you give the more talented incentives to work harder (i.e. higher rewards) they will contribute to a greater extent to the total wealth to be distributed, and a greater share of that wealth will revert to the worst-off. Cohen's point is that if the talented really believe in equality, as Rawls says they do, then they have to endorse the following distribution:

	Worst-off	Talented	Total Wealth
D3	7	7	14

Moreover, a further argument in support of D2 is that it is Pareto superior to D1: both the worst off and the talented fare better under D2 than under D1. So the move from D1 to D2 is consistent with Pareto-optimality. Note, however, that Pareto-optimality cannot dictate in favour of D2, and against D3: for although the worst off are better off in D3 than they are in D2, the talented are better off in D2 than they are in D3. D2 and D3 are Pareto-incomparable.

Of course, Rawls has a reply to all this: he claims the principles of justice and the requirement to obey them only apply to the choices we make with respect to the organisation of the basic structure, when those choices can be legally enforced. They do not apply to the uncoerced choices we make on the market, for example. But here too Rawls' reply is problematic. If the principles of justice apply to choices we make within the basic structure, given that the basic structure is defined as major institutions which have a huge influence on our life, they should apply to choices we make in the market, which is included in the basic structure (p. 6). The crucial point to remember is this: to be just is not simply to obey the law when the law implements the principles of justice. It is to live up to the principles of justice in one's **private conduct**.

### A feminist challenge to Rawls

From what we have just seen, Rawls' conception of justice, as articulated in the book *A Theory of Justice*, purports to be both egalitarian and universalistic in scope. It is egalitarian, in that it assumes that all human beings have equal moral worth, and that we should distribute freedoms and resources equally amongst all (unless an unequal distribution of resources would benefit the worst-off.) It is universalistic, in that all rational and moral agents, irrespective of their specific characteristics and attributes, are meant to choose the two principles of justice. Moreover, those principles of justice apply to society's major social institutions.

Now, in an important book entitled *Justice, Gender and the Family*, the American feminist philosopher Susan Moller Okin argues that Rawls' theory of justice as he himself describes it is not sufficiently sensitive to two important, and related, issues, namely gender, and the family. She also argues that his theory, once it is read through the lenses of those two issues, is far more radical, in fact, than one may think at first sight.

10

## Gender

Let us start with gender. It is interesting that, in *A Theory of Justice*, Rawls always uses the words 'he', 'him', 'his', when referring to individuals. In one sense, it is a mark of the time at which he was writing, and one easily substitute 'she' for 'he' without loss or change of meaning. More deeply, however, in describing the parties, in the original position, as imagining themselves to be **fathers** and to have concerns for their **sons**, Rawls (according to Okin) makes himself hostage to the criticism that, on his views, politics – the business of deciding how society should be ran – is primarily seen as the business of men, whereas the family (to which we will return below) is primarily the business of women.

To be sure, Rawls makes it clear, at one point, that parties in the original position do not know their gender. And one might think, then, that his theory in fact dictates strict equality between men and women. For if parties do not know their sex, then in so far as they are risk adverse, they will not vote for principles of justice which systematically disadvantage one gender rather than the other. And this, strictly speaking, is true. However, it raises a number of issues which (again, according to Okin) needs addressing. For a start, if Rawls is correct, then he is, in fact, calling into question the entire gender system upon which most cultures and societies are organised. This is because that system is characterised, at worst, by serious and systemic political, social, and economic inequalities between men and women (to the advantage of the former and the detriment of the latter), and, at best, by fairly traditional understandings of the roles – social and familial – which men, and women, can, and ought to perform. However, if parties in the original position do not know their gender, if, in other words, gender ought to be irrelevant to the distribution of burdens and benefits, then such system is profoundly unjust, and needs (more or less) radical reforming – ranging from granting equal political rights to both men and women to radically reforming – through the law – practices in the workplace.

One might think that this is not a problematic implication of Rawls' theory – that any theory which does, explicitly or implicitly, call for equality between men and women is the more convincing for it. As Okin notes, though, one needs to ask whether gender can, indeed ought to be, irrelevant in the way just suggested. It is an open question, for a start, whether parties in the original position can think of themselves as un-gendered – or, as either a man, or a woman. For gender, or some people would argue, is too much a part of **who we are** for us to be able to think it away (we shall return to this kind of criticism of the original position in Chapter Three.) Moreover, it pays to bear in mind that gender-neutral laws may in fact end up discriminating against women, in so far as the latter, as women, have certain needs which men do not (relating to pregnancy and childbirth, for example), and in so far as the social pressures which lead women, and men, to avail themselves, or not, of the opportunities provided by the law, are more likely to operate to their detriment. Let me give you an example. Suppose that the law stipulates that anyone, **man or woman**, who wishes to stay at home to look after young children will be paid a pensionable salary – as high as, but not higher than, the minimum wage – by the state. Now, this is a gender-neutral law: men, as well as women, can take up the opportunity it gives for looking after one's children **and** earn some income at the same time. However, under current, societal conditions, women are much more likely than men to take it up, and the effect is to forego the possibility of (at least for some of them) earning a higher salary on the labour market, and to worsen their already unequal (at least for some of them) economic situation in relation to that of their husbands.

My point, note, is **not** that such a law would be unjust – let alone that women ought not to opt for staying at home and looking after their children. Rather, my point is that, from a social and economic point of view, the law will not remedy gender discrimination. Gender neutrality, which seems built into Rawls' theory of justice, may not, in fact, achieve its aims.

At this point, Rawls might be tempted to reply that the distribution of income between husbands and wives does not fall within the remit of justice – that it is not the business of the state to inquire into the choices made by individuals in the face of such social expectations. The problem, however, is that for Rawls, as we saw when discussing Cohen's objection to the difference principle, principles of justice apply to the basic structure, namely, to society's main institutions, because the effects of those institutions are pervasive from the start. In so far as marriage between individuals of different genders with its provisions and expectations is a social institution the effect of which on individuals are present and profound, it seems that principles of justice should apply to it.

### The family

So should they apply to the family in general, in fact – which leads us to the other strand of Okin's critique of Rawls. When he describes the original position, Rawls characterises the parties as heads of households: one representative per household. In so doing, and given the family structure at the time he wrote, he is assuming that the representative – typically, as we saw, the husband and father – will adequately represent the interests of all the members of the household. But why should all adult members of the household not be present? Moreover, and this is a more serious criticism, Rawls is not considering the possibility that principles of justice could regulate the distribution of burdens and benefits **within** the family: he assumes that they regulate the distribution of burdens and benefits between people who are, mostly, economic and political agents. This, according to Okin, overlooks the situation of those individuals, mostly women, whose labour (for their husbands, children, dependent elderly, etc.) remains unpaid. In addition, what goes on within the family crucially affect children's opportunities, and in turn, the opportunities of the adults which they will become. It is all well and good to say that people should have equal opportunities, but if someone is brought up in a family where there is a strict understanding of what constitutes a proper job for a man and for a woman, and a proper education for a boy and for a girl, that individual will not be able to take up the opportunities on offer. In fact, the pressures she (or, indeed, he) would endure where she (or he) to choose against the parents' wishes could be such as to amount almost to coercion. We shall return to this point in Chapter Seven, when we deal with the issue of multiculturalism.

### Activities

1. Outline for yourself the content and justification for the difference principle.
2. Think about the importance of responsibility. In the tennis player/gardener example, is Rawls right to imply that the tennis player should be helped by the gardener, even though he is responsible for his situation?
3. Are you persuaded by the feminist challenge to Rawls which we examined in section 2.5?

12

## Concluding remarks

Rawls shaped the agenda in contemporary political theory – an agenda which many call egalitarian liberalism. It is **liberal**, because it defends fundamental individual freedoms; and it is **egalitarian**, because its fundamental assumption is the principle of fundamental equality, whereby all individuals are morally equal, and because it mandates an extensive distribution of material resources (income and wealth) towards those who have fewer such resources.

Now, *A Theory of Justice* raises the following, important, issues:

- The conception of the person, which underpins Rawlsian justice, is of an autonomous individual, who chooses and reformulates her own ends, and who can stand aside, and evaluate, the community to which she belongs, with a view to reforming it. And it is that kind of person which chooses principles of justice. Is that plausible?
- The principles of justice, in *A Theory of Justice*, are meant to be universal, to apply at all times and in all places. Is a universalistic theory of justice plausible?
- A just society, according to Rawls, is one where individuals do not suffer misfortune as a result of unchosen factors such as natural endowments, and social origin. On that view, justice mandates transfers of resources from the better off to the worse off, with a view to bring about equality in the distribution of primary goods, unless an unequal distribution would benefit the worse off. We have seen that the difference principle is incoherent within the terms of Rawls' theory itself. But several questions arise: is coercive taxation compatible with the view that all individuals are autonomous moral agents, who must relate to one another as equals? Assuming that it is, is a just society one where material equality obtains, and if so material equality of what kind? Or is a just society one where individuals' needs are met? Does the family itself need to be subject to the principles of justice?

In the next chapter, we shall scrutinise the communitarian critique of egalitarian justice, which casts doubts both on its conception of the person and its aspirations to be universal. Having done so, we shall examine, in Chapter Four, the libertarian critique of egalitarian justice, which calls into question the legitimacy of coercive taxation. Then, in Chapters Five and Six, we shall explore in greater details the egalitarian project itself. The last four chapters will apply the arguments thus considered to four issues: multiculturalism, immigration, global justice, and justice towards future generations.

## A reminder of your learning outcomes

Having completed this chapter, and the Essential readings and Activities, you should be able to:

- describe Rawls' principles of justice and his arguments in their defence
- outline some important criticisms against both the principles of justice and Rawls' methodology
- identify reasons why you agree, or disagree, with Rawls or some of the criticisms we will examine here.