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Seth Halverson

"Rawls, Historical Knowledge, and the Original Position:
A Case for Historical Perspectivism"

John Rawls' book, *A Theory of Justice* (1972), marked a watershed in American political philosophy. In this book, and his subsequent works, Rawls offers a theory of justice that is as comprehensive as it is compelling. I propose an alteration in justice as fairness that could be seen as quite radical and problematic. This alteration would be no less problematic than are the arguments against metaphysics and intuitionism. It would require substantive reworking of the theory. I call it "historical perspectivism"; it is, in essence, the extension of historical experience into the deliberations of persons in the original position. Three areas of analysis will be examined in this paper: first, why Rawls does not allow the knowledge of history in the original position; second, the problems that are manifested in not allowing historical perspective in the deliberations in the original position; and finally, how historical knowledge would not bias the individuals deliberating on the principles of justice.

Many scholars have critiqued Rawls' original position as inadequate. It presupposes a metaphysical construction of the self; it may allow for a consideration of the principle of utility for a principle of justice (something Rawls adamantly wished were not the case, as his work is predicated on a workable alternative to utilitarianism); and it does not give a detailed enough account of persons in a setting where they are deliberating about the principles of justice to be adopted. It is this last concern that I see most problematic for justice as fairness. For the theory to succeed on a fundamental level, we must establish the way the parties in the original position approach the deliberations of the principles of justice. The way the parties of the original position approach the process of deliberating in Rawlsian "reflective equilibrium" affects the outcome. If Rawls' view of the support for a normative claim is incorrect, or not comprehensive, the impacts are depressing. As they have a direct impact on the principles of justice, that will be the foundation of the social system. So it is with these concerns that we turn to the original position. Professor Rex Martin of the University of Kansas provides a fine synthesis of the original position:

Accordingly we create a hypothetical bargaining situation (called the original position) in which certain significant constraints operate. These constraints include those required to discount or bracket off all special, peculiarly personal, or circumstantial facts and biases and those embedded in objective circumstances (such as relative scarcity) or in our psychological orientation (such as mutual interest in one another's life plans). And as well there are a number of presumed formal constraints (that the principles agreed to are to be public, that they constitute the ultimate or foundational standard, that the principles are to be chosen once and for all, that they are to be chosen unanimously, that each

participant is to imagine that he will live his entire life in a society governed by the principles selected, etc.) (Martin, 15).

Many of these assumptions are predicated on the lack of knowledge that the parties have in the course of their deliberations. They know a few things, such as the importance of primary goods, and they do not know who they will be in the social system they are setting up. In my view, the constraints on their knowledge are not based just on what they know, but on how they come to know. In the case of Rawls, the parties appeal to assumptions, shared and weak, to justify and provide the warrant for their claims. Is that enough? Rawls expressly limits the scope of historical knowledge from his persons in the original position. His rationale is that such knowledge could prejudice the parties to adopt principles that would be inconsistent with the demands of justice. Rawls notes:

In the original position the only particular facts known to the parties are those that can be inferred from the circumstances of justice. While they know the first principles of social theory, the course of history is closed to them; they have no information about how often society has taken this or that form, or which kinds of societies presently exist. In the next stages, however, the general facts about their society are made available to them but not the particularities of their own condition. Limitations on knowledge can be relaxed since the principles of justice are already chosen. The flow of information is determined at each stage by what is required in order to apply these principles intelligently to the kind of question of justice at hand, while at the same time any knowledge that is likely to bias and distortion and to set men against one another is ruled out. The notion of the rational and impartial application of principles defines the type of knowledge that is admissible. At the last stage, clearly, there are no reasons for the veil of ignorance in any form, and all restrictions are lifted (Rawls 1972, 200).

Historical knowledge is expressly limited. In fact, there is none--to do so would prejudice the parties against some principles in favor of others. But Rawls indicates that the knowledge available to the parties is ordered by need. In my mind, persons in the original position need such knowledge, but it will become clear later as to why. He also indicates that general facts will be allowed. The most general facts are the facts of history; yet for Rawls these are based, I think, on the structure of the society in which the persons are to become a part of. This limitation on historical knowledge, for Rawls, is to prevent three things.

The first is bias. Historical knowledge will give people a subjective field of reference in which to judge principles of justice based on past experience. Such a field of reference could allow utility considerations to be made. Consider the judgments (if historical knowledge is allowed in the original position) of other social systems. If persons see the fascist state as advantageous, or some claim of that

nature, they will be violating the intuitive nature of justice. This is strictly in the sense Rawls uses the term--to mean simply, the appeal to a notion of justice when adjudicating the different principles.

The second is the fact that such knowledge must be universal. Rawls can say that the nature of historical knowledge depends greatly on the perspective from which it is written.

The third is that all knowledge must be open to all generations. History, or it could be seen as such, is quite different for different generations--not in the sense of facts, but in terms of personal impact of historical events. Consider the experience of a survivor of the Holocaust, and of the student of history. The former's historical knowledge is much more personal, and for that matter carries a great deal of emotional impact to questions of state authority, or principles of toleration for comprehensive doctrines. The impression a survivor has on a question of justice--say, freedom of religion--will be much different than the impression of the latter, one who did not experience the tragedy of the Holocaust. Rawls does not make this claim, but I think it can be gleaned from his statement:

Being unconditional, they always hold (under the circumstances of justice), and the knowledge of them must be open to individuals in any generation. Thus, to understand these principles should not require a knowledge of contingent particulars, and surely not a reference to individuals or associations (Rawls 1972, 132).

The issues of complexity of information is vital to keep the considered judgments of persons in line with Rawls' perspective. If such information is too complex, or draws too many distinctions, the persons in the original position will not be acting on their intuitions. Rawls explains:

Next, principles are to be universal in application. They must hold for everyone in virtue of their being moral persons. Thus I assume that each can understand these principles and use them in their deliberations. This imposes an upper bound of sorts on how complex they can be, and on the kinds and number of distinction they draw.... Principles are to be chosen in view of the consequences of everyone complying with them (Rawls 1972, 133).

A historical perspective would allow for a reasonable decision-making calculus to exist, by basing our intuitions not on some weak (but shared) conceptions, but on historical experience. Such a method of justification would make decisions more credible, and perhaps prevent gambling on the principles of justice.

But why should historical knowledge not be extended to the persons deliberating about principles in the original position? In the original position, the claims advanced by individuals are based in intuition. They are ahistorical, do not reference individual agents or associations, and are universal.

The language that we use in framing judgments of an ethical nature is, in my mind, historical. Ethical terms are often defined by, and gain significance from, their opposites. We view "justice," in some senses, as a state where "injustice" does not seem to exist. Our notions of "rights" can be viewed in a similar fashion. To use the word "rights," or, in a more general sense, "liberty," we need to have a conception of its opposite. A conception of the opposite is key for framing and justifying moral claims. We value "liberty," to be sure, for some intrinsic notions, i.e., notions that can, in fact, be justified in the abstract. Unfortunately such justification is limited, and will not fully provide the warrant for a claim. We can value "liberty," because we have experience with its opposites--"slavery," "oppression," "coercion." Such experience does not have to be personal, i.e., we did not have to personally experience it. But we must have had some distant experience with the opposite for a concept like "liberty" to have a unique, true meaning. This experience can be historical. If persons in the original position have some historical knowledge about the way states have treated their minorities in the past, the principles of justice regarding liberty and tolerance will be stronger. As advocates, persons can describe most accurately the notion of "liberty" as of value, because persons have experience with the opposite--"slavery" or "coercion." We understand tolerance to be an important consideration in terms of the principles of justice that we establish, because we have experience with intolerant regimes. Only because we have, do these ethical notions begin to have meaning. Only when they have meaning, do the principles that express them have meaning. It is by the very nature of an understanding of what has taken place in the past that we begin to be able to frame and justify our normative claims on a sufficient level. Such is the warrant for historical experience in the original position.

Recall the possible incident of persons in the original position adopting a principle of slavery. There are some problems with this view described by Rawls. The first is Rawls' notion that racist doctrines are irrational in the original position. He says that persons would not adopt racist principles because people do not know if they will be the oppressors or the oppressed, and therefore could be the victims of the prejudicial principles they themselves have agreed to. Rawls says such a view would be irrational. But where does that conception of rationality stem from? A metaphysical notion of rationality? Perhaps, but it also might stem from Rawls' assumptions about the people in the original position. What Rawls is not considering is why such doctrines are irrational. I will concede that parties who are free and equal will see those doctrines as unjust (unless of course they are gamblers, in which case they might adopt such principles for personal benefit). But it does not follow, given the constraints on information on the individuals in the original position, that such doctrines are irrational. The reason they are irrational is because we, post-original position, have a notion of racism. But that notion is not solely based on some intuitive notion of justice, but of the experience of history (e.g., the Holocaust). Post-original position, we do not have the constraints of information on us to impede the forming of warrants for our claims; and thus, we can make such a judgment.

Note that Rawls' argument is that such conceptions (racist principles) are not moral; rather, they are just a means of suppression. Since such claims are not moral

claims, they are not up for discussion in the original position. This argument is rather remarkable. First, moral claims are normative claims, i.e., they affirm that one ought to do something. To say one ought to give alms to the poor is, in short, a statement of worth and action. Consider this normative claim: "It is worthy to give alms to the poor; one ought to do so." It is a claim, but it also entails an action and a judgment of an action. The same can be said in light of racism. Racist claims are statements of worth, i.e., such claims state that some persons are more worthy than others, and they are statements of action--one should prioritize one's own group over another. There is no reason why racist doctrines cannot be viewed as normative claims. As such, they are moral conceptions. It would follow, then, that racist claims are also moral claims, and then could be in the deliberations in the original position. This has the disturbing implication of principles of justice being adopted that are racist, if not in form, in content.

We need to examine this issue of the historicity of considered judgments in light of Rawls' recent turns in thought. Such conditions of historical experience have direct impact to the overlapping consensus. Professor J. Ralph Lindgren writes:

Finding that peoples committed to widely diverse belief systems assent to a modest list of substantive principles, Rawls hopes to build on that common ground. In spite of our differences we do assent to religious toleration and to the prohibition of slavery and that is enough to treat those principles as "theorems...at which the comprehensive doctrines...intersect or converge." But that move neglects to take seriously our differing reasons for assenting to these principles and so neglects to anticipate that we are likely to place very different interpretations upon them (Lindgren, 113-14).

These differing conceptions of religious toleration, rights, etc., which Rawls calls "comprehensive doctrines" converge to form an overlapping consensus. Such is the nature of intuitions in reflective equilibrium. They are by all accounts inadequate to deal with the persons' in the original position motive for assent to a principle of justice. But the notion is not just limited to the formulations of principles of justice; they affect the point in which comprehensive doctrines overlap. This point of convergence is the overlapping consensus, the point of stability and pluralism in justice as fairness.

In Rawls' more recent writings, the original position is still the method that we can use to derive principles of justice. Yet now we look to the liberal democratic states, instead of a non-liberal society. It is unclear how much of a difference there is in Rawls' conception of the original position in *A Theory of Justice*, and in his writings since then. In his later works, he seems to recognize the value of historical perspective in terms of a post-original position situation. Rawls writes:

We collect such settled convictions as the belief in religious toleration and the rejection of slavery and try to organize the basic ideas and principles implicit in these convictions into a coherent

conception of justice. We can regard these convictions as provisional fixed points which any conception of justice must account for if it is to be reasonable for us. We look, then, to our public political culture itself, including its main institutions and the historical traditions of their interpretation, as the shared fund of implicitly recognized basic ideas and principles. The hope is that these ideas and principles can be formulated clearly enough to be combined into a conception of political justice congenial to our most firmly held convictions (Rawls 1985, 228).

What are we to make of this? We are to look at the historical experience in one sense; yet in the original position, we cannot. Consider Rawls' argument that the structure of the original position is ahistorical (Rawls 1993, 271). Here we are to imagine the initial situation as hypothetical and ahistorical. But post-original position, we gain insight for this overlapping consensus and the foundations of the social system by historical context. It would be better to move historical experience to the knowledge levels of persons in the original position, instead of an after-contract consideration. The principles that people in the original position will be establishing are far more important than considerations that will evaluate how successful the enterprise was. Those principles agreed to give the foundation for such dialogue to even occur.

Rawls also seems to note the importance of historical context when he writes:

Our predecessors in achieving certain things leave it up to us to pursue them further; their accomplishments affect our choice of endeavors and define a wider background against which our aims can be understood. To say that man is a historical being is to say that the realizations of the powers of human individuals living at any one time takes the cooperation of many generations (or even societies) over a long period of time. It also implies that this cooperation is guided at any moment by an understanding of what has been done in the past as it is interpreted by social tradition (Rawls 1972, 523-5)

This statement brings about similar concerns. While the context of this argument lies in Rawls' discussion of the social union of the system of which the principles adopted by the persons in the original position are to evaluate, it seems to me that if it (historical experience) is necessary to ensure cooperation in a social system, the system would be better served if, in fact, the very foundations of the system were predicated on such knowledge. The principles adopted will be stronger in both form and content.

This is where the strength of historical perspective comes into play. How historical perspective would play out in the original position is as follows. First, persons would have the knowledge of history. Such knowledge would not be limited to just questions of political and economic history; history of cultures and peoples would also be included. While I cannot establish a curriculum of what would, and

would not, be presented to individuals, I think the above general conception is sufficient for these purposes. Such information would reference specific events and individuals (e.g., Hitler, Stalin, Pol Pot, etc.). Such information would also be representative of the human experience. By that, I mean it would not be limited to one area, but would have a broad general overview in which people in the original position would, in fact, be able to justify their claims without solely basing them on shared weak intuitions. The shared information would be strong, comprehensive evidence for the claims that they will be making to establish principles of justice.

We need not scrap Rawls's theory of justice as fairness, as long as we add historical perspective to the knowledge base of persons in the original position. If this addition is made, the principles established in the deliberations in the original position will be more compelling, have meaning, and perhaps be more "just" than the principles agreed to without such knowledge. Without such historical perspective, the claims that persons in the original position make will be weak, and will lack the sense needed to make abstract terms like "liberty" and "freedom" meaningful.

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