

A Feminist Critique on the Limits of Rawls

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Abstract

The general aim of this paper is to elaborate on the political philosophy of John Rawls, specifically his concepts such as the original position, the veil of ignorance, and the difference principle. In clarifying these concepts, it will be shown why Rawls has been so influential in the field of political philosophy. The specific aim of this paper, though, is to critique his theory of justice, often termed “justice as fairness,” as insufficient in dealing with gender inequality in society, such as the exploitation of women within the institution of the family. In doing so, a paradox will be presented, showing Rawls’ continual inability to back his claim that the principles of justice do not apply to the family, but that the family is imperative in cultivating one’s sense of justice. Realizing this, it will be argued that it is unjust for Rawls’ theory of justice to be applied in a society that believes in gender equality, as it is in opposition to feminist scholarship.

John Rawls’ *A Theory of Justice* is often considered the most important work of political philosophy of the twentieth century. A large part of this reason is because of the influence it has had on the thought of other political theorists. This influence, in many cases, is not that of praise; many thinkers have come to criticize Rawls. This paper will focus on one of these major criticisms, this being the failure to account for the subordination of women in society, specifically in Rawls’ lack of acknowledgment of the institution of the family. It will be argued, then, that although Rawls made significant progress in political philosophy, his theory should not be considered a complete theory of justice when it possesses such a flaw. First, Rawls’ thought will be praised, largely by discussing the originality of *A Theory of Justice*, notably in introducing the concept of the original position, the veil of ignorance, and the difference principle. Second, Rawls’ thought that the principles of justice only apply to the basic structure of society will be acknowledged, as well as an argument against distributive justice as being inefficient to deal with issues of feminism. This will lead, lastly, to the feminist thought that “the personal is political,” wherein there will be a thorough discussion in regards to Rawls’ brief thoughts towards the family and how he claims his principles of justice do not apply to it, as well as the

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implications that arise from this. Most importantly, it will be argued that Rawls' theory contains a paradox, that is, that it does not seem that the family can be such an instrumental part of children's upbringing to appreciate justice when his principles of justice do not include the institution of the family. That being said, it will be concluded that although John Rawls' *A Theory of Justice* has been incredibly influential in political philosophy, it is unjust for it to be applied to society as a full theory of justice without fully accounting for gender equality.

Rawls' theory has been revolutionary in the field of political philosophy; to begin to understand this, his creation of concepts such as the original position and the veil of ignorance can be discussed. In short, the original position is his social contract argument: "The original position of equality corresponds to the state of nature in the traditional theory of the social contract" (Rawls, 1971: 12). Similar to the thought of social contract theorists such as Thomas Hobbes and John Locke, Rawls' original position is a thought experiment "to think, above all, about what is fair" (Hirschman, 1994: 1879). One could argue, though, that Rawls' social contract argument, that is, his idea of the original position, is more fair than past social contract theories. In fact, Rawls' theory of justice is often termed "justice as fairness," showing that fairness is at the heart of his idea of justice. To elaborate on Rawls' theory, Okin explains that "justice as fairness characterizes institutions whose members could hypothetically have agreed to their structure and rules from a position in which they did not know which place in the structure they were to occupy" (Okin, 1989: 94). This is exactly what the original position entails, that is, it is a hypothetical position wherein the individuals within the position choose the outcomes that will be as fair as possible for everyone, as no one knows where they will end up in the structure of society. No one wants to be disadvantaged; in choosing outcomes that are fair for everyone, no one would have to worry about being in a disadvantageous position in society.

More must be said on the original position. Kymlicka has called it "a device that prevents people from exploiting their arbitrary advantages in the selection of principles of justice," as one's arbitrary advantages, such as one's natural intelligence, work ethic, or physical strength should not have any role in determining what is fair for everyone in society (2002: 63). If arbitrary advantages did have a role in determining what is to be considered fair, it could be argued that most people would be biased in choosing principles of

justice. This leads to a crucial aspect of the original position, that is, that “the principles of justice that should regulate the basic institutions of society” as Okin explains, “are those that would be arrived at by persons reasoning in what is termed ‘the original position’” (1989: 90). Further, “‘the parties’ who deliberate there are rational and mutually disinterested [...] a ‘veil of ignorance’ conceals from them all knowledge of their individual characteristics and their social position,” thus one would have no idea of one’s race, class, religious orientation, or gender, to cite a few examples (Okin, 1989: 90). The main purpose of the original position, then, is to choose principles of justice that everyone, not knowing where they will end up in the hierarchy of society, would consent to, and the veil of ignorance is the lens that one looks through while in the original position: “The principles of justice are chosen behind a veil of ignorance” (Rawls, 1971: 12). To use an analogy, Kymlicka says that “the veil of ignorance is [...] an intuitive test of fairness, in the same way that we try to ensure a fair division of cake by making sure that the person who cuts it does not know which piece she will get” (2002: 63). In the original position, then, one is behind a veil of ignorance, and because of this “it should be impossible” for one to “tailor principles to the circumstances of one’s own case” (Rawls, 1971: 19). These two general concepts, in short, are a large part of what makes Rawls’ thought live up to the notion of being a theory of justice as fairness.

Another major reason that Rawls’ work in *A Theory of Justice* is often praised is because, in creating his system of justice, he showed that the prevailing equality of opportunity put forward by liberals is a form of injustice. In the former notion of equality of opportunity “people’s fate” was “in their own hands;” but “natural talents and social circumstances,” Kymlicka explains, “are both matters of brute luck” (2002: 58). It can be argued, then, that the previous conception of equality of opportunity depended on, in a large way, luck. Although merit is normally the word used to describe what comes of one’s actions when living in a welfare state, this does not account for the natural talents that individuals possess, that is, talents that individuals innately possess by birth. To use an example, if an individual is born with an immensely creative mind and desires to be an artist, this individual would have a much greater opportunity of being a successful artist than an individual who is born with an immensely unimaginative mind, and although the second individual may try very hard to become a successful artist, the first individual, simply by nature, will be a

better artist. Kymlicka uses the example of one being “born handicapped, or with an IQ of 140;” according to the previous conception of equality of opportunity, both the handicapped person and the person with an IQ of 140 would have to work just as hard to do whatever they may want to do, when in reality, the person with an IQ of 140, in most cases, would have a much easier time achieving their goals (2002: 58). The prevailing equality of opportunity argument, then, contains undeserved inequalities, and “if we are genuinely interested in removing undeserved inequalities, then the prevailing view of equality of opportunity is inadequate” (Kymlicka, 2002: 59). From this, Rawls creates the difference principle.

Rawls’ second principle of justice is often referred to as the difference principle. The difference principle is the thought that, in Rawls’ words, “all social primary goods - liberty and opportunity, income and wealth, and the bases of self-respect - are to be distributed equally unless an unequal distribution of any or all of these goods is to the advantage of the least favored” (1971: 303). From this, two main points must be known; first, inequalities, for Rawls, are in some ways justified, and, second, if there is to be an inequality, it must be for the benefit of the least well-off in society. Kymlicka argues that this “is the single, simple idea at the heart of Rawls’ theory,” and that, in a way, it gives “the less well-off a kind of veto over inequalities” (2002: 55). To reincorporate the previous conception of equality of opportunity, it can be said that “under the prevailing idea of equality of opportunity [...] the less well-off have no veto over these inequalities, and no right to expect to benefit from them” (Kymlicka, 2002: 57). In taking into account the least well-off persons in society, then, Rawls comes to create his “general conception of justice” (Kymlicka, 2002: 55). One may wonder, here, why it is that Rawls does his theorizing by thinking about the least well-off individuals in society. If one thinks of the original position that was discussed, though, a connection can, and must, be made. In the original position, to restate, one looks through a veil of ignorance to choose principles of justice that would be fair for everyone, as no one in the original position knows where in society they will end up. In doing so, but in different words, one would be choosing principles of justice that would be most beneficial for the least well-off in society. Realizing this, Rawls’ theory comes full circle: “We are led to the difference principle if we wish to set up the social system so that no one gains or loses from his arbitrary place in the distribution of natural assets or his initial position in society without giving

or receiving compensating advantages in return” (Rawls, 1971: 102). To conclude with an example of an inequality that Rawls would find just, Hirschman explains that “inequalities in wealth and power” are “acceptable if they provide more adequately for those at the bottom than would an equal division of wealth” (1994: 1879). On the other hand, if an equal division of wealth would benefit those at the bottom just as much as those at the top, then that would also be just. In sum, what is just in every circumstance is that which will benefit those that are the least well-off in society.

Although Rawls’ theory, as was shown, has many reasons for praise, his theory can also be critiqued. Rawls’ justice as fairness is a form of distributive justice, and distributive justice is often insufficient to explain certain injustices. His “conception of justice,” then, provides “in the first instance a standard whereby the distributive aspects of the basic structure of society are to be assessed” (Rawls, 1971: 9). What this does, as the difference principle explained, is distribute social primary goods in society so that the least well-off will benefit the most. What this does not do, though, is account for the injustices against women, as will be argued. Further, it seems that distributive justice overlooks group-based oppression. Young, who argues that injustices are done to people based on the groups they belong to and not because of who they are individually, says that “social justice means the elimination of institutionalized domination and oppression” (1990: 15). To apply this to the main argument that will come of this paper, that is, that there is a feminist argument to be put against Rawls in regards to the family, his distributive justice does not seem to account for the oppression and domination of women in the private sphere. It can briefly be noted, then, that Rawls’ version of justice does not just overlook group-based injustices, but that it also overlooks injustices that happen in the private sphere. For this reason, “it is a mistake to reduce social justice to distribution” (Young, 1990: 15). Okin goes as far to say that Rawls’ distributive justice “fails entirely to address the justice of the gender system, which, with its roots in the sex roles of the family and its branches extending into virtually every corner of our lives, is one of the fundamental structures of our society” (1989: 101). Further, Hirschman says that Rawls is not justified in “drawing a line around justice that excludes private agencies of injustice,” and in realizing that this was done in a time where feminist values were well known in political philosophy, this including the awareness of private injustices against women,

it does not seem right for Rawls to have not done more to acknowledge them (1994: 1865).

Another critique of Rawls' theory is the impracticality of his original position argument, and since his original position argument is such a crucial aspect of his theory of justice, this critique, in a way, acts as a critique of his theory as a whole. For this paper, this critique will be presented from a feminist point of view. Okin describes Rawls as "disembodied and unembedded in any social or cultural reality," but for one to be aware of feminist values, one must be embodied in reality (2004: 1544). This is the case because, theoretically, all humans are said to be equal, but it is only in understanding the reality of women's lives that their subordination can be grasped. This subordination, Hirschman argues, is often due to the physical dominance, at least the majority of the time, of men over women: "The primacy of equal moral autonomy cannot survive the physical reality of the inequality of physical players" (1994: 1874). Even though the original position disregards sex and gender when individuals choose principles of justice, then, this still does not help the reality of women being dominated and oppressed in the private sphere. Hirschman further states that "the positive benefits of narrow Rawlsian justice" become "essentially meaningless, and its restrictions affirmatively harmful" when it does not account for the private sphere, which, as it is being argued, it does not (1994: 1866). Being "in the ineluctable physical reality of a sexed population, women, smaller, weaker, and more vulnerable in childbirth and nursing, will know that, as individual players, they will always come out at a disadvantage," and if Rawls' theory of justice is what societies adopt as their rulebook for justice, this will continue to be true (Hirschman, 1994: 1868). In other words, "if Rawls has his way and only the state can be held to any standards of justice," Hirschman asks, "what arguments can women make against these private oppressions?" (1994: 1876). That being said, there must also be standards of justice in the private sphere.

Another critique of the original position is that it disregards history and the status quo. This criticism comes from Nussbaum; she claims that Rawls "proceeds as if, at the level of the Original Position, the account is historically neutral, not biased in favor of the status quo in any given place and time" (2000: 64). This comes back to the notion, then, that Rawls is not anchored enough in reality. In acting like the original position is historically neutral, he is not accounting for the centuries of domination and oppression

against women. If there was no such thing as a status quo or if people's minds could spontaneously change for the better after years of thinking in a certain way, it could be argued that the original position being historically neutral could be justified. It seems, though, that people cannot simply forget about history, and that change, especially attitudinal change, normally takes a lot of time. That being said, although it makes sense that Rawls' original position is historically neutral because by definition it is indifferent to empirical circumstances, the reality of injustices towards women is far too apparent for the original position to be historically neutral and therefore neglect the fact that many people still view women as subordinate. Choosing principles of justice from the original position, then, although great for "public justice," does nothing to address the reality of "private anarchy," that is, wherein there is no law and the naturally stronger will rule, and the naturally stronger, as was previously argued, is usually men (Hirschman, 1994: 1875).

Rawls and the Family

From here, there can now begin a thorough discussion on Rawls' failure to adequately deal with the institution of the family; first, there must be more known about the common feminist argument that "the personal is political." In short, this motto calls for awareness of that which is often only considered to be of importance in people's personal lives, such as one's family life, as it is here that women face the greatest amount of injustice. Due to the injustice that women face in their private life, it should be brought out into the open, that is, into the public realm, so people can become aware and try to correct the injustices towards women. Rawls, though, does not appropriately address this. One of his many critics on this point is Okin; she critiques Rawls for being "trapped into the public/domestic dichotomy and, with it, the conventional mode of thinking that life within the family and relations between the sexes are not properly regarded as part of the subject matter of a theory of social justice" (1989: 92). Further, Rawls "does not consider as part of the basic structure of society the greater economic dependence of women and the sexual division of labor within the typical family," which are two consequences of women's private life that are disguised as just, when they are in fact unjust (Okin, 1989: 96). Hirschman thinks that this is the case because "for too long, we have been conflating what it means to be human with what it means to be male. If that

metaphysical assumption is not challenged, feminist theory can ultimately do nothing” (1994: 1880). In accepting Rawls’ theory, then, it seems that one would further be assuming that what is just for everyone is what seems to be just for males. This is, to restate, because Rawls does not adequately address the problem of gender equality, especially in the private lives of women; because of this, what he may have thought was to be just for everyone may be so theoretically, but not in practice.

Rawls is a liberal, and “the idea of the public and the private is intrinsically associated with liberalism;” this does not mean, though, that Rawls is justified in believing in the dichotomy of the public and the private (Newman and White, 2012: 29). To elaborate on liberalism’s view towards this, it is often said that “state authority should not extend to any intervention in the freedom of individuals to run their own lives beyond preventing people from harming one another” (Newman and White, 2012: 29). The public/private distinction, though, is “a distinction that has disfigured the lives of girls and women through the ages,” that is, to defeat what was said about liberalism’s right to only interfere when harm is involved, women have been harmed in the private sphere for a long time (Nussbaum, 2000: 67). That being said, state authority, or in this case Rawls’ theory of justice, should have the right to interfere in the private lives of people because of the fact that there is harm being done. All one has to do is acknowledge the harm, then, and then it is unjust if a liberal, such as Rawls, was to not acknowledge this harm. Rawls, though, either is somehow unaware of the harm that is done to women or just does not know how to incorporate it into his theory of justice, because he continually claims that his theory only applies to the basic structure of society (Nussbaum, 2000: 64). He claims that public rights are enough: “Since wives are equally citizens with their husbands, they all have the same basic rights, liberties, and opportunities as their husbands, and this [...] suffices to secure their equality and independence” (Rawls, 1997: 790). This last point, which was written after being aware of feminist criticisms against his theory, shows how, even over time and criticism, Rawls still seemed to think that legal equality in the public realm is all one needs to be fully equal to everyone else, regardless of gender. As feminists believe, though, this is certainly not the case.

Rawls also does not adequately address the sexual division of labour, that is, the relegation of tasks to the sexes, normally thought of as

disadvantaging women. First, though, this does not mean that Rawls is in any way a sexist or anti-feminist; in fact, speaking on how women should be compensated for labour at home that is unpaid if she divorces her husband who she depends on economically, he argues that to not think that women deserve this is a society that “does not care about women, much less about their equality” (1997: 793). That being said, Rawls still falls far too short of helping end the “unequal distribution of the unpaid labor of the family” (Okin, 1989: 4). Okin’s main criticism of Rawls in this regard is that “the prevalent gendered division of labor within the family is neglected” because the family “is assumed to be just” (1989: 9). Rawls’ assumption of the family being a just institution, though, does not make sense when one thinks of the sexual division of labour: “In societies characterized by gender (all current societies) a much larger proportion of women’s than men’s labor is unpaid and is often not even acknowledged as labor” (Okin, 1989: 95). This, quite simply, is unjust, that is, the assumption that the family is just is a false premise in his argument for not applying his principles of justice to the family. Rawls seems to have no plausible justification, then, for not acknowledging the sexual division of labour in the family. To further show the injustice of the sexual division of labour, Newman and White describe it as not just continuing on “the invisibility of women’s domestic labour,” but they say that it also “hides the abuse of women” (2012: 33). An example of this can be common domestic work such as cooking. Traditionally, and still in many families, women are to cook the majority of the meals for her husband and children. This is, of course, without pay. Many women carry this responsibility yet still have to work a job as well, and even though their husbands understand that they work a job, it is still often assumed that cooking is the responsibility of the wife. Examples such as this of the sexual division of labour Rawls assumes to be just, but, as was shown, he is not justified in assuming this. It may be possible that Rawls simply does not know how to approach the problem; Nussbaum goes as far to say that, “in practical terms, Rawls thinks that we cannot make rules for the division of labor in families” (2000: 60). Regardless of if he did not know how or if he was just unaware of it in his reasoning, his theory cannot suffice without acknowledging the sexual division of labour.

There is more to be said about Rawls’ assuming that the family is just. His “failure to remark upon a gendered division of labour in the family,” Okin argues, threatens “to undermine the development of a sense of justice

in the children” who are “to be the just society’s future citizens” (2004: 1548). The reason that this is such a crucial aspect is because, Okin says, “Rawls alone treats the family seriously as the earliest school of moral development. He argues that a just, well-ordered society will be stable only if its members continue to develop a sense of justice” (1989: 21). Rawls, then, claims that the family is where children first learn to be moral and to appreciate justice, but it does not seem plausible for children to learn to be moral and just in a way that values gender equality when Rawls does not account for the injustices of women in the family. To restate, the family is the place where “we learn to be just,” but if the family acts as Rawls thinks it should act, that is, as completely separated from the principles of justice that govern the basic structure of society, then the family will not be just, and children will be socialized to believe in a sense of justice that is fine with the subordination of women (Okin, 1989: 18). It can be easily argued that, without accounting for injustices such as the sexual division of labour in the family, the patriarchal and traditional ways of the family will persist. It is plausible that a young girl, then, will grow up believing that it is her duty to do housework, provide for the sexual needs of her husband, and also have a career. On the other hand, this may lead a young boy to grow up believing that housework is solely for his wife to do, as well as thinking that he deserves sexual favours from her and for her to give labour to his children for him, simply because this is what he seen from his parents growing up. Okin argues that first human interactions must be “based on equality and reciprocity rather than dependence and domination,” but many relationships within the traditional family are based on the latter (1989: 99). One can understand, then, that children “are likely to be considerably hindered in becoming people who are guided by principles of justice” in embracing Rawls’ theory of justice that, in many ways, neglects the injustices within the family (Okin, 1989: 17).

Nussbaum argues that Rawls thinks “of the family as pre-political” (2000: 65). In what has been said thus far, this makes sense; an example of this is that Rawls merely assumes that the family is just without actually taking the time to understand if it really is or not. If the family was pre-political, the justifiability of political institutions should be considered prior to the family. By adopting the feminist belief that the personal is political, though, it can be concluded that the family, in opposition to Rawls’ thought, is in fact political. In saying it is pre-political, then, one can understand, but not justify, Rawls’ idea that legal equality, as touched on earlier, is enough

for a husband and wife to be equal and for there to be a just family that will socialize children to believe in just principles. The fact is, though, this idea goes as far back as the time of Mill: “The equality of married persons before the law [...] is the only means of rendering the daily life of mankind, in any high sense, a school of moral cultivation” (1991: 517). That being said, legal equality is not enough; Okin argues that “until there is justice in the family, women will not be able to gain equality in politics, at work, or in any other sphere” (1989: 4). In other words, “a just family” is the “essential foundation” of “a just society,” wherein women have equal opportunities as men not just in the public sphere, but also in their private lives (Okin, 1989: 17).

Rawls’ Paradox

Rawls’ theory possesses a paradox. Okin claims that “because of his assumptions about gender,” that is, because he neglects gender, “he has not applied the principles of justice to the realm of human nurturance, a realm that is essential to the achievement and the maintenance of justice” (1989: 108). Despite this, Rawls continues to argue that the family is the first school of moral development and is therefore crucial for children to grow up to be just citizens. To make clear, Rawls does not apply his two principles of justice to the family, his two principles of justice being that which one is supposed to consult when wanting to know if an action is just, and yet he still believes that the family is the first school of moral development and that it is crucial in bringing up children to be just citizens. Another contradictory part of Rawls’ theory that Okin notices is that he claims families are “similar to other social associations such as universities and trade unions;” this “seems completely to neglect the crucial function of families in promoting a sense of justice in the young,” which he repeatedly argues for (2004: 1566). This previous “value of the family in securing the orderly production and reproduction of society,” that is, via the production and reproduction of just citizens, does not seem to hold as much weight when the family is compared to significantly less crucial institutions like universities and trade unions (Rawls, 1997: 793). To sum up, the words of Nussbaum can be used: “The family is one of the most non-voluntary and pervasively influential of social institutions, and one of the most notorious homes of sex hierarchy, denial of equal opportunity, and sex-based violence and humiliation” (2000: 59). In realizing that the family plays such a vital role in the production of a just society, Rawls should have tried harder to find a way to apply his two

principles of justice to the family. Because he did not do this, and does not seem to adequately address any feminist issues in his revisions of *A Theory of Justice*, Okin has stated that Rawls “almost completely ignores women” (2004: 1548). Although this is not the place to speak of Rawls’ character, it can be said from his work in political philosophy that, although being an innovative thinker, he failed to solve issues of gender equality, and therefore his theory of justice is inadequate and unable to be applied to a society in the hopes of making it fully just.

This paper has been, first, a brief discussion on the originality of the work of John Rawls, and then a thorough feminist critique of his work, specifically in regards to the family. His concepts such as the original position, veil of ignorance, and his second principle of justice, the difference principle, were explained, arguing that they are all innovative concepts that have taken place over prevailing concepts; this includes his defeat of the prevailing equality of opportunity argument, showing that past liberals did not account for natural inequalities. In critiquing his theory of justice as fairness, a form of distributive justice, it was said that distributive justice is insufficient to solve feminist issues, as well as his original position being too disengaged from the reality of women’s lives in society. In critiquing his work for not acknowledging the family, many crucial points were made, such as the fact that not applying his principles of justice to the family led his theory of justice to leave out the situations of women, not acknowledging the sexual division of labour in the family, as well as showing that some of his arguments about the family are contradictory, such as saying that the family is crucial for children’s moral development yet that his two principles of justice do not apply to it. In short, John Rawls was a revolutionary political philosopher, and it is assumed that he believed in gender equality and was thus a feminist, but his theory has been unable to help the problem of gender equality in society.

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