Contractarian Perspectives of International Society: An Analysis of John Rawls’ Theory of Justice as Fairness

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Contractarianism developed in the seventeenth and eighteenth centuries during the Enlightenment. It was developed as a political theory to analyze the legitimacy of a government and the basis for political obligation of common people to such a government. In a climate where traditional beliefs were being questioned, credence in the divine right of kings was fading and political authority was beginning to be seen as analogous to human practices. Consequently, political legitimacy and obligation were to be dictated by the wills of the people, and not by God or by nature. Social contract theorists wanted an explanation for the existence of the state and the duty that people had afforded it. The contract would come to serve three purposes. It would explain the emergence of government, the people’s obligation to it, and the limitations of such a government’s power.\(^1\) The author Will Kymlicka states “people would therefore agree to institute government, and cede certain powers to it, if governors agreed to use these powers to ensure security.”\(^2\) In a state of nature, all people are free and equal with no one person or entity holding any authority over others. In such a situation there is neither allegiance nor responsibility to others, resulting in a feeling of insecurity. Without government there is no control over people’s actions and thus, no guarantee of personal safety. It is for this reason that people consented to government, and were then obligated to obey the laws that it had created.\(^3\)

It is this idea of consent that was seen as a flaw in the theory because consent was never given by way of any real contract, therefore there were no commitments binding governments or citizens.\(^4\) Theorists then began looking for hypothetical consent. They did this by assuming an idealized situation where “people as they would be were they (for instance) perfectly rational and appropriately informed”\(^5\) would give consent under appropriate conditions. They fabricated a completely hypothetical situation to demonstrate how people and governments would come up with the basis for a political system. This consisted of rights and obligations of both the governing and the governed by way of a mutually agreed upon social contract. Once the theory took its focus off the reality of the situation, and placed it on the hypothetical, it seemed to be incomplete and quickly became replaced with other theories.

Thomas Hobbes’ theory of mutual advantage morality was the idea that people would agree to abide by certain rules if they knew that others would also abide by them. The motivation for agreeing to these rules was not morality itself but the benefits gained by being moral.\(^6\) On the other hand, Immanuel Kant, through the social contract, focused upon the inherent moral character of people without having to fabricate a specific morality and also nullified the concept of unequal bargaining power. This is his theory of morality as impartiality.\(^7\) In the twentieth century there was a revival of the social contract theory. What had been introduced as a political theory during the Enlightenment period was presented as a moral theory in the twentieth century by several authors, notably John Rawls.
John Rawls’ modern contractarian theory will be analyzed in this essay. His theory is founded on the morality of all parties concerned, who, being equal, must accept its principles. Thus, it takes the aspect of benefits being gained by all, as popularized by Hobbes and other social contract theorists, and combines it with Kant’s influential conception of morality and the fairness of negotiations.

Conception of the State

The basic structure of society contains inequalities and these are represented by the various positions that people are born into. These positions are shaped by political, social and economic circumstances and are given varying degrees of importance with a preference being placed on some over others. This situation forces some people to unfairly begin their lives from a disadvantaged position. It is this initial inequality that John Rawls wishes to erase. His idea, in accordance with Platonian and Aristotelian conceptions of society, is that the basic structure of society should be justice itself, justice interpreted as fairness.

It is interesting to note that although the nature of the state is being discussed here, Rawls does not wish to support the idea that government is founded on contract. In keeping with the idea that modern contractarianism is a moral rather than a political theory, he rather wishes to emphasize the origin of the principles of justice. It is these principles that he hopes to derive from the negotiations of people, namely “the principles that free and rational persons concerned with furthering their own interests would accept an initial position of equality as defining the fundamental terms of their associations.” The selection of these principles would be guided by feelings of uncertainty, “...principles are those a person would choose for the design of a society in which his enemy is to assign him his place.” The principles formed in this original contract and based on the idea of fairness will be those that will guide future social co-operations and the establishment of representative governments.

If his focus is on fairness for all people, he then must decide how fairness can be implemented into the system. He does this by explaining the idea of the ‘original position’, which is similar to the concept of the state of nature in the sense that all people are considered equal with no common authority. The original position is characterized by the fact that people, when occupying this position, hold very limited information about their personal make-up. They are ignorant of what their class and social status is as well as the amount of wealth they possess. They are also unaware of their level of intelligence and strength. Rawls refers to this lack of information as the ‘veil of ignorance.’ Behind this veil people are forced to form the principles of justice based on complete fairness taking into account the interests of all members of society, because they represent any one of these members. If they do anything less, they themselves may suffer the injustices, “[T]he original position is, one might say, the appropriate initial status quo, and thus the fundamental agreements reached in it are fair.” Clearly, people in the original position are thinking persons and thus moral, which he equates to being rational.

Rawls believes that the problem that people may have with his contract view of justice as fairness is not with the idea of the initial situation. The problem may lie in accepting the set of principles that would be hypothetically agreed upon through the negotiations of people assuming
the initial positions. The first principle states that each person has an equal right to basic liberty, which includes political liberty; that is, the right to vote and to be eligible for public office as well as the freedom of speech and assembly. This basic liberty also includes liberty of conscience and freedom of thought, the right to possess property and freedom from arbitrary arrest and seizure. The second principle is that social and economic inequalities are legitimate but only when they are a) 'reasonably expected to be to everyone’s advantage,' and b) 'attached to positions and offices open to all.' The latter refers to the inequalities in the distribution of wealth and income, inequalities that are justified if they result in the benefit of all. He gives an example by suggesting that a system based on equality of all rights may be able to demonstrate the possibility for improvement and that a slight imbalance in perhaps organizational powers may be an advantage for all concerned. If this were the case, the circumstances would fall in line with the idea set out in the second principle, and “...injustice, then, is simply inequalities that are not to the benefit of all.” In keeping with a basic tenet of contract theory, the knowledge that these slight inequalities would be to their advantage would make people willing to give up some liberties. The distribution of wealth and income must correspond with equal citizenship and equal opportunity.

Starting with the ideas of the original position and the ‘veil of ignorance,’ Rawls thus established the above two principles of justice. These principles, which correspond to fairness, are seen as the basic structure of society. This basic structure must be able to sustain a certain institutions that espouse the ideals of fairness. Rawls describes five requirements that a constitutional democratic society should possess. These requirements are, firstly, equality of opportunity especially pertaining to education and training, to enable people to take part in debates that contribute to the making of social and economic policies. The second requirement is a decent distribution of wealth and income and the means by which to take advantage of one’s basic freedoms listed earlier. Thirdly, the society must provide long-term security and employment to ensure participation in society. The fourth requirement is the assurance of basic health care for all. Lastly, elections must be publicly financed and there must be public access to information on policy matters, ensuring that all representatives are free from any specific interests and that citizens are well informed. If these requirements are fulfilled, the result will be Rawls’ conception of a constitutional democratic well-ordered society. The success of such a society is not gauged by military terms, but rather by the attainment of political and social justice for all citizens, ensuring that their basic freedoms are protected and that they are attaining a decent level of income. Success is also evaluated in terms of the civic culture’s ability to express itself freely.

As mentioned earlier, the contract theory was developed to explain not only the establishment or emergence of government but also to explain people’s obligation to government. John Rawls explains this by stating that people have a natural duty, which is the duty of justice. This duty of justice compels people to be obligated to ideas, principles, institutions and societies that uphold justice, “...thus if the basic structure of society is just, as it is reasonable to expect in the circumstances, everyone has a natural duty to do his part in the existing scheme.” Therefore, it is no longer a question of the existence of a hypothetical contract whereby people are obligated to the government. Once the basic structure of society and its institutions are just, based on principles developed from the original position, duty is
unconditional and consent, real or hypothetical, is not needed. People no longer take certain action solely motivated by the idea of what they will receive in return. They undertake certain actions because the foundations for fairness and equality have already been laid due to the establishment of just principles, "...in fact, once the full set of principles, a complete conception of right, is on hand, we can simply forget about the conception of original position and apply these principles as we would any others." Thus, in Rawls' view, the original contract lays down the principles of justice, but does not specify the components of a just government.

**Concept of Man**

Earlier philosophers would discuss their ideas of man by discussing what they believed to be the inherent natures of men. John Rawls seems to look at the characteristics of man from a different angle. It is not a question of whether man is inherently evil, bad, decent or good, rather he bases his perceptions of man on principles of morality. It is for this reason that Rawls' concept of the state is discussed prior to his concept of man, because his concept of a good man falls directly in line with what he views as a just society. He refers once again to the original position. The good person is endowed with rational feelings found in the original position and this good person must, to a higher degree than the average individual, possess a broad set of moral features that people would want to see reflected in each another. Thus, he sees goodness as rationality.

These features must be representative of a moral character based on the principles of justice and are manifested through good acts. These acts are carried out to advance the good of others. Here he stresses that there is no obligation to perform these good acts but that they are done based on the level of moral character of a particular rational person. It is rational to act this way because each member assumes that all individuals will act on the principles of justice.

Rawls bases the characteristics of the bad man on the principles of justice as well. He defines the bad man as someone who has, as his priority, the attainment of excessive power and authority over others. This desire goes beyond the limits of what is acceptable by trying to achieve gains through unjust actions. Rawls does not view all men as equally bad. He divides them by degrees of morally suspect character. The three levels of the bad man are the unjust man, the bad man and the evil man. The unjust man aspires to power and authority to achieve specific goals. These goals, such as the attainment of wealth and security are generally viewed as being legitimate when limits are placed on them. The bad man, like the unjust man, has a yearning for legitimate aims but in excessive amounts. He seeks the high esteem of others and a feeling of supremacy over others. What makes him worse than the unjust man is the dangerous way in which he seeks to achieve these ends. The evil man has a love of injustice and goes completely against what average people hold as just based on the principles established in the original contract. He offends the self-respect of others by gaining unjust rule and by placing them in humiliating and degrading positions of inferiority. He takes delight in this superiority over others.

According to Rawls, the good and the bad man stem from the structure of society within which they develop. If people are born, raised and develop mentally in a society where there exist just political and social institutions, it is likely that the moral character of the majority of
the individuals will also be enhanced. In this case, the lack of moral features of the bad man, who does not extol the virtues of justice, covets more than what is actually sufficient for his existence and lack confidence in his self worth, will be easily distinguishable based on the established morality of the majority. Rawls thus summarizes his conception of man:

...to say that human nature is good is to say that citizens, who grow up under reasonable and just-institutions that satisfy any of a family of reasonable liberal political conceptions of justice, will affirm those institutions and act to make sure their social world endures.

The structure of a just society, therefore, prevails because the characteristics that make it what it is are manifested in the actions and interactions of its citizens.

Conception of International Society

In keeping with the moral rather than political nature of his theory, Rawls feels that states in the existing international structure, in the Realist sense, are guided by a rational pursuit of interests. He wishes to differentiate between the abstract idea of the state and the more tangible concept of peoples. This enables him to focus on the moral character of these peoples.

John Rawls categorizes the world's peoples into five groups. The first group he refers to are the liberal peoples. These peoples live in a constitutional democratic society that depicts the ideal of the society that was discussed earlier when dealing with Rawls' conception of the state. The second group is what he refers to as non-liberal yet decent peoples. This group comes from societies that possess basic institutions that meet a certain level of political justice. These first two groups are what he labels well-ordered societies. The third group consists of outlaw states that do not respect the rights of their citizens. The fourth are societies burdened by unfavourable conditions, specifically, a lack of human capital, required resources and technology. These burdens are a direct result of historical, social and economic circumstances that make it difficult for these people to establish a well-ordered society. The fifth group consists of societies that he defines as benevolent absolutisms, in which human rights are honored, but ordinary members of society are prohibited from taking on roles of decision-making.

Rawls uses again the concept of the original position, first, to develop the basic structure of a people's society, and, then, to establish a framework for a society of peoples. He differentiates between the two original positions by referring to the domestic use, as the first position, and the international use, as the second position. Once again, the second position, like the first, is to be a model of conditions under which peoples, or states, establish terms or principles that will guide the basic structure of the international society of peoples. Again, the 'veil of ignorance' is used to deny peoples holding the original position information about the country they represent, information which could influence the establishment of terms. The participating parties do not know the size of their territory, the size of their population, their relative strength, their natural resources or their level of economic development. The only knowledge they have is that they are able to work within reasonable conditions to achieve a democratic structure. What guides the participating representatives is what Rawls calls the criterion of reciprocity. The terms proposed for the cooperation of peoples in the international...
system should be established with the understanding that these terms are fair terms, which free and equal people would accept as reasonable.\textsuperscript{35} The only way they will be adhered to is if non-liberal decent people deem them as reasonable, just as liberal peoples will. If there is any doubt in the minds of the participants that the terms will not be seen as fair, then the criterion of reciprocity has not been followed. Reciprocity prevails only if each participant’s rationality in terms of seeking interests includes reasonable terms to which all can agree.

In the second position peoples select from eight principles that form the Law of Peoples. The principles are as follows: 1) people possess freedom and independence, which are to be respected by other groups, 2) they are to observe treaties, 3) all peoples are equal and are parties to the agreements that bind them, 4) they are to observe a duty of non-intervention, 5) they have the right of self-defense but no right to instigate war for reasons other than self-defense, 6) human rights must be honored, 7) certain specified restrictions in the conduct of war are to be observed, and 8) peoples are to assist others living under unfavorable conditions that prevent their having a just or decent political and social regime. Rawls admits that these principles are only the basic ones and that they require more in-depth specifications. He also maintains that these eight principles are subject to the restrictions of the principle of sovereignty; namely: the right for a people to go to war in pursuit of state policies, and the autonomy of a people in dealing with its own citizens.\textsuperscript{36} However, he does question the right of sovereignty in certain cases and this will be discussed later.

Once the principles are established, guidelines for setting up cooperative organizations can be determined. Rawls mentions three organizations in particular. Firstly, an organization that will ensure fair trade involving equal standards and a free and competitive market. Secondly, one that will resemble a cooperative banking system from which people will be able to borrow and finally, an organization that will resemble the United Nations, which he calls a Confederation of Peoples.\textsuperscript{37} This is Rawls’ version of Kant’s\textit{foedus pacificum}, which he refers to many times throughout his work. For this confederation to succeed it must adhere to certain conditions which come from the Law of Peoples. The political conception of justice must remain within the realm of the political, and moral, religious and philosophical doctrines must exist outside of the political sphere. Religious homogeneity is not a required element in order to live within the confines of a Law of Peoples. An interesting point is Rawls’ idea that there can be varying degrees of allegiance to international law due to each peoples’ differing sense of justice, but that it must be a\textit{sufficient} level of allegiance. He calls this reasonable pluralism.\textsuperscript{38} A true liberal society will show itself to be just when it can remain open by tolerating different societies.\textsuperscript{39}

Rawls raises the question of to what extent non-liberal peoples are to be tolerated with regards to liberal foreign policy? His answer is that liberal people should tolerate a non-liberal society or a decent society if its basic institutions satisfy certain conditions of justice in politics and it governs its citizens with reasonable and just laws.\textsuperscript{40} If a liberal society cannot accept the differences that non-liberal societies present then it cannot define itself as liberal. Every society, provided it satisfies certain conditions, deserves its due respect. A lack of respect will result in harming the self-respect of these decent peoples. It would wound their ‘proper patriotism’, which is a pride in their own societies.\textsuperscript{41} To stress his point he discusses Rousseau’s idea of
amour propre and how peoples desire respect and recognition of equality from others. Liberal peoples must be willing to grant this respect to decent peoples.  

Rawls’ ultimate goal is for all societies to become liberal societies, but does not endorse the idea of enforcing liberal doctrine on them. Liberal peoples should not be arrogant in thinking that decent societies cannot in their own way reform their structures. He is a proponent of self-determination and believes that liberal peoples should encourage decent peoples when striving for liberal structures. This thinking harks back to Kant’s idea of never imposing a certain people’s will or ideology on others, rather allowing them the freedom of choice and the freedom to develop on their own. He is against paternalism because he feels that it only serves to stall development, leaving people without the empowering feeling of self-realization, stating: “liberal peoples must try to encourage decent peoples and not frustrate their vitality by coercively insisting that all societies be liberal.”

This idea of refusing to act paternalistically is carried over to Rawls’ notion of assistance. Well-ordered societies should help peoples in need, usually burdened societies, to manage their affairs allowing them to take part in public and civic life. He points out three guidelines of assistance. One guideline is that peoples should be given the right of self-determination as explained above. A second guideline is the idea that the political culture of the society in need should be understood. Once this culture is recognized, well-ordered peoples should help to change it without using force. For example, sometimes the political culture of a particular burdened society places women in a position of inferiority. A change would come in the form of empowerment by way of providing them with education, employment and the right to vote. These new opportunities will provide them with alternatives to child bearing, which would decrease the birth rate and alleviate a major problem of overpopulation. Another problem would be food crises, which Rawls feels arise not from a lack of food but from a lack of a proper distribution system.

Rawls states that “insisting on human rights will help prevent famines from developing and will exert pressure in the direction of effective governments in a well-ordered society.” A third guideline is that burdened societies need not become wealthy societies. They need only enough wealth to sustain their people. All peoples have a duty to reach a certain level of savings that will make it possible for them to establish just institutions for a democratic society and to provide all citizens with a worthwhile life. Once this level is reached, there is no longer a need to accumulate wealth, rather only a need to maintain it and assure resources for future use. Technology will need to be developed to preserve the earth’s natural resources ensuring that its people will be sustained. This economic structure is Rawls’ ideal not only for assistance but also for his conception of a liberal state.

While the economic structure should give all peoples equal opportunities to achieve a decent standard of living, Rawls does not feel that the level of wealth of all peoples must be equal. A situation of inequality is not always unjust. There can exist a gap between different levels of wealth providing that the less advantaged of these peoples has enough means to become the beneficiaries of just institutions and a decent life. Once this goal has been reached there is no longer a need to narrow the gap. This is what Rawls refers to as distributive justice among peoples. Feelings of inferiority or a desire for more wealth are unjustified once societies have
reached this sufficient point. Rawls does not believe in a global egalitarian principle, which he feels does not have a target goal. He feels that without a target there would forever be a funneling of funds from the wealthier societies to the less wealthy societies, which he finds unacceptable. Once levels of wealth are brought up to certain standards and maintained, the duty of assistance no longer applies, because the goal had been reached. Once a burdened society achieves just and democratic economic institutions, it then has the ability to make its own choices, including developing its own economic policies. If two societies start at the same level and, based on their economic policies, one becomes wealthier than the other, the wealthier state should not be obligated to send funds to the other. It is not reasonable for a society to ask for more than is necessary.

Non-Ideal Relations

John Rawls understands that not all societies will fall in line with liberal doctrine immediately and has allowed for the Law of Peoples to contain principles in dealing with non well-ordered peoples during times of war. Once peoples are engaged in war they are to be restricted by principles describing the accepted conduct of war. The principles are as follows:

1) The aim of the war is a just and lasting peace with the enemy. 2) Well-ordered peoples do not wage war against each other. War is only to be waged when non well-ordered peoples threaten the security and free institutions of well-ordered peoples. 3) People of the outlaw state are to be divided into three groups: the leaders and officials who instigated the war, the average soldiers who are not directly responsible and the civilian population who had absolutely no hand in bringing about the war. These divisions are made to protect the innocents even if they belong to the enemy society. 4) Well-ordered peoples must respect the human rights of those on the other side. 5) Well-ordered peoples must teach the content of human rights. This is important because they must, through their actions in dealing with enemy soldiers and civilians, lead by example by demonstrating the true meaning of the nature of human rights. This principle is most important for government leaders and officials because the decisions they make could affect the future structure of the international system. John Rawls is adamant about the extension of a universal set of human rights to all societies and to which all peoples would be obligated. In order to achieve this he is prepared to amend the principles of sovereignty. He does not feel that a state has the right to unrestricted autonomy within its borders, enabling a leader to treat his citizens in an unjust manner. The universal set of human rights would supercede this autonomy. 6) Practical means-end reasoning must have a restricted role in judging the appropriateness of an action. The ends do not always justify the means, especially if they are particularly costly and unjust. It would not be reasonable to destroy an enemy arms factory, if this would lead to killing a large number of civilians.

Once a war has been fought and peace has been established, an enemy society is not to be stripped completely of its ability to rebuild and reform itself. It is to be granted the means to establish a well-ordered society of its own. Rawls claims that, when the internal structures of society are just, people are usually satisfied and there is no temptation to engage in war. Thus, in his view, the greater the number of constitutionally democratic societies, the fewer wars there will be. This is a direct observance of the ideas expressed in Kant’s A Perpetual Peace.
Conclusion

By presenting the basic tenets of his theory of justice as fairness, John Rawls has provided domestic society with a framework with which to build a constitutionally democratic system. He has also provided international society with a framework to devise a set of principles which will form the basis of a Law of Peoples. He has done this keeping the ideas of fairness, although not always equality, for all at the forefront. However, his notion of the original position behind a ‘veil of ignorance’ and the hypothetical nature of the conditions envisaged are quite difficult to accept. How can we imagine the existence of a person that is denied access to information, and whose ignorance could very well cause biases during negotiations? If a person does not have access to information, then he/she must be aware that differences in social, economic and political positions exist. This awareness must come from the fact that he/she has experienced these differences directly, advantageously or disadvantageously. In Rawls’ conception, it is this lack of experience or information that will ensure that people will be as fair as possible when formulating principles of justice. How can a person be denied such specific information? Can he/she possibly forget what position in society he/she held and yet understand what position he/she did not want to hold? Thus, the original position does not appear to be viable.

As stated earlier, Rawls expects people to have difficulty in accepting some aspects of his theory. His response might be that the recognition of its moral features would be counted as a success, “...while realization is of course not unimportant, I believe that the very possibility of such a social order can itself reconcile us to the social world. That we think it is possible banishes dangers of resignation and cynicism.” At the same time, does not Rawls miss the whole point of morality, notably of Kantian morality, which is a matter of choice and responsibility, rather than rationality per se? And, from a more practical perspective, while Rawls’ “Law of Peoples” adds little to the established principles of the United Nations Charter, does not his categorization of peoples into five groups lend itself to easy misinterpretations and abuses by race-conscious and power-hungry “liberal democracies”?

Notes

3 Ibid.
4 Ibid.
6 Ibid, 260.
9 Ibid, 11.
10 Ibid, 152.
11 Ibid, 12.
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