

Equality, Justice and Class: Comments on
"Les Deux Principes de la Justice selon Rawls" *

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Summary

I examine and extend Guy Lafrance's critique of Rawl's two principles of justice. Both principles are challengeable and the equal liberty principle is not satisfiable with the inequalities allowed by the second principle.

Résumé

J'examine et étends la critique, de Guy Lafrance, des deux principes de la justice selon Rawls. Les deux principes sont contestables et le principe de la liberté égale n'est pas compatible avec les inégalités permises par le deuxième principe.

Zusammenfassung

Guy Lafrances Kritik der beiden Prinzipien der Gerechtigkeit von Rawls werden untersucht und erweitert. Beide Prinzipien werden in Frage gestellt. Die mit dem zweiten Prinzip zugelassenen Ungleichheiten machen das Prinzip der gleichen Freiheiten unerfüllbar.

* Presented as a commentary on Guy Lafrance's "Les Deux Principes de la Justice selon Rawls" at the 21st Annual Congress of the Canadian Philosophical Association, Fredericton, New Brunswick, May 27, 1977. Cf. *Dialectica* preceding pages.

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I

In the English-speaking world, among lawyers, economists and political scientists, as well as among philosophers, discussion of Rawls' work has been, to put it minimally, very extensive. There have been symposia on him in the professional meetings of several disciplines; whole issues of journals have been devoted to his work, again in several disciplines; two books have been written about him; an important anthology, *Reading Rawls*, has had extensive use in seminars; a considerable number of dissertations have been and are being written about him and the flood of articles on Rawls has been so considerable that I would hazard the guess that in journals published in English it is rather difficult by now to publish an article on Rawls. With the recent German translation of *A Theory of Justice* considerable discussion of Rawls is also developing in the German-speaking world. By contrast, there has not been any very considerable examination of Rawls' work among French-speaking intelligentsia. Professor Lafrance has made a start in this direction and it is particularly to be welcomed that so close a student of Durkheim, Mauss and Levi-Strauss should examine Rawls, for Lafrance brings to his task a keen understanding of the social dimensions of thought. This kind of sensitivity and understanding is rare among Anglophone philosophers, so it is fortunate that Guy Lafrance should turn his attention to an examination of Rawls.

II

I want first to remark on what Lafrance says about Rawls' relation to Kant. Here I have little to add of my own but I would like to call attention to some recent (1975) remarks of Rawls' that might themselves be taken as a response to criticisms such as Professor Lafrance's¹. Lafrance correctly remarks that Rawls sees utilitarianism as the dominant modern normative ethical theory and tries, while rejecting utilitarianism in its various forms, to find a distinctive middle way — a conciliatory position — between Kant and utilitarianism that remains, while escaping the distinctive difficulties of Kant's own account, essentially Kantian in inspiration. Lafrance rightly questions a) whether this 'Kantianism' succeeds and b) whether it is genuine Kantianism.

Rawls' first principle of justice — a principle which takes absolute priority over the second principle in societal circumstances of moderate scarcity — is that "each person is to have an equal right to the most extensive total system

of equal basic liberties compatible with a similar system of liberty for all."² Lafrance sees here, and in Rawls' discussion and defense of the priority of liberty, Rawls' principal expression of a Kantian ideal. The first principle of justice is an expression of the inviolable character of liberty founded on a very Kantian conception of the free and rational nature of all human beings. Somehow there we find, or at least postulate, or in some way affirm, an equality, though what this comes to is anything but clear.

Lafrance grants that this is a Kantian ideal but questions whether Rawls has given us good grounds for believing that rational contractors *must* choose it in the original position as their first principle of social justice. Rawls, it should be remembered, indeed thinks that free and equal rational contractors, choosing from behind the veil of ignorance, must choose that principle. It is not just one of many principles they might or legitimately may choose, but it is the principle they *must* choose, given that *ex hypothesi* they are through and through rational. Lafrance questions whether such a principle has actually been so derived, given Rawls' essential Humean model of rationality, where the calculation of interests plays such a decisive role. Why must such rational contractors choose such principles under such conditions of ignorance? To ask, alternatively, why they should, where 'should' has a moral force, is not appropriate for Rawls, for it attributes a distinctively moral sense to the contractors, when Rawls is supposed to be trying to show, in an antiseptic, non-moralistic sense of 'rational', that in the condition of the original position purely rational contractors, without any previous distinctive moral commitments or preconceptions (without any conceptions of what it is right to do), would choose the equal liberty principle. Lafrance rightly questions whether any such Kantian derivation has been achieved. Moreover, for Rawls, the contractors, with their conception of rationality, rooted in their conception of interest, in turn rooted in their understanding and acceptance of the primary natural and social goods, though autonomous, still choose moral principles with *material* conditions in mind. This, as Lafrance observes, is entirely foreign to Kant's method and hardly gives us principles of justice which have the logical status of categorical imperatives. His image of himself to the contrary notwithstanding, Rawls' position is actually closer to utilitarianism than to Kantianism. This, says Lafrance, is particularly evident when we conjoin the second principle with the first, consider the reasoning in the original position and the sense of 'rationality' operative in Rawls' account.

¹ John Rawls, "A Kantian Conception of Equality," *Cambridge Review*, Vol. 96, No. 2225 (February, 1975), pp. 94-99.

² John Rawls, *A Theory of Justice*, (Cambridge, Massachusetts: Harvard University Press, 1971), p. 302.

III

In a recent essay, "A Kantian Conception of Equality", Rawls defends the appropriateness of characterizing his approach as Kantian³. He first points out, in a manner consonant with Lafrance's remarks, that he does not mean that his Kantian conception "is literally Kant's conception, but rather that it is one of no doubt several conceptions sufficiently similar to essential parts of his (Kant's) doctrine to make the adjective appropriate"⁴.

Much turns, in attempting to adjudicate the force of Lafrance's remarks, on what one counts as *essential* in such a context. Are there key elements in Rawls' doctrine which are sufficiently similar to essential parts of Kant's doctrine to make the characterization "Kantian" apposite? Rawls believes that the characterization is apposite; Lafrance apparently thinks it is not. Rawls thinks that the characteristic dualisms (the distinction between "the necessary and the contingent, form and content, reason and desire, noumena and phenomena") can, in accordance with "an empirical theory", be thoroughly de-mythologized and reinterpreted, albeit in a way that Kant would not interpret them. And such an empirical theory can, Rawls maintains, capture what is essential to a Kantian moral theory. He thought that he had achieved this in *A Theory of Justice*.

In taking his view to be Kantian, Rawls has something tolerably specific in mind. His conception of a well-ordered society is "an interpretation of the kingdom of ends thought of as a human society under the circumstances of justice"⁵. *Ex hypothesi* the members of a well-ordered society are free and equal moral persons. Rawls argues that the readings he gives to 'freedom' and 'equality' are Kantian. Kant distinguished, we should remember, between *negative* and *positive* freedom: the former being freedom from being coerced or constrained by another and the latter being the freedom to realize one's aims and intentions by having the means or the power to achieve them. A well-ordered society is a society that "would be agreed to in a hypothetical situation that is fair between individuals conceived as free and equal moral persons"⁶. The device of the veil of ignorance in the original position is meant to capture in a de-mythologized form Kant's conception of negative freedom, namely "being able to act independently from the determination of alien causes"⁷. That comes to choosing independently of all information,

³ John Rawls, "A Kantian Conception of Equality," *Cambridge Review*, Vol. 96, No. 2225 (February, 1975), pp. 94-99.

⁴ *Ibid.*, p. 98.

⁵ *Ibid.*

⁶ *Ibid.*

⁷ *Ibid.*, p. 99.

except that which is very general and does not rest on a knowledge of social, historical or psychological contingencies. The contractors in the original position are not determined by alien causes because they choose only on the basis of information required for rational agreement.

If the principle of equal liberty would be adopted in the original position with such limitations on information, then this would express the *negative* freedom of the contractors. For they would have succeeded in regulating the basic structure of society "by principles the grounds for which are suitably independent from chance and contingency"⁸. We have here, so the argument runs, something which captures an insight essential to Kant's ethics. Yet it is not fettered by some of Kant's most contentious doctrines.

Kant, as I have remarked, also had a conception of *positive* freedom. On Rawls' reading of this, for positive freedom to be a reality, the contractors must a) play a decisive part in the adoption of the principles of social justice and b) the content of these principles must be such that they express the self-direction of the contractors and must, as well, be such as to apply to the design of institutions. Rawls' conception of justice gives priority to basic liberties. He takes, as well, rational persons to be free and responsible masters of their aims and desires. They will grant for all an equal share in the means necessary for the attainment of ends, unless the circumstances of everyone can be improved by departing from this strict equality⁹. For such principles to be operative is to attain *positive* freedom. Such a society is a well-ordered society. The members of such a society, in choosing as they do, "express a conception they give to themselves" and, in so acting, show they are autonomous members of a kingdom of ends. In this way, Rawls argues, his position is essentially and recognizably Kantian.

IV

Whether Rawls is or is not right in such a defense is perhaps a question that cannot be readily answered; what is more interesting is the issue of the perspicacity of his conceptions, Kantian or not, and the soundness of his arguments. I turn now to Lafrance's criticism of them.

Lafrance perceives an egalitarian intent in the first principle of justice, an intent which he does not challenge, but he finds fault with its formulation. He thinks Rawls has dual and sometimes conflicting criteria for his fundamental liberties and that the formula 'the total system of fundamental liberties' is unclear. We have no clear understanding, Lafrance claims, of what is inten-

⁸ *Ibid.*

⁹ *Ibid.*

ded in his statement by 'total system'. Which liberties, Lafrance asks, are to be included in the system and which liberties are to be taken as the basic liberties?

In his latest (1975) statement of the equal liberty principle, Rawls, perhaps out of sensitivity to such questions, does not use the phrase 'total system' but formulates the equal liberty principle as follows: "Each person has an equal right to the most extensive scheme of equal basic liberties compatible with a similar scheme of liberties for all"¹⁰. Still, this is not much of an improvement, for questions similar to those raised by Lafrance arise about 'the most extensive scheme of equal basic liberties'.

However, it is not clear to me how it is that on any version of Rawls' account, we are forced, as Lafrance claims, to make the difficult choice between equal but rather minimal liberties for all and an extensive but unequal system or scheme of liberties. We could hardly have equal liberties without having a system or scheme of basic liberties available to everyone. And I would think the more extensive that scheme is, the greater the *equal* liberties. Lafrance needs to explain to us under what circumstances making the system of liberties more extensive, but still compatible with a like liberty for all, would make these liberties less equal.

V

Lafrance also finds the second principle of justice obscure. It is not clear what is covered by 'social and economic inequalities'? Do we assess and determine economic inequalities by some objective conception of need satisfaction or by reference to income or what? It is not clear what Rawls wants to claim here. Moreover, it is not clear how we determine who are 'the least advantaged'. So, in trying to arrange social and economic inequalities to the greatest benefit of the least advantaged, we are working with a key conception whose sense is not clearly delineated.

It just isn't clear how exactly we determine who are the least advantaged. Income, which Rawls generally favours, would only be a rough indicator, for a group A could have a greater income than a group B but still have less political power and in that sense less autonomy or less prestige or less meaningful work than group B. Rawls tries to determine who are the least advantaged by reference to the primary social goods, but there is no clear index of these diverse social goods. The primary social goods are "rights, liberties and opportunities, income and wealth, and the social basis of respect"; they are things that all individuals are "assumed to want whatever

¹⁰ *Ibid.*, p. 96.

else they want or whatever their final ends". The least advantaged are defined very roughly, by "the overlap between those who are least favored by each of three main kinds of contingencies"¹¹. This response, however, does very little to answer Lafrance's query, for those primary goods will be weighted differently by different individuals and groups. Some will care more for income and wealth and less for certain rights and liberties. Others will react in just the opposite way. Some might trade a lesser total wealth in the society, including a lesser wealth for themselves, for a greater equality of power which — or so they believe — would lay more adequately the social basis for self-respect and autonomy¹². Rawls has not shown that there is a certain determinate weighting here of the primary social goods that the rational person must accept. In fact, with his Humean conception of rationality, one would expect a considerable diversity. Thus it is not at all clear why or even that all rational contractors would opt for the *difference principle*.

It should be noted as well that in articulating this second principle of justice, Rawls assumes the inevitability of some social and economic inequalities¹³. Rawls believes, that what he calls classes — confusing them with social strata — are inevitable, so that, while equality for him is the benchmark, there is, Rawls would have it, no abolishing or overcoming of inequality. His account is in some sense egalitarian, but it is a long way from the egalitarianism of Engels which construes the demand for equality as the demand for the abolition of classes¹⁴. Now it may be that some social stratification is inevitable in any society but it does not follow from this that classes, based on differing relations to the means of production, are inevitable. Social ownership of the means of production could go hand in hand with a certain amount of social stratification. But, as long as there is any social stratification at all, some groups will be more or less advantaged. But it still may be the case, in a way that Rawls does not adequately face, that the most crucial inequalities are rooted in inequalities of power which in

¹¹ *Ibid.*

¹² J. E. J. Altham, "Rawls and Power" and Philip Pettit, "The Importance of Reading Rawls" both in *Cambridge Review*, Vol. 96, No. 2225 (February, 1975).

¹³ This is argued forcefully by C. B. Macpherson in his *Democratic Theory*, (Oxford: Clarendon Press, 1973), chapter IV and in his "Rawls's Models of Man Society," *Philosophy of the Social Sciences*, Vol. 3, No. 4, (December, 1973). See, as well, my "Class and Justice," in John Arthur and William H. Shaw (eds.), *Justice and Economic Distribution*, (Englewood Cliffs, New Jersey: Prentice-Hall Inc., 1978).

¹⁴ F. Engels, *Anti-Dühring*, (New York: International Publishers, 1939), pp. 117-118. See here as well my "Class and Justice," *op. cit.*, Martin J. Sklaar, "Liberty and Equality, and Socialism," *Socialist Revolution*, Vol. 7, No. 4 (July-August, 1977), pp. 92-104 and Lawrence Crocker, "Equality, Solidarity and Rawls' Maximin," *Philosophy and Public Affairs*, Vol. 6, No. 3 (Spring, 1977), pp. 262-266.

turn are grounded in the existence of classes and these class divisions may not be at all inevitable.

Be that as it may, *pace* Lafrance, it is not only the first part of the second principle of justice that is problematic but the second part as well. It is true that Rawls states very unequivocally the necessity of a "fair equality of opportunity". (In his latest formulation Rawls simply speaks of "conditions of fair opportunity".) But when we try to ascertain the conditions of fair equal opportunity, it turns out that the conception is as indeterminate and problematic as the other conceptions in the second principle that Lafrance finds problematic. The problem here is heightened if Rawls' claimed distinction between liberty and the *worth* of liberty turns out to be a spurious one. Yet, just this has been powerfully argued by Norman Daniels¹⁵. That one has the right to compete for a position, that there are no legal impediments to one's doing so, hardly provides a situation of equality of opportunity between the children of a wealthy ruling class and the children of farm labourers in their competition for education and later for jobs. Yet Rawls allows that a society which contains just such class differentiations can still be a well-ordered society; such a class society can be a society in which the second principle of justice with its condition of 'fair equality of opportunity' is satisfied. But in reality this is no genuine application of the condition of fair equality of opportunity.

VI

Ronald Dworkin has argued that Rawls' two principles of justice, even with the inequalities sanctioned by the *difference* principle, provide the most egalitarian form of social justice that it is reasonable to defend¹⁶. In effect my above remarks begin a questioning of that, as has Norman Daniels "Equal Liberty and Unequal Worth of Liberty". Guy Lafrance's probing of the relations between the two principles has in effect done the same thing. Given Rawls' stress on efficiency and given his empirically unsupported claims about how rewards enhance it, his second principle recognizes as just considerable inequalities of rank, power and wealth. Lafrance very properly queries whether such inequalities are not in reality impediments to

¹⁵ Norman Daniels, "Equal Liberty and Unequal Worth of Liberty," in Norman Daniels (ed.) *Reading Rawls*, (New York: Basic Books Inc., 1976).

¹⁶ Ronald Dworkin, "The Original Position," *The University of Chicago Law Review*, Vol. 40, No. 3 (Spring, 1973), p. 533. See as well Thomas M. Scanlon, "Rawls' Theory of Justice," *The University of Pennsylvania Law Review*, Vol. 121 (1973), p. 1064 and Peter Singer, "The Right to be Rich or Poor," *New York Review of Books*, Vol. 6 (March, 1975), p. 22.

to the achievement of the first principle of justice with its commitment to the most extensive system of equal basic liberties for all.

Rawls would no doubt reply that the first principle takes priority over the second and must be satisfied before the second can be satisfied. So if such inequalities are impediments to the satisfaction of the equal liberty principle, such inequalities are unjust. But in Rawls' discussion of the second principle and in his discussion of a well-ordered society, he takes such inequalities to be necessary and yet they are, as a matter of fact, conditions which make the first principle of justice unsatisfiable or unachievable.

Some adjustment is necessary somewhere and, *pace* Dworkin, for a thorough going egalitarian, the adjustment should come over the *difference* principle¹⁷. Such an egalitarian would not accept as just the social and economic inequalities allowed by it. As long as there remain any extensive class embedded inequalities in the satisfaction of our socio-economic needs, the society in question will not be, in Rawls' own terms, a well-ordered society. Yet all capitalist societies require these very inequalities. Rawls' intentions to the contrary notwithstanding, he seems to have shown that, if one takes the parameters of capitalism as given, the most just social system achievable, within those parameters, is indeed one that contains the *difference* principle, but that still, with such a system, the first principle of justice is not realizable.

The conclusion would seem to be inescapable that capitalism, in any of its various forms, is an unjust social system, making, through its inequalities, impossible the achievement of equal basic liberties for all. Lafrance does not assert this, but it seems to me that his analysis points in that direction. Yet it is a conclusion that Rawls would try to resist. But can he, given his commitment to both liberty and equality?

His resistance would take the form of calling our attention to the 'ought-implies-can' principle and in asserting again that classes are inevitable. However, he simply assumes that and does not argue for it. But, given a proper theory of classes that does not confuse that concept with that of social stratification, it is not at all evident that classes are inevitable.

¹⁷ Laurence Crocker, *op. cit.* and Elizabeth Rapaport, "Classical Liberalism and Rawlsian Revisionism" and Virginia McDonald, "Rawlsian Contractarianism: Liberal Equality or Inequality" both in *New Essays on Contract Theory*, Kai Nielsen and Roger Shiner (eds.), (Guelph, Ontario: Canadian Association for Publishing in Philosophy, 1977).