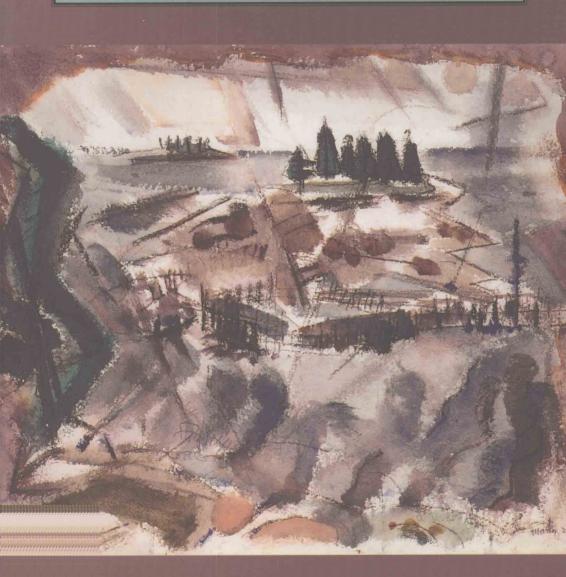# Justice as Fairness

A RESTATEMENT

John Rawls

EDITED BY ERIN KELLY

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Editor's Foreword

In *A Theory of Justice* (1971), John Rawls proposed a conception of justice that he called "justice as fairness."[1] According to justice as fairness, the most reasonable principles of justice are those that would be the object of mutual agreement by persons under fair conditions. Justice as fairness thus develops a theory of justice from the idea of a social contract. The principles it articulates affirm a broadly liberal conception of basic rights and liberties, and only permit inequalities in wealth and income that would be to the advantage of the least well off.

In "Justice as Fairness: Political Not Metaphysical" (1985), Rawls began to develop the idea that an account of justice with liberal content is best understood as a *political* conception.[2] A political conception of justice is justified by reference to political values and should not be presented as part of a more "comprehensive" moral, religious, or philosophical doctrine. This idea is central to *Political Liberalism* (1993).[3] Under the political and social conditions of free institutions, we encounter a plurality of distinct and incompatible doctrines, many of which are not unreasonable. Political liberalism acknowledges and responds to this "fact of reasonable pluralism" by showing how a political conception can fit into various and even conflicting comprehensive doctrines: it is a possible object of an overlapping consensus between them.

1. *A Theory of Justice* (Cambridge, Mass.: Harvard University Press, 1971; rev. ed., 1999).
2. "Justice as Fairness: Political Not Metaphysical," *Philosophy and Public Affairs* 14 (Summer 1985): 223–252.
3. *Political Liberalism* (New York: Columbia University Press, 1993).

Developing the idea of political liberalism has led Rawls to reformulate his presentation and defense of justice as fairness. Whereas *A Theory of Justice* presented justice as fairness as part of a comprehensive liberal outlook, this restatement shows how it can be understood as a form of political liberalism. Indeed, Rawls presents justice as fairness as the most reasonable form of political liberalism. In doing so, he recasts the basic arguments for the two principles of justice that are central to a conception of justice as fairness.

This book originated as lectures for a course on political philosophy that Rawls taught regularly at Harvard in the 1980s. The course included a study of the works of historically important figures (Hobbes, Locke, Rousseau, Kant, Hegel, Mill, and Marx) and also presented the fundamentals of Rawls's own view. The lectures on justice as fairness were distributed to the class in written form, at first to supplement reading assignments from *A Theory of Justice*. They addressed questions not taken up in *Theory,* and corrected what Rawls had come to see as mistakes in some of *Theory*'s arguments. Later the lectures were presented on their own, as a more or less complete restatement of the theory of justice as fairness. By 1989 the manuscript had evolved into something close to its current form.

Rawls did revise the manuscript again in the early 1990s as he completed *Political Liberalism*. It is not, however, substantially different from the 1989 version, except for the addition of §50 on the family. After the publication of *Political Liberalism,* Rawls turned his attention to a number of other works, including *The Law of Peoples,*[4] which was originally to be Part VI of this restatement. The rest, now published, are "Reply to Habermas," an introduction to the paperback edition of *Political Liberalism,* and "The Idea of Public Reason Revisited."[5] Ideas from those works are found here, though not always as fully developed as in their already published form.

Because of illness, Rawls has been unable to rework the manuscript in its final state, as he had planned. Still, most of the manuscript was nearly complete. Parts IV and V are the most unfinished, and with more time, surely Rawls would have filled out those sections and integrated them more fully with the first three parts. Part IV reads as addenda to the more detailed and

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4. *The Law of Peoples* (Cambridge, Mass.: Harvard University Press, 1999).

5. "Reply to Habermas," *Journal of Philosophy* 92 (March 1995): 132–180, reprinted in the paperback edition of *Political Liberalism* (1996); "The Idea of Public Reason Revisited," *University of Chicago Law Review* 64 (Summer 1997): 765–807, reprinted in *Collected Papers,* ed. Samuel Freeman (Cambridge, Mass.: Harvard University Press, 1999), and in *The Law of Peoples.*

free-standing Parts I–III. Part V is a preliminary effort to reformulate the arguments for the stability of justice as fairness that were presented in Part Three of *A Theory of Justice*. Using the notion of an overlapping consensus, Part V argues for the stability of justice as fairness as a political conception of justice, an idea pursued in *Political Liberalism* and the more recent works. Although they are unfinished, Parts IV and V present important pieces of the overall argument for justice as fairness. The editorial decision has been to leave them, as well as the other parts of the book, mostly untouched. Some sections were reordered so as to introduce basic distinctions earlier. What is now §42 originally followed §50, §47 followed §44, §§55 and 57 were reversed, and §56, which had been the last section of Part V, has been inserted between them.

Additional changes involved the following. References to Part VI, "The Law of Peoples," have been removed. Some exposition of basic concepts, such as the veil of ignorance, has been added. Where this was done, the wording was drawn from *A Theory of Justice* and *Political Liberalism,* and footnotes to those works have been added accordingly and bracketed. Throughout, the approach to making changes has been conservative. Revisions were kept to a minimum and care has been taken not to alter the substance of what Rawls wrote. All changes were made with the author's knowledge.

I am grateful for the help I received in preparing this manuscript. I would especially like to acknowledge Joshua Cohen and Mard Rawls, both of whom worked through the text with me in detail. Their critical judgment and numerous suggestions were extremely valuable. For their useful advice, I would also like to thank Arnold Davidson, Barbara Herman, Percy Lehning, Lionel McPherson, and T. M. Scanlon.

Preface

In this work I have two aims. One is to rectify the more serious faults in *A Theory of Justice*[1] that have obscured the main ideas of justice as fairness, as I called the conception of justice presented in that book. Since I still have confidence in those ideas and think the more important difficulties can be met, I have undertaken this reformulation. I try to improve the exposition, to correct a number of mistakes, to include some useful revisions, and to indicate replies to a few of the more common objections. I also recast the argument at many points.

The other aim is to connect into one unified statement the conception of justice presented in *Theory* and the main ideas found in my essays beginning with 1974. *Theory* itself was nearly six hundred pages and the more relevant essays (of which there are about ten) bring the total close to a thousand pages.[2] Moreover, the essays are not fully compatible, and ambiguities

1. In 1975 I made revisions for the first foreign translation of *A Theory of Justice* (1971, rev. ed. 1999). These have appeared in many subsequent foreign translations but never, before 1999, in English. The revised edition rectifies that situation (it contains no further revisions). When these lectures were given, the revisions, some of which address problems discussed in the lectures, were not available in English, and it was assumed the students had only the original text. Therefore, some references to *Theory* in this restatement may be to discussions that do not appear in the revised edition. In these cases, pages in the first edition are indicated. All other page references are to the revised edition. References will always include the section number, which is the same in both editions.

2. Here I list the more relevant essays for reference: "Reply to Alexander and Musgrave," *Quarterly Journal of Economics* 88 (November 1974): 633–655; "A Kantian Conception of

in stating various ideas—for example, that of an overlapping consensus—make it difficult to find a clear and consistent view. The interested reader is entitled to assistance in seeing how these essays and *Theory* might fit together, where the revisions go and what difference they make. This assistance I try to provide by presenting in one place an account of justice as fairness as I now see it, drawing on all those works. I have tried to make this reformulation more or less self-contained.

For those who have some acquaintance with *Theory*, the main changes are of three kinds: first, changes in the formulation and content of the two principles of justice used in justice as fairness; second, changes in how the argument for those principles from the original position is organized; and third, changes in how justice as fairness itself is to be understood: namely, as a political conception of justice rather than as part of a comprehensive moral doctrine.

To explain: two examples of changes of the first kind are these: one is a quite different characterization of the equal basic liberties and their priority, a change required to meet the forceful criticisms raised by H. L. A. Hart (§13); another is a revised account of primary goods which connects them with the political and normative conception of citizens as free and equal persons, so that these goods no longer appear (as many pointed out to me, including Joshua Cohen and Joshua Rabinowitz) to be specified solely on the basis of psychology and human needs (§17). I also try to meet objections raised by Amartya Sen (§51).

Equality," *Cambridge Review* 96 (1975): 94–99, and reprinted as "A Well-Ordered Society" in *Philosophy, Politics, and Society*, 5th ser., ed. Peter Laslett and James Fishkin (New Haven: Yale University Press, 1979); "Fairness to Goodness," *Philosophical Review* 84 (October 1975): 536–555; "The Basic Structure as Subject," *Values and Morals*, ed. Alan Goldman and Jaegwon Kim (Dordrecht: D. Reidel, 1978); "Kantian Constructivism in Moral Theory," *Journal of Philosophy* 77 (September 1980): 515–572; "Social Unity and Primary Goods," in *Utilitarianism and Beyond*, ed. Amartya Sen and Bernard Williams (Cambridge: Cambridge University Press, 1982); "The Basic Liberties and Their Priority," *Tanner Lectures on Human Values*, vol. 3, ed. Sterling McMurrin (Salt Lake City: University of Utah Press, 1982); "Justice as Fairness: Political Not Metaphysical," *Philosophy and Public Affairs* 14 (Summer 1985): 223–252; "On the Idea of an Overlapping Consensus," *Oxford Journal of Legal Studies* 7 (February 1987): 1–25; "On the Priority of Right and Ideas of the Good," *Philosophy and Public Affairs* 17 (Fall 1988): 251–276; "The Domain of the Political and Overlapping Consensus," *New York Law Review* 64 (June 1989): 233–255. These essays are occasionally noted in the footnotes of the text, sometimes by an obvious abbreviation. Excepting "The Basic Structure as Subject" and "The Basic Liberties and Their Priority," these all appear in John Rawls, *Collected Papers*, ed. Samuel Freeman (Cambridge, Mass.: Harvard University Press, 1999).

The main change of the second kind is a division of the argument from the original position for the two principles of justice into two fundamental comparisons. In one comparison the two principles are compared with the principle of (average) utility. In the other comparison the two principles are compared with a modification of themselves formed by substituting for the difference principle the principle of (average) utility constrained by a minimum. These two comparisons enable us to separate the reasons for the first principle of justice, covering the basic liberties, and for the first part of the second, that of fair equality of opportunity, from the reasons for the other part of the second principle, the difference principle. In contrast to what the exposition in *Theory* may suggest, this division of the argument shows that the reasons for the difference principle do not rest (as K. J. Arrow and J. C. Harsanyi and others have not unreasonably thought) on a great aversion to uncertainty viewed as a psychological attitude (§§34–39). That would be a very weak argument. Rather, the appropriate reasons rest on such ideas as publicity and reciprocity.

Changes of the third kind arise in clarifying how justice as fairness is to be understood. *Theory* never discusses whether justice as fairness is a comprehensive moral doctrine or a political conception of justice. In one place it says (*Theory*, §3: 15) that if justice as fairness succeeds reasonably well, the next step would be to study the more general view suggested by the name "rightness as fairness." Even though the problems examined in *Theory* in any detail are always the traditional and familiar ones of political and social justice, the reader can reasonably conclude that justice as fairness was set out as part of a comprehensive moral doctrine that might be developed later should success encourage the attempt.

This restatement removes that ambiguity: justice as fairness is now presented as a political conception of justice. To carry out this change in how justice as fairness is to be understood forces many other changes and requires a family of further ideas not found in *Theory*, or at least not with the same meaning or significance. Besides the introduction of the idea of a political conception of justice itself, we need the idea of an overlapping consensus of comprehensive, or partially comprehensive, religious, philosophical, and moral doctrines in order to formulate a more realistic conception of a well-ordered society, given the fact of pluralism of such doctrines in a liberal democracy. We also need the ideas of a public basis of justification and of public reason, as well as certain general facts of commonsense political sociology, some of which are accounted for by what I call the burdens of judgment, again an idea not used in *Theory*.

Offhand, it may seem surprising that viewing justice as fairness as a political conception, and not as part of a comprehensive doctrine, should require a family of further ideas. The explanation is that now we must always distinguish between the political conception and various comprehensive doctrines, religious, philosophical, and moral. These doctrines usually have their own ideas of reason and justification. So likewise does justice as fairness as a political conception, namely, the ideas of public reason and of a public basis of justification. The latter ideas must be specified in a way that is appropriately political and hence distinct from the parallel ideas of comprehensive doctrines. Given the fact of reasonable pluralism (as I shall call it), we must keep track of different points of view if justice as fairness (or any political conception) is to have any chance of gaining the support of an overlapping consensus.

The meaning of these remarks will not be clear at this point. Their aim is simply to give an indication, to those already familiar with *Theory,* of the kinds of changes they will find in this brief restatement.

As always, I am grateful to many of my colleagues and students for their thoughtful and helpful commentaries and criticisms over the years. They are too numerous to mention here, but to all of them I am deeply indebted. I also wish to thank Maud Wilcox for her sensitive editing of the 1989 version of the text. Finally, I must express my deepest appreciation to Erin Kelly and my wife, Mardy, who made completion of the book possible despite my declining health.

October 2000

JUSTICE AS FAIRNESS

A Restatement

Contents

PART I

Fundamental Ideas

§1. Four Roles of Political Philosophy

1.1. We begin by distinguishing four roles that political philosophy may have as part of a society's public political culture. Consider first its practical role arising from divisive political conflict and the need to settle the problem of order.

There are long periods in the history of any society during which certain basic questions lead to deep and sharp conflict and it seems difficult if not impossible to find any reasoned common ground for political agreement. To illustrate, one historical origin of liberalism is the Wars of Religion in the sixteenth and seventeenth centuries following the Reformation; these divisions opened a long controversy about the right of resistance and liberty of conscience, which eventually led to the formulation and often reluctant acceptance of some form of the principle of toleration. The views in Locke's *Letter on Toleration* (1689) and Montesquieu's *The Spirit of Laws* (1748) have a long prehistory. Hobbes's *Leviathan* (1652)—surely the greatest work of political philosophy in English—is concerned with the problem of order during the turmoil of the English civil war; and so also is Locke's *Second Treatise* (also 1689). To illustrate in our own case how divisive conflict may lead to political philosophy, recall the extensive debates between Federalists and Anti-Federalists in 1787–88 over ratification of the Constitution, and how the question of the extension of slavery in the years before the Civil War called forth fundamental discussions of that institution and of the nature of the union between the states.

We suppose, then, that one task of political philosophy—its practical role, let's say—is to focus on deeply disputed questions and to see whether, despite appearances, some underlying basis of philosophical and moral agreement can be uncovered. Or if such a basis of agreement cannot be found, perhaps the divergence of philosophical and moral opinion at the root of divisive political differences can at least be narrowed so that social cooperation on a footing of mutual respect among citizens can still be maintained.

To fix ideas, consider the conflict between the claims of liberty and the claims of equality in the tradition of democratic thought. Debates over the last two centuries or so make plain that there is no public agreement on how basic institutions are to be arranged so as to be most appropriate to the freedom and equality of democratic citizenship. There is a divide between the tradition derived from Locke, which stresses what Constant called "the liberties of the moderns"—freedom of thought and liberty of conscience, certain basic rights of the person and of property, and the rule of law—and the tradition derived from Rousseau, which stresses what Constant called "the liberties of the ancients"—the equal political liberties and the values of public life.[1] This overstylized contrast brings out the depth of the conflict.

This conflict is rooted not only in differences of social and economic interests but also in differences between general political, economic, and social theories about how institutions work, as well as in different views about the probable consequences of public policies. Here we focus on another root of the conflict: the different philosophical and moral doctrines that deal with how the competing claims of liberty and equality are to be understood, how they are to be ordered and weighed against each other, and how any particular way of ordering them is to be justified.

1.2. I note briefly three other roles of political philosophy which we consider further as we proceed. One is that political philosophy may contribute to how a people think of their political and social institutions as a whole, and their basic aims and purposes as a society with a history—a nation—as opposed to their aims and purposes as individuals, or as members of families and associations. Moreover, the members of any civilized society

1. See "Liberty of the Ancients Compared with That of the Moderns" (1819), in Benjamin Constant, *Political Writings,* trans. and ed. Biancamaria Fontana (New York: Cambridge University Press, 1988). Constant's dates: 1767–1830. The phrase "liberties of the ancients" refers to the liberties of native-born male citizens specified by the rights of political participation in the Athenian democracy at, say, the time of Pericles.

need a conception that enables them to understand themselves as members having a certain political status—in a democracy, that of equal citizenship—and how this status affects their relation to their social world.

This need political philosophy may try to answer, and this role I call that of orientation.[2] The idea is that it belongs to reason and reflection (both theoretical and practical) to orient us in the (conceptual) space, say, of all possible ends, individual and associational, political and social. Political philosophy, as a work of reason, does this by specifying principles to identify reasonable and rational ends of those various kinds, and by showing how those ends can cohere within a well-articulated conception of a just and reasonable society. Such a conception may offer a unified framework within which proposed answers to divisive questions can be made consistent and the insights gained from different kinds of cases can be brought to bear on one another and extended to other cases.

1.3. A third role, stressed by Hegel in his *Philosophy of Right* (1821), is that of reconciliation: political philosophy may try to calm our frustration and rage against our society and its history by showing us the way in which its institutions, when properly understood from a philosophical point of view, are rational, and developed over time as they did to attain their present, rational form. This fits one of Hegel's well-known sayings: "When we look at the world rationally, the world looks rationally back." He seeks for us reconciliation—*Versöhnung*—that is, we are to accept and affirm our social world positively, not merely to be resigned to it.

We shall be concerned with this role of political philosophy in several respects. Thus I believe that a democratic society is not and cannot be a community, where by a community I mean a body of persons united in affirming the same comprehensive, or partially comprehensive, doctrine. The fact of reasonable pluralism which characterizes a society with free institutions makes this impossible.[3] This is the fact of profound and irreconcilable differences in citizens' reasonable comprehensive religious and philosophical conceptions of the world, and in their views of the moral and aesthetic values to be sought in human life. But this fact is not always easy to accept,

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2. The term and its meaning is suggested by Kant's use of it in his essay "Was Heisst: Sich im Denken orientieren?" *Kant's gesammelte Schriften*, Preußischen Akademie der Wissenschaften, vol. 8 (Berlin, 1912). For him, reason is similarly the faculty of orientation as very briefly characterized in the text.

3. For the meaning of "reasonable" as used in the text, see §§2, 11, 23.