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| A Critique of Theory of Justice |
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Matters of justice and injustice as facts of history are not the same as matters of liberty. Persons of Christian faith claim inspiration to follow an arc of history inclined toward justice. As often as not, this premise suggests that the arc bends away from a past that must be remembered to some extent, as part of a continuity. However, since sciences began producing consistently predictable outcomes according to universal physical and cosmic laws, the horizon of history has been scrutinized more and more as progress forward from the horizon of a past that must be jettisoned. Scrutiny produced skepticism about the non-rational contingencies like religious myth or legend that now appeared to be delaying human progress, thus retarding the drive toward a realized goal of history that instead is always never in sight. Matters of history in Enlightenment terms is a problem that frustrates science. Enlightenment thinkers hope to arrive at predictable futures that lay over the horizon of the future – a horizon which once stood adjudicated only by myth and possibility and resolve the conflict of contingent non-rational thought through the application of reason based on facts.

Once the forward horizon no longer hides the future, but rather rests idly between a perceived stability and even more stable outcomes, justice becomes an end rather than a matter of fact. If nothing else, Enlightenment thinking promised to eliminate the irrational obstacles to reasoned and stable social and political processes. Humankind was hurtling toward a state of fluid perfectibility that will fulfill the promise of a just human existence which will benefit all who accept reasoning. It is unfortunate but true that much of Enlightenment Christendom left behind a troublesome mythical solution to the problem of human alienation in favor of a well-reasoned socio-political civic religious expression of myth which attempts to mandate a secure horizon whether it is a predictable one or not. Enlightenment reasoning has led an institutional Christianity toward an often legally-protected irrationality that serves mainly, it appears, to underwrite what is promised to be a social and political structure and cultural framework intent on producing the future security of capitalism, and economic power-brokers that demand a horizon of a justice that protects those who benefit, regardless of who may be run over by the economic engine of constantly created wealth.

Kant may not have assumed that the Enlightenment might produce the kind of distinctive gap of wealth and access to resources, or at least, not the unfettered technological progress that would produce the type of world and wealth that exists presently. Yet, if Kant’s moral categorical imperative was applied to the realities of the 21st century economic and political realm, would honesty as a virtue be recognizable to him as one he would mandate on all independent moral agents? What reasoning interprets the fact that there are no consistent understandings of what honesty, as a matter of truth, entails? How would Kant make sense of the fact that reasonable people, as often as not, fail to find any unifying method of reasoning that can resolve their disagreements. He would have to insist that one individual was irrational, or that one individual was dishonest. As such, it seems honesty and justice are matters for legal courts rather than reasoning, though one will argue that laws can ultimately produce the best, most well-reasoned and logical outcomes if all share a rationality. The question of whether reasoned and logical outcomes are always just, or fair, is another thing altogether. In the early 70’s, American philosopher and ethicist John Rawls published a systematic notion of justice as fairness. It was an American attempt to fully legitimize liberal democratic visions as the universal means of solving problems of justice.

Rawls’ book *Theory of Justice* (1971) continues to be discussed as one of the important contributions to ethics and justice, more specifically as a most recent highlight of the thinking produced by contributions of American pragmatists (though Rawls and others might deny this categorization). As Rawls works through concepts of justice as fairness, there are working precepts that are necessary to his system. Rawls identifies liberal democratic regimes of power as the most, if not only appropriate context for his terms of justice to realized. Rawls consistently presupposes a potential or readily imagined “hypothetical situation of equal liberty” (11) which assumes an engagement regarding conflict where resolution begins from an “originary position,” the hypothetical assumption where each party has no knowledge of or stake in personal privilege or predictable benefit that will be related to the resolution of the conflict. Rawls writes “no one knows his place in society, his class position or social status… I shall even assume that the parties do not know their conceptions of the good or their special psychological propensity. The principles of justice are chosen behind a veil of ignorance.” (11)

Rawls further assumes that such an originary position will produce outcomes agreeable to “free and rational persons concerned to further their own interests” who engage in social contracts intended to provide rational individuals or groups with a foundation of “equality as defining fundamental terms of their association.” (10). Justice as fairness is to be produced by an assumption that all persons engage in the contract after free and equal persons come to an agreement “to an initial situation that is fair.” (11) I note here that Rawls agrees that such social contracts may not be entirely voluntary, and that cooperation or non-cooperation may in some instances be self-imposed, and in other circumstances be coerced. Rawls believes rational people will, for the most part, self-regulate desire in favor of meeting social contract obligations because the themes related to concerns for autonomy can be accepted as being buoyed by voluntary adherence. (12)

Rawls “original position” will yield fairness “if rational persons” in this prescribed “initial situation would choose its principles over those of the other for the role of justice. Individuals engage with the hopes of “working out a problem” by striving to “ascertain which principles would be rational to adopt given the contracted situation.” Rawls suggests that this reasoning “connects the theory of justice with the theory of rational choice.” (16) Of course, their will be the problem of perspective. Rawls states that a prescribed original position is that “of the most philosophically favored interpretation of… a theory of justice.” (17)

I find the following pericope of *Theory of Justice* to be most telling in terms of Rawls expectations for fairness. “Systems of ends are not ranked in value;” he writes, “and each man is presumed to have the requisite ability to understand and act upon whatever principles are adopted. Together with the veil of ignorance, these conditions define the principles of justice as those which rational persons concerned to advance their interests would consent to as equals when none are known to be advantaged or disadvantaged by social and natural contingencies.” In Rawls mind, such consent is actually based upon the concept that certain concepts of fairness or rationality is described with and “example.” He supposes that “we are confident that religious intolerance and racial discrimination are unjust.” (17)

Yet he recognizes quickly that other examples are not so clearly resoluble. “We have much less assurance as to what is the correct distribution of wealth and authority.” Rawls response to this conundrum (some rationality is evident, some not so evident) he believes that “we work from both ends” to find the fair and equal original position. “We begin by describing it so that it represents generally shared and preferably weak conditions.” In the following debate or discussion, Rawls writes “I assume that eventually we shall find a description of the initial situation t and both expresses reasonable conditions and yields principles which match our considered judgments duly pruned and adjusted.”

In *Theory of Justice,* the discussion of an original position, the assumed matters of fairness in absence of discrimination, and Rawls’s acknowledgment of certain situations that are not easily adjusted for the sake of justice are all contingent on specific matters if they are to produce the anticipated outcomes. No appeal can be made to the self-evidence of any position or appeal to tradition, but arguments must be made to produce a synthesis of positions into “one coherent view.” (19) “We shall want to say that certain principles of justice are justified because they would be agreed to in an initial situation of equality. *I have emphasized that this original position is purely hypothetical.*” (19)

There is a further notion that deserves discussion before addressing Rawls work in such limited scope. This is Rawls concern for utilitarian outcomes and what he considers classical utilitarian concepts that have been integral to American pragmatism and philosophies of disciplines as disparate as religion, economics, and criminal justice. Rawls shares that his “aim is to work out a theory of justice that represents an alternative to utilitarian thought generally and so to all… different versions of it.” (20) It is another conundrum to consider whether Rawls accomplishes this in his theory, and whether the resulting theory, even if contra-utilitarian is in fact practical.

*Theory of Justice* assumes two basic principles of justice. “Each person is to have an equal right to the most extensive scheme of basic liberties compatible… with liberties of others. Secondly, “social and economic inequalities are to be arranged to that they are both (a) reasonably expected to be to everyone’s advantage, and (b) attached to positions and offices open to all.” Rawls then lists a version of what he indicates are indicative oif white be agreed to as “basic liberties.” On this list are items such as the right to universal suffrage, free speech and assembly, liberty of conscience (free religious expression?) and freedom from threat to psyche and physical health. Interestingly, he includes “the right to hold personal property and freedom from arbitrary seizure as defined by the concept of rule of law.” These, he states, are first order liberties. (53) As for the second principle, Rawls is impacted by his above realization that matters of wealth and income, access to resources and capital, are not so readily protected as individual concerns. He writes “while the distribution of wealth and income need not be equal, it must be to everyone’s advantage, and at the same time, positions of authority and responsibility must be assessable to all. One applies the second principle (of justice) by holding positions open, and then, subject to this constrain, arranges social and economic inequalities so that everyone benefits.”

*Theory of Justice* continues to articulates, systematically, how a commitment to justice as fairness can be built and embodied cultural or socially so that social, economic, and political fairness can be the predictal outcomes produced by institutions and governance tasked with protecting both principles of justice – first, liberty and agency, second the generalized realization of the benefits of wealth and resources accumulated by some or any who may accumulate of experience windfalls of wealth, or access to capital resources. Rawls actually cites the tradition of *noblesse oblige* a*s* a metaphor related to this second principle, as it will be “carried over to the conception of a natural aristocracy” within democratic regimes.

Such aristocracies seem to be part of the natural outcomes produced despite attitudes related to the hypothetical all-things-being-equal original position necessary to justice as fairness. He states that because the business class have “greater expectations” they are “encouraged to do things which raise the prospects of laboring classes. Their better prospects act as incentives so that the economic process is more efficient, innovation proceeds at a faster pace, and so on.” Importantly, it is here that Rawls seems to assume the democracy (and potentially even socialized government programs) is inextricably linked to capitalism. “I shall not consider how far these things are true,” he writes. The point is something of this kind must be argued if these inequalities are to satisfy by the difference principle (an acceptable notion of differences of ability, skill, access to resources and distribution of wealth and income).” (68)

Unarguably, far too little is given over to a more fully developed understanding of Rawls’s *Theory of Justice* in this essay. The author himself suggests that less than half the book be read to understand the basic system and arguments in support of the system of justice as fairness. (xviii) However, the above overview is enough in terms of critiquing the basic premise of Rawls arguments and assumptions that should lead the reader to consider the following. Rawls work in 1971, later revised, and also expanded upon in books such as *Political Liberalism* (1993), has come to represent a benchmark in American philosophical thought that exists at least in the shadows of significant American pragmatists if not directly indebted to them.

If the above is true, than I suggest that *Theory of Justice* stands, from the perspective of postmodern and postcolonial critical theory, to represent the demise of Marxist revolutionary ideals and the variant Cultural Criticism; but represents the outcomes of what might be determined to be the overwhelming victory of capitalism and structuralist perspectives in light of the failures of 1968. At least in the United States, democracy gave into culturally expressed identity and meaning-making models of consumer choice and free expression as fueled by mass produced uniqueness of individual presentation and access to popular cultural as marketed by entertainment conglomerates. The assumptions, and even the hypotheticals suggested by Rawls are open to criticism as being to cozy at the start with American ideals of rugged individualism and exceptionalism.

However, from a religious or uniquely Christian theological perspective, there are other problems with Rawls’s work that can be identified in light of the thought of Jacques Derrida and the care ethics of both Emanuel Levinas and the criticisms of Levinas by Derrida.

In the fourth chapter of his work *Writing and Difference* (1978) entitled “Violence and Metaphysics,” Derrida has his own point of origin. It asks a far different question of the reader than does Rawls assumption of an originary position. While Rawls seeks a zero-sum place as a beginning, Derrida recognizes that each originary event is only possible because it represents something that has already begun. “The question has already begun,” he writes, “we know it has – and this strange certainty about an other absolute origin, an other absolute decision that has secured the past of the questions.” (80) Which question? That of the history of the question itself, “one of pure memory of the pure questions which in its possibility perhaps authorizes all inheritance and all pure memory in general…”

While Rawls asserts that a hypothetical ground zero of non-difference must be considered to begin a process of fairly defined justice, Derrida is suggesting that the question itself can never be answered, but is one that is always being asked and answered, left as a question that identifies differences as a point of origin.” There is no such hypothetical ground zero in Derrida’s mind, but rather a real or hypothetical notion of original difference! In fact, Derrida states that when one asks the question (again) “the answer has already begun to be determine the question. The purity of the question (Rawls’s original position) can only be indicated or recalled through the difference of a hermeneutical effort.” Rawls’s hypothetical is already tainted by the very context in which it is raised. Not even a hypothetical is free of contingency, thereby always working in favor of those with more at stake is the manner in which justice and the distribution of wealth is considered fair or just.” Rawls can only ask his question regarding an original position when the matter of justice and fairness is asked as related or influenced by capitalism and the maintenance of capitalist structures.

Derrida further states that no questions in the western world can be asked without the predetermining factors of Greco-Roman philosophical standards. Even Rawls assumption of an original position of fairness is couched in terms of a western philosophical rut that presupposes that ancient Greek and Roman categories are still enjoying epistemological supremacy. That this supremacy has worked hand in hand with sciences is a notion discussed by Lyotard and others, and effectively negates Rawls’s potentially fair and equal original position. It necessarily favors western categories, scientific categories, and rationalities that dismiss narrative or mythological contributions to an originating point of fairness even thought the paradigm for the notion is anchored in a system that exploits myth for cultural legitimacy. “No philosophy could possible dislodge (the Greek *Logos*) without first succumbing” to it as the paradigm for reality or any related hypothesis. (82)

This point of the priority of the *Logos* is the beginning of violence, in Derrida’s thinking. If there is violence, there can be no fairness or justice that is uncoerced or contracted fairly and justly. Even if Rawls’s hypothetical original position is realized, I believe Derrida is stating that this position in and of itself mandates the elimination of the other from experiencing a category of fairness, because the notion of a social contract intending to produce a universally ascribed notion of justice or fairness eliminates the agency of one or the other participants. Such a notion is one of extermination of the other. Such claims of universality are described as “the origin or alibi of all oppression in the world.” (83)

Derrida describes Levinas as seeking an original position of sorts that mandates the non-rational contributions to knowing as a means of securing the continuous otherness of the would-be participant in any theoretical social contract. There is no contract, as any social contract is an original act of oppression. Levinas., writes Derrida “seeks to raise up [metaphysics] from its subordinate position and whose concept he seeks to restore in opposition to the entire tradition derived from Aristotle.” (83) “This… calls upon the ethical relationship – a non-violent relationship to the other as infinitely other – The Other.” For Levinas and Derrida, any original position is not only contingent to begin with, but is laden with a colonizing power that must be subverted before any fairness or justice may occur in any sense outside of that already determined by the context within which the questions of a original position of all things considered can be – considered!”

It is here, early in a lengthy essay that the notion of a messianic ethic appears. Derrida identifies the messianic ethic in Levinas’ work and begins to relate a notion of original difference and maintenance of otherness to eschatology as a category of meaning-making and relationship building (if not justice). Derrida suggests that the eschatological experience can only occur, not in a literal messianic experience (which he remembers as not being explicit in Levinas’ work) but rather it is an experience regarding “a question of designating a space of a hollow within naked experience where this eschatology can be understood and where it must resonate.” Again, Derrida is suggesting that relationships building, maintaining difference and otherness, and now being vulnerable to experiences that are indicative of healthy emotional risk-taking that lead to multiple originary experiences of truthfulness and understanding that allows for both self-awareness and fairness, and potentially justice without the necessary submission of one’s identity as related to any social contact or expectation laden originary position masquerading as equal and fair from the start.

This is further described (84) as the possibility of the impossible system on the horizon which will protect us from empiricism,” that fundamental contributor to the utilitarian democratic regimes that Rawls’s speaks of avoiding, perhaps because he believes or understands that suck outcomes cannot be truly just. N fact, Derrida even questions how one can arrive at the notion of the good. Any attempt at an original point of fairness must be self-justified as it is either the result of a kind of forgetting one’s privilege or need or being justified by thinly veiled (Rawls’s used the term veiled) realities that will always and ever impact any hypothetical notion. Power and privilege will always control the originary point at the expense of the other and consume the other as it works its way back toward the surface of reality.

Derrida continues on I “Violence and Metaphysics” with remarkable contributions to thinking that at its most basic challenges the roots of each assumption made by Rawls in *Theory of Justice.* Derrida’s continuing address to the work of Levinas is important in challenging the concept of a messianic ethic, but both Levinas and Derrida provide a manner of criticism that not only call into question the assumptions of Rawls, but the assumptions made by many Christians in regards to justice and participation id democracy as a means of reflecting the ethics of biblical messianic faithfulness. While Levinas writes as a Jew without apology, Derrida’s quasi-atheism is more a product of faith than is any Christian investment in democratic capitalist or socialist concept of justice. Rawls’s cannot consider a non-coercive and entirely voluntary concept of justice, because he lacks the qualities of an eschatological category that can support the non-rational consideration of vindication without victory.