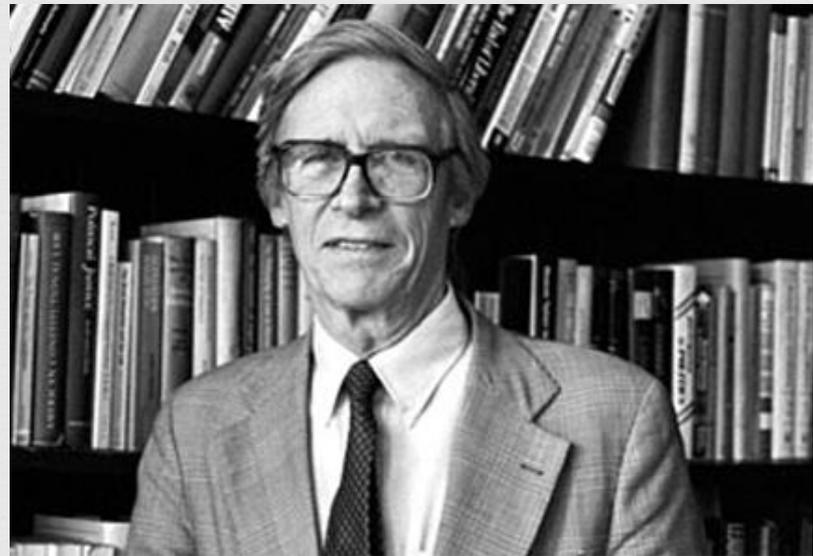
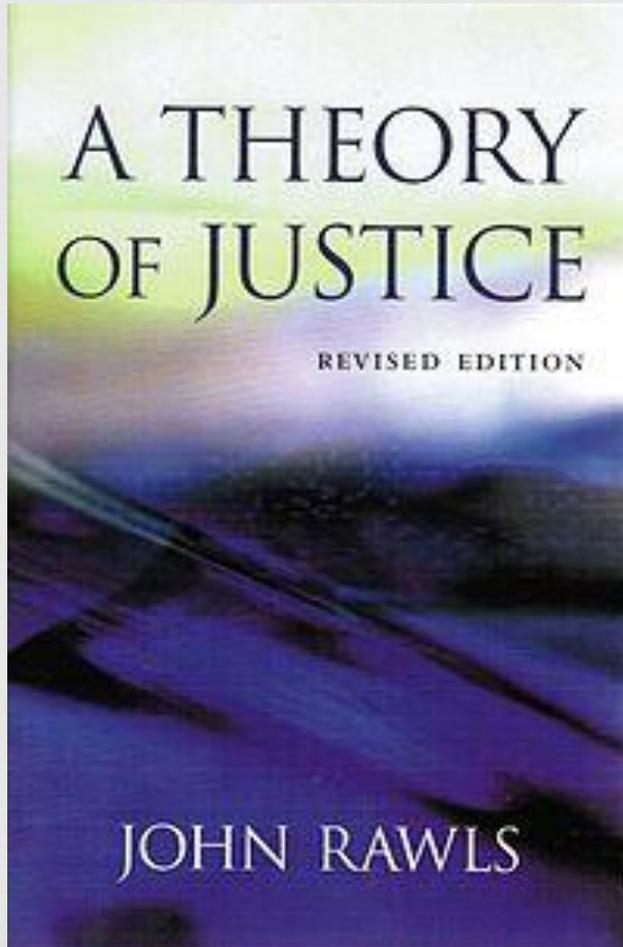


《正義論》導讀



導讀人：吳豐維

羅爾斯(John Rawls, 1921-2002)



The role of justice



∞ “Justice is the **first virtue of social institutions**, as truth is of systems of thought. A theory however elegant and economical must be rejected or revised if it is untrue; likewise laws and institutions no matter how efficient and well-arranged must be reformed or abolished if they are unjust. Each person possesses an inviolability founded on justice that even the welfare of society as a whole cannot override...Being first virtues of human activities, truth and justice are uncompromising.” (§1)

Well-ordered society



“I characterized a well-ordered society as one designed to advance the good of its members and effectively regulated by a **public conception of justice**. Thus it is a society in which everyone accepts and knows that the others accept the same principles of justice, and the basic social institutions satisfy and are known to satisfy these principles.” (§69)

Concept & conception of justice



☞ “The concept of justice I take to be defined, then, by the role of its principles in assigning rights and duties and in defining the appropriate division of social advantages. A conception of justice is an **interpretation of this role.**” (§2)

The subject of justice



☞ “For us the primary subject of justice is **the basic structure of society**, or more exactly, the way in which the major social institutions distribute fundamental rights and duties and determine the division of advantages from social cooperation. By major institutions I understand the political constitution and the principal economic and social arrangements.” (§2)

Primary goods



☞ The basic structure of society distributes primary goods, something that every rational man is presumed to want, including **social primary goods** (rights, liberties, opportunities, income and wealth) and **natural primary goods** (health and vigor, intelligence and imagination). (§11)

Social contract (1)



“My aim is to present a conception of justice which generalizes and carries to a higher level of abstraction the familiar theory of the social contract as found, say, in **Locke**, **Rousseau**, and **Kant**.” (§3)

Social contract (2)



☞ “In justice as fairness the original position of equality corresponds to the state of nature in the traditional theory of the social contract...it is understood as a **purely hypothetical situation** characterized so as to lead to a certain conception of justice.” (§3)

Social contract (3)



“The merit of the contract terminology is that it conveys the idea that principles of justice may be conceived as principles that would be chosen by rational persons, and that in this way conceptions of justice may be **explained and justified**. The theory of justice is a part, perhaps the most significant part, of the theory of rational choice.” (§3)

Original position(1)



“Among the essential features of this situation is that no one knows his place in society, his class position or social status, nor does any one know his fortune in the distribution natural assets and abilities, his intelligence, strength, and the like. I shall even assume that the parties do not know their conceptions of the good or their special psychological propensities.” (§3)

Original position(2)



“This interpretation is based upon Kant’s notion of **autonomy**....he begins with the idea that moral principles are the object of rational choice. They define the moral law that men can rationally will to govern their conduct in an ethical commonwealth....The description of the original position is an attempt to interpret this conception.” (§40)

Veil of ignorance(1)



“The principles of justice are chosen behind a veil of ignorance. This ensures that no one is advantaged or disadvantaged in the choice of principles by the outcome of natural chance or the contingency of social circumstances.” (§3)

Veil of ignorance(2)



“The veil of ignorance is so natural a condition that something like it must have occurred to many. The formulation in the text is implicit, I believe, in Kant’s doctrine of the **categorical imperative**, both in the way this procedural criterion is defined and the use Kant makes of it. Thus when Kant tells us to test our maxim by considering what would be the case were it a universal law of nature, he must suppose that we do not know our place within this imagined system of nature.” (§24, note 11)

Circumstances of justice



- ☞ “The circumstances of justice may be described as the normal conditions under which human cooperation is both possible and necessary.” (§22)
- a) **Objective circumstances:** a definite territory, roughly similar physical and mental powers, moderate scarcity in natural resources...etc.
 - b) **Subjective circumstances:** roughly similar needs and interests, different plans of life, incomplete knowledge and limited cognitive powers, susceptible to anxiety and bias...etc.

Hume on circumstances of justice



“Here then is a proposition, which, I think, may be regarded as certain, that 'tis only from the **selfishness and confined generosity of men**, along with the **scanty provision nature has made for his wants**, that justice derives its origin. If we look backward we shall find, that this proposition bestows an additional force on some of those observations, which we have already made on this subject.” (Hume, *Treatise* 3.2.2.18)



Reflective equilibrium as justification



- ☞ “This is to see if the principles which would be chosen match our **considered convictions** of justice or extend them in an acceptable way.” (§4)
- ☞ “It is an equilibrium because at last our principles and judgements coincide; and it is reflective since we know to what principles our judgements conform and the premises of their derivation....But this equilibrium is not necessarily stable. It is liable to be upset by further examination.” (§4)

Against utilitarianism



- ❧ Classical utilitarianism (Bentham): “a society is properly arranged when its institutions maximize the net balance of satisfaction.” (§5)
- ❧ Utilitarianism defines **the good** independently from **the right** (§5)
- ❧ Justice denies that the loss of freedom for some is made right by a greater good shared by others. Utilitarianism is teleological, but justice as fairness is deontological. (§6)

The priority problem



- ☞ Intuitionism claims that “there exist no higher-order **constructive criteria** for determining the proper emphasis for the competing principles of justice.” (§7)
- ☞ Rawls argues that we can rank competing principles in a lexical order. (§8)

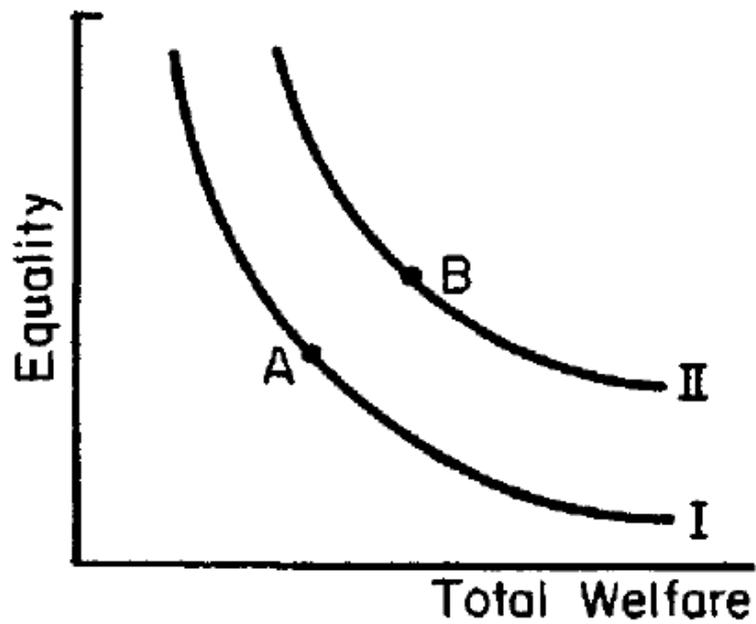


FIGURE 1

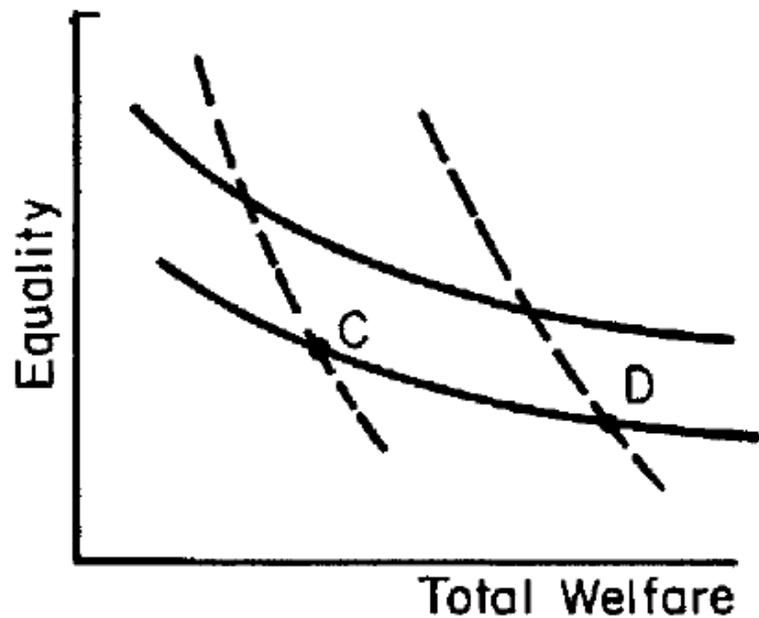


FIGURE 2

First principle of justice



✧ First Principle(Principle of Liberty):

“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.” (§46)

First Priority Rule



✧ First Priority Rule(The Priority of Liberty):

(a) A less extensive liberty must strengthen the total system of liberties shared by all.

(b) A less than equal liberty must be acceptable to those with the lesser liberty.(§46)

Second principle of justice



Second Principle:

“Social and economic inequalities are to be arranged so that they are both:

- (a) to the greatest benefit of the least advantaged, consistent with the just savings principle, and
- (b) attached to offices and positions open to all under conditions of fair equality of opportunity. “ (§46)

Second Priority Rule



☞ Second Priority Rule (Justice over efficiency and welfare):

(a) An inequality of opportunity must enhance the opportunities of those with the lesser opportunity.

(b) An excessive rate of saving must on balance mitigate the burden of those bearing this hardship.

(§46)

Maximin Rule (§19)



Decisions	Circumstances		
	c_1	c_2	c_3
d_1	-7	8	12
d_2	-8	7	14
d_3	5	6	8

Four-stage sequence (§31)



1. Original position
2. Constitutional convention
3. Legislative stage
4. Application stage

Civil disobedience defined



“I shall begin by defining civil disobedience as a public, nonviolent, conscientious yet political act contrary to law usually done with the aim of bringing about a change in the law or policies of the government.” (§55)

Civil disobedience as exception



“The real question is under which circumstances and to what extent we are bound to comply with unjust laws. Now it is sometimes said that we are never required to comply in these cases. But this is a mistake. The injustice of a law is not, in general, a sufficient reason for not adhering to itWhen the basic structure of society is reasonably just....we are to recognize unjust laws as binding provided that they do not exceed certain limits of injustice.” (§53)

Conditions of civil disobedience



1. Instances of substantial and clear injustice
2. The legal means of redress have proved of no avail
3. Without leading to a breakdown in the respect for law and the constitution

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