

The New York Times Book Review

JULY 16, 1972 SECTION 7

A Theory Of Justice

By John Rawls.
607 pp. Cambridge, Mass.:
The Belknap Press of
Harvard University Press.
Cloth, \$15; paper, \$3.95.

By MARSHALL COHEN

For too long now, the main tradition of moral philosophy has been utilitarian in its broad assumptions: people ought to work for "the greatest happiness of the greatest number" of their fellow-men; minorities should submit to the interests of the majority. But utilitarian attitudes are incompatible with our moral judgment and with the principles on which our Constitution rests. It is, therefore, a crucial task of moral and political philosophy to make clear the inadequacy of utilitarian concepts and, more important, to provide a persuasive alternative to them. In the opinion of John Rawls, professor of philosophy at Harvard, the social contract theory of Rousseau and Kant provides the main such alternative. And it is no accident that the Founding Fathers looked to this theory, in Locke's version of it, for their main philosophical doctrines. In recent times, however, this tradition has seemed unavailable to sophisticated opinion. For modern men cannot take seriously the myth on which the theory appears to rely—an actual contract agreed upon by solitary primitives determined to create the first society—and modern philosophy has been inclined to agree with Bentham's view that any appeal to natural rights is nothing more than nonsense on stilts.

All this will now change. For, in

Marshall Cohen is professor of philosophy at The City University of New York and editor of "Philosophy and Public Affairs." He is a member of the Committee for the Study of Incarceration chaired by former Senator Goodell.



The social contract explained and defended

his magisterial new work, "A Theory of Justice," John Rawls draws on the most subtle techniques of contemporary analytic philosophy to provide the social contract tradition with what is, from a philosophical point of view at least, the most formidable defense it has yet received. In addition, he revives the English tradition of Hume and Adam Smith, of Bentham and of John Stuart Mill, which insists on relating its political speculations to fundamental research in moral psychology and political economy. Rawls thereby makes available the powerful intellectual resources and the comprehensive approach that have so far eluded anti-utilitarians. He also makes clear how wrong it was to claim, as so many were claiming only a few years back, that systematic moral and political philosophy are dead.

This was a rash, if understandable, inference from the examples then before us—works like C. I. Stevenson's "Ethics and Language" and T. D. Weldon's "The Vocabulary of Politics." The subsequent renewal of political philosophy, to which Rawls has made such notable contributions, can be attributed in part to important developments within philosophy

itself. Of these, the decline of logical positivism and the weakening of an insistence on piecemeal linguistic analyses are perhaps the most important. But the revival of political philosophy is also a response to the moral obtuseness and the debased political rhetoric of our time. All the great political philosophies of the past—Plato's, Hobbes's, Rousseau's—have responded to the realities of contemporary politics, and it is therefore not surprising that Rawls's penetrating account of the principles to which our public life is committed should appear at a time when these principles are persistently being obscured and betrayed. Rawls offers a bold and rigorous account of them and he is prepared to argue to a skeptical age that in betraying them it betrays reason itself.

According to Rawls, justice is the first virtue of social institutions and the difficulty with utilitarianism is that it offends our sense of justice. In Rawls's view, the requirements of justice can be formulated in two principles, and it is easy to see that anyone who accepts utilitarianism cannot accept either of them as fundamental. Consider the first principle: each person has a right to the

most extensive basic liberty compatible with a like liberty for others. Rawls has in mind here such basic liberties as the right to vote and to stand for public office; freedom of speech and assembly; liberty of conscience and freedom of thought; freedom to hold (personal) property. Utilitarianism could easily justify abridging these basic liberties. For utilitarianism claims that we ought to seek the greatest balance of satisfaction over dissatisfaction for society as a whole. If this is so, however, a violation of the basic liberties of an individual, or of a minority, would be justified if the violation brought sufficient satisfaction to the majority. Such a philosophy could justify slavery or, more to the present point, a suppression of the very political rights that are basic to our notions of constitutional government.

A similar difficulty for utilitarians arises with Rawls's second principle, which applies to the distribution of wealth and to arrangements of power and authority. In this domain Rawls is not an equalitarian, for he allows that inequalities of wealth, power and authority may be just. He argues, however, that these inequalities are just only when they can reasonably be expected to work out to the advantage of those who are worst off. The expenses incurred in training a doctor, like the rewards that encourage better performance from an entrepreneur, are permissible only if eliminating them, or reducing them further, would leave the worst off worse off still. If, however, permitting such inequalities contributes to improving the health or raising the material standards of those who are least advantaged, the inequalities are justified. But they are justified only to that extent—never as rewards for "merit," never as the just deserts of those who are born with greater natural advantages or into more favorable social circumstances.

It is important to understand that according to Rawls it is neither just nor unjust that men are born with differing natural abilities into differing social positions. These are simply natural facts. (Continued on Page 16)

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A Theory Of Justice

Continued from Page 1

To be sure, no one deserves his greater natural capacity or merits a more favorable starting point in society. The natural and social "lottery" is arbitrary from a moral point of view. But it does not follow, as the equalitarian supposes, that we should eliminate these differences. There is another way to deal with them. As we have seen, they can be put to work for the benefit of all and, in particular, for the benefit of those who are worst off. What justice requires, then, is that natural chance and social fortune be treated as a collective resource and put to work for the common good. Justice does not require equality, but it does require that men share one another's fate.

Now, if this conception, or something like it, represents our sense of justice in these matters, it is plain that a utilitarian approach will violate our sense of justice. For, according to utilitarianism, it would be right to forgo a substantial improvement in the position of the worst off, if doing so would secure a greater improvement in the position of the well off. Indeed, utilitarianism would even permit us to make the worse off a little worse off still, if this would enable us to make the well off much better off. And this although it reflects some of the practices of the affluent society, is plainly unjust. Rawls's second principle fits our considered judgments about the just distribution of wealth and power far better than the philosophy of utilitarianism does.

Rawls's formulation of the principles of justice is, then, a remarkable achievement and it would remain one even if the arguments he offers in its defense were less impressive than they are. But these arguments, a Hobbesian exercise in

"moral geometry," are deep and elegant, and I believe they will earn for Rawls's book the status of a classic.

Just as Hobbes argued that it would be rational for men in the state of nature to enter into a social contract, so Rawls argues that it would be rational for men in what he calls the "original position" to adopt the principles of justice he has articulated. This "original position" is not however, an actual historical situation of the sort that skeptical opinion finds it difficult to acknowledge; it is rather, a hypothetical situation that can be entered into at any time.

Rawls's aim is to define this hypothetical situation in such a way that any principles agreed upon in it will be just. They will be just, he argues, if the conditions under which they are chosen, and the procedures by which they are chosen, are themselves fair. (It is for this reason that he calls his conception "justice as fairness.") Rawls tries to insure this fairness by requiring that the principles which are to govern society be chosen behind a "veil of ignorance." This veil prevents those who occupy the "original position" from knowing their own natural abilities or their own positions in the social order. What they do not know they cannot turn to their own advantage; this ignorance guarantees that their choice will be fair. And since everyone in the "original position" is assumed to be rational, everyone will be convinced by the same arguments. In the social contract tradition the choice of political principles is unanimous.

By construing the choice of principles in the "original position" this way, Rawls has transformed the problem of justice into a problem in the theory of rational choice. And this allows him to exploit some of the results of modern decision theory (and of game theory). Rawls argues that given the uncertainties that characterize the "original position" (men do not know whether they are

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well—or ill-endowed, rich or poor) and given the fateful nature of the choice to be made (these are the principles by which they will live) rational men would choose according to the "maximin" rule of game

theory. This rule defines a conservative strategy—in making a choice among alternatives, we should choose that alternative whose worst possible outcome is superior to the worst possible outcome of the others. In the "original position," the "maximin" rule suggests that we eschew utilitarianism and choose the two principles of justice defined by Rawls. For, Rawls argues, it would not be rational for men to gamble on the utilitarian principle since it might, as we have seen, deprive them of their basic liberties and deny them an adequate social minimum. Rather, the rational course would be to secure their basic liberties and an adequate social minimum. For these liberties and this minimum will be necessary to carry out their own life-plans, or to pursue their own conceptions of the good, no matter what these turn out to be when the "veil of ignorance" is lifted.

In addition, Rawls argues, obtaining these primary social goods provides the best assurance of achieving the most fundamental good of all, the good of self-respect. Rawls's principles, unlike those of the utilitarians, take the difference between individuals to be morally fundamental; and his principles also permit each man to pursue his own conception of the good, subject only to the principles of right which are the same for all. But these principles are crucial, for it is in the principles we acknowledge—not in the aims we pursue—that we reveal our fundamental nature and display the ultimate character of our social institutions.

It is frequently said in scholarly circles that Mr. Rawls has made the most penetrating contribution to systematic political philosophy since John Stuart Mill, and it is not unheard of for admirers to invoke the name of Immanuel Kant in the search for an adequate comparison. It is obvious that in the case of a work of this stature many years will pass, and much ink will be spilled, before a satisfactory appraisal can be made. Even now, however, it is possible to suggest some points of criticism.

Thus, I am inclined to believe that the boldness and simplicity of Rawls's formulations depend on a considered, but questionable, looseness in his understanding of some fundamental political concepts. Is it plain, for instance, that justice, and not some other standard, is offended when something less than the greatest equal liberty is conceded? Would we inevitably accuse a regime of in-

justice if it denied its citizens the right to foreign travel? Are there not occasions on which we would accuse it of tyranny, or even of irrationality, instead?

Similar problems arise in connection with Rawls's concept of liberty, and here the matter is more urgent because it affects Rawls's important doctrine of "the priority of liberty." According to this doctrine, the "basic" liberties may only be restricted for the sake of liberty itself. They may not be restricted for the sake of other—and especially not for the sake of economic—goods. Now, insofar as the concepts of liberty, and of "basic" liberty, are left unclear so is the doctrine of the priority of liberty. Some will therefore doubt whether a political right, such as the right to vote, is in fact protected by the doctrine, for they will doubt whether the right to vote in fact confers a liberty as opposed, say, to a power.

Then, too, it is questionable whether liberties, even basic liberties, should be restricted only to protect liberty itself. Rawls allows, for instance, that we may justly restrict the freedom of an intolerant sect when it threatens our security. Now this concession may present no problems if Rawls means by security the security of our free institutions. But would we not be justified in restricting the liberties of a sect that threatened not our liberty, but our physical security? And are the goods of bodily integrity and of life itself properly regarded as forms of liberty? Similar questions will inevitably arise in connection with economic and other social goods. It looks, therefore, as though Rawls employs the term "liberty" in an excessively broad sense, and that he ought to formulate his doctrine of the priority of liberty in more precise terms.

If Rawls's discussion of the relationship between justice and liberty, and his views on the meaning and priority of liberty, are the most vulnerable aspects of his work, his discussion of the proper distribution of wealth and power is the most original, and the most penetrating. Even here, however, questions may be raised and differing intuitions about the requirements of justice will manifest themselves. Thus, some will differ with Rawls and argue that it is unjust that some men are born into more favored social circumstances than others. These critics are also likely to be more egalitarian than Rawls. To be sure, Rawls suggests that many of the inequalities that our society permits are excessive and he also suggests that permitting them helps to undermine the fair value of our equal liberties. But one would like to be clearer about the sorts of inequalities that are in fact justified in order to "en-

courage" better performance. And is it in fact legitimate for Rawls to exclude considerations of what he calls envy from the calculations that are made in the "original position"? It is arguable that including them would lead to the choice of more egalitarian principles.

However that may be, for one am inclined to argue that once an adequate social minimum has been reached, justice requires the elimination of many economic and social inequalities, even if their elimination inhibits a further raising of the minimum. Rawls argues that once an adequate social minimum has been reached it would be unjust to trade fundamental political rights away for further economic gains. I would argue that it would be unjust, in precisely the same circumstances, to perpetuate certain inequalities. I ought to forgo some economic benefits if doing so will reduce the evils of social distance, strengthen communal ties, and enhance the possibilities for a fuller participation in the common life.

All of this raises the disturbing question—whether self-respect, the fundamental good in Rawls's system, might not be enhanced by the arrangements of a society that is in fact unjust both on Rawls's, and on more egalitarian standards. For is it not possible that men would gain greater self-respect from belonging to a society that sacrificed some of their economic well-being, and even some of their freedom, to the pursuit of high political purposes or to the production of marvelous works of art? Indeed, is it clear that an improvement of social conditions is inevitably to be preferred to a Nietzschean *Veredelung* (ennobling) of the species? I believe that there is something to be said for the perfectionistic doctrines of Aristotle and Nietzsche, which Rawls rejects. To be sure, the inequalities these doctrines justify may come into sharp conflict with our sense of justice. And the more egalitarian one's sense of justice the more painful the conflicts will be. But it is not clear to me that Rawls has shown us how to resolve them.

Even if these speculations are sound, however, they cannot justify the inequalities we now accept or the impairment of our liberties that we now endure. For our politics are inglorious and our high culture does not enjoy extravagant support. Whatever else may be true it is surely true that we must develop a sterner and more fastidious sense of justice. In making his peerless contribution to political theory, John Rawls has made a unique contribution to this urgent task. No higher achievement is open to a scholar. ■