CHAPTER – 3

**Original Position and The Idea of Social Contract**

The idea of social contract is not only the most ancient but also the most famous of all the theories regarding the origin of the state. “The Sophists and the Epicureans of ancient Greece faintly subscribed to it by taking state, in clear opposition to the views of Plato and Aristotle, as a conventional organization by virtue of being based on the interest of the people. The Roman thinkers and lawyers like Polybius and Cicero took the same view.”¹ The substance of this theory is that the state is the result of an agreement entered into by men who originally had no governmental organization. The theorist divided the history of the world into two periods. In the first one, there was no government and no law. The people lived in a state of nature. After sometime they decided to set up a state that they did by means of a contract. Thus, the state was born.

Though several writers were connected with the theory at different periods of history, the theory found real support at the hands of Hobbes, Locke and Rousseau. Like Hobbes, Locke, Rousseau and Kant, Rawls also belongs to the social contract tradition. However, Rawls’s social contract takes a different form than that of previous thinkers. Specially, Rawls develops what he claims the principles of justice through the use of a deliberately artificial device, which he calls the “original

position”, in which everyone decides principles of justice from behind a veil of ignorance. This ‘veil’ is one that essentially blinds people to all facts about themselves that might bias the nation of justice that is developed. Ignorance of these details about oneself will lead to principles which are fair to all. Rawls claims that the parties in the original position would adopt two such principles, which then govern the assignment of rights and duties and regulate the distribution of social and economic advantages across society.

Rawls’s idea of original position is a hypothetical situation articulated by him as a thought experiment to replace the imagery of a savage state of nature of prior political philosophers like Thomas Hobbes. In social contract theory, persons in the state of nature agree to the provisions of a contract that defines the basic rights and duties of citizens in a civil society. In Rawls’s theory, justice as fairness, the original position plays the role that the state of nature does in the classical social contract tradition of Thomas Hobbes, Rousseau and John Locke.

The original position, as Rawls design it, self-consciously builds on the long social contract tradition in Western Political Philosophy. If we recall, Hobbes, Locke and Rousseau each described a state of nature. The state of nature was just an idea, nobody was saying that humans ever were actually in the state of nature. Hobbes, Locke and Rousseau each described how people could leave a state of nature by a hypothetical social contract. Instead of a state of nature, Rawls has what he calls the original position. Rawls says that the original position is just an idea to help the discussion. Here’s how it works, people should imagine themselves without any government and rational discuss, what sort of government could be supported by a social contract and achieve justice. Rawls’s uses the original position not to justify the
authority of some particular government, but rather to try to figure out what basic principles should govern any society when it is set up. In the end, Rawls’s comes up with a society that is not too different from our own.

In ‘A Theory of Justice’, Rawls tries to develop a conception of justice that is based on a social contract. His approach, doubtlessly, led to a revival of the contract theory in modern political theory. However, his peculiar conception of a hypothetical contract has also evoked a wave of severe criticism. Some of his critics settle for condemning special features of Rawls’s contractual concept, while others maintain that Rawls’s theory is, in effect, no real contract theory. But is Rawls’s theory a genuine contract theory at all? If yes, does the contract play a crucial role in this theory or is there a preferable alternative available to Rawls?

The strategy of the original position is to construct a method of reasoning that models abstract ideas about justice so as to focus their power together onto the choice of principles. So, Rawls’ conception of citizen as free and equal and of society as fair are built into the design of the original position itself. Rawls’s intent is that readers will see the outcome of the original position as justified because they will see how it embodies plausible understanding of citizen and society, and also because this outcome confirms many of their considered convictions about justice of specific issues.

The original position is a thought experiment an imaginary situation in which each real citizen has a representative, and all of these representatives come to an agreement on which principles of justice should order the political institutions of the real citizens, were actual citizen to get together is real time to try to agree to principles of justice for their society, the bargaining among them would be influenced by all
sorts of factors irrelevant to justice, such as who could appear most threatening or who could hold out longest. The original position abstracts from all such irrelevant factors. In effect the original position is a situation in which each citizens is represented as only a free and equal citizen, as wanting only what free and equal citizen want, and as trying to agree to principles for the basic structure while situated fairly with respect to other citizens. For example, citizen’s basic equality is modeled in the original position by imagining that the parties who represent real citizens are symmetrically situated; no citizen’s representative is able to threaten any other citizen’s representative, or to hold out longer for a better deal.²

The most striking feature of the original position is the veil of ignorance, which prevents other arbitrary facts about citizens from influencing the agreement among their representative. As we have seen, Rawls holds that the fact that a citizen is, for example, of a certain race, class, and gender is no reason for social institutions to favor or disfavor him. Each party in the original position is therefore deprived of knowledge of the race, class, and gender of the real citizen they represent. In fact the veil of ignorance deprives the parties, Rawls says, of all facts about citizens that are irrelevant to the choice of principles of justice not only their race, class, and gender but also their age, natural endowments, and more, moreover the veil of ignorance also screens our specific information about the citizens society so as to get a clearer view of the permanent feature of a just social system.

Behind the veil of ignorance, the informational situation of the parties that represent real citizens is as follows: parties do not know, the race, ethnicity, gender, age, income, wealth, natural endowments, comprehensive doctrine, etc, of any of the citizen in society, or to which generation in the history of the society these citizens belong, the political system of the society, its class structure, economic system, or level of economic development. And parties do know, that citizens in the society have different comprehensive doctrines and plans of life, that all citizens have interests in more primary goods. And that the society is under conditions of moderate scarcity, there is enough to go around, but not enough for everyone to get what they want. And the general facts about human social life, facts of common sense, general conclusion of science (including economic and psychology) that are uncontroversial.³

The ‘veil of ignorance’ is intended to situate the representative of free and equal citizens fairly with respect to one another. No party can press for agreement on principles that will arbitrarily favor the particular citizens they represent, because no party knows the specific attributes of the citizens they represent. The situation of the parties thus embodies reasonable conditions, within which the parties can make a rational agreement. Each party’s tries to agree to principles that will be best for the citizens they represent (i.e. that will maximize that citizen share of primary goods). Since the parties are fairly situated, the agreement they reach will be fair to all actual citizens.


The set up of the original position also models other aspects of Rawls conception of citizen and society. For example, the publicity of a well ordered society is modeled by the fact that the parties must choose among principles that can be possibly endorsed by all citizens.\(^4\) There are also some assumption that make the hypothetical agreement determinate and decisive, the parties are not motivated by how much citizen besides their own end up with; the parties must make a final agreement or principles for the basic structure there are no ‘do-overs’;\(^5\) after the veil of ignorance is lifted and the parties learn which real citizens they represent.

The condition of the ‘original position’ can be divided into kinds, those, which concern knowledge, and those which concern motivation. The limits on knowledge, summarily stated, are that the actors do not know their social position, their particular talents or bents, or their ‘conception of the good’, which includes such things as their particular sources of pleasure, their ambition, and their religion or other beliefs. As a further refinement, to deal with certain problems with the ‘just saving rate’, Rawls adds that they do not know what stage of economic development their society has reached. The limitation on knowledge Rawls refer to as a ‘veil of ignorance’. The motivational postulates are fist that the actors in the original position are rational and secondly that they are not altruistic. More precisely, the second condition means that each of them wishes to further his own ‘conception of the good’, though he does not-


URL=\url{http://plato.stanford.edu/archives/spr2012/entries/originalposition/}.

\(^5\)Ibid.
under the limitations of knowledge—know what content this conception will have. A man’s conception of the good may include in it the welfare of certain other people for whom he feels affection or special responsibility. But, for the purpose of the position original, it does not include a substantive sense of justice. That is to say, a man cannot, in the original position, take as his end the idea that everyone’s welfare should be increased as much as possible, or, say, that he would like a certain distribution of goods or utilities for its own sake.⁶

Historically the idea of a social contract had a more limited role than Rawls assigns to it. In Hobbes and Locke the social contract serves an argument for the legitimacy of political authority. Hobbes argues that in a pre-social state of nature it would be rational for all to agree to authorize one person to exercise the absolute political power needed to enforce norms necessary for social cooperation. Locke argued against absolute monarchy by contending that no existing political constitution is legitimate unless it could be contracted into without violating any natural rights or duties from a position of equal right and equal political jurisdiction within a state of nature. For Rousseau and perhaps Kent too, the idea of a social contract played a more significant role, as part of their accounts of the general will, it was a point of view legislators should adopts for deciding on law that achieve justice and the common good of citizens. Rawls generalizes on these more specialized idea of a social contract, the purposes of his original position is to yield principle that are to be

used to assess the justice of political constitutions and of economic and social arrangements. To do so, he seeks in the original position. ‘To combine into one conception the totality of condition which we are ready upon due reflection to recognize as reasonable in our conduct towards one another.’

Why does Rawls represent principles of justice as originating in a kind of social contract? Rawls says that ‘Justice as fairness assigns a certain primacy to the social’. Unlike Kant’s categorical imperative procedure, the original position is designed to represent the predominantly social basis of justice. To say that justice is predominantly social does not mean that people do not have ‘natural’ moral rights and duties outside society or in non-cooperative circumstance—Rawls clearly thinks there are certain human rights and natural duties that apply to all human beings as such. But whatever our natural or human rights and duties may be, they do not provide an adequate basis for ascertaining the rights and duties of justice that we owe one another as members of the same ongoing political society. It is in large part due to ‘the profoundly social nature of human relationships’ that Rawls sees political and

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economic justice as grounded in social cooperation and its reciprocity. For this season Rawls eschews the idea of a state of nature wherein pre-social but fully rational individual agree to cooperation norms (as in Hobbesian views), or where pre-political persons with antecedent natural rights agree on the form of a political constitution (as in Locke). We are social beings in the sense that in the absence of society and social development we have but inchoate and unrealized capacities, including our capacities for rationality, morality, even language itself. As Rousseau says, outside society we are but ‘stupid, limited animals.’ This undermines the main part of the idea of a state of nature, which is to distinguish what we bring to society from what we owe to society. Not being members of some society is not an option for us. In so far as we are rational and reasonable beings at all, we have developed as members of a society, within its social framework and institutions. The traditional idea of pre-social or even pre-political rational moral agents thus plays account of justice and the social contract, for him the state of nature is an idea without moral significance. The original position is set forth largely as an alternative to the state of nature and is regarded by Rawls as the appropriate initial situation for a social contract.

Another way in which Rawls represents the ‘profoundly social’ bases of principles of justice is focusing on ‘the basic structure of society’. The ‘first subject of justice’, Rawls says, is principles that regulate the basic social institutions that constitute the basic structure of society.¹² These basic institutions include the political constitution and framework for the legal system, the system of trials for

adjudicating disputes; the norms of property, its transfer, contractual relation, etc, which are necessary for economic production, exchange, and consumption and finally norms that define and regulate permissible forms of the family. It is the role of the principles of justice to specify and assess the system of rules that constitute the basic institutions, and determine the fair distribution of rights, duties, opportunities, powers and positions of office to be realized within them.

What makes these institutions and their arrangement the first subject for principles of social justice is that they are all necessary to social cooperation and moreover have such profound influence on our situation, aims, characters, and future prospects. No society could exist without certain rules of property, contract, and transfer of goods and resources, for they make economic production, trade, and consumption possible. Nor could a society long endure without some political mechanism for resolving disputes and making, revising, interpreting, and enforcing its economic and other cooperative norms, or without some form of the family, to reproduce, sustain, and nurture members of its future generations. This is what distinguishes the social institutions constituting the basic structure from other profoundly influential social institutions, such as religion, and other social institutions are not basic because they are not generally necessary to society and social cooperation.

Another reason Rawls regards the original position as the appropriate setting for a social contract is implicit in his stated aim in A Theory of Justice: it is to discover the most appropriate moral conception of justice for a democratic society wherein persons regards themselves as free and equal citizens. Here he assumes an ideal of citizens as “moral persons” who regards themselves as free and equal, have a
conception of their rational good, and also have a sense of justice.¹³ “Moral person” are not necessarily morally good person, but instead are capable of being rational in that they have the capacities to form, revise and pursue a conception of the good and also they are capable of being reasonable in that they have a moral capacity for a sense of justice, to understand, apply and act upon principles of justice and their requirements. Because people have three capacities, we hold them responsible for their actions and they are regarded as capable of pursuing their interests and engaging in social cooperation. Rawls’s idea is that, being reasonable and rational persons who regards ourselves as free and equal should be in a position to accept as morally justifiable the principles of justice regulating our basic social institutions and individual conduct. Otherwise our conduct is coerced for reasons we cannot reasonably accept and we are not fundamentally free persons. Rawls thus starts from the intuitive idea that reasonable and rational persons who regard themselves as free and as equals ought to be able to freely accept the norms and constraints on their conduct. He then constructs the moral point of view from which to decide moral principles of justice as a social contract in which free and equal persons are given the task of coming to an agreement on principle of justice that regulate their social and political relations. How otherwise should we represent the justification of principles of justice for free and equal persons who have different conceptions of their good, as well as different religious, philosophical, and moral view? There is no commonly accepted moral or religious authority or doctrine to which they could appeal in order

to discover principles of justice that all could agree to and accept. Rawls contends that, since his aim is to discover a conception of justice appropriate for a democratic society that is justifiable to its free and equal citizens and which they can endorse and accept, the appropriate way to justify this conception is by (imagining) an agreement among free and equal persons themselves.

How is this social contract to be conceived? It is not to be regarded as an event that must actually take place at some point in history. It is rather a hypothetical situation designed to uncover the most reasonable principles of justice. Rawls maintains that the major advocate of social contract doctrines – Hobbes, Locke, Rousseau, and Kant – all regarded the social contract, as a hypothetical event. Hobbes and Locke thus posited a hypothetical state of nature in which there is no political authority, and where people are regarded as rational and also reasonable. The purpose of this hypothetical social contract is to demonstrate what types of governments are politically legitimate, and to determine the nature of individual’s political obligations. Their presumptions is that if a government could or would be agree to by all in an appropriately described pre-political situation, then it is generally acceptable to rational persons now and is hence legitimate and subjects us to political obligations. Similarly, in Rousseau and Kant the social contract is a way to reason about the general will, or the laws that hypothetical moral agents would all agree to promote in


the common good and to realize the freedom and equality of citizens. Rawls employs
the idea of a hypothetical social contract for more general purposes than his
predecessors. He aims to provide principles of justice that can be applied to
determine both the justice of political constitutions and their laws, as well as the
justice of social and economic arrangements is the distribution of educational and
work opportunities, powers and positions of office and income and wealth.

It has been objected that hypothetical agreements cannot bind people, only
actual contracts or agreements can impose obligations and commitment. In response,
Rawls says that the original position is to be used “to help us work out what we now
think”,¹⁶ “it incorporates conditions….we do in fact accept”,¹⁷ and is kind of “thought
experiment for the purpose of public – and self – clarification”.¹⁸ Hypothetical
agreement in the original position does not then bind anyone to duties or
commitments he or she does not already have. Its point rather is to explicate the
requirements of moral concepts of justice and enable us to draw the consequences of
considered certain moral convictions that we all presumably share. Whether we in
turn consciously accept or agree to these consequences and the principles and duties
they implicate once brought to our awareness is irrelevant to their justification. For


¹⁷Rawls, John, A Theory of Justice, Cambridge, MA: Harvard University Press, 1999,
PP.587/514.

¹⁸Kelly, E., Justice as Fairness: a Restatement, Cambridge, MA: Harvard University
surely it can matter little to the jurisdiction of moral principle whether or not existing people actually do accept or agree to them. The point rather of conjecturing the outcome of a hypothetical agreement is that, assuming that the premises underlying the original position correctly represent our most deeply held considered moral convictions, then we are committed to endorsing the resulting principles and duties whether or not we actually accept or agree to them. Not to do so implies a failure to line up to the consequences of our own moral convictions about justice.

There are three factors that play a role in motivating the parties in the original position:

1) First, they aim to advance their determinate conception of the good or rational plan of life, even though they do not know what that conception is. Moreover, they also seek conditions that enable them to exercise and develop their “moral powers”, namely.

2) Their rational capacities to form, revise and pursue a conception of their good, and

3) Their capacity to the reasonable and to have a sense of justice. These are the three higher—order interests the parties to Rawls’s original position aim to promote in their agreement on principles of justice.

The three higher—order interests provide the basis for Rawls’s account of primary social goods. The primary goods are the all—purpose social means that are necessary to the exercise and development of the moral powers and to pursue a wide variety of conceptions of the good. Rawls describes them initially in theory as goods that any rational person should want whatever his or her rational plan of life. The primary social goods are: rights and liberties, powers and opportunities, income and
wealth and the social bases of self—respect. “Powers” refer not simply to a capacity to effect outcomes or control others behavior. Rawls rather uses the term to refer to the legal and institutional abilities and prerogatives that attend offices and social positions. Hence, he sometimes refers to the primary goods of “power and prerogatives of offices and positions of responsibility”,¹⁹ Members of various professions and trades have institutional powers that are characteristic of their position and which are necessary if they are to carry and their respective role. The social bases of self—respect are feature of institutions that are needed to enable people to have the confidence that their position of society is respected and their conception of the good is worth pursuing. These features depend upon history and culture. Primary among these social bases in a democratic society are the conditions needed for equal citizenship including equality of political rights and fair equal opportunity, as well as personal independence and adequate material means for achieving it.

The parties to the original position are motivated to achieve or adequate share of primary goods so they can achieve their higher – order interests in pursuing their rational plans of life and exercising their moral powers. “They assume that they normally prefer more primary social goods rather than less”.²⁰ This too is part of being rational. Because they are not anxious, their concern is with the absolute level


of primary goods, not their share relative to other persons.

The parties in the original position are formally rational in that they are assumed to have and to effectively pursue a rational plan of life with a schedule of coherent purpose and commitments that give their life meaning. As part of their rational plans, they have a substantive interest in the development and exercise of their capacities to be rational and to be reasonable. These “higher—order interest” provide them with reason to procure for themselves in their choice of principles of justice an adequate share of the primary social goods that enable them to achieve these higher order ends and effectively pursue their life plans.

According to Rawls, The Law of Peoples, appeals to the original position, to argue for principles of justice that holds among different political societies, on “peoples”. Rawls contend that a theory of social and political justice requires principles of justice to regulate the foreign relations of well—ordered societies with one another. He calls these principles of justice “The Law of Peoples”, about which we will study more in chapter six. Since he conceives of the Law of Peoples as regulating relationships between political societies, he imagines an agreement, not among all the individuals in the world’s population, but among the representatives of liberal democratic well-ordered societies. In this agreement among liberal peoples, each political society is to be regarded as an equal with equal rights of participation in this agreement; thus they each have one representative, no matter the size of their population. To represent the equality of peoples and guarantee fairness of the agreement, Rawls once again utilize the original position as a hypothetical situation from which representatives of well-ordered liberal peoples decide principles of international justice. The parties to this agreement are once again to be regarded as
ignorant of particular facts about their societies, including the size of their population, their natural resources and level of produced wealth, their social and ethnic cultures, and other particular facts knowledge of which might result in unfair bargaining advantages and leads to an unfair agreement. The representatives of each society are motivated by their fundamental interest in maintaining the justice of their own societies, as this is defined by justice as fairness and some other liberal conception.²¹

The Law of Peoples of Rawls has been widely criticized since it does not allow for an original position agreement among all the world’s members; nor does Rawls envision agreement upon a global principle of distributive justice; or even a global tax on more advantaged society’s wealth or natural resources, to be redistributed to less advantaged societies.²²

In A Theory of Justice, Rawls provides a “Kantian Interpretation” of the original position and the principles of justice.²³ The Kantian interpretation is the first step towards Rawls’s Kantian constructivism,²⁴ and his later political

URL = http://Plato, Stanford.edu/archives/fall 2008/entries/original - position/
constructivism. Rawls says that for Kant, “a person is acting autonomously when the principles of his action are chosen lay him as the most adequate possible expression of his nature as a free and equal rational being” what is missing from Kant, Rawls says, is an attempt to show how moral principles express our nature. “This defect is made good the original position”. The original position can be interpreted as a “procedural interpretation” of our nature as free and equal rational beings, and therewith of Kant’s conception of autonomy and the categorical imperative. For in the original position, because of the veil of ignorance and other moral constraints, the parties “choice is made independent of natural contingencies and accidental social circumstances”, thus the principles of justice are not chosen. “heteronomously”, on the basis of our social position, natural endowments, particular wants, or the particular kind of society we live in. Instead, the parties are all represented in the same way, as free and equal rational persons who choose principles of justice subject to all relevant moral conditions. Rawls says that the original position might thus be regarded as incorporating “conditions that best express their nature as


free and equal rational beings”. On a Kantian view, our moral nature is defined by our
capabilities for practical reasoning. This are our capacity to be rational and reasonable.
The moral powers are the relevant capacities of practical reasoning in so far as they
bear on justice. “Acting autonomously is acting from principles that we would
consent to as free and equal rational beings”³¹ The description of the original position
expressed “what it means to be a free and equal rational being”, and even “resembles
the point of view of noumenal selves”.³²

In addition to expressing our autonomy, the original position is also
objective.³³ It is objective in that it requires that the parties all adopt a common
standpoint and make a considered rational choice under impartial conditions that
require them to abstract from their particular interests and circumstances; moreover
they are all motivated by higher-order interests in their moral powers, which represent
their “nature as free and equal rational beings”. Finally, the original position is
designed to incorporate all the relevant reasons and restrictions on arguments for
principles of social and political justice.³⁴ In so far as the original position is an
appropriately defined objective point of view incorporating all relevant moral reason
and conditions on rational choice of principles of justice, and the parties therein come

³¹Rawls, John, A Theory of justice, Cambridge, MA: Harvard University Press,


³³Ibid, PP. 587/514.

³⁴Ibid, PP. 18/16.
to a unanimous agreement, then the principles agreed to are also objective. Together with the universality requirement, we can infer from the objectivity of the principles of justice that they apply to and are binding on all persons in all societies. For as Rawls says of the original position in concluding, “to see our place in society from the perspective of this position is to see it is to regard the human situation not only from all social but also all temporal points of view”.  

Rawls affirms the objectivity and ‘correctness’ of the principles of justice, and he says they are the “most reasonable” principles. But he does not say at any point that the principles of justice are true. He does however say that judgments based upon the principles of justice are true, and this applies not just to particular judgments but to claims regarding the moral rules of justice that are required by the principles of justice. These claims are implicit in Rawls’s Kantian constructivism. In general, constructivism in moral philosophy is a view about the possibility of the correctness of moral principles and judgment. “Realism” says that the correctness of moral judgments resides in their truth, and that the truth of most fundamental moral principles consists in their corresponding to a moral order that is antecedent to reason and to principles of practical reasoning. This means that at the level of fundamental moral principles the correctness of these principles depends, not on their correspondence to a prior moral


order, but on their following from the fundamental principles of practical reasoning. The objectivity of judgment that is involved in reasoning from an objective perspective according to relevant principles of practical reasoning results in objective moral principles that are the bases for judgments of moral truth. The moral facts that are the objects of these moral truths are not then prior to, but are the facts that are single out as relevant by moral principles and principles of practical reasoning.³⁸

Finally, we come to the question, what is the relationship between the original position and Rawls’s more general non-foundationlist method of justification, “reflective equilibrium”? Reflective equilibrium begins with our shared “considered convictions” of justice and rationality at all levels of generality, from particular to our most general judgments. It then seeks to discover the principles of justice that best “fit” with these considered convictions in a “wide reflective equilibrium”, upon considering all the reasonable alternative principles of justice.³⁹ What can Rawls mean by “fit” other than simply the logical consistency of considered convictions with principles of justice, or the trivial claim that sound moral principles are those supported by the best reasons? He cannot mean, rigorous deductive proof of principles of justice from our considered convictions, for that is not to be achieved.

Rawls said at one point that “reflective equilibrium works through the

original position”. The implication is that original position itself supplies, in large part, the relevant sense of “fit” of considered moral convictions with principles of justice. The principles of justice that best fit with our considered convictions of justice are those that would be chosen by rational persons within this hypothetical-choice “procedure of construction”, which itself “represents” our considered convictions regarding all the relevant reasons for arguments about principles of social justice. As Rawls says in concluding *A Theory of Justice*, “Each aspect of the original position can be given a supporting explanation. Thus what we are doing is to combine into one conception the totality of conditions which we are ready upon due reflection to recognize as reasonable in our conduct towards one another”.40 Until opponents of Rawls’s contractarianism present an alternative argument for the principles of justice that is more persuasive and inclusive of all the relevant reasons bearing on justice, Rawls’s original position should be regarded, not as redundant, but as essential to justification of the principles of justice. 41

