

## Interpreting the Initial Situation

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Choosing the correct principles of justice for the basic structure of society is a difficult task and it is natural to search for a procedure that will help us in that task. Suppose we refer to the situation we find ourselves in when we want to know what the correct principles of justice are as the initial situation. Our problem is then to describe this situation, to identify its most important elements. Understanding our problem better will hopefully mean that its solution will be easier. We might require that the reasoning in such a situation be logical, consistent and conform to generally accepted rules of evidence and argumentation, but it is not hard to see that such stipulations will not take us very far. It will then be necessary to develop an interpretation of the initial situation that will enable us to determine which set of principles is the most reasonable set for us.

In A Theory of Justice John Rawls refers to the original position as the "most philosophically favored interpretation" of the initial situation.<sup>1</sup> About the initial situation itself he says:

There are, as I have said, many possible interpretations of the initial situation. This conception varies depending upon how the contracting parties are conceived, upon what their beliefs and interests are said to be, upon which alternatives are available to them, and so on. In this sense, there are many different contract theories. Justice as fairness is but one of these. But the question of justification is settled, as far as it can be, by showing that there is one interpretation of the initial situation which best expresses the conditions that are widely thought reasonable to impose on the choice of principles yet which, at the same time, leads to a conception that characterizes our considered judgments in reflective equilibrium. This most favored, or standard, interpretation I shall refer to as the original position.<sup>2</sup>

Rawls remarks frequently that the elements of the original position and other parts of his theory are 'reasonable', 'fitting', and 'natural'. But he says relatively little about the initial situation and how it fits in with the other parts of his theory. In this essay I will attempt to describe what exactly the initial situation is, how it can help us to understand how the various elements of Rawls' theory fit together, and why we should regard its interpretation as an important task for political philosophy. The interpretation procedure will lead to the idea of a wide reflective equilibrium. I will also consider one objection to such a procedure and try to show that it fails, but in the main I will simply try to describe how we can construct the elements of Rawls' theory from the idea of the initial situation.

Two further points must be noted. The first is that although I shall conceive of the interpretation of the initial situation as being a practical task, such an interpretation will inevitably look something like a philosophical ideal. Since any interpretation of such a situation will have to simplify and generalize about a complex set of considerations, such a simplification will lead to a procedure that cannot be used for all of the cases that might be considered. The second point is that although I will stick pretty close to Rawls' way of arguing for his conception of justice, I shall try to move beyond it in a way that I hope will be compatible with it.

Further, this essay is not an argument for Rawls' conception of the initial situation but rather an exposition of the interpretation I see implicit within A Theory of Justice. An argument for Rawls' particular way of interpreting the initial situation would have to canvass all of the possible rival interpretations and show why they are unreasonable. Such a vast project is obviously beyond the scope of this essay. But my discussion will suggest why Rawls' interpretation is more reasonable vis-a-vis its main competitor, utilitarianism.

Suppose there is a public culture, in democracies a democratic public culture which can be thought of as the sum of public discussion on questions of justice, including the question of which principles of justice are best for that culture. There are fundamental disagreements between the participants in the discussion over which principles are best but there is also agreement on certain matters. Indeed, one of the prerequisites for there being a public culture is a measure of agreement among the participants. But although the participants share common concepts, there is presumably dispute over how these fundamental concepts are to be interpreted. The important point is that within a culture there will be a large measure of adherence to certain general concepts as well as specific moral

judgments among most if not all members of that culture. Any theory of justice that does not take this kind of broad agreement into account runs the risk of simply not being relevant to our particular public culture. Certainly a theory can suggest that we reform our interpretations of some of our fundamental concepts, perhaps even that we abandon them. But any theory that in effect suggests that we abandon a significant portion of our total system of beliefs will simply be rejected out of hand. There are very few theories that even attempt to persuade us to do this. Most theories of justice appeal to us on the basis that they give a better rendering to the concepts we already have on hand. The theories that suggest we overthrow all of our important concepts with regard to justice are regarded with suspicion. The concepts we already have allow a lot of latitude in interpretation and to demand their overthrow demands that we abandon much that we agree with for an unknown ideal. The burden of proof placed on such theories in view of such enormous risks is usually too great for them to bear.

Although there are disagreements in any democratic public culture, the participants may still wonder whether there is any one conception of justice that will settle the important questions of social justice once and for all. Failing that, they may wonder how to determine what the best conception of justice available is, not the best theory in some absolute sense but simply the best theory among all of the available alternatives. Once the participants in the discussion have asked themselves that question, they are in the initial situation. As I stated above, the problem is then to describe this situation to make our decision easier.

How should we go about answering such a question? The first point to make is that there is no lack of theories or suggestions as to the principles we should use to organize our political, social and economic life. In fact, one of our main problems in constructing a theory of justice is that we have too many theories. We also have a superabundance of information that forms the background for testing those theories. The theories I refer to are not simply the philosophical theories on Rawls' list (intuitionism, utilitarianism and perfectionism). There are also theories about politics written by political scientists, theories about how to run an economy efficiently and fairly by economists and theories about how society should be organized written by sociologists. Add to these theories the relevant aspects of theories offered by other academic disciplines (legal, psychological and anthropological theories) as well as the intellectual history of the fundamental concepts being discussed and the relevant thoughts and knowledge of politicians, scientists, artists and laymen and we have a truly enormous set of materials.

The people in the initial situation thus face a staggering task. This point is worth emphasizing. Whatever theory of justice we eventually decide on, and no matter how much the initial situation is simplified to make our choice easier, the theory of justice that emerges at the end of this process will be extremely complex. A simple theory, a set of principles without any detailed explanation will not even qualify as a proper theory. So we have reached our first tentative conclusion about the proper interpretation of the initial situation. The theory that results from such a situation will have to be a comprehensive, complex theory. No matter how interesting a theory may look at one level (philosophical, political etc.), it cannot be counted as a real alternative for us unless it can work at least to a certain extent at all levels of theory simultaneously. At this point it is worth recalling what Rawls says in the Preface to A Theory of Justice about utilitarianism. He remarks that one reason utilitarianism is such a powerful theory is that its creators were not simply philosophers but also economists and social theorists. They understood utilitarianism to be not simply a moral theory but a wider theory that applied to many questions of their democratic public culture. The implication is that to develop a workable alternative to utilitarianism we will need to create a theory that can work in the same general way, not just as a philosophical theory but a philosophical theory that has clear political, economic and social implications.

Now we can state a second consideration that informs our description of the initial situation. The theory that we need must be one that can actually work in the world as we know it. Specifically it should be possible to institutionalize the principles of justice we endorse and we should be able to describe these institutions in some detail. The theory is not much good if it leaves to the imagination how the principles are to work in the actual circumstances in which questions of justice first arise. If our current institutions require some changes, the theory should be able to tell us what changes are necessary. This stipulation further guards against the possibility that the philosophical theory will provide us with unrealistic principles, principles that could not be adhered to in the world as we know it.

A third consideration can be inferred from the above remarks. In the initial situation, we must take account of the fact that persons do not approach the arguments of moral philosophers without previous commitments. Persons in a particular democratic public culture have strong moral commitments to certain ideals. A theory of justice must take some account of this fact or risk being irrelevant to that culture. Rawls works this idea into his theory through the no-

tion of a considered judgment. Examples of considered judgments in our public culture include the idea that slavery is wrong, that religious toleration should be encouraged and that a person's freedom of conscience ought to be preserved. I want to expand further on this idea of a considered judgment to show how it can be applied to our specific democratic public culture.

The first point to make is that these considered judgments are public considered judgments. It is not enough for one person to say that he has thought a moral question over carefully in a cool hour and then demand that his judgment be incorporated into the theory of justice for his public culture. The judgment must be a publicly shared judgment in some sense. I noted above that one of the prerequisites for there being a public culture in the first place was that agreement be present among the members of that culture on some fundamental ideals. These ideals can serve as the considered judgments that we use in the theory. Perhaps some of them are set forth in a constitution or some other public document that are recognized as stating the ideals of that culture. There may be in fact many different forms that the public considered judgments of a democratic culture can take. But we will be on fairly safe ground if we select what look to be the strongest and most widely agreed upon judgments.

A second point is that these judgments will normally have their own history, independent of any general moral theory. They will have an independent intellectual history, which is only to say that people have thought about the judgments in the past and argued for them in their present form on the basis of whatever considerations they could bring to bear. Think of the example of opposition to slavery in the United States. Citizens wrote books, articles, pamphlets on this question discussing the issue from all sides, offering arguments against the practice that were both pragmatic (slavery does not help us, our economy would be better off without it) and moral (slavery is wrong and unjust, it should be eliminated). Over time, a consensus built up in our public culture that slavery in any form was unjust. Later that judgment was extended to include all of the various forms of racial oppression. Much of this discussion offered arguments that did not depend on any comprehensive moral theory for their argumentative force.

These judgments do not only have the backing of a strong intellectual tradition. They also have the backing of history itself, which is to say that the judgments have stood the test of time. People have not simply accepted these ideals in an intellectual way but they have been willing to act on them and so change history by their actions. Perhaps they have risked their lives for such ideals or devoted their efforts to working to see that these ideals are fully institution-

alized. In any case, the fact that these judgments have moved people to action means that they have a special significance for the persons within that public culture. So in our interpretation of the initial situation we must find a place for these judgments. We may not regard these judgments as final arbiters of whether our theory is a good one but we might regard them as provisional points against which our theory is to be tested.

There is an objection to this way of proceeding that has been made by Richard Brandt. Part of the objection may have already been answered in terms of the requirement that the considered judgments cannot be private judgments and that they must have some validating independent intellectual history. But I think that Brandt would still object to this way of proceeding despite the explanation I have given. Brandt argues:

In the case of normative beliefs, no reason has been offered why we should think that initial credence levels, for a person, correspond to credibilities. The fact that a person has a firm normative conviction gives that belief a status no better than fiction. Is one coherent set of fictions supposed to be better than another? . . . What we should aim to do is step outside our own tradition somehow, see it from the outside, and evaluate it, separating what is only the vestige of a possibly once useful moral tradition from what is justifiable at present. The method of intuitions in principle prohibits our doing this. It is only an internal test of coherence, what may be no more than a reshuffling of moral prejudices.<sup>3</sup>

From what I have argued above, it should be clear why we should regard these judgments as more than mere fictions. They are part of what we are and we could no more abandon these fundamental judgments than we could change our form. But we do not simply accept these judgments on faith and they are not intuitions in the sense that we are expected to 'see' that they are true. We can understand that they are correct because there are public arguments in their favor and because we can actually observe their beneficial effects by examining our history and by seeing how they are working today. As Norman Daniels argues, these considered judgments should not be understood as some sort of foundational intuition, a glimpse into some fundamental moral reality.<sup>4</sup> Rather they are revisable in some sense. This may be hard to see if we adhere to the examples I used above. Are our judgments as to the wrongness of slavery or the rightness of religious toleration to be revisable? Perhaps the exact way of institutionalizing these judgments is open to interpretation but the point

to make here is that I have so far used as examples only some of the strongest considered judgments that we have. We may assume that there is a much larger class of considered judgments that does not have the powerful historical backing of the examples already mentioned but yet have a hold on our opinions. Seen in the light of a comprehensive theory of justice, we may want to revise these judgments in the manner that Rawls describes.'

Now let us examine the charge that these judgments are fictions a little more closely. Suppose the considered judgments we have in mind are the first, fourth, fifth, eighth, and fourteenth amendments to the Bill of Rights. I would suggest that these statements of what every citizen in our democracy is guaranteed have a long intellectual history behind them, an intellectual history that can be understood independently of the history of the moral theories offered by philosophers. The writings that support these ideas have a powerful hold on our opinions and give considerations which are sufficient to determine the intellect. These ideas have also moved men to action, possibly even to sacrifice their lives so that the institutions that protect these ideas could be preserved. To suggest that these ideas (ideas which Rawls clearly draws on) are fictions is at best a silly suggestion and at worst a suggestion that those who acted on those ideas did so without good reason since (according to Brandt) they were acting on a mere fiction.

Before leaving this objection, I want to consider the idea that we should find a way as Brandt suggests, of standing outside our own set of beliefs in order to better determine whether they are true. In the language I have used in this essay this would mean that we should abstract ourselves from our own democratic public culture in order to determine which judgments in our culture are true and which are false using some standard independent of our culture. Now whatever one thinks about such a project, it should be evident that such a task places an unbearable strain on our ability to construct a proper theory. Constructing a theory within the context of a particular public culture is hard enough as explained above, but to go further and require that we gaze at our culture along with all other cultures from some perspective outside of them is to require the impossible. Here we enter the realm of some sort of ideal observer theory. Perhaps God or an ideal observer could perform this task, but we surely cannot. We can however make progress by recognizing what the initial situation is and by realizing that a great deal of work has already been done for us in terms of the kinds of considered judgments dealt with above. The fact that a great deal of discussion has already gone on in our culture over matters relevant to a theory of justice can be of great assistance to us.

We must keep in mind that what we are aiming at is a theory--not a perfect theory but most likely a theory full of problems and flaws, a theory that represents the best we can do given the magnitude of the job we have taken on. To ask that we forget the thinking about these matters that has gone on before we arrived on the scene is to ask that we assume the kind of omniscience that only an ideal observer could lay claim to. We may further ask why we should want to stand outside our public culture. Given that our culture is not a static one, that there are many ideas that need interpretation, explanation and revising in the light of the need for a general theory of justice, why should we want to take on a larger task than this?

If we look at Rawls' theory in the light of what I have just argued, it is clear that we will have to abandon the idea that the theory of justice can be valid from all temporal perspectives. Rawls seems to endorse this general way of looking at things in his latest article:

[W]e are not trying to find a conception of justice suitable for all societies regardless of their particular social or historical circumstances. We want to settle a fundamental disagreement over the just form of basic institutions within a democratic society under modern conditions. We look to ourselves and to our future, and reflect upon our disputes since, let's say, the Declaration of Independence . . . . The aim of political philosophy, when it presents itself in the public culture of a democratic society, is to articulate and to make explicit those shared notions and principles thought to be already latent in common sense; or, as is often the case, if common sense is hesitant and uncertain, and doesn't know what to think, to propose to it certain conceptions and principles congenial to its most essential convictions and historical traditions.<sup>6</sup>

One final stipulation as to the nature of the initial situation can be inferred from the foregoing discussion. Given the magnitude of our task we will want to both restrict the scope of our inquiry and the information we have to consider. As to the scope of the inquiry, Rawls limits it just to a theory of justice which he says is only one part of a moral view and only part of an overall social ideal. As to the information we consider, Rawls not only restricts the information we can use but starts from a position of no information at all. He then permits only enough information to the parties in the original position to allow them to reach agreement. But we can think of this condition as an agreement among the parties in the initial

situation to exclude the information they feel is morally irrelevant to their decision as to which principles of justice are best for them. Obviously this means that we need an account of what kind of information is irrelevant from a moral point of view. But if we do have such a theory then our task will be much easier.

At this point it is appropriate to introduce the idea of a wide reflective equilibrium. A narrow reflective equilibrium involves choosing principles of justice for the basic structure of society by moving back and forth from a set of considered judgments to a suggested set of principles and adjusting one or the other as seems appropriate. Rawls conceives of a wide reflective equilibrium as a process of comparing different moral conceptions in order to discover which conception will best survive philosophical scrutiny and therefore become the most favored conception.'

I will use the idea of a wide reflective equilibrium in a different way. A wide reflective equilibrium develops out of the interpretation of the initial situation as that interpretation identifies the various essential elements needed to construct the kind of theory of justice that we need. Specifying these elements and examining the ways in which they interact will hopefully make the complex task of theory construction easier. In a wide reflective equilibrium as I conceive it, we are not comparing alternative moral conceptions but specifying the structure of our theory of justice as it develops from the most reasonable interpretation of the initial situation.

We now have several of the background elements of our wide reflective equilibrium in place. We know that our theory must be comprehensive, workable in the real world, that it should be possible to illustrate how the principles are to be implemented in a specific set of institutions, that we should give a role to our considered judgments when selecting the principles of justice and that we need to decide on some legitimate way to restrict the information available to the parties.

Now that we have the background elements of our wide reflective equilibrium in place, we can consider how we can move from the notion of an initial situation to the three central elements of the equilibrium: the conception of the person, the original position and the concept of a well-ordered society. My treatment of these elements in Rawls' theory is not intended to be exhaustive or comprehensive. I want to explain why these concepts are important from the standpoint of the initial situation and describe the main ways in which the concepts interact.

Recall the nature of the initial situation. We are in a democratic public culture, trying to discover the bases of agreement that we can use to construct a theory of justice. We try to specify the main ideas

that we have to take account of in order to formulate an adequate theory. The reasons for the requirements already discussed were fairly practical. Since we wanted a theory that would have relevance to the world as we know it, we specified that the principles should be testable against the reality of the world. Now the need for a conception of the person and of a well-ordered society looks very justifiable if we look at the problem from the standpoint of the initial situation. We need to know in a general way what kind of persons we are as well as what kind of persons we hope to be. A clear conception of the person will also guard against the possibility that our theory of justice could make extreme demands on the personalities of individuals, forcing them to become radically different types of persons in order to conform to the principles of the theory. It also ensures that we can incorporate into our theory an emphasis on a particular ideal of the person, an ideal that we hope to better approximate by constructing our institutions in such a way that a tendency towards the ideal way of being is reinforced by those institutions. We also need to know in a general way what kind of society we would like to live in. We are not here specifying a social ideal, but the minimum conditions we would like our conception of justice to satisfy in terms of how the principles we choose specify the kind of society that we are to have. Finally, the need for some central decision making procedure to select the principles of justice from the available alternatives, principles which we then test against the background of the wide reflective equilibrium is fairly obvious. Presumably the decision procedure (the original position) can be specified by identifying the kinds of principles we want (general, universal, ordered) and by borrowing from the other elements of the reflective equilibrium in a manner that I will describe. But I will not pursue the exact description of the original position further. I only want to characterize these three central elements in a general way.

What conception of the person should we use? Rawls suggests that the concept of a free and equal person satisfies our need for a general conception which combines both a description of what we are and an ideal of the person that we can aspire to. How are persons considered to be free? On Rawls' account, this concept of freedom is expressed in two main ways: persons should be free of contingencies that are arbitrary from a moral point of view and persons do not see themselves as tied down to any fundamental set of interests, they wish to preserve their liberty to revise their interests over time. As far as the idea of being an equal moral person is concerned, this is satisfied if persons possess two capacities: the capacity to form a concep-

tion of the good and the capacity to have a sense of justice."

The main way in which this conception of the person contributes to the original position is through the notion of the veil of ignorance. The veil screens out the knowledge of the arbitrary contingencies that could bias our judgment as well as precluding knowledge of our particular conception of the good, thus ensuring that the principles of justice chosen do not favor any one conception of the good. The veil ensures equality between persons by giving all participants access to the same information so that all are equally situated. The veil cannot be understood as simply an effort to achieve impartiality but as an effort to ensure that a certain conception of the person is reflected in the original position." Further, the motivation assumption of mutual disinterest ensures a measure of freedom to the parties by not requiring that they not take extreme motivations such as egoism or altruism as primary. Mutual disinterest as a condition seems to be a reasonable compromise between two unattractive extremes.

What should we say about Rawls' conception of the person from the standpoint of our democratic public culture? Trying to separate out a conception of the person from the complex milieu of a public culture that will in a general way describe the aspects of the conception of the person supported by that culture is obviously a difficult task. Perhaps we should regard any such conception as only provisional, to be evaluated later in the light of the principles the theory selects. But Rawls' conception is certainly a plausible one. It focuses our attention on two fundamental elements in our public culture: the freedom and equality of the individual. It seeks to characterize these two elements in terms of their basic thrust: freedom from forces outside of the individual and equality as an empirical equality, something we can observe in other persons. Rawls then seeks a way to ensure that the decision procedure will reflect this conception in some way and he uses the veil of ignorance to achieve this end. But the idea of a veil of ignorance can be understood as a very practical one from the perspective of our public culture. It is practical in the sense that we constantly try in arguing about questions of justice to free ourselves from the effects of bias and prejudice. We criticize others if their judgments reflect some bias and we are chastened if someone establishes to us that such undesirable factors have influenced our own judgment. The effort to view the world not just from an individual perspective but as an individual looking at matters from a social perspective is something that we try to do every time we argue about controversial questions. The veil of ignorance can be understood as an extension of this familiar idea that we should try as far as possible to free ourselves

from the influence of prejudice. It is so natural in fact, that I think it would be a good thing if Rawls just dropped the idea of a veil. It is a powerful idea but perhaps it is too powerful. It leads other philosophers to emphasize how strange it is that we should be suddenly deprived of much of the knowledge with which we normally confront the world. Instead the emphasis should be on the fact that this process is something we try to do every time we argue about questions of justice in everyday life and hence we should want it to be part of our decision procedure. So there are some grounds for believing that Rawls' conception of the person is plausible in terms of our democratic public culture.

The main elements of the Rawlsian notion of a well-ordered society are two: the society is regulated by a public conception of justice and the society is stable. Public principles of justice regulate the basic structure of society and the institutions of that society are presumed to satisfy those principles. This kind of public justice helps a well-ordered society to be stable since all citizens know what the conception of justice is, how it is justified and that the institutions of their society satisfy this conception. The element of stability also means that the society is ordered so that it will tend toward social equilibrium: defects that develop in any one part of the society will over time be remedied or compensated for and the principles of justice that regulate the society will generate their own support among the citizenry.<sup>10</sup>

From the perspective of the initial situation, these conditions are very reasonable. One of the basic aspects of the initial situation in a democratic public culture is that it is a public situation, we are openly searching from the correct principles of justice. If we conceived of our task in another way, say to search for the principles of justice embedded in a transcendent reality that could only be apprehended by a select few then we could permit ourselves to search for principles that perhaps would not be made public for fear that they would be misinterpreted by the unenlightened. But we are not in that situation. We are in a situation where people are arguing about which principles of justice will be most justifiable in the light of generally accepted beliefs concerning reasoning and evidence. Such persons are not about to accept the supposed privileged insights of those who claim an insight through revelation into a more permanent reality. For that matter, these persons are also not about to accept principles that are so complicated that they could only be understood by experts. Such claims are simply irrelevant from the standpoint of persons in a democratic public culture. The criterion of stability also seems to be a good idea. Surely we are interested in a society that will not fly apart when it is challenged by

outside forces or unexpected defects. As mentioned above we want to construct a society that will be flexible and compensate for any problems that arise.

The stipulation that the theory that results from the original position must be a public theory is the main element that the notion of a well-ordered society contributes to the original position. Rawls uses the idea that a conception of justice must be public to argue that utilitarianism would not be chosen in the original position.<sup>11</sup> Since utilitarianism would require an extreme amount of sympathy and benevolence in order to have internal stability, the parties would be less likely to choose it than a conception which relied on the basic idea of reciprocal advantage. But there is no argument that this criterion of publicity applies to all moral judgments.<sup>12</sup> It is a special requirement engendered by the particular needs of the initial situation. This further illustrates how the construction of a theory of social justice is a very practical affair. We are not limited solely to the formal requirements of morality (universality for example) to help us in the selection of principles. We can add new conditions to the selection process if they are warranted by the interpretation of the initial situation.

All of the elements of the Rawlsian wide reflective equilibrium as I conceive it are now accounted for. We think of our task as describing the situation we are in when we argue which principles of justice would be best for our democratic public culture to adopt. We arrive at two conceptions, a conception of the person and a conception of a well-ordered society that seem especially important to our decision. We also construct a decision procedure called the original position that takes important elements from the first two conceptions along with other stipulations that seem appropriate (such as the theory of social primary goods, rationality, conception of the good and the formal constraints on the concept of right; elements of the original position not discussed in this essay) and that also presumably can be accounted for from the perspective of the initial situation. After we rank conceptions of justice using our decision procedure we check to see if the favored conception can be applied to a set of institutions, whether such an application is feasible, and whether this whole conception matches our considered public judgments.

This wide reflective equilibrium is surrounded and permeated by our particular democratic public culture. This is where our arguments originate and where they end in a particular conception of justice. Where we are uncertain as to how to proceed in our argument, we can look to our public culture to see if it provides any guidance. Since our public culture is a dense, rich source of experiences, judgments, arguments and

opinions, it is unlikely that we will find ourselves at a loss if we have to resort to it to help the process of selecting principles along. This also means that wide reflective equilibrium is not a closed justificatory system. Our public culture is constantly changing as it responds to the influences of new experiences and opinions. This is the open end of the system that allows us to keep our theory of justice relevant to our changing concerns. This way of thinking implies finally that when we speak of 'Rawls' theory of social justice' we should keep in mind that the theory is not simply the contents of the book published in 1971 but those contents plus the changes and additions made by our public culture. These changes and additions would include those made by Rawls himself as well as all of the ideas compatible with the theory offered by other writers. To assess Rawls' theory as it presently stands then, we would have to take account of all of these writings as well.

Now I would like to briefly compare this way of thinking about the task of constructing a theory of justice with a way of thinking that I associate with utilitarianism. For the purposes of this discussion I will define utilitarianism in terms of the classical principle of utility that Rawls discusses along with Brandt's idea that we need to find a way of standing outside our world in order to assess it. Now in terms of the kind of theory we have been exploring here it looks as if utilitarianism, at least as matters stand today, is not really a true competitor with the Rawlsian theory. Where is the kind of complex theory of political, economic and social relationships that we need? What set of institutions would utilitarians endorse? Would they give a priority to liberty over the task of distributing income and wealth? This theoretical ambiguity may exist because of the magnitude of the task facing the utilitarian. He has to assess the complexities of our public culture armed with a principle that demands that he calculate the happiness quotient or preference satisfaction level of all persons who will be affected by the theory. Given this, it is not really surprising that although we have many answers to the difficult questions that have plagued political philosophy in the twentieth century, it is hard to find answers that are uniquely utilitarian.

A utilitarian might reply that there is no lack of institutions or judgments of which the classical principle of utility would approve. Take the example of the most important amendments in the Bill of Rights which I used earlier. A utilitarian might argue that these principles have worked well over a long period of time, many persons from different public cultures have found them to be congenial and hence they would likely be approved of by the principle of utility. The advantage for the utilitarian of reasoning in this way is

that no precise calculation of the consequences that the amendments in question actually have on human happiness or preferences need be made. The fact that our public culture approves of such judgments is taken as conclusive proof that they maximize human happiness. So the utilitarian neatly turns the tables by in effect telling his critics: What are you suggesting? That utilitarianism would disapprove of the Bill of Rights? The burden of contention is now on the critics of the utilitarian who (if they wish to demonstrate that utilitarianism would not approve of some important considered judgment) must perform the complex calculation themselves. So the whole discussion proceeds at a very abstract level with the utilitarians relying on their intuitions as to what would be approved of by the principle of utility.<sup>11</sup>

But now we have to wonder why we need utilitarianism at all. If all the theory does is tell us what we know already, that our considered public judgments are plausible candidates for principles of justice, then it does not really help us in any special way. We would do well just to concentrate on the problem of constructing a theory of justice from the standpoint of the initial situation before we take on the enormous task of trying to ascertain whether or not the arrangement we come up with maximizes the happiness or the preference satisfaction of all the persons that it affects. All in all, the kind of theory that develops from an interpretation of the initial situation is more likely to give us some substantive results than is the utilitarian theory. It would not be impossible of course to try to develop a detailed utilitarian theory of social justice but my basic point is that to assume that such a theory exists does us no good from the perspective of the initial situation. We need the theory in our hands so to speak, before we can consider it.

If we keep the idea of interpreting the initial situation in mind, I think it is easier to understand why Rawls' theory is such a successful theory in the sense of being both popular and controversial. Because the theory gives a place to our considered judgments it can be applied to a wide range of problems. Because the theory asks that we check to see if the principles that the theory selects can be institutionalized, it can serve as a way of criticizing our current institutions as we compare them against the set of institutions that the theory would endorse. The theory also has appeal because it is practical. The fundamental perspective that the theory of justice originates from is the very situation we find ourselves in whenever we puzzle about questions of social justice. Thus many of the ideas and procedures in the theory are familiar ones. As Rawls says:

The task is to articulate any public conception of justice that all can live with who regard

their person and their relation to society in a certain way. And though doing this may involve settling theoretical difficulties, the practical social task is primary. What justifies a conception of justice is not its being true to an order antecedent to and given to us, but its congruence with our deeper understanding of ourselves and our aspirations, and our realization that, given life, it is the most reasonable doctrine for us. We can find no better basic charter for our social world.<sup>14</sup>

For such a basic charter, we need look no farther than our own democratic public culture and its collective experience, knowledge, arguments and judgments.

#### NOTES

<sup>1</sup>John Rawls, A Theory of Justice (Cambridge, MA: Harvard University Press, 1971), p. 18.

<sup>2</sup>A Theory of Justice, p. 121.

<sup>3</sup>Richard B. Brandt, A Theory of the Good and the Right (Oxford: The Clarendon Press, 1977), pp. 20-22.

<sup>4</sup>Norman Daniels, "Wide Reflective Equilibrium and Theory Acceptance in Ethics," The Journal of Philosophy, v. 76 (May, 1979), pp. 256-282, p. 265.

<sup>5</sup>A Theory of Justice, pp. 46-53.

<sup>6</sup>John Rawls, "Kantian Constructivism in Moral Theory," The Journal of Philosophy, v. 77 (Sept., 1980), pp. 515-572, p. 518.

<sup>7</sup>John Rawls, "The Independence of Moral Theory," Proceedings and Addresses of the American Philosophical Association, v. 47 (1974/1975), pp. 5-22, p. 8.

<sup>8</sup>See generally John Rawls, "A Kantian Conception of Equality," reprinted in Virginia Held ed. Property, Profits and Economic Justice, (Belmont, CA: Wadsworth Publishing Company, 1980), pp. 198-208.

<sup>9</sup>"Kantian Constructivism," p. 549.

<sup>10</sup>A Theory of Justice, pp. 453-462.

<sup>11</sup>A Theory of Justice, pp. 175-183.

<sup>12</sup>"Kantian Constructivism," p. 539.

<sup>13</sup>Alan Donagan has made the same point. See The Theory of Morality, (Chicago: University of Chicago Press, 1977), pp. 203-204.

<sup>14</sup>"Kantian Constructivism," p. 519.