

JUSTICE AS IDEOLOGY: ANOTHER LOOK AT RAWLS

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The object of this article is not to add to the already excessive output of the Rawls industry which covers pretty well all the analytical ground. The time has come to put the underlying theory in perspective, and to look at the forest instead of at the trees. If Rawls had paid any attention to Marx, he would have pondered over his famous statement that it "is not the consciousness of men that determines their being, but, on the contrary, their social being that determines their consciousness".¹ One can learn from Rawls without being a Marxist, but one cannot understand the strange mixture of criticism and adulation which has greeted his work unless one is aware of their common ideological source. The temptation is to glide along the surface of the prevailing ideology and to accept *its* signposts as facts of life.

This article is not a Marxist critique of Rawls' theory, nor should it be identified with any other orthodox position. My aim is simply to reveal its ideological premises and to lift the veil of its rationality. So far the great majority of critics have focused their attention on the superstructure and neglected the larger questions which it conceals. Even those who have commented on the ideological aspect of Rawls' theory have not to my knowledge dealt adequately with its roots in "false consciousness".

It is important to distinguish between two meanings of "ideology". According to the first, it denotes what Marx described as the "false consciousness" of the superstructure of a social system or theory. According to the second, it stands for the basic ideas which lie at the foundation, without any judgment as to their objective validity.² One problem with the idea of "false consciousness" is that it tends to suggest that there is a true one which we can find by penetrating the superstructure. However, we can say that something is false without knowing the true state of affairs because we are clear that—if it is knowable at all—it is not what it is represented to be. Thus we can speak of false consciousness to indicate that the superstructure of a social system or theory is out of line with the professed reality of its foundation. We can do this without explaining with

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¹ K. Marx, *A Contribution to the Critique of Political Economy* (1856), preface.

² R.A. Samek, *The Meta Phenomenon* (1981), p. 146.

reference to some absolute standard of truth, what the true foundation of the society or theory is, and how it came about that the superstructure got out of line. I shall use "ideology" here in this sense.

Far from being necessary to free ourselves from the grip of ideologies, our craving for absolute truth promotes their dominance. Ideologies arise because no social structure can fulfill the demands which we place on it. Hence, the inadequacy of its foundation must be concealed from view. It is the business of the superstructure to generate a smoke-screen to hide its defects. The more defective a system is, the greater will be the pressure to cover up its contradictions, and the more desperate will be the search for a legitimating authority to make it invulnerable. The fixed beliefs of an ideology must be seen for what they are before we can be cured of its cant. As long as our horizon is limited to *its* view of world, we will not be able to solve our problems, for we will continue to see them from the wrong perspective, and so apply the wrong cures.

We can think of the belief structure of an ideology as a *paradigm* to which everything is subordinated. I have discussed Kuhn's famous concept of a paradigm elsewhere.³ Here it will suffice to say that it can provide a useful antidote to the false notion that an ideology presents a correct picture of the world. It helps to make us aware that social as well as scientific phenomena are only such in virtue of a paradigm that treats them as genuine. The problems to which they give rise, and the solutions which they inspire, are entirely dependent on the paradigm for their status. The recognition of this relativity saves us from the false consciousness of factualizing the world in the image of the prevailing ideology. The idea of a true paradigm is self-contradictory. A paradigm is like a distorting mirror which gives us its own slanted picture of the world. There is no correct picture.

Rawls' theory of justice is built on the "flat earth" of rationality. Alas, the world is not flat, and therefore his rationality is askew. It is bent by the perspective of his paradigm, by the false consciousness of the superstructure which he accepts as true. Although Rawls is a rationalist, he behaves like an empiricist who looks at the world without allowing for the relativity of his position. As a Kantian, he should have known better than to accept it at its face value. Every world is *constructed*: there is no knowledge, logic, rationality which is independent of our presupposed values. Rawls admits that there are different conceptions of justice, but he professes to rank them in order of rationality. What is more, he claims that *his* rationality is not merely superior because it is better; it is more rational because it is more just.

³ R.A. Samek, *Beyond the Stable State of Law* (1976), 8 Ottawa L. Rev. 550, at p. 555 *et seq.*

In order to perceive the ideological bent of Rawls' theory of justice it will pay us to look closely at the nature of his enterprise. Justice, he says, is the first virtue of *social* institutions. A theory, however elegant and economical, must be rejected or revised if it is untrue; likewise institutions, however efficient, must be abolished or reformed if they are unjust. Each person possesses inviolable claims founded on justice which even the welfare of the society as a whole cannot override. For this reason the loss of freedom by some cannot be made right by a greater good shared by others. Being first virtues of human activities, truth and justice are uncompromising.

These propositions seem to express our intuitive conviction of the primacy of justice. No doubt they are expressed too strongly. In any event I wish to inquire whether these contentions or others similar to them are sound, and if so how they can be accounted for. To this end it is necessary to work out a theory of justice in the light of which these assertions can be interpreted and assessed. I shall begin by considering the role of the principles of justice. Let us assume, to fix ideas, that a society is a more or less self-sufficient association of persons who in their relations to one another recognize certain rules of conduct as binding and who for the most part act in accordance with them. Suppose further that these rules specify a system of co-operation designed to advance the good of those taking part in it. Then, although a society is a cooperative venture for mutual advantage, it is typically marked by a conflict as well as by an identity of interests. There is an identity of interests since social cooperation makes possible a better life for all than any would have if each were to live solely by his own efforts. There is a conflict of interests since persons are not indifferent as to how the greater benefits produced by their collaboration are distributed, for in order to pursue their ends they each prefer a larger to a lesser share. A set of principles is required for choosing among the various social arrangements which determine this division of advantages and for underwriting an agreement on the proper distributive shares. These principles are the principles of social justice: they provide a way of assigning rights and duties in the basic institutions of society and they define the appropriate distribution of the benefits and burdens of social cooperation.⁴

According to Rawls, for a society to be well ordered it is not enough that it advance the good of its members; it must also be effectively regulated by a public conception of justice. Everyone must accept and know that the others accept the same principles of justice, and the basic social institutions must generally satisfy, and be known to satisfy, these principles. If men's inclination to self-interest make their vigilance against each other necessary, their public sense of justice is required to ensure their association. Since what is just and unjust is usually in dispute, existing societies are rarely well ordered. But although their members will have different conceptions of justice, these will still share a common role:

Those who hold different conceptions of justice can, then, still agree that institutions are just when no arbitrary distinctions are made between persons in the assigning of basic rights and duties and when the rules determine a proper balance between competing claims to the advantages of social life. Men can agree to this

⁴ J. Rawls, *A Theory of Justice* (1972), p. 4.

description of just institutions since the notions of an arbitrary distinction and of a proper balance, which are included in the concept of justice, are left open for each to interpret according to the principles of justice that he accepts. These principles single out which similarities and differences among persons are relevant in determining rights and duties and they specify which division of advantages is appropriate. Clearly this distinction between the concept and the various conceptions of justice settles no important questions. It simply helps to identify the role of the principles of social justice.⁵

Rawls claims that some measure of agreement on a common conception of justice is a prerequisite for a viable human community. Although the need for co-ordination, efficiency and stability raises other fundamental social problems, their solution would be a good deal more difficult without some agreement on what is just and unjust. The way in which basic rights and duties are to be determined has broader consequences which must be taken into account in evaluating the merits of any such scheme.

Rawls is concerned with *social* justice. Its primary subject of justice for him is the basic structure of society, or more exactly, the way in which the major social institutions distribute fundamental rights and duties:

By major institutions I understand the political constitution and the principal economic and social arrangements. Thus the legal protection of freedom of thought and liberty of conscience, competitive markets, private property in the means of production, and the monogamous family are examples of major social institutions. Taken together as one scheme, the major institutions define men's rights and duties and influence their life-prospects, what they can expect to be and how well they can hope to do. The basic structure is the primary subject of justice because its effects are so profound and present from the start. The intuitive notion here is that this structure contains various social positions and that men born into different positions have different expectations of life determined, in part, by the political system as well as by economic and social circumstances. In this way the institutions of society favor certain starting places over others. These are especially deep inequalities. Not only are they pervasive, but they affect men's initial chances in life; yet they cannot possibly be justified by an appeal to the notions of merit or desert. It is these inequalities, presumably inevitable in the basic structure of any society, to which the principles of social justice must in the first instance apply. These principles, then, regulate the choice of a political constitution and the main elements of the economic and social system. The justice of a social scheme depends essentially on how fundamental rights and duties are assigned and on the economic opportunities and social conditions in the various sectors of society.⁶

Rawls limits the scope of his inquiry in two ways: First, he says, he is only concerned with a special case of the problem of justice, namely with the "basic structure of society conceived for the time

⁵ *Ibid.*, pp. 5-6.

⁶ *Ibid.*, p. 7.

being as a closed system isolated from other societies''.⁷ He concedes that there is no reason to suppose that the principles which apply to the basic structure hold for all cases. However, he argues that once we have a sound theory for this case, the remaining problems of justice will prove more tractable. With suitable modifications, he states, such a theory should provide the key for their treatment.

The other limitation on our discussion is that for the most part I examine the principles of justice that would regulate a well-ordered society. Everyone is presumed to act justly and to do his part in upholding just institutions. Though justice may be, as Hume remarked, the cautious, jealous virtue, we can still ask what a perfectly just society would be like. Thus I consider primarily what I call strict compliance as opposed to partial compliance theory. The latter studies the principles that govern how we are to deal with injustice. It comprises such topics as the theory of punishment, the doctrine of just war, and the justification of the various ways of opposing unjust regimes, ranging from civil disobedience and militant resistance to revolution and rebellion The reason for beginning with ideal theory is that it provides, I believe, the only basis for the systematic grasp of these more pressing problems. The discussion of civil disobedience, for example, depends upon it. At least, I shall assume that a deeper understanding can be gained in no other way, and that the nature and aims of a perfectly just society is the fundamental part of the theory of justice.⁸

Rawls admits that the concept of the basic structure is somewhat vague. Still, he insists that it is worth having for its own sake and that it should not be dismissed. A conception of social justice, he tells us, must provide a standard for assessing the distributive aspects of the basic structure of society. This standard does not enable us to judge all its virtues; the basic structure may be efficient or inefficient, liberal or illiberal, and many other things as well as just or unjust. A conception of social justice is merely part, though perhaps the most important part, of a social ideal. Since the former is not independent of the latter, it cannot be fully understood on its own.

Rawls goes out of his way to stress that his theory of justice is an account of certain distributive principles for the basic structure of society, and not an analysis of the ordinary meanings of the concept. In his view, any reasonably complete ethical theory must include a doctrine of justice which is defined by its role of assigning rights and duties, and by the appropriate division of social advantages. A conception of justice serves to interpret this role.⁹

Rawls assumes that societies are made up of self-interested individuals. On this assumption, he says, the idea of a social contract is to provide guiding criteria for working out a fair distribution of the benefits and burdens of social co-operation. At first Rawls treats

⁷ *Ibid.*, p. 8.

⁸ *Ibid.*, pp. 8-9.

⁹ *Ibid.*, p. 10.

fairness in terms of striking a balance between the narrow self-interest of individuals and their wider self-interest, but later on he claims that it is their public sense of justice which makes their association possible. On this view, social justice rests on a moral sense that serves the interests of the parties, and not the other way round. Seeing that different people have different conceptions of justice, the role of a theory of justice is to determine which is the most rational.

Rawls' blending of self-interest and morality is symptomatic of our *laissez faire* society. Its underlying rationale is that if everyone is given a free hand, everything will work out for the best, and both morality and self-interest will be satisfied at the same time. All we have to do is to set up institutions through which the people can govern themselves. There is only one catch; citizens would remain subject to the inequalities of their birth and of their social and economic circumstances. This *seems* to conflict with our sense of social justice, or at least with that of some of us.

Rawls' line of approach will now become clear. In his view there is no need to change the basic structure of our society. All that is required is to rationalize it and so to dispel the *appearance* of injustice created by the existing inequalities in social positions and economic benefits. If it could be shown that the basic structure would have been freely chosen by individuals who had no knowledge of their personal advantages or disadvantages, this objection of inequality would be removed. Then all that would be necessary would be to reform the institutions already in place to accord with the aspirations of the parties to the hypothetical social contract.

It is significant that Rawls seeks to attach an absolute value to his reformist stance. He is not a pragmatist in the sense that he is primarily concerned to fix social injustices without bothering his head about justice. For him, the pressing problems of injustice can only be solved with reference to an *ideal* theory of justice. However, since Rawls refuses to re-examine the basic structure of society, he constructs his theory in the image of the *status quo*. We must be careful not to accept professions of rationality at their face value; they are inevitably coloured by the slanted outlook of an ideology.

Notwithstanding Rawls' declared social objective, his enterprise has in fact a distinctly academic bent. Its aim is to make the world a more just place by demonstrating the superiority of his conception of justice over those of his rivals. The academic nature of Rawls' enterprise emerges clearly from the following statement which appears under the heading *THE MAIN IDEA OF THE THEORY OF JUSTICE*.

My aim is to present a conception of justice which generalizes and carries to a higher level of abstraction the familiar theory of the social contract as found, say, in Locke, Rousseau, and Kant. In order to do this we are not to think of the original contract as one to enter a particular society or to set up a particular form of

government. Rather, the guiding idea is that the principles of justice for the basic structure of society are the object of the original agreement. They are the principles that free and rational persons concerned to further their own interests would accept in an initial position of equality as defining the fundamental terms of their association. These principles are to regulate all further agreements; they specify the kinds of social cooperation that can be entered into and the forms of government that can be established. This way of regarding the principles of justice I shall call justice as fairness.¹⁰

According to Rawls, the original position of equality corresponds to the state of nature in the traditional theory of social contract. It is not an actual historical state of affairs, but a purely hypothetical situation "characterized so as to lead to a certain conception of justice".¹¹ Among the essential features of this situation is that no one knows his place in society, or his fortune in the distribution of natural abilities. Neither does anyone know his conception of the good or his psychological propensities. Moreover, the parties to the contract do not know the particular economic and political circumstances of their own society, the level of civilization and culture which it has achieved, and the generation to which they belong.¹²

The principles of justice are chosen behind a veil of ignorance. This ensures that no one is advantaged or disadvantaged in the choice of principles by the outcome of natural chance or the contingency of social circumstances. Since all are similarly situated and no one is able to design principles to favor his particular condition, the principles of justice are the result of a fair agreement or bargain. For given the circumstances of the original position, the symmetry of everyone's relations to each other, this initial situation is fair between individuals as moral persons, that is, as rational beings with their own ends and *capable, I shall assume, of a sense of justice*. The original position is, one might say, the appropriate initial status quo, and thus the fundamental agreements reached in it are fair. This explains the propriety of the name "justice as fairness": it conveys the idea that the principles of justice are agreed to in an initial situation that is fair. The name does not mean that the concepts of justice and fairness are the same, any more than the phrase "poetry as metaphor" means that the concepts of poetry and metaphor are the same.¹³

I have already mentioned Rawls' blending of self-interest and justice. This gives rise to a dilemma. If the persons in the original position are endowed with a sense of justice, they cannot be choosing principles of justice *out of* self-interest. In other words, if justice is natural in man—and Rawls tells us that it is to the extent of advocating equal justice for everybody on this ground—¹⁴it does not originate in a contract based on self-interest. Conversely, if justice is conventional in origin, it cannot also be natural.

¹⁰ *Ibid.*, p. 12.

¹¹ *Ibid.*

¹² *Ibid.*, p. 137.

¹³ *Ibid.*, pp. 12-13. Italics mine.

¹⁴ *Ibid.*, p. 506.

By the same token, if each one of us is endowed with a sense of justice, why should we not follow it instead of listening to Rawls? Conversely, if we cannot trust our own intuition, why should we have any faith in his. Rawls is aware that he cannot do without intuition, yet he does not want to have to rely on it. Hence, he moves forward and backward between intuitionism and his contract theory to flesh out the former with the help of the latter. Alas, its support is illusory. Even assuming that men could work out certain principles by maximizing their self-interest behind a veil of ignorance, there is no guarantee that they would be just.

There is a further difficulty: intuition is not what it seems because it is conditioned by false consciousness. The more firmly an ideology is in the saddle, the greater will be its distorting pull. It is no coincidence that Rawls' sense of justice is rooted in the libertarian values of the prevailing ideology. His theory of social contract does not refine his intuition; it slants it to accord with these values. Its function is to rationalize the *existing* basic structure of society, not to determine what it should be. The hypothesis of the social contract is made to provide the moral backing for the present state of affairs.

The blind man's bluff of the original position is reminiscent of Adam Smith's "invisible hand". While the latter turns self-interest into a public boon through the mechanism of the market, the former lends it a virtuous glow. Rawls never makes it clear how the miracle of turning the water of selfishness into the wine of justice is accomplished. Apparently he employed the old illusionist trick of slipping the miraculous object into the initial situation.

It is significant that the one *particular* fact which Rawls allows the parties to the contract to know is that "their society is subject to the circumstances of justice and whatever that implies".¹⁵ The veil of ignorance is lifted entirely in regard to the "general facts about human society". In reality, these are the ideological values which colour the intuition of the parties:

They understand political affairs and the principles of economic theory; they know the basis of social organization and the laws of human psychology. Indeed, the parties are presumed to know whatever general facts affect the choice of the principles of justice. There are no limitations on general information, that is, on general laws and theories, since conceptions of justice must be adjusted to the characteristics of the systems of social cooperation which they are to regulate, and there is no reason to rule out these facts. It is, for example, a consideration against a conception of justice that in view of the laws of moral psychology, men would not acquire a desire to act upon it even when the institutions of their society satisfied it. For in this case there would be difficulty in securing the stability of social cooperation. It is an important feature of a conception of justice that it should generate its own support. That is, its principles should be such that when

¹⁵ *Ibid.*, p. 137.

they are embodied in the basic structure of society men tend to acquire the corresponding sense of justice. Given the principles of moral learning, men develop a desire to act in accordance with its principles. In this case a conception of justice is stable. This kind of general information is admissible in the original position.¹⁶

It is not hard to imagine *what* knowledge of political affairs, economic theory and social organization the parties will apply; nor can there be much doubt as to what laws of moral psychology they will accept. The seeming practicality of Rawls' theory gives the game away. The "practical man of the world" defines everything in terms of the *status quo*. He is convinced that any change in the current ideology is only possible at the risk of anarchy, and that to believe in anything else is to indulge in illusion. Yet, the greatest illusion of all is to think of the present as fixed, as a piece of machinery which can be kept going forever by replacing a few parts here and there, and patching up the rest. Any social fabric can take only so much patchwork. The "practical man of the world" is not a pragmatist. The pragmatist is at least theoretically prepared to test the value of his beliefs by evaluating their consequences. The practical man, on the other hand, has his mind closed by the current ideology. Both his framework of evaluation, and the range of phenomena which he evaluates, are circumscribed by it.¹⁷

Rawls himself admits that it may seem at first sight that the influence of men's views of themselves poses a decisive objection to his contract theory. One might think, he says, that such a conception of justice relies on the aims of existing individuals and regulates the social order by principles they would choose.

How, then, can this doctrine determine a Archimedian point from which the basic structure itself can be appraised? It might seem as if there is no alternative but to judge institutions in the light of an ideal conception of the person arrived at on perfectionist or on a priori grounds. But, as the account of the original position and its Kantian interpretation makes clear, we must not overlook the very special nature of that situation and the scope of the principles adopted there. Only the most general assumptions are made about the aims of the parties, namely, that they take an interest in primary social goods, in things that men are presumed to want whatever else they want. To be sure, the theory of these goods depends on psychological premises and these may prove incorrect. But the idea at any rate is to define a class of goods that are normally wanted as parts of rational plans of life which may include the most varied sorts of ends. To suppose, then, that the parties want these goods, and to found a conception of justice on the presumption, is not to tie it to a particular pattern of human interests as these might be generated by a particular arrangement of institutions. The theory of justice does, indeed, presuppose a theory of the good, but within wide limits this does not prejudice the choice of the sort of persons that men want to be.¹⁸

¹⁶ *Ibid.*, pp. 137-138.

¹⁷ R.A. Samek, A Case for Social Law Reform (1977), 55 Can. Bar Rev. 409, at p. 419.

¹⁸ Rawls, *op. cit.*, footnote 4, p. 260.

Rawls' reply merely complicates the situation without meeting his own objection. As a Kantian, Rawls feels obliged to subject the relative *teleological* ideal of the good to the discipline of the *deontology* of the right.¹⁹ He points out that in utilitarianism the satisfaction of any desire has some value which must be taken into account in deciding what is right. In calculating the greatest balance of satisfaction, its source is not relevant. Thus, if men take pleasure in discriminating against each other, then this desire must be weighed along with the others.

In justice as fairness, on the other hand, persons accept in advance a principle of equal liberty and they do this without a knowledge of their more particular ends. They implicitly agree, therefore, to conform their conceptions of their good to what principles of justice require, or at least not to press claims which directly violate them. . . . We can express this by saying that in justice as fairness the concept of right is prior to that of the good. A just social system defines the scope within which individuals must develop their aims, and it provides a framework of rights and opportunities and the means of satisfaction within and by the use of which these ends may be equitably pursued. The priority of justice is accounted for, in part, by holding that the interests requiring the violation of justice have no value. Having no merit in the first place, they cannot override its claims.²⁰

Although Rawls insists on the priority of the right over the good, he recognizes that his theory of justice presupposes the good of what he claims to be just. The result is his "thin" theory of the good. Like Hegel, he is intent on legitimating the *status quo* by giving it an absolute sanction. While Hegel resorted to the metaphysical doctrine of the World Spirit to achieve this end, Rawls relies on the original position to support a "full" theory of the good.

. . . I shall distinguish between two theories of the good. The reason for doing this is that in justice as fairness the concept of right is prior to that of the good. In contrast with teleological theories, something is good only if it fits into ways of life consistent with the principles of right already on hand. But to establish these principles it is necessary to rely on some notion of goodness, for we need assumptions about the parties' motives in the original position. Since these assumptions must not jeopardize the prior place of the concept of right, the theory of the good used in arguing for the principles of justice is restricted to the bare essentials. This account of the good I call the thin theory: its purpose is to secure the premises about primary goods required to arrive at the principles of justice. Once this theory is worked out and the primary goods accounted for, we are free to use the principles of justice in the further development of what I shall call the full theory of the good.²¹

It should be noticed that both the thin and the full theory of the good are based on the ideology of *laissez faire*. The persons in the original position choose their primary goods behind the veil of ignorance. They are then free to pursue their individual ideas of the good

¹⁹ *Ibid.*, p. 30.

²⁰ *Ibid.*, p. 31.

²¹ *Ibid.*, p. 396.

by formulating their own rational “plans of life”, provided they keep within the limits set by the contract. In short, Rawls justifies the prevailing ideology by tracing it back to a first contract that legitimates it.

The time has come now to mention Rawls’ famous two principles of justice. Here is their final statement:

First Principle

Each person is to have an equal right to the most extensive total system of equal basic liberties compatible with a similar system of liberty for all.

Second Principle

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

(a) to the greatest benefit of the least advantaged, consistent with the just savings principle [for the benefit of future generations], and

(b) attached to offices and positions open to all under conditions of fair equality of opportunity.²²

The two principles of justice are subject to two priority rules. They are to be ranked in “lexical” order, that is, the primary good of liberty secured by the first cannot be traded off for the economic primary goods promoted by the second. A less extensive liberty must strengthen the total system of liberty shared by all, and a less than equal liberty must be acceptable to those with the lesser liberty. The second part of the second principle has priority over the first part: inequality of opportunity cannot be justified by conferring greater economic benefits on the least advantaged. An inequality of opportunity must enhance the opportunities of those with the lesser opportunity.²³

It is scarcely necessary to point out the extreme vagueness of these principles. I have no intention of repeating here the numerous criticisms which have been made of them. Instead I shall concentrate on the question why Rawls put them forward in the first place, and why he chose his lexical rules of priority. The obsession with liberty *as such* is part of the liberal tradition which puts it on a higher plane than any other good. The open option is considered of greater value than any specific choice, since it enables its holder—so the argument goes—to choose what seems to him best at any one time. He does not remain stuck with choices which have gone sour, and preserves his freedom of action in the light of future contingencies. What is overlooked is that this option is as illusory as the false consumer choices which conceal the essential uniformity of the product. True liberty is freedom *from* the subtle chains of ideologies, including those which bind us to them by false slogans of free choice. As much as I generally

²² *Ibid.*, p. 302.

²³ *Ibid.*, pp. 302-303.

disagree with Sir James Fitzjames Stephen's views, he was right when he said:²⁴

To me the question whether liberty is a good or a bad thing appears as irrational as the question whether fire is a good or a bad thing? It is both good and bad according to time, place and circumstance

Liberty for its own sake is an empty vessel; it has no value except as a means to an end. This does not mean that it must be of some material benefit, for that too should be considered as a means, and not as an end in its own right. If we take this approach, Rawls' artificial segregation of liberties from economic benefits will lose its point.

Rawls, like Mill before him, restricts the priority of liberty to societies which have passed the economic threshold of civilization.

The supposition is that if the persons in the original position assume that their basic liberties can be effectively exercised, they will not exchange a lesser liberty for an improvement in their economic well-being, at least not once a certain level of wealth has been attained. It is only when social conditions do not allow the effective establishment of these rights that one can acknowledge their restriction. The denial of equal liberty can be accepted only if it is necessary to enhance the quality of civilization so that in due course the equal freedoms can be enjoyed by all. The lexical ordering of the two principles is the long-run tendency of the general conception of justice consistently pursued under reasonably favorable conditions. Eventually there comes a time in the history of a well-ordered society beyond which the special form of the two principles takes over and holds from then on.²⁵

According to Rawls, as the conditions of civilization improve, the marginal significance of further economic and social advantages diminishes relative to the interests of liberty. Beyond some point it becomes irrational from the standpoint of the original position to acknowledge a lesser liberty for the sake of greater material benefits. Increasingly, persons and groups will seek to achieve the ends to which they are drawn in modes of social union consistent with equal liberty. In addition, men will aspire to some control over the laws and rules that regulate their association.

Rawls expressly disclaims that at this point all material wants will have been satisfied. Rather, he says, they will not be so compelling as to make it rational for the persons in the original position to agree to satisfy them by accepting a less than equal freedom. It should be noted that Rawls assumes that rational men are disinterested in their relative position in the pecking order, and free from the feeling of envy. Although they are concerned with status, in a well-ordered society they will be satisfied with the public affirmation of their

²⁴ J.F. Stephen, *Liberty, Equality, Fraternity* (ed. R.J. White, 1967), p. 85. See R.A. Samek, *The Enforcement of Morals* (1971), 41 Can. Bar Rev. 187, at pp. 202 *et seq.*

²⁵ Rawls, *op. cit.*, footnote 4, p. 542.

self-respect which rests on equal citizenship for all. In such a society, the distribution of material benefits can be safely left to pure procedural justice. The requisite background institutions will narrow the range of inequalities so that excusable envy does not arise.

For all Rawls' desperate attempts at rationalization, the facts do not support his thesis. The thirst for material benefits has not slackened with their growth, and liberty has been used to swell the demand for consumer goods and services. People want what they are conditioned to demand by the prevailing ideology. It is the better off who have the clout to get their way, and they do not hesitate to press for an ever larger share of the cake. The voice of the worst off — the growing army of unemployed and unemployables, the single families, the unskilled and unschooled, the sick and incorrigibly poor—remains unheard. Most grudge them the crumbs which are thrown to them to satisfy the conscience of the rich. Not only are they not being helped by the overconsumption of those higher up the scale; they are paying for it out of the moneys saved on their keep. Status consciousness and envy have not disappeared, and the rational life plans which are supposed to show the value of liberty, are largely devoted to rising in the hierarchy at the expense of the less advantaged.

Rawls cannot plead that these shortcomings are due to the failure of individuals to live up to his rational expectations, for this failure has become the way of life of what he calls a "nearly just" society. He defines such a society as one that is well ordered for the most part, but in which some serious violations of justice nevertheless do occur.²⁶ Since he rationalizes it with reference to the original position, he cannot afford to allow too much of a gap between theory and practice.

Quite apart from this point, Rawls does not make out his case that the two principles of justice he puts forward are fair. In order to do so he would have to prove that they would be chosen by persons in the original position. Even accepting Rawls' account of the social contract, it still does not follow that rational men behind the veil of ignorance would endorse his choice of primary goods, let alone his strange lexical ordering of them. Why should they buy the maximin rule whereby they must rank alternative designs for a just society by their worst possible outcome as if their enemy would assign them their place?

I have already pointed out the dilemma to which blending self-interest and justice leads. Moreover, if everybody put his own interest first, and had to be artificially restrained by a veil of ignorance from acting on it, he would be unwilling to ignore it when the veil was

²⁶ *Ibid.*, p. 363.

eventually lifted. After all, the original position cannot be maintained forever, and Rawls' theory must be applicable in practice if it is to have any value. Indeed, according to Rawls, it is applied in our "nearly just" society. But if what passes there is justice as fairness, then the jargon of the ideology takes over, and the superstructure reigns supreme.

The separation between Rawls' two principles of justice echoes the established dichotomy between the theoretical equality of liberty and the hard facts of economic inequality. The egalitarianism of the first stands in sharp contrast to the class division acknowledged by the second. Rawls himself emphasizes this dichotomy:

As their formulation suggests, these principles presuppose that the social structure can be divided into two more or less distinct parts, the first principle applying to the one, the second to the other. They distinguish between those aspects of the social system that define and secure the equal liberties of citizenship and those that specify and establish social and economic inequalities. The basic liberties of citizens are, roughly speaking, political liberty (the right to vote and to be eligible for public office) together with freedom of speech and assembly; liberty of conscience and freedom of thought; freedom of the person along with the right to hold (personal) property; and freedom from arbitrary arrest and seizure as defined by the concept of the rule of law. These liberties are all required to be equal by the first principle, since citizens of a just society are to have the same basic rights.

The second principle applies, in the first approximation, to the distribution of income and wealth and to the design of organizations that make use of differences in authority and responsibility, or chains of command. While the distribution of wealth and income need not be equal, it must be to everyone's advantage, and at the same time, positions of authority and offices of command must be accessible to all. One applies the second principle by holding positions open, and then, subject to this constraint, arranges social and economic inequalities so that everyone benefits.²⁷

As we have seen, the first principle has priority over the second: a departure from the institutions of equal liberty cannot be compensated for by greater social and economic advantages. The distribution of wealth and income must be consistent both with the liberties of equal citizenship and with equality of opportunity for gaining access to the official hierarchy.

In identifying justice primarily with the established political institutions, and allowing economic inequality on the fiction that it promotes the economic interests of the most disadvantaged, the stage is set for guaranteeing the *status quo*. The legend has it that the existing system alone is capable of safeguarding the fundamental political and economic institutions on which we depend for our liberty and economic survival. While economic equality would be desirable as an ideal, it is ruled out by the hard facts of life. But for the present economic inequalities, we are told, there would be far less economic

²⁷ *Ibid.*, p. 61.

wealth to share, with the result that the worst off would be worse off still. Hence, to help them attain a greater measure of equality would be merely counter-productive.

The juxta-position of political and economic equality is one of the most dangerous features of Rawls' theory of justice. We have already seen that the ("special") conception of justice under which greater liberty must not be traded for more economic benefits does not hold for underdeveloped nations which are subject to the ("general") conception which allows for such trade-offs. This not only enables us to accept repressive regimes in the Third World on the spurious ground of economic necessity; it also poses a threat to our own societies. Rawls' qualification imports that liberty has a price. From that it is easy to see a connection between the conditions abroad and at home. If we rock the boat too much, we might slide back to the economic level of a poor society which could no longer afford the luxury of our political institutions.

I am not claiming that Rawls would favour this kind of development; I am sure he would not. I simply want to indicate where his rationalizations lead. His theory of justice fits easily into the framework of the prevailing ideology. Shorn of its academic niceties, it is a restatement of the liberal credo: individuals are free to pursue their own ideas of the good under the protective umbrella of democratic institutions. Equal opportunity ensures social mobility and gives everybody access to the official hierarchy. The market system is the most efficient, and works best in a capitalist economy. The world is divided into countries each of which forms a more or less closed society. Justice, like charity, starts at home, and must be securely founded on self-interest. Liberty, wealth and power are the primary goods for which all strive and which it is the object of just institutions to share out fairly. And so on, and so on.

The last thing we need is a rationalization of our false consciousness. Rawls seeks to justify the sense of justice enshrined in our institutions by putting it on a moral pedestal. He does not deny that they can be improved, but he assumes that there can be no question of changing their basic structure. Instead of evaluating it from the outside, he rationalizes it from the inside. As a result, his theory of justice legitimates it by investing it with an almost religious authority.

We must not allow ourselves to be hypnotized by Rawls' constant appeals to rationality. If we judge his theory by its own logic, it will remain a closed book to us, for nothing in it is as it seems. Take the "individuals" in the original position. They are not really individuals at all; they are actors in his play. It is not they who make their choice; it is Rawls who makes it for them, or rather the ideology for which he speaks. Although Rawls modestly entitles his book *a* theory

of justice, he is at pains to demonstrate that it is based on a higher rationality than his own. This is the reason for the heavy emphasis on the original position: it constitutes the divine authority for the plot.

The stage instructions are that the actors should be blind in regard to their personal circumstances. In reality, it is Rawls who is blind to the ideological bias of the original position which he puts before us in the name of impartiality. He does not reason forward from the premises of his theory to a conclusion of what a fair system of justice should be; he starts off with the presumption that the present system is fair, and proceeds to formulate the necessary premises to prove his case. The fact that he does not succeed in doing so is beside the point. What is wrong with his theory is that it is built on shaky ideological foundations, not that its superstructure is too weak.

I am not suggesting that Rawls stoops to deceptive means to support his ideological convictions, and that his theory of justice is a bait to make us swallow the capitalist system. Rawls operates from inside the ideology, and finds in it his logical base. He speaks its language, and he uses its kind of reasoning. What he has to say cannot be understood on its own ground. The same is true of his critics who for the most part purport to judge his theory on its rational merits. Despite their differences, most operate in the same milieu. They share the same ideology, and they engage in their polemics with its blessing. This explains why Rawls' reputation has grown apace while his theory has been torn to shreds.

Philosophers revere Rawls and at the same time take him to pieces because they all share the same paradigm on which they can continue to sharpen their teeth. 'Rawls' aim of demonstrating the superiority of his theory confirms the importance of those of his rivals, and conversely, their dissection of its principles spreads his own fame. In these elevated philosophical jousts reputations are made, but never lost. What *is* lost are the underlying issues which remain cloaked by the ideology. The greater the contradictions in the superstructure, the more determined are its supporters to keep the foundation in place. Rawls and his critics are like the feuding couple who will defend their differences against any third party who is naive enough to try to make peace between them. Their quarrels are part of their life-style which keeps them together and distracts them from their common predicament.

Some of Rawls' critics have commented on the ideological aspect of his theory of justice. For instance, Daniels writes:

Rawls intends to do three things. He wants to reveal the principles of justice which underlie the dominant moral and political views of our period. He wants to show that these principles can be viewed as the result of a selection procedure that all people can agree is fair (thus, 'justice as fairness'). And he wants to show that these principles describe a workable social arrangement, given everything we

know from the social sciences. But, the dominant moral and political ideology of our time, reflected in these principles, is, of course, a form of liberalism. Perhaps it is a more egalitarian liberalism that dominated the eighteenth and nineteenth centuries, but it is liberalism nonetheless. Rawls' goal, then, is to produce a persuasive, coherent framework for this liberalism.²⁸

In his subsequent comments Daniels shows that he is not aware of the depth of the problem of false consciousness, and this is necessarily true of all liberal critics. Thus, he tells us that the theory was published on the heels of a period of intense political struggle and of serious challenge to liberalism. In the United States, the Civil Rights and Black Liberation movements, followed by the anti-Vietnam movement, brought millions of people in conflict with the existing political institutions and policies. These movements, Daniel says, raised fundamental questions about their justice. Liberal moral and political judgments were pitted against liberal political institutions, and they were in turn defended by liberal political arguments.

That, of course, was the root of the trouble. Instead of lifting the veil of the ideology, liberal reformers vied with each other on ways and means of tightening it. If Daniels had grasped the full implications of his ideological comment, he would have separated the goats from the sheep. An ideology cannot be judged by its own standards, and it cannot be reformed from within. Nor will a counter-ideology open our eyes; it will close them merely in another direction. Unless we see an ideology for what it is, it will continue to deceive us.

The ideological nature of Rawls' theory of justice is clearly revealed in this treatment of individuals. Its primary subjects are the basic institutions of society, and the role of individuals is to support them, provided they are fair. The principle of fairness applies to individuals; they are required to do their part as defined by the just rules of institutions if they have voluntarily accepted their benefits. The main idea, Rawls says, is that when a number of persons restrict their liberty for the benefit of all, they have a right to a similar acquiescence on the part of those who have benefitted from them.²⁹

Rawls distinguishes between the "obligations" and the "natural duties" of individuals. The former are the requirements specified by the principle of fairness. Obligations presuppose just institutions, *or ones reasonably just in the circumstances*. The qualification shows the ease with which the presupposition can be circumvented by assuming that the existing basic structure is the most just which is practical now.

It is significant that Rawls does not believe in *political* obligations (strictly speaking) for citizens generally, but merely for public

²⁸ N. Daniels (ed.), *Reading Rawls* (1975), p. xiv.

²⁹ Rawls, *op. cit.*, footnote 4, p. 112.

officials. From this it is only a short step to limit *political* rights to duly elected officials. Rawls' handling of civil disobedience shows which way the wind is blowing. He confines the problem to citizens of more or less democratic states who accept the legitimacy of the constitution, and defines it in terms of a conflict of duties: at what point does the duty to comply with laws enacted by a legislative majority cease to be binding in view of the right to defend one's liberties and of the duty to oppose injustice?³⁰

It is by no means obvious why there should be a *conflict* of duties here, seeing that the duty to obey the law presupposes that the law is just. The reason for Rawls' approach lies in his institutional bending of the concept of "natural duty". Whereas he accounts for all obligations with reference to the principle of fairness, he expressly renounces any attempt to bring natural duties under one principle, though he recognizes the difficulty this poses for determining their priority. Rawls gives the following examples of natural duties: the duty to help another when in need or jeopardy as long as one can do so without excessive risk or loss to oneself; the duty not to harm or injure another; and the duty not to inflict unnecessary suffering. The first is the positive duty of mutual aid, while the other two are negative duties requiring us not to do something which is bad. The duty of justice is a fundamental natural duty.

This duty requires us to support and to comply with just institutions that exist and apply to us. It also constrains us to further just arrangements not yet established, at least when this can be done without too much cost to ourselves. Thus if the basic structure of society is just, or as just as it is reasonable to expect in the circumstances, everyone has a natural duty to do his part in the existing scheme. Each is bound to these institutions independent of his voluntary acts, performative or otherwise. Thus even though the principles of natural duty are derived from a contractarian point of view, they do not presuppose an act of consent, express or tacit, or indeed any voluntary act, in order to apply. The principles that hold for individuals, just as the principles for institutions, are those that would be acknowledged in the original position. These principles are understood as the outcome of a hypothetical agreement. If their formulation shows that no binding action, consensual or otherwise, is a presupposition of their application, then they apply unconditionally. The reason why obligations depend upon voluntary acts is given by the second part of the principle of fairness which states this condition. It has nothing to do with the contractual nature of justice as fairness.³¹ In fact, once the full set of principles, a complete conception of right, is on hand, we can simply forget about the conception of original position and apply these principles as we would any others.³¹

This is strange reasoning indeed. The hypothesis of the original position enables us to dispense with voluntariness. As a result, we can impose compliance with the *status quo* on individuals as absolute duties, and then forget all about the hypothesis. This is the iron fist in

³⁰ *Ibid.*, p. 363

³¹ *Ibid.*, pp. 116-117.

the velvet glove: a man is bound to the wheel of "justice" even if it crushes him.

Rawls adroitly bridges the gap between rationality and force. Suppose, he says, there are some persons in a well-ordered society for whom the affirmation of their sense of justice is not a good. Given their aims and the peculiarity of their nature, the thin theory of the good will not provide a sufficient reason for them to do so. To such persons one cannot recommend justice as a virtue. This leaves the further question whether it would be unjust to require them to comply with just institutions.

... [G]ranting that adherence to whatever conception is acknowledged will be imperfect if left completely voluntary, under what conditions would the persons in the original position agree that stabilizing penal devices can be employed? Would they insist that a person can be required to do only what is to his advantage as defined by the thin theory?

It seems clear, in the light of the contract doctrine as a whole, that they would not. For this restriction amounts in effect to general egoism which, as we have seen, would be rejected. Moreover, the principles of right and justice are collectively rational; and it is in the interest of each that everyone else should comply with just arrangements. It is also the case that the general affirmation of the sense of justice is a great social asset, establishing the basis for mutual trust and confidence from which all normally benefit. Thus in agreeing to penalties that stabilize a scheme of cooperation the parties accept the same kind of constraint on self-interest that they acknowledge in choosing the principles of justice in the first place. Having agreed to these principles in view of the reasons already surveyed, it is rational to authorize the measures needed to maintain just institutions, assuming that the constraints of equal liberty and the rule of law are duly recognized. Those who find that being disposed to act justly is not a good for them cannot deny these contentions. It is, of course, true that in their case just arrangements do not fully answer to their nature, and therefore, other things equal, they will be less happy than they would be if they could affirm their sense of justice. But here one can only say: their nature is their misfortune.³²

I need hardly say that this conclusion has an ominous ring about it. What could be more dangerous than to shrug off any denial of the official good as a personal heresy that cannot be tolerated for the good of all? Here we see the practical implications of investing a relative theory with an absolute value. This is the way an ideology is imposed on its "beneficiaries". The libertarian Rawls does not hesitate to force his liberty down everybody's throat for the good of society as a whole. His insistence on the "fairness" of the institutions is merely a ploy of the ideology to distract our attention from the arbitrariness of this criterion. The liberal theory of justice is in principle no different from other cults of rationality or irrationality—it matters not which—that demand to be satisfied. The dictatorial thrust of Rawls' theory is apparent in this résumé:

³² *Ibid.*, pp. 575-576.

The main point then is that to justify a conception of justice we do not have to contend that everyone, whatever his capacities and desires, has a sufficient reason (as defined by the thin theory) to preserve his sense of justice. For our good depends upon the sort of persons we are, the kinds of wants and aspirations we have and are capable of. It can even happen that there are many who do not find a sense of justice for their good; but if so, the forces making for stability are weaker. Under such conditions penal devices will play a much larger role in the social system. The greater the lack of congruence, the greater the likelihood, other things equal, of instability with its attendant evils. Yet none of this nullifies the collective rationality of the principles of justice: it is still to the advantage of each that everyone else should honor them. At least this holds true so long as the conception of justice is not so unstable that some other conception would be preferable. But what I have tried to show is that the contract doctrine is superior to its rivals on this score, and therefore that the choice of principles in the original position need not be reconsidered.³³

In fairness to Rawls it should be said that he believes in the use of force only as a last resort, and that he expresses the wish that it will be rarely invoked. Alas, these pious hopes tend to fall by the wayside when an ideology feels itself threatened. The appeal to moderation, order, and the rule of law, is one of its favourite tricks to ensure its survival. Despite Rawls' declared opposition to utilitarianism, and to its concern with the good of the collectivity rather than with the rights of the individual, he subjects the latter to the institutional regime of the former.

The "plans of life" are individual merely in name, for they are all cast in the same ideological mould. The seeming diversity of established life-styles conceals their drab uniformity. The fact that in overtly dictatorial countries the prison bars are much more apparent should not conceal from us the dreadful reality of ideological jails. A person who conceives his liberty essentially in terms of consumer satisfaction and career success is not all that far removed from the party hack who toes the line for the sake of higher material rewards and official esteem.

So much for Rawls. It goes without saying that I have touched merely on a few aspects of his theory, and left out the greater part of it. But if I have not done justice to the case for Rawls, I have not done so either to the case against him. In this connection, I want to say a word about the false spirit of scientism that is abroad. According to its presiding high priests, an argument must take a certain form and establish certain conclusions by its own logic. This is a wonderful means of the superstructure to maintain itself. By choosing the permissible weapons of attack and defining its own vulnerability in such a way that it is never fatal, it preserves its false consciousness. Rawls' theory bears all the hallmarks of the established rationality,

³³ *Ibid.*, p. 576.

and therefore it is immune to a frontal attack. The more points his critics score, the greater is the respect for their target.

My parting remarks—and they can be no more in the space available—will stress the need for seeing justice in a new light. Instead of seeking to bring heaven down to earth and to establish the reign of the absolute, however imperfectly, in the world of the relative, I want to stress the incommensurability of the two. To speak of justice in society and in the world in which we live, is to confound justice with custom. Pascal saw this three centuries ago, and I can do no better than quote him:

Montaigne is wrong: we should follow custom simply because it is custom, not because it is reasonable or fair; but the people follow it simply because they believe it to be fair. Else they would cease to follow it, despite its being custom; for men wish to obey only what is reasonable or fair. Otherwise custom would seem tyranny; but the sovereignty of reason and justice is no more a tyranny than that of enjoyment: they are all principles natural to man.

It were well then to obey laws and customs because they are laws; but a man must know that there is no question of a true and just law; that we know nothing about that and must therefore simply follow accepted laws; in this way we should never depart from them. But the people are incapable of this doctrine; and so, believing that truth can be found, and that it exists in laws and customs, they believe these and take their antiquity as proof of their truth, not merely of their authority apart from truth. So they obey them, but are apt to rebel when they are shown to have no value; and this holds good of all, looked at from a certain angle.³⁴

In this passage we find the theme which Dostoevsky developed so poignantly in the *Grand Inquisitor*, that the people are incapable of bearing the truth, and have to be deceived for their own good. If they could live by bread alone, they could live by custom, but they need the jam of the lie to make it palatable. Hence Pascal's advice:

It is dangerous to tell the people that laws are not just, for they only obey them because they believe them to be just. Therefore they must be told at the same time that they must obey them because they are laws; just as our superiors must be obeyed, not because they are just, but because they are our superiors. All sedition is avoided if only this can be brought home to men and they understand that such is the proper definition of justice.³⁵

Pascal tells us that he passed much of his life believing in the existence of justice, and that he was not mistaken, since it exists in the measure in which God has vouchsafed to reveal it.

But that is not how I took it, and here I was mistaken; for I thought that our justice was essentially just, and that I possessed the means to know it and weigh it. But I have found myself so often wanting in right judgment that at last I have come to mistrust myself, and then to mistrust others. I have seen men in process of change in all countries; and so, after many variations of opinion concerning true justice, I

³⁴ *Ibid.*, p. 217.

³⁵ B. Pascal, *Pascal's Pensées* (transl. H.F. Stewart, 1950), p. 218.

recognized that our nature was a perpetual changing, and I have not changed since: if I came to change it would confirm my opinion.³⁶

As to *true* justice, Pascal says, we have lost it, for if we still had it we would not take the manners of one's country as a standard. "This is how, having failed to find justice, we have fallen back on force."³⁷ If it had been possible, he remarks, we should have armed justice with force, but force is something tangible which cannot be handled at will, whereas justice is a spiritual quality that can be treated as we like. In consequence, force has been armed with justice, and what we are forced to obey is called just. Whence comes the right of the sword; else we would see violence on one side and justice on the other. This section is headed *summum jus, summa injuria* (strict law, great wrong), and is introduced with the sentence: "Obedience to the majority is the best way, because the majority is visible and has force behind it; but it is the counsel of the dullard."³⁸

Pascal's penetrating insight into the confusion between justice and its misrepresentation by custom and law contrasts sharply with Rawls' essentially procedural approach. Although Rawls insists that justice must be founded on his two distributive principles, he in fact assumes, as we have seen, that the basic structure of society is informed by them. For practical purposes he identifies justice with the rule of law, and concentrates on the inadequacies of its application rather than on the validity of its premises. In his theory of justice, Rawls projects the rational into the actual, the absolute into the relative. The established paradigm is put beyond question, and acquiesces the status of a quasi-divine fiat.

According to Pascal, on the other hand, justice transcends human custom and law, but man needs the illusion that they are just in order to live in society. Unlike Rawls, Pascal is not taken in by our display of rationality. "Man", he observes, "never acts in obedience to reason, which is the very nature of his being".³⁹ The corruption of reason is shown by the "host of different and extravagant customs".⁴⁰ It was meet, he says, that Truth should come and deliver man at last from himself.

Pascal does not face the dilemma that if a custom or law is not just, it is unjust to follow it. His injunction to do so is based on the false dichotomy that we must render one thing unto Caesar and another unto God. Surely, if custom and law are not just, then we

³⁶ *Ibid.*

³⁷ *Ibid.*, p. 219.

³⁸ *Ibid.*, p. 399.

³⁹ *Ibid.*, p. 211.

⁴⁰ *Ibid.*

should do our utmost to free ourselves from their grip. True equity, as Pascal realized, is a challenge to the law, not a gloss on it. If man had known justice, he would not have preached obedience to custom and law.

Assuredly if he had known it he would never have laid down this maxim, the most general of all in the world of men, that each should follow the customs of his country; the splendour of true equity would have brought all nations under subjection, and law-givers would not have taken as model, instead of unvarying justice, the fancies and whims of Persians and Germans. We should see it firmly established in all States on earth, and in all times, whereas we see neither justice nor injustice that does not change its nature with change of climate. Three degrees of latitude are enough to upset all jurisprudence; truth is decided by a meridian; fundamental laws change with a few years of possession; right has its epochs; the entry of Saturn into the Lion teaches us the origin of a particular crime. The farce of Justice bounded by a stream! Truth this side of the Pyrenees, error beyond! . . .

Of course there are natural laws, but this precious corrupt reason has corrupted all. "*Nothing more is our own. What we call our own is convention.*" "*Crimes are committed by decree of the Senate and plebiscite.*" "*Formerly we suffered from our sins; to-day we suffer from our laws.*"⁴¹

True equity must not be confounded with the false equity created by custom. If we follow Reason alone, Pascal states, there is no essential justice, everything changes with time. Custom appears to be equitable simply because it is accepted; that is the mystical basis of its authority. To take it back to first principles is to destroy it. Nothing is so faulty, Pascal remarks, as the laws which correct faults. The man who obeys them because they are just obeys an imaginary justice. Law is self-contained. Any underlying motivation is so feeble and slight that we may well wonder how a single century has won for it so much pomp and veneration.

The art of wilful opposition and of revolution is the shaking of established customs, exploring them to their source, in order to bring to light their want of authority and justice. We must, they say, return to the fundamental and primitive laws of the state, abolished by an unjust custom. That is a game leading straight to ruin; the scales are quite untrustworthy. Yet the people lend a ready ear to such talk. They shake off the yoke as soon as they are aware of it, and the great profit by their collapse as well as by that of these keen critics of established customs. Hence, the wisest of all law-givers used to say that you must often throw dust into the eyes of men for their own good; and another, a sagacious statesman: "*When the people know not the truth that sets them free, it is well to deceive them.*" The true facts about the wrongful reign of law must be kept from them; it crept in long ago without reason, it has grown reasonable; you must bring it to be looked upon as authentic and eternal, and keep its origin out of sight unless you want it to come to a speedy end.⁴²

Here we have it again: the need to resort to the lie for the good of the people on the ground that justice in this world is impossible. And so it is, but that is not a reason for placing it in another world which (to

⁴¹ *Ibid.*, pp. 211-213.

⁴² *Ibid.*, pp. 213-215.

my mind) is just as imaginary as justice is in this one. Man does not live by bread alone; he hungers for justice. This is why he looks beyond custom and law to a higher authority. While it is salutary, as Pascal does, to stop him from reading justice into custom and law, it would be counter-productive to make him follow them blindly.

Pascal's exposure of the confusion between justice and custom and law gives us a brilliant insight into the mystifying influence of ideologies. Substituting ideology for custom and law, we can say that in disentangling justice from what passes for it in the false consciousness of a superstructure we set ourselves free to apply an open mind to the problems of its foundation. What is more, in perceiving the relativity of all ideologies, we avoid the trap of buying the "justice" of a counter-ideology. Pascal was right to insist on distinguishing between justice as a transcendent norm and any alleged embodiment of it in custom and law. As Kierkegaard said: "The greatest satire on the human race is precisely its conception of justice, and its righteousness."⁴³

"What then *is* justice?", a frustrated reader may ask. To formulate the problem in this way is to confuse justice with custom. Any definition of justice will take us back to convention, and so will any analysis of the concept, or of the "language games" that can be played with it. Justice, like Truth, transcends convention, and therefore cannot be reduced to its terms. Language is convention; hence it is incapable of answering the questions which stretch it beyond itself. We must use it against the grain so to speak to free ourselves from its hidden values.

Language can never work itself pure, but we can reverse its direction by stripping it down to its existential roots. If we adopt this perspective, the problem of justice will appear in a new light. We will see it as an aspect of the human predicament, of the paradox of human existence in an inhuman world. On that view we can explain man's affirmation of justice as the "negation of a negation". Man, as a *human* being, denies the denial of his fundamental equality. What he objects to is not so much the variations in individual fortunes as the vast disparities in the circumstances of whole classes and people. How could it be just that while a handful lives in wasteful abundance, the great majority should barely have enough to sustain life? If justice is to have any real meaning, it must seek to correct this imbalance; it must concern itself above all with the needs of the poor. Although man does not live by bread alone, fine phrases do not fill empty stomachs.

⁴³ S. Kierkegaard. *The Journals of Søren Kierkegaard* (transl. A. Dru, 1972), s. 1363.

No theory of justice will cure a single injustice in the world. Practice without theory is blind, but theory without practice is lame. Justice, like truth, must be part of a praxis, not merely subjects of speculation for philosophers. As Marx put it in his celebrated *Eleventh Thesis on Feuerbach*: "The philosophers have only interpreted the world in various ways; the point, however, is to change it."

What is the use of a theory of justice if it lacks a cutting edge? We tend to think of implementation in institutional terms. But there we deceive ourselves. Institutions are always part of the superstructure. Hence, they can never solve the problems of the foundation. Institutional "justice" belies its name. This was Pascal's great insight. We must turn it round, and expose its injustice. Custom and law cannot serve justice as a means until they have ceased to misrepresent it as an end.

In the climate of the prevailing ideology, these thoughts will seem hopelessly cryptic and impractical. Admittedly, they are no more than straws in the wind. Nevertheless, they do point the way, and they indicate the beginning of a praxis that would make the world less unjust. Its first priority would be one of needs, and these would be measured on a world-wide scale. True justice knows no boundaries, and ignores the false dichotomies of custom and law. I know of no finer maxim than: "From each according to his ability, to each according to his need."

Just as we cannot perceive even a glimmer of truth until we have understood the limitations of knowledge, so we are unable to apprehend justice until we have freed it from its ideological veil. We must stop treating the falsehoods of the ideology as if they were true, and the norms of behaviour it lays down as if they were just. In short, we must reverse its role of distorting means into ends. This is not a superficial trend which can be corrected mechanically. It is a deeply ingrained human propensity that lies at the root of the human predicament. I have called it the "meta phenomenon".⁴⁴

⁴⁴ Samek, *op. cit.*, footnote 2, p. 4.