

Between the original original position and nationalism

Author: Terence Rajivan Edward

Abstract. In this paper, I present a way in which John Rawls's original position thought experiment can be brought closer to nationalism. The social science laws can be taken from a nation's heritage.

Draft version: Version 2 (24th September 2022, reference correction:"451").

Quietly I search for rhymes

At "The Paris Centre For Does British Social Anthropology Have Paradigms"

John Rawls's original position thought experiment is opposed to various kinds of nationalism. We are to imagine self-interested individuals coming to an agreement on which principles institutions in a society will implement. These individuals lack knowledge which would lead them to be biased. For example, they do not know their talents, otherwise an individual with a certain talent will prefer principles which are highly advantageous to those with that talent and disadvantageous to those without. They also do not know their tastes: which authors they prefer or painters or musicians, and so forth. The original position is thereby opposed to nationalisms which aim to conserve the achievements of a nation, including its artistic achievements. It will not allow principles designed to encourage a national taste. In this paper, I present a revision to Rawls's original position which involves a concession to nationalism, for those who are after a concession.

The individuals in the original position, though lacking knowledge of various personal features, do know laws of social science, which they are to use when selecting principles from a

menu (1999: 119). They must not prefer principles which are unrealizable owing to these laws. Now it is natural to interpret Rawls as making the following assumption:

(Universality assumption) Everyone who uses his original position method should rely on the same claims about what the social science laws are.

But perhaps there is some prospect of updating the claims with time, once experts learn that a certain theory of what the laws are does not work.

Nevertheless, there is dispute amongst experts over what the laws of social science are – it may be more transparent here to write of “the laws of society.” What shall we do about the lack of consensus? Here one might try to solve the problem by smuggling in some nationalism. If I carry out the original position thought experiment in England, for example, then I should take my social science law claims from the English intellectual heritage. And the people in the original position must choose principles which are realizable given those claims. Some claims may even come from novels, by the way, though they would need justification (Raphael 1974: 122). The French meanwhile should use claims from the French heritage, or at least the French in France carrying out the thought experiment should.

Obviously this involves treating the two heritages as distinct, which may be difficult to do in practice, as suggested by the portrait of life in France in my opening poem (see also Samuel 2012: 451; Edward 2020 [2012]: 11-16). But to illustrate this solution, consider Rawls’s liberty principle. It gives all adult citizens, or sane adult citizens, a set of equal basic liberties, such as freedom of speech and the right to run for public office. An adult’s basic liberties should only be restricted for the sake of greater equal basic liberty. But H.L.A. Hart argues that legal prohibitions against libel and slander – laws in another sense – are justified on the grounds of avoiding harms other than restriction of liberty harms (1973: 538). Now in the French social

science tradition, I was once told, there is the claim that the prohibition causes the desire to violate. Thus if people in France rely on that claim when doing Rawls's thought experiment and afterwards, the absence of a legal prohibition against slander will presumably not appear a problem!

References

- Edward, T.R. 2020 (revised version, originally 2012). Feminist Research and Paradigm Shift in Anthropology. Available at: <https://philpapers.org/rec/EDWFRA-2>
- Hart, H.L.A. 1973. Rawls on Liberty and its Priority. *The University of Chicago Law Review* 40 (3): 534-555.
- Raphael, D.D. 1974. Critical Notice: *A Theory of Justice* by John Rawls. *Mind* 83 (329): 118-127.
- Rawls, J. 1999 (revised edition). *A Theory of Justice*. Cambridge, Massachusetts: Belknap Press.
- Samuel, G. 2012. Is legal knowledge cumulative? *Legal Studies* 32 (3): 448-479.