
Knowledge Problems from behind the Veil of Ignorance

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Relative to the prominent influence of the Rawlsian framework (Rawls 1971), F. A. Hayek's (1978) forceful critique of social justice has been largely overshadowed. This is not surprising because Hayek's bold proclamation that social justice is essentially meaningless was likely penned prior to his closer reading of Rawls.¹ Hence, those committed to Rawlsian social justice today perceive Hayek's argument as a sort of straw man rather than as a deep or foundational engagement.

I argue that much of Hayek's initial skepticism was warranted and remains prescient even amid the more nuanced Rawlsian framework. Rawls's theory is not a moral prescription for specific institutional changes; it instead aims more modestly to identify the margins from which we may assess the relative moral qualities of different institutional communities. In other words, Rawls is concerned primarily with how we know which sets of rules and public policies are more just compared to others.

My central claim is that the Rawlsian framework does not succeed in this more-mild aspiration. To assess the *relative* moral conditions of different institutional systems requires comparative institutional analysis beyond the capacities of the Rawlsian paradigm.

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1. There is some archival evidence of Hayek sharing positive impressions of Rawls's earlier works with economist colleague James Buchanan, but Buchanan (1972) wrote a similarly delayed but critical review of Rawls in which he reversed much of his initial positive impressions.

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In short, Rawls does not sufficiently address the epistemic challenges inherent to the processes of institutional design or selection. In result, Rawls may succeed in providing some good reason(s) for why social equality bears moral relevance, but his paradigm provides no meaningful way to assess the relative moral value of social equality or any other normative value against other reasonable moral standards.

In essence, the idea of the veil of ignorance is a conceptual attempt to mitigate individual citizens' biases. It seems obvious that any individual would prefer rules that privilege her own personal interests, but what sorts of institutional rules would a person select if she were conveniently blind to her own identity or socioeconomic status within a community? What rules would reasonable citizens choose from behind a "veil of ignorance"? Rawls argues that such agents would be risk averse and would thus prioritize those institutions that assure the well-being of the least well-off. Rawls labels this situation "the maximin condition." Hence, the veil of ignorance is thought to vindicate a general normative commitment to social equality.

Rawlsians and Hayekians draw contrasting policy inferences from the two thinkers' respective theories. Rawlsians interpret the insights from the veil of ignorance to justify stronger institutional commitments to redistributions and social safety nets than are currently observed. Hayek (1960), although not principally opposed to public-welfare programs, tends to emphasize the epistemic challenges inherent to central planners while designing and implementing such programs. Furthermore, Hayek's commitment to generality places strong normative limitations on the potentials of progressive redistributions.

I believe that the disagreements of policy across Rawlsians and Hayekians are more than skin deep. Rather than merely reflecting the alternative biases of these two thinkers or the biases of their respective followers, these divergences stem from core differences in how the two models understand the positive operations of society and specifically the processes of institutional design and selection therein. In short, the Rawlsian framework implies that social outcomes, like material distributions, are capable of being designed and strategically manipulated through democratic deliberation. In contrast, Hayek's insights and more contemporary findings of social science suggest a far more limited potential for democratic deliberation to effectively reshape inequality via institutional manipulations. In Kantian terms, "ought implies can." Hence, normative policy implications that are justified on Rawlsian grounds break down if such outcomes are not systematically governable by designed efforts and then break down further if such efforts conflict with other normative commitments of high moral weight.

Comparative social science today demonstrates a much broader swath of institutional types than the Rawlsian vision accommodates. In short, different communities confront some similar and some unique social problems, but such problems are often distinctly shaped by the particular conditional factors faced across diverse societies. Hence, the intentions and functions that motivate collective choices toward the design and maintenance of institutional norms also vary across communities. Such institutional

functions are difficult if not impossible to fully comprehend let alone predict from a purely theoretical vantage or behind a veil of ignorance.

Attempting to ascertain the normative dimensions of a particular social norm apart from the real social context within which it was developed is comparable to asking what is the just price for a particular commodity. It could very well be that an equilibrium price in a particular social setting was brought about by morally dubious procedures or actions, but such information alone tells us virtually nothing about how to actually obtain more morally desirable outcomes or at what morally reasonable consequence.

To demonstrate this limited potential of the Rawlsian framework, I investigate Inuits' historic social norms as a useful case study. "Inuit" is the current name used to refer to the indigenous peoples once commonly referred to as "Eskimos" in the present-day Arctic areas of Canada, Greenland, and Alaska. A variety of sociological and ethnographic reports provide consistent qualitative descriptions of individual life, legal customs, and social norms common among Inuit prior to the mid-twentieth century (see Briggs 1971; Brody 1977; Matthiasson 1992). Although Rawlsians may object that the veil-of-ignorance paradigm was intended to assess the normative qualities only of advanced Western democracies, I select the Inuit case specifically because its vast differences from contemporary developed contexts highlight some specific limitations of the Rawlsian framework and its associated inferences in that certain Inuit social norms seem to explicitly violate Rawlsian standards of social equality while promoting alternative social outcomes of dire normative relevance.

Although it is true that historic Inuit social norms were vastly different from Western norms, this case suffices to demonstrate a variety of key theoretical insights regarding how institutions are understood to evolve, operate, and change. First, institutional forms that relate to and shape legal, political, and economic outcomes are often deeply embedded in local conditional factors and long-run historical processes therein. Second, particular outcomes such as wealth distributions are the result of multiple different institutional types coexisting and interacting through time. Institutions across political, economic, legal, and cultural dimensions of a community tend to come in interdependent bundles. Hence, third, institutional forms cannot be transported or manipulated across societies without practical consequences, some with inescapable normative relevance. Insofar as these principles of institutional dynamics are generalizable and persist throughout more contemporary and traditional settings, any normative theory of social institutions such as Rawlsianism must take them into account.

Hence, I argue that there remains strong reason to embrace the boldness of Hayek's original critique of social justice. The relationship between social institutions and the distribution of wealth in a community is as complex and as socially contingent a relationship as the emergence of different equilibrium price levels across different market environments. It makes little conceptual sense to ask what the just price of a particular good or service is apart from such contexts, just as it is meaningless to ask whether German is more moral than French. Each price level, like each language,

evolved within its relative climate as a product of individuals aiming to ameliorate the unique costs and challenges they faced when communicating. Importing or displacing particular norms across contexts inevitably entails social consequences of significant moral concern.

Thus, the supposed normative weight and supposed objectivity of the maximin condition lack meaning without a comparably objective assessment of its normative worth relative to other reasonable values. This does not require or justify a commitment to moral relativism or nihilism; it merely demonstrates the strict epistemological limits of the Rawlsian paradigm. The Rawlsian framework essentially comes full circle back to a deductive and conceptual comparison across normative standards rather than to a successful mechanism to infer objectively the relative moral weights across different social institutions.

In the next section, I briefly summarize the Rawlsian framework. Following that, I explain the epistemological limits of the Rawlsian framework via Hayekian knowledge problems. Then I examine a case study of historic Inuit social institutions to highlight the practical limits of the Rawlsian paradigm, before offering concluding remarks.

The Rawlsian Veil of Ignorance

It is not possible to provide a fully nuanced or detailed re-creation of the Rawlsian framework within the constraints of this essay. However, a rudimentary but accurate summary will suffice for our purposes.

At its core, the Rawlsian project was focused on ascertaining the relative moral qualities across different societies. Different individuals harbor alternative normative beliefs and are motivated toward biased interests. Given such proclivities, how can we know objectively what social policies and rules are just? In this vein, Rawls's work was a step of tremendous progress in political philosophy because, first, it recognized the epistemic challenge posed by special interests and, second, it provided a framework intended to cope with this obstacle.

Rawls's setup is straightforward. Imagine which institutional system a reasonable citizen would prefer were she ignorant of her own identity and status within any system. Rawls thus interprets this framework to imply some commitment to material equality because reasonable citizens would likely seek to hedge against the risk of being among the worst-off members of a community. Hence, Rawls proclaims the maximin condition as the inference that reasonable citizens would support social policies that prioritize the well-being of the lowest socioeconomic classes.

Again, many infer that Rawls's argument provides a strong justification for policies aimed at assuring the well-being of the poor. Hence, many Rawlsians favor more intensive forms of social safety nets and redistributions than currently observed in modern capitalist contexts. However, the framework itself (and Rawls's personal inferences therefrom) remains more agnostic regarding the particular institutional demands of the veil of ignorance. In other words, the framework is not necessarily geared toward advising real public policies

but is rather more narrowly intended to identify objective proxies for gauging the normative value of different social institutions.

In short, Rawls implies that societies ought to be morally judged against the standard of how well they provide for their poorest members. I should state clearly that I am not interested in challenging the idea that the treatment of the poor is a reasonable standard from which to assess a community's moral qualities; rather, I intend to challenge the idea that the Rawlsian framework is a strong or effectively objective justification for prioritizing the well-being of the poor above and beyond other normative values.

The Epistemic Limits of Choosing from behind a Veil

Although conceptually ingenious, the Rawlsian framework inevitably confronts two epistemological challenges, or what Hayekians refer to as “knowledge problems.” First, even if the framework is modeled accurately and without bias, conceptual agents choosing from behind a veil of ignorance lack the forms of tacit knowledge inherent to the procedures of real institutional decision making. Reasonable agents may harbor and express a preference for equality or a targeted concern for the least well-off, but they lack the ability to know how to practically achieve such ideals via institutional design or manipulation. Furthermore, they lack the capacity to recognize how any strategic attempt to instantiate such values may conflict with some desirable social outcomes or other normative ideals. Thus, we can see that the supposed objectivity of the maximin condition is maintained only in the absence of any knowledge or appreciation of real institutional opportunity costs.

In the second challenge, related to the first, Rawlsian theorists face a knowledge problem when modeling the preferences of reasonable citizens choosing from behind the veil. By what assurances do theorists know which normative conditions are specifically those that reasonable citizens would prefer? By what standard of objectivity can we know that the maximin condition is not merely reflective of the imbued biases of the theorists themselves? What is to be said for other normative values? Although we may have reason to believe that there is some objective moral weight to the maximin condition thanks to the Rawlsian paradigm, we have no ability to assess this normative weight against competing moral values.

There is no explicit reason for why the maximin condition is the only or even the most relevant margin for differentiating the conditions of justice across social systems apart from the presumption that material equality is what unbiased reasonable citizens would demand. Though the Rawlsian framework provides reason to recognize some normative weight for the absolute welfare of the poor, it remains distinct from a full-throated argument that the well-being of the poor ought to be prioritized above other normative values. This is a particularly damning observation in that virtually any normative institutional ideal can be afforded some positive moral weight via the veil of ignorance.

The veil of ignorance is capable of ascertaining only a single dimension of institutional outcomes at a time. In other words, the two hypothetical societies viewed through the veil of ignorance are essentially identical apart from the material conditions of the poor. In such a situation, it does seem reasonable that, all other things being equal, a society with better living conditions for the poor is morally desirable relative to other societies. However, any normatively desirable social outcome can be similarly isolated and heralded. Hence, the Rawlsian framework alone falls short of providing an objective reason for privileging one normative ideal above others.

It is important to note that the general commitment to social equality can and often does conflict with other reasonable normative commitments. Whereas Tomasi (2012) highlights the normative ideal of self-determination as potentially compatible with Rawlsian implications, I focus on the inevitable tension between the maximin condition and a normative commitment to the pursuit of excellence and/or technological progress.

When considered alone, the prioritization of the well-being of the poorest classes seems reasonable, but so too can other normative ideals be upheld for justifiable reasons in the absence or unawareness of any exclusivity with other normative commitments. Just as someone's moral commitments to attend to the well-being of the poor is likely supported by good reasons, so too can someone else have justified reasons for normatively heralding the institutional conditions that provide for the opportunities of technological breakthroughs and personal excellence, what Nicholas Capaldi and Gordon Lloyd (2009) refer to as a commitment to "the technological project." Technological progress through history and across social environments is correlated with nearly every marker of human well-being and perceived happiness.

The technological project can pass a Rawlsian impartiality standard when we control for wealth distributions, just as the maximin condition can pass when we control for technological progress. Suppose a reasonable citizen is choosing from behind the veil across two societies with the same levels of well-being for the least advantaged, but the two communities differ only with regard to their levels of technological advancement. Reasonable citizens would likely prefer the more advanced community and its associated institutions. Again, this preference may tell us something about an inherent moral worthiness of technological progress, as viewed by reasonable and impartial citizens. However, it reveals nothing about the normative value of technological progress compared to a prioritization of the well-being of the poor.

By forcing an engagement between the Rawlsian maximin condition and the technological project, I can showcase the limitations of the Rawlsian framework when normative values conflict. How generalizable the inferences from the veil of ignorance are depends on how well commitments to the maximin condition can supersede other normative values.

Rawls is aware that the maximin condition could conflict with other normative preferences. Hence, he is unwilling to uphold a universal commitment to material

equality in all social circumstances. Reasonable, unbiased citizens would be unlikely to prefer a social environment wherein they endure worse absolute conditions but smaller relative gaps of wealth. Few would opt to live in a community where a normative commitment to equality means that everyone is equally poor. Rawls explicitly rejects such equality; his argument accepts large spreads of inequality so long as a more unequal society also contains a superior absolute condition for the poor.

But Rawls's emphasis on the absolute conditions of the poorest in society does not abate concerns regarding the potential trade-offs across conflicting normative values. For example, suppose an individual upholds a commitment to the technological project as the primary margin from which to normatively assess a social community. Such an individual may concede the intuitive appeal of the Rawlsian maximin condition when it is viewed in isolation from other normative values, but she would likely be willing to trade off the absolute conditions of the poorest classes within an individual community if the potentials for pursuing technological excellence were sufficiently large. It seems intuitive to prefer society A over society B, when the poor living within A are substantially better off than B, all other things equal. It is less intuitive that society A would still be preferable to B if B possesses tangibly superior technological advancements and opportunities for similar pursuits despite the poor enduring only slightly worse conditions than in society A (Harsanyi 1975). Would a reasonable citizen prefer to live in a society without the Internet where the poorest households enjoy incomes of \$30,000 per year or in a society with the Internet and household incomes of \$25,000 per year among the poor? The answer does not seem obvious. Legitimate reasons can undergird each preference.

Empirical attempts to test the Rawlsian framework affirm the presence of these types of trade-offs. Ordinary participants are often willing to deviate from the maximin condition. In short, when confronted with an experimental version of the Rawlsian veil, subjects tend to prefer the existence of larger middle classes even when such distributions entail worse absolute conditions for the poorest classes (Frohlich, Oppenheimer, and Eavey 1987). Migratory trends can be thought of as another evidentiary case to think about how real individuals assess the desirability of different social systems (Hayek 1978, 188–89). Consistently across times and cultures, individuals often move from relatively equal but low-income environments toward more unequal but wealthier contexts. Most international migrants are similarly motivated by economic opportunities despite high rates of inequality in destination countries.

The preceding comparison helps to highlight the critical need for dynamism in political philosophy. Although it is convenient to simplify the idea of material well-being as a household income in constant dollar terms, such simplification does a great disservice to understanding the ways that individuals actually behave in society, how economic inequality actually occurs, and how individuals design and select the institutional environments they desire to live in. Real people do not identify as a member of a fixed socioeconomic demographic, nor do they assess their willingness to reside in a community according to national Gini coefficients. Many citizens normatively herald

real societal institutions with reference to more dynamic components. Which community has more opportunity for one's future and one's children's futures often takes precedent over animosities about material inequality.

Comparative Institutional Analysis and the Veil of Ignorance: The Inuit

The Rawlsian paradigm obfuscates how individuals within a community actually participate in institutional design and selection. Different communities confront a variety of social challenges, many of which are unique and particular to their specific conditions of time and place. Hence, individual citizens within a given community must make institutional decisions and actions that often prioritize responses to those challenges above and beyond other normative values. Many seemingly immoral or even inhumane institutional practices can actually be seen to provide necessary social functions when their evolutionary design and selection processes are better understood.

In the previous section, I focused on the potential tensions that may arise between the Rawlsian maximin standard and technological progress in a modern institutional setting. In this section, I take seriously the other extreme end of economic performance: mere subsistence and survival. Whereas one may infer a reasonable prioritization of the maximin standard above the possible increased production of advanced technologies, inescapable normative tensions become more obvious when the stakes are more severe and the viable existence of the community is placed in jeopardy.

In this section, I briefly survey some qualitative but representative descriptions of historic Inuit social institutions, culture, and legal norms. The Rawlsian paradigm typically limits its applicability to advanced Western democracies, but social cases beyond such boundaries provide a variety of conceptual insights via comparative analytics. In particular, they demonstrate that the operational dynamics of institutional evolution and change occur consistently across both modern and nontraditional environments. Such operational features are not unique to the Inuit context; similar research provides institutional descriptions across other nontraditional contexts, including primitive tribes (Posner 1980; Benson 1988), organized criminal syndicates (Gambetta 1996; Leeson 2011; Skarbek 2014), frontier communities (Ellickson 1994; Anderson and Hill 2004), and many others. In short, across both traditional modern developed contexts and nontraditional social environments, a variety of principles of institutional dynamics bears relevance.

Though the particular institutions in historic Inuit society are vastly different from institutions in other societies—the contemporary United States, for example—those different institutional outcomes adhere to similar causal dynamics and operational principles. In short, individuals tend to invest in social institutions of governance via collective actions in the face of high or rising costs of conflict. Such institutions can take shape as formal governments or informal social norms or both, each having the potential

to serve as a substitute in the absence of the other. I chose to focus on Inuits because their particular norms explicitly violate the maximin condition and social equity and thus provide a unique opportunity to challenge the Rawlsian paradigm directly.

Traditional Inuit life prior to its integration with and displacement by the developed world in the early twentieth century was far removed from the material abundances of industrialization, with even more exaggerated material constraints than commonly observed within other primitive societies. The harsh environment of the frozen tundra provided sustenance resources only through narrow channels of large game-hunting and fishing endeavors (Matthiasson 1992, 24–34). Hence, resolving collective-action problems to maintain cohesive and effective group production efforts was often a matter of life and death for the entire community. If the tribe could not cohesively work together, everyone would starve and freeze. The direct threat from climate coupled with the inherent logistic challenges of reliable social coordination thus permeated almost all social customs and institutional norms across Inuit tribes.

Many of the most clichéd norms of Inuit culture have some grounding in reality. It is true that Inuits had many more words for snow than other languages do (Boas [1922] 2013) and that “eskimo kisses” (*kunik*), though slightly different from merely rubbing noses, were a genuine cultural practice because one’s face tended to be the only exposed part of the body to express signals of intimacy and trust. Hence, one can easily recognize that the particular conditional factors of Inuit society had a strong influence on even nonmaterial cultural norms that emerged therein.

Because Inuit tribes were so critically dependent on working cohesively as a group to hunt, fish, and construct shelter, violent conflict, especially among young strong men, was extremely costly. If the two strongest men fought and injured each other, the net productivity of the tribe was significantly curtailed. This connection had a direct effect on both the Inuits’ rituals of conflict resolution and their sexual cultural norms. Physical altercations, proprietary disputes, and conflicts surrounding sexual infidelity were resolved via nonviolent norms that heavily leveraged cultural practices of song and dance (Hoebel 1954). Disputants were expected to voice and perform their grievances. Tribal members sided with and supported the most compelling and engaging performer. Furthermore, polygamy and adultery were consistently observed as acceptable and stable social norms (Billson and Mancini 2007). In short, social institutions were aimed to strongly discourage, avoid, and swiftly resolve physical conflicts.

The pervasive influence of geographic conditions on social institutions conforms with a secondary insight provided by institutional theory: institutions tend to have long evolutionary histories and cannot be seamlessly decoupled from their surrounding institutional complements without altering the general patterns of social outcomes associated with the institutional basket. In other words, institutions come in clusters. Rules that directly relate to legal and/or political processes often relate and interact with conditions, rules, and policies more relevant to economic and cultural conditions. Hence, it is difficult and sometimes impossible to reshape specific social outcomes, such

as inequality, without disrupting a variety of other social and cultural processes, many of them with significant moral relevance.

The iconic Inuit practice of essentially euthanizing the elderly (no longer practiced but a prominent feature when Inuits were first encountered and studied in the latter part of the nineteenth century) brings this issue to light. At first glance, the idea of exiling elderly members of a society (an essential death sentence in their particular climate) seems morally repugnant and obviously so. More puzzling from an external vantage is the sense of duty and obligation reported by the elderly when conforming to this practice. Replicating such a custom in an advanced Western democracy would be almost impossible to rationalize or morally justify. However, a closer investigation and appreciation of the unique societal challenges of historic Inuit society makes such normative condemnations far more complicated and less certain.

Again, resource constraints for Inuits were extremely strict. Hence, the evolution and persistence of senicide can be seen as a necessary function of tribe sustenance. Submission to this norm was not determined by age but rather by when one's production-to-consumption ratio fell below one. If you consumed more than you produced, you risked the tribe's health and well-being because surplus production was scarce. Furthermore, it is interesting to consider the likely outcomes of an institutional change motivated by the maximin standard imposed into the Inuit context. A social security system akin to that of modern Western societies with forced savings rates and redistributions from the young to old would likely have condemned a historical Inuit tribe to death and starvation.

Conclusions

I have argued that the Rawlsian paradigm does not achieve its intention to identify margins from which to objectively assess the relative moral value of different social institutions. I identified two critical forms of knowledge problems inherent to the Rawlsian paradigm. First, Rawlsian theorists do not know with objective certainty that the normative standards they presume reasonable agents will hold, such as the maximin condition, are accurate. Hence, we are still left with the challenge of how to assess the relative moral weights across different reasonable but conflicting moral standards. Second, agents choosing from behind the veil do not know what real intentions or normative priorities actually motivate real individual citizens and real institutional decision makers. Hence, institutional changes justified via the Rawlsian veil of ignorance tend to be shortsighted regarding their full practical consequences and the normative implications of those consequences.

Though the Inuit case study appears far afield from the case of advanced Western societies, I selected it because in it the institutional tensions and consequences of imposed institutional changes are most obvious. But the same principles of institutional operation consistently hold within contemporary developed contexts. In short, modern institutions and social outcomes are also deeply embedded with their local conditional

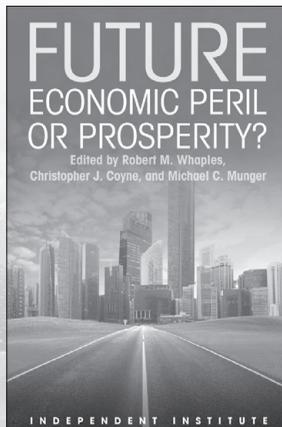
factors and long-run evolutionary histories. Social outcomes as varied as economic performance, rates of military conscription, the degree of regulated labor markets, welfare spending, government ownership of banking, and incarceration rates have been shown to carry strong and robust correlations with long-run embedded markers of historical institutional choices. In short, key institutional decisions were made during episodes of social conflict long ago. Such instances of conflict varied significantly across different social environments and legal systems, and such differences altered the selection of different institutional types. Furthermore, such institutional differences are associated with significantly different patterns of social outcomes today (La Porta, Lopez-de-Silanes, and Shleifer 2008). It is also well established that transporting singular institutional types such as labor policies or financial regulations across these categories of institutional clusters may disrupt the functional components of other surrounding institutions within the imported social environment.

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