

# IS APPLIED HUMAN JUSTICE POSSIBLE IN A MERITOCRACY? A COMPARISON/CONTRAST OF ANSWERS FROM RAWLS AND PERELMAN

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**Abstract.** When Rawls' *A Theory of Justice* was published in 1971<sup>1</sup>, a conversational debate on justice was already underway between him and Polish/Belgian legal theorist Chaïm Perelman. In 1975, Michel Meyer<sup>2</sup> outlined that this debate on a workable theory of justice was based upon the fact that Rawls was operating from Kantian starting point (which was ahistorical, abstract and universal), while Perelman was operating from a modified Hegelian starting point (which was resolutely historical, concrete and particular). Meyer states: "For Rawls, it seems that the principles of justice, which are deduced from the postulated existence of an original situation, are formal truths, whatever he may say about it. However, for Perelman, «the rules of a constituted society are for the most part products of a historic past» . . . , as well as their improvements"<sup>3</sup>. As he concludes, "Rawls' ambition is to think out a consistent theory of justice which would be a philosophical ideal that ought to be realized on earth. Perelman's ambition on the other hand, is not to think out what should, but what could be in a world torn by conflicts of interests and passions"<sup>4</sup>. From these two diverse perspectives on justice, I will then consider the 'wicked' issue of defining and applying the ambiguous concept of 'merit' in Anglo-American societies; the current debate of which seems to parallel the larger philosophical debate of justice (as per its nature versus its application) as demonstrated between Rawls and Perelman.

**Keywords:** John Rawls, Chaïm Perelman, Kantian philosophy, Hegelian philosophy, meritocracy, justice.

## 1. WHAT IS A WICKED PROBLEM?

The early description of "wicked problems" are described by Termeer, Dewulf and Biesbroek as:

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<sup>1</sup> J. Rawls, *A Theory of Justice*, Cambridge [MA, USA], Harvard UP, 1971.

<sup>2</sup> In "The Perelman-Rawls Debate on Justice", *Revue Internationale de Philosophie* 29, 113 [3], 1975, pp. 316–331.

<sup>3</sup> *Op. cit.*, p. 323.

<sup>4</sup> *Op. cit.*, p. 331.

The earliest published definition of wicked problems can be found in a 1967 guest editorial by C. West Churchman in *Management Science*, where the following definition is attributed to Horst Rittel: ‘a class of social system problems which are ill-formulated, where the information is confusing, where there are many clients and decision makers with conflicting values, and where the ramifications in the whole system are thoroughly confusing’ (Churchman, 1967, p. B-141). The adjective ‘wicked’ was initially supposed to describe ‘the mischievous and even evil quality of these problems, where proposed “solutions” often turn out to be worse than the symptom’ (Churchman, 1967, p. B-141). Applying rational approaches, such as operations research, to wicked problems requires isolating a piece of the problem to solve it, leaving the untamed part of the problem unaddressed. In the words of the same author, this boils down to taming the growl of the wicked problem, such that it ‘no longer shows its teeth before it bites’ (Churchman, 1967, p. B-141). Attempting a deep understanding of the untamed aspects of wicked problems is therefore a moral obligation according to Churchman. The subsequent seminal paper by Rittel and Webber (1973) elaborated and established the notion of the wicked problems, for which there are ‘no solutions in the sense of definitive and objective answers’ (p. 155)<sup>5</sup>.

## **2. THE FORMAL DEFINITION OF JUSTICE AS A WICKED PROBLEM: RAWLS’ TAKE**

*Rawls on justice formally defined:* According to Meyer’s critique:

In his publication on «Constitutional Liberty and the Concept of Justice», Rawls upholds a theory of justice based on the two following principles:

1. «Each person participating in an institution or affected by it has an equal right to the most extensive liberty compatible with like liberty for all.
2. Inequalities as defined by the institutional structure or fostered by it are arbitrary unless it is reasonable to expect that they will work at to everyone’s advantage and provided that the positions and offices to which they attach or from which they may be gained are open to all » (6).

Rawls calls this conception «justice as fairness», for the contracting parties undertake to play the social game and to respect these two principles.<sup>6</sup>

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<sup>5</sup> C.J.A.M. Termeer, A. Dewulf, R. Biesbroek, “A Critical Assessment of the Wicked Problem Concept: Relevance and Usefulness for Policy Science and Practice”, *Policy and Society*, 38(2), 2019, pp. 167–179. Texts referred to are: C.W. Churchman, “Wicked Problems”, *Management Science*, 13(4), 1967, B-141–142 and H.W. Rittel, M.M. Webber, “Dilemmas in a General Theory of Planning”, *Policy Sciences*, 4, 1973, pp. 155–169.

<sup>6</sup> M. Meyer, p. 317. The reference he makes is to J. Rawls, “Constitutional Liberty and the Concept of Justice”, in *Justice*, C. Friedrich and J. Chapman (eds.), (eds.), *Nomos VI* (1963), pp. 98–125.

### 3. THE APPLIED DEFINITION OF JUSTICE AS A WICKED PROBLEM: RAWLS' TAKE

*Rawls on justice applied:* Meyer states:

In his book [*A Theory of Justice*] Rawls completes the formulation of the two fundamental principles that he has previously given to us in his article (cited pages 2 and 3).

1. Each person is to have an equal right to the most extensive basic liberty compatible with similar liberty for others.
2. Social and economic inequalities are to be arranged so that they are both (a) reasonably expected to be to everyone's advantage; (b) and attached to positions and offices open to all.<sup>7</sup>

### 4. THE DEFINITION OF JUSTICE AS A WICKED PROBLEM: PERELMAN'S TAKE

*Perelman on justice:* According to Edmund L. Pincoffs' review of Perelman's *Justice* (1967), philosophers need "to show that their discipline is 'not a purely theoretical and critical activity, but one that can fulfill a constructive function in the behavior of individuals and societies by rationally determining norms and values' through the presentation of 'the relation between justice and reason with greater precision'" (p. 292). Pincoff continues, "In the second chapter, Perelman isolates the 'Rule of Justice,' which requires non-arbitrariness of treatment of individuals under whatever system of laws obtains. The Rule requires 'the equal treatment of beings who are essentially alike' (p. 23). This is a formal rule which does not itself tell us anything about when two beings are essentially alike, nor how they are to be treated equally. It permits the 'coherent and stable functioning of a juridical order," but this leaves open the question whether the 'order thus realized be in itself just' (p. 26)".<sup>8</sup>

The foundational dispute between Rawls and Perelman, according to Meyer, is:

We are going to recall here the history of the debate between these two philosophers; a debate which ultimately recalls the fundamental opposition, in the field of ethics, between Kant and Hegel. Rawls belong to the Kantian tradition, in the sense that he propounds a contractual moral theory grounded on rules of justice reasonable [sic] for all parties to the contract who are situated in a certain original position. «My aim is to present a conception of

<sup>7</sup> *Op. cit.*, p. 324.

<sup>8</sup> E. L. Pincoffs, *Justice* by Chaim Perelman. Book Reviews. *The Philosophical Review* 79(2), (Apr., 1970), pp. 292–295; p. 292.

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» (4). On the other hand, Perelman denies that it is possible to base an ethical theory on indubitable principles and abstract rules for engendering a just society. Belonging to the Hegelian tradition, he believes that ethics is always conditioned by history and that, behind the formalism of ethical and juridical rules, the inevitable play of values is concealed. But, unlike Hegel, Perelman does not think there could exist any supreme value, any Absolute, which would determine all the other values and with the achievement of which all history would therefore come to an end”.<sup>9</sup>

### 5. RAWLS' RULES OF ETHICAL DECISION-MAKING

Meyer states, “in the above cited article, Rawls puts forward three rules of decision [making]:

1. «If the criteria for decision proposed by any one member is accepted, the claims of the others shall be judged according to the same criteria.
2. No complaint shall be heard until everyone has agreed, in general, on the principles according to which complaints shall be judged.
3. The principles proposed and recognized on any given occasion shall be considered obligatory, except for special circumstances for all subsequent occasions»”.<sup>10</sup>

Rawls is depending on his a historical/hypothetical “veil of ignorance” situation in making these conditions. As he states, “among the essential features of this situation is that no one knows his place in society, his class position or social status, nor does anyone know his fortune in the distribution of natural assets and abilities, his intelligence, strength, and the like. I shall even assume that the parties do not know their conceptions of the good or their special psychological propensities”.<sup>11</sup>

### 6. FORMAL VERSUS INFORMAL CONCEPTIONS OF LOGOS

Along the lines of Meyer’s critique, I posit that the core issue driving the debate between Rawls and Perelman over the ethics of political decision-making is their different starting points concerning *logos*. Rawls begins with a formal philosophical logic, Perelman with an informal one. (In this embrace of informal logic, Perelman walks in the steps of philosopher Stephen Toulmin.) As I have

<sup>9</sup> M. Meyer, p. 316.

<sup>10</sup> *Op. cit.*, p. 320.

<sup>11</sup> J. Rawls, *A Theory of Justice*, Rev ed. Cambridge [MA, USA]: Belknap/Harvard UP, 1999, p. 11.

explained elsewhere<sup>12</sup>, Toulmin and Perelman's goal is to rescue ethical decision-making from abstract hypotheticals. Their goal is:

[T]he re-integration into the process of knowledge discovery the Aristotelian concept of 'practical reasoning' which had been lost since the separation of classical 'invention' from the art of persuasion, as noted above, and the subsequent growth of reductive scientism in the 18th-20th centuries. As Toulmin states, "We will attempt to characterize the "rational process" by which arguments are created, actually argued and settled" (*The Uses of Argument*, p. 7). Similarly, Perelman had discovered how he, after studying the concept of formal justice in the late 1940s (resulting in the premise that "everyone in the same category be treated in essentially the same way") despaired because he saw no rational way (using formal logic) by which to decide upon the definition of categories[?]. "I had to conclude that decisions about values were arbitrary."<sup>13</sup>

Toulmin's and Perelman's solution is, according to Gilder:

"At about the same time, Toulmin also was puzzled about a similar problem in his *Reason [in] Ethics*, i.e., the discovery of a middle ground between the "Hobson's choice" offered by formal logic, that is, either absolutism or relativism in ethical thought. Hence, Perelman developed his thoughts in [*The*] *New Rhetoric: A Treatise on Argumentation* (as did Toulmin in [*The*] *Uses of Argument*. Both authors depend upon a rediscovery of Aristotle's *Topica*, wherein he had outlined the tools of rhetorical invention.)"<sup>14</sup>

"Turning specifically to Perelman's unique contribution, rhetoric is defined as the 'gaining of the adherence of the minds of the audience to those conclusions offered by the orator to them [for their assent]" (based upon premises to which they agree. But how does one know whether this "adherence of minds" is warranted or not?"<sup>15</sup>

## 7. THREE AUDIENCES FOR ETHICAL DECISION-MAKING

Rawls seems to imagine a perfectly rational, disinterested audience in his original conception of his contractual theory. Pointing to Perelman's more elaborate consideration of differing types of audience Gilder continues:

<sup>12</sup> E. Gilder, "Appendix III". *Topical Argumentation Practice: Selected Historical Readings in Post-War Commercial Radio Broadcasting in the United Kingdom*, Sibiu: Techno Media Press, 2019 (pp. 304–19).

<sup>13</sup> *Op. cit.*, pp. 308–09. The referenced work is S. Toulmin, *The Uses of Argument*, Cambridge [UK]: Cambridge UP, 1958.

<sup>14</sup> *Ibid.* The referenced works are: S. Toulmin, *Place of Reason in Ethics*, Chicago: Univ. of Chicago P., 1995; C. Perelman, *The New Rhetoric: A Treatise on Argumentation*. (Trans. J. Wilkinson) Notre Dame [IN]: Univ. of Notre Dame P, 1969.

<sup>15</sup> *Op. cit.*, pp. 309–10.

1. The particular audience: This audience is that audience which has certain interests and needs, and which is composed of by both rational and reasonable persons and by irrational and unreasonable persons. . . ;
2. The composite audience: This audience is composed of a number of different particular audiences. Because of this, the rhetor will be required to either look for commonalities among the members of the audience, or choose to ignore segments of the audience. . . ;
3. The universal audience: This audience is composed of "all reasonable and rational persons who are competent to judge on an issue," according to Perelman.<sup>16</sup>

In my view, Perelman is saying that decision-making has to keep all three types of audiences in mind, and in tension, when making inherently public ethical decisions.

Turning to deliberative deciding and practical life outcomes, Gilder concludes, "the grounds for the differences between formal and informal reasoning lie in the process of deliberative living. Formal logic, based upon mathematical formulas, does not have an isomorphic relationship to real life. Informal logic, however, does. As both Toulmin and Perelman argue, the core model of informal reasoning is the jurisprudential decision-making process. Human judges have to decide real-life cases, reasonably weighing between evidence, precedent and justice. They cannot avoid making a decision by hiding behind philosophical quibbles".<sup>17</sup>

Let us now turn to a consideration of "meritocracy" in light of Rawls and Perelman's thought.

## 8. DEFINING AND APPLYING THE AMBIGUOUS CONCEPT OF 'MERIT'



"OK, OK, you guys have had your chance—  
the horses want another shot at it."

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<sup>16</sup> *Op. cit.*, p. 310.

<sup>17</sup> *Op. cit.*, p. 312.

<sup>18</sup> "60 Observations on Life from the Far Side by Gary Larson ...", (n.d.) Allwomenstalk – girl rules. Retrieved: <https://www.pinterest.com/pin/627337423091770523/> (29/09/2021).

Asking, “is it possible to be fair in a true meritocracy?,” Bektas argues, in “Meritocracy as Principle of Justice”<sup>19</sup>:

“In *A Theory of Justice* the writer starts with a contentious phrase. He puts it, ‘Justice is the first virtue of social institutions, as truth is of systems of thought’ (Rawls, 1971, 3). To put in another way, the first principle of social institutions is justice, since truth is the primary aim of logic. To clarify this statement, one ought to consider the function of a social institution and why they should be fair, and whether truth is the critical basis of logical thought. Starting from social institutions, the definition, which has not been accurately given by the philosopher, leads to obscurity. To describe the phrase, contemporary sociologists and political scientists consider it to refer to complex social forms that manifest themselves as family, government, universities, hospitals, and schools. . . . *In schools, it would be more acceptable to see the truth in such an organization determined by merit, not fairness.* To be fair in such an institution means to provide equal opportunity for each student, which is psychologically and pragmatically a mistake. To apply fairness in such institutions, in fact, is paving a way to injustice”.<sup>20</sup>

“In other words, Rawls’ principles of justice were founded on ‘equitable treatment’ of social cooperation. To put it differently, the idea of equality in every aspect of social institutions is an essential element for Rawls. Here is precisely the point where the meritocratic thought is interrupted with Rawls. While Rawls wants institutional and social equality, meritocracy claims that such equality is achieved through talent”.<sup>21</sup>

Arguing the idea of whether perceived merit in neo-liberal societies overrides true merit, Jo Littler, in her *Against Meritocracy: Culture, power and myths of mobility* noted, “‘meritocracy’ has, ever since it was first used and in all its different historical–political incarnations, meant a society where people are given far greater economic rewards according to their *perceived* merit.”<sup>22</sup> This creates a system of economic inequality, which means their children grow up in privileged circumstances. ‘Meritocracy’ is thus, as it has always been used so far, a tautology”.<sup>23</sup> So, the term needs to be re-defined, keeping its good elements while discarding the pernicious. She continues, “Equally, it is not useful or credible to deny the importance of merit. It is, however, important to argue about what forms of merit are useful for what purpose, and to nurture them in their diversity. It is not useful, as Michael Young’s satire pointed out all those years ago, to create an elite

<sup>19</sup> M.S. Bektas, “Meritocracy as Principle of Justice”, European Students Think Tank, 25 May 2019, pp. 1–15. Retrieved: [https://esthinktank.com/2019/05/25/meritocracy-as-principle-of-justice/\(29/05/2021\)](https://esthinktank.com/2019/05/25/meritocracy-as-principle-of-justice/(29/05/2021)).

<sup>20</sup> *Op. cit.*, p. 8, emphasis added.

<sup>21</sup> *Op. cit.*, p. 10.

<sup>22</sup> J. Littler, *Against Meritocracy: Culture, Power and Myths of Mobility*, London & New York: Routledge, 2018.

<sup>23</sup> *Op. cit.* p. 220, emphasis added.

cadre of those deemed to have merit at the expense of others and of themselves (Young 2004)”.<sup>24</sup>

## 9. TALKING OURSELVES OUT OF THE LADDER MYTHOLOGY OF EARNING MERIT

Littler closes her book by observing that “the ladder is the prime symbol of meritocracy: as Raymond Williams pointed out nearly seventy years ago, it ‘weakens community and the task of common betterment’, as its promise of individual rewards ‘sweetens the poison of hierarchy’ . . . . One of Altgen’s graphics depicts a ladder turned on its side, above the caption ‘You don’t need to climb the ladder’ (Figure C.1). This is not just inviting other people to drop out and do nothing. It is inviting them, or us, to engage in constructing alternatives that involve working together and to share resources.

A key issue is what possibilities do and might exist for those who do not believe in neoliberal meritocracy and those who are actively trying to construct alternatives to it to connect together, in order to create and to popularise democratic alternatives to the individualised social ladder”.<sup>25</sup>

It is my view that a careful use of the diverse audience constructs of Perelman can carry us beyond the formal limitations of Rawls’ theory of justice without falling into power relativism.



Figure C.1 Altgen graphic. Design by Constance Laisné for Altgen. Reproduced courtesy of Constance Laisné and Altgen via a Creative Commons License.<sup>26</sup>

<sup>24</sup> *Op. cit.* p. 221. The referenced book is M. Young, *The Rise of the Meritocracy*, 2<sup>nd</sup> rev ed. London: Transaction Publishers, 2004.

<sup>25</sup> *Op. cit.* p. 222. The referenced quote is from R. Williams, *Culture & Society 1780–1950*. New York: Anchor/Doubleday, 1960, p. 351.

<sup>26</sup> *Op. cit.* p. 223.



## 10. CONCLUSION: RHETORICAL NOVELTY AS AN OVERALL APPROACH

In a recent LUMEN conference I participated in,<sup>27</sup> I took their definition of Novelty: “seeks to highlight the issues generated by the need for personal, institutional and social adapting to what is new, and to a continuous paradigmatic change, both in the field of knowledge and of social action” and turned to rhetorician Kenneth Burke for insight:

“Burke: ‘Throughout his writings, Burke says and shows that words are actions, reflecting ethical decisions, and it follows that even in a motivational jungle another person’s meaning should be respected as that other person’s own, *particularly if communication and coping are the goals of symbolic action*. Finally, Burke argues that texts are themselves more or less conducive to particular attitudes, that there is a trade-off between form and information; he recommends that critics’ decisions about what they are looking for—determinate or indeterminate meaning—should stand pragmatic tests (*Attitudes* 200). As we shall see, Burke transcends the either/or distinction between determinate and indeterminate by his key term, “rhetoric”’ (emphasis added, Warnock, 1986, p. 63).<sup>28</sup>”

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<sup>27</sup> E. Gilder, “Is the Past a Prologue? Construing Future Possibilities amidst Present Perditions in a Continuing Time of Crisis,” Plenary Presentation, WLC 2021, LUMEN, Iasi, Romania, 26–30 May 2021 (34 Slides).

<sup>28</sup> *Op. cit.*, slide 27. The referenced article is T. Warnock, “Reading Kenneth Burke: Ways in, Ways out, Ways Roundabout”, *College English* 48(1) (Jan., 1986), pp. 62–75. The book referred to is K. Burke, *Attitudes toward History*, 3<sup>rd</sup> ed. Berkeley: U of Calif. P, 1984.