

Rawls and Nozick on justice

RAWLS: JUSTICE AND THE SOCIAL CONTRACT

John Rawls' theory of distributive justice (*A Theory of Justice*) is based on the idea that society is a system of cooperation for mutual advantage between individuals. As such, it is marked by both conflicts between differing individual interests and an identity of shared interests. Principles of justice should 'define the appropriate distribution of the benefits and burdens of social co-operation'. (p. 4) Justice is the most important political value and applies to the 'basic institutions of society' – the political constitution and the institutions that regulate the market, property, family, freedom, and so on – because it is intimately connected to what society is and what it is for. If society is a matter of cooperation between equals for mutual advantage, the conditions for this cooperation need to be defended and any inequalities in social positions must be justified. And so the principles of justice, Rawls thinks, must be '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' (p. 11). Justice, then, is fairness.

What are the terms of the 'social contract'? What principles of justice would we agree to in this situation? For our agreement to secure a fair, impartial procedure, we need to eliminate any possible bias towards, say, the rich or the poor, or the religious or the atheist. So, argues Rawls, assume that we are to agree on these principles *without knowing what our position in society will be* or what our idea of the good is. The point of this 'veil of ignorance' is to ensure

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 similar situated and no one is able to design principles to favour his particular condition, the principles of justice are the result of a fair agreement or bargain. (p. 12)

Rawls calls this the 'original position'. Of course, Rawls is not supposing that anyone has ever made decisions on this basis. The original position is simply a hypothetical thought experiment that seeks to 'make vivid to ourselves the restrictions that it seems reasonable to impose on arguments for principles of justice, and therefore on these principles themselves'. (p. 18)

Two principles of justice

The goods to be distributed by justice are only those that we can assume everyone will want. These include rights, liberties, powers, opportunities, income, wealth, and self-respect. In the original position, Rawls argues, first, we will only agree to an equal distribution, unless a certain amount of inequality will work to everyone's advantage, for example by providing incentives which will generate more wealth for everyone. Second, once a certain level of material well-being is secured, we will value our basic liberties – political liberty, the freedoms of speech, assembly, conscience, thought, personal property – more than other goods. So equal liberty will be preferred to unequal liberty but greater wealth.

These two ideas lead to two principles of justice, with the first (political justice) always taking priority over the second (social justice):

1. 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; and
2. social and economic inequalities are to be arranged so that they are both
 - a. to the greatest benefit of the least advantaged... and
 - b. attached to offices and positions open to all under conditions of fair equality of opportunity. (p. 302)

The most controversial claim is 2(a), known as the ‘Difference Principle’. Rawls argues that inequalities should be to everyone’s benefit. But is he right that we would choose the Difference Principle in the original position? Which of the following two scenarios is it rational to prefer, if we have a 50% chance of being either richer or poorer?

	Richer	Poorer	Average
A:	50	40	45
B:	150	30	90

Rawls argues for A – ‘maximise the minimum’ level of welfare. But we can object that it makes just as much sense to maximise the average wealth (B), especially as there is equality of opportunity that will allow one to improve one’s position.

Self and society

Rawls’ theory is based on his view that society is a cooperative pursuit of what is in our individual interest, which can be identified prior to our existence in society. Both Conservatism and Marxism would reject this liberal individualism. It rules out any theory that sees social bonds as intrinsically good, rather than a means to our individual advantage. It assumes that we are fundamentally separate, rather than naturally social. It understands justice as arising out of conflicting claims between individuals who are disinterested in each other’s welfare.

Second, in his defence of the usefulness of the original position, Rawls assumes that you and I can meaningfully exist *as ourselves* behind the ‘veil of ignorance’ – or the original position is useless in discerning justice for *us*. A different theory of the self, known as communitarianism, argues that our individual identities are defined by our values, what gives meaning to our lives. We cannot strip ourselves of such ideas in a thought experiment; nor would the results of the thought experiment be meaningful for us. Furthermore, our values and conception of what is good are derived from other people, and held in common with them. We gain our values in a community – another objection to Rawls’ individualism.

If this is right, then even if redistribution is justified, it is not justified by Rawls’ argument. In the next section, we will discuss further objections to Rawls’ theory of justice.

THE RELATIONSHIP BETWEEN DISTRIBUTIVE JUSTICE, LIBERTY AND RIGHTS

The three principles of distributive justice we discussed, based on equality, need and desert, did not comment on the relationships between justice and liberty, nor did they

make use of the concept of 'rights' in developing their accounts. By contrast, Rawls explicitly relates his theory to both liberty and rights.

Rawls' first principle of justice covers liberty, and he argues that, once a certain level of material well-being is secured, it should always take priority over the second principle regarding distributive justice. Liberty is more important than the distribution of social and economic inequalities.

Rawls rejects the idea of rights prior to the principles of justice. Principles of justice *assign* rights (and duties, benefits and burdens), so people can only make a rights claim once the principles of justice are in place.] We could object that justice is served when people receive what they have a right to. We could argue, for instance, that people have a right to what they need or deserve. A different theory, which bases justice on rights and liberty, is that of Robert Nozick.

Nozick's entitlement theory

Robert Nozick (*Anarchy, State and Utopia*, Ch. 7) is primarily concerned with the distribution of property, and argues that justice involves three ideas:

1. Justice in acquisition: how you first acquire property rights over something that has not previously been owned
2. Justice in transfer: how you acquire property rights over something that has been transferred (e.g. by gift or exchange) to you by someone else;
3. Rectification of injustice: how to restore something to its rightful owner, in case of injustice in either acquisition or transfer.

Nozick's theory of justice claims that whether a distribution is just or not depends entirely on *how it came about*. By contrast, justice according to equality, need, desert or Rawls' Difference Principle depends entirely on the 'pattern' of distribution at that moment.

An advantage of Nozick's theory is that if a certain distribution of goods (D1) is just (according to whichever theory you like), then if people voluntarily move to a different distribution (D2), observing justice in transfer, D2 will also be just. Whether D2 is patterned according to equality, need, desert or the Difference Principle is *irrelevant*. Suppose a famous footballer whom people love to watch, e.g. Cristiano Ronaldo, asks to be paid 25p of each ticket sold for home games. The club agrees and fans are happy to pay the extra 25p each. If 400,000 people go to his games in a season, he will be £100,000 richer. According to Nozick, this is not unjust, because everyone gave the extra money *voluntarily*. Yet the new distribution would be deemed unjust by the other theories.

Justice, Nozick argues, is about respecting people's (natural) rights, in particular, their rights to property and their rights to self-ownership. We must allow people the freedom to decide what they want to do with what they own. Each person is separate, an individual, and we must respect their autonomy. People are 'ends-in-themselves', and we cannot use them in ways they do not agree to, even if that would lead to some supposed 'greater good' (e.g. other people getting what they need). This has a radical conclusion: to take property away from people in order to redistribute it according to some pattern *violates their rights*. But this is exactly what taxation (for the purpose of redistribution) does. To tax Ronaldo's extra earnings and return the money to the poorer fans violates his right to the money.

Nozick thinks property rights are important because they derive from 'self-ownership'. A person has a right to what they produce, because they own their own labour, which they invest in creating the product. 'Justice in acquisition' places constraints on exactly when and how this occurs, but this is the basic idea. And once something is (justly) owned, then justice is all about justice in transfer.

If people have the right to do as they choose with their property, then liberty upsets patterns, as the Ronaldo example shows. So all patterned theories of distributive justice restrict people's free actions. Either we will constantly have to intervene with the distribution of property to bring it back into line with our patterned principle of justice or we will 'have to have to forbid capitalist acts between consenting adults'. (p. 162)

Discussion

Nozick's theory is very controversial, because it could justify *very* unequal distributions of property that may not respect what people deserve, nor what they need, nor give any kind of priority to people who are worse off. If he is right, redistribution cannot be justified except to rectify a previous injustice.

Rawls challenges Nozick's defence of property rights. Much of what people own is the result of people's social position and their natural talents, both of which are morally arbitrary. Therefore, any inequalities in ownership are unjust. Furthermore, what rights people have to property can't be decided *before* deciding on the principles of justice. People don't have a right to the earnings their talents bring them, only to that share which they keep according to the principles of distributive justice.

Nozick responds that each person's talents and abilities belong to them. They therefore have a right to keep (or do whatever they want with) whatever these talents and abilities gain for them. To forcibly redistribute what they earn is to fail to respect their autonomy.

But even if people own themselves, we can argue that this doesn't entail that we have the right to do *whatever* we want with *all* of our property. A reinterpretation of 'justice in transfer' could place restrictions on property rights. Nozick supposes that any transfer, if it is freely consented to, is just. We can argue that the rules governing transfer should be sensitive to *many* political values, not just liberty. The rules we currently have (regarding tax, inheritance, transfer between married couples, gifts and so on) are a product of balancing many considerations relating to patterns of production and work, family life, and political institutions.

Furthermore, we can interpret individual liberty as a goal to be pursued, not a constraint. If the value of justice rests on liberty, and Nozick is right that property is so important for liberty, then surely we must ensure that everyone has sufficient property to be free. Redistribution of property from the rich to the poor will equally be a redistribution of liberty. But this is a patterned principle of justice.

A final objection to Nozick is this: History shows that a great deal of initial acquisition of property was unjust, based on theft, exploitation, slavery and colonization. All property that derives from unjust acquisition is unjustly held. You do not have a right to transfer property you stole, nor does the new owner have a right to what they receive. But, of course, we cannot *now* rectify the injustice of the past. We have no way of establishing what belongs to whom. So Nozick's theory has no application if we do not start from a

just beginning; we must therefore work out a different theory of justice that is not so sensitive to past injustices that we cannot correct. The historical nature of Nozick's theory turns out to be a weak spot.