

John Rawls & Justice

Helen McCabe considers the arguments over Rawls' theory of justice.

Justice, Harvard philosopher John Rawls (1921-2002) claimed, is the first virtue of institutions. Certainly justice seems to be the first concern of contemporary political theorists, and has been since Rawls published *A Theory of Justice* in 1971. A great deal has been written about it, and the on-going nature of the investigation shows how difficult it is to see the wood for the trees. Justice is 'an essentially contested concept', to borrow Michael Freeden's phrase: philosophers disagree about what goes into justice, what weighting the different components of justice should have, and where justice sits in relation to other concepts. This makes justice a very difficult topic to get a handle on. In this article I will try to lay out where the disputes arise between some famous and competing understandings of justice, in order to gain an overview of the problem.

Rawls himself was particularly concerned with *distributive* justice, which is about the distribution of what he calls 'the social surplus' – that is, all the things we get only through co-operating in a society. That we're talking about the social surplus is important, because it means that we can't resist quite a few claims of justice that libertarians and even some liberals would like to resist. For instance, it means the rich capitalist cannot refuse the claims of the starving child in his country on the grounds that the child has never known him or worked in one of his companies. Rawls would argue that by obeying the law, and thus participating *in some way* in the co-operative endeavour of their society, this child is owed duties of justice by the rich banker. (Rawls seems to think this doesn't work for the whole world, despite globalisation, although some modern Rawlsians want to apply his principles globally.) What we are distributing, then, is not merely money or 'stuff', but rights and liberties, and even opportunities.

Rawls believes that justice can be created through just institutions. If what he calls the 'basic structure' of a society (things like its constitution) is just, then that society will be just. Rawls says that in order to determine which social institutions would be just, we need to discover what kind of social structure would be chosen by rational agents free from prejudice and partiality, that is, what principles of justice do they think ought to govern the basic institutions of society, in terms of how it's structured and how people divide all the benefits of co-operating in a society? Rawls' mechanism for determining what people would rationally but impartially choose, is through a thought experiment. Imagine people in an 'Original Position' (OP) behind a 'veil of ignorance', where they have been stripped of knowledge of potentially-biasing identifying features such as their age, race, religion, talents, abilities, preferences and presumably their gender, as Susan Okin points out. With no knowledge of what their position will be in the society, they then choose what society should be like.

The outcome of deliberations from the OP, Rawls thinks, would be that his unbiased agents would vote for the following principles: firstly, each person is to have an equal right to the most extensive system of basic liberties compatible with a system of equal liberties for all; secondly, social and economic inequalities are to be arranged so that they are both a) to the greatest benefit of the least advantaged compared with other possible social systems (the 'maximin' principle), and b) attached to positions open to all under conditions of fair equality of opportunity. The first

principle always has priority over the second – we may not trade off rights and liberties for greater equalities.

Criticising Rawls

There are many potential problems with Rawls' mechanism for determining social justice. One is that people don't seem to actually *maximin*, ie opt for a system which 'maximises the minimum', as Rawls suggested they would. Rather, people seem to prefer a system which guarantees the meeting of a fairly high threshold of needs, and then very little interference. So perhaps Rawls was wrong, and his principles are *not* those to which unbiased rational agents would agree.

Another problem is that posed by communitarians: does the idea of an 'unbiased rational agent' even make sense as Rawls formulates it? Don't our talents, abilities, preferences, religions, moral codes, ethnicities and cultures rather *make us who we are*? What would an individual even *be* if all of this identity had been abstracted from them? There are two versions of this attack. One is to say that Rawls' OP agents wouldn't be *human* – perhaps this approach would work for Vulcans, but we are interested in justice for humans. Another is to say that Rawls' whole idea is metaphysically impossible – there would not be anything deliberating behind the veil of ignorance if all of these things were abstracted from the individual.

There are further communitarian objections, some shared by ideologies with a communitarian aspect, such as One Nation conservatism, or socialism. One is that Rawls' understanding of justice is based on seeing society as a set of isolated individuals. They may be co-operating, but only out of necessity. Thus Rawls rules out the idea of society being intrinsically good, rather than merely a necessary means to individual advantage; and he assumes we are fundamentally separate, rather than naturally social. Moreover, he understands justice as arising out of competing claims between individuals who are uninterested in each other's welfare, and must be *forced* to be just by just institutions. All of these points can be challenged.

Another kind of attack is to disagree with Rawls' understanding of the place of justice. Rawls' colleague in the next-door office at Harvard, Robert Nozick, for instance, disagreed that justice necessarily respects or creates rights: for him, it is the other way around. G.A. Cohen, Marxist political philosopher, and a former Professor of Social and Political Theory at Oxford, too, suggested in lectures that justice may not be the first virtue of institutions, as Rawls claimed – is it more important for society to be just or to be stable, for instance?

Leaving aside Rawls' methodology, we might also disagree with his principles of justice. Cohen, for instance, although sympathetic to Rawls' project, thinks his principles do not work.

Rawls believes that talents are arbitrary and we ought not, really, be rewarded for them, since they are already an inequality which is to our advantage. However, Rawls has built into his principles of justice room for incentives: the talented can accrue unequal shares of the social surplus so long as they can show they are benefiting the least well off by doing so. Thus, the brain surgeon who would rather surf all day can ask for greater wealth in order to get off his surf board and into surgery, and as people would die if he did not operate on them (and as ill people generally count as being 'the least well-off'), this inequality is to their advantage. Cohen objects

that this is just the brain surgeon blackmailing dying people. And as blackmail is exploitative and unjust, Rawls' principles cannot be just.

Some contemporary Rawlsians think that Rawls could just reply, "Well spotted, Jerry – and that's why we wouldn't allow that kind of inequality if we had just basic institutions. Although the state could not force the surfer to get off the beach and go and work in a hospital – because that would infringe my first principle of justice about rights and liberties – there is no absolute need to pay him more if he does go and use his talents as he ought – to save dying people." Rawls doesn't say this in any of his books, but it is plausible that he would agree. (Of course, you might think we can force people to use their life-saving talents, but you would have to somehow square this with claims of liberty and autonomy.)

Cohen himself says that the only way for Rawls to get out of this problem is by including what Rawls calls 'an ethos of justice' alongside just institutions – so that people in his society would *believe* in Rawls' principles and *want* to see them instituted. But, says Cohen, they wouldn't *need* incentives to act in a just way for the benefit of the least well off if they actually believed they *ought* to act in their interest. So, as long as we have just people, we don't need Rawls' incentivising principle. Thus, Rawls' principles of justice either aren't really *just*, as they allow blackmail, or aren't really *necessary*, as just people wouldn't exploit each other anyway. This ties in with what Cohen has said in lectures, which was that Rawls' principles of justice might be many things (more expeditious, more efficient, better for producing greater wealth, etc.), but they are not *just*.

Nose-To-Nose With Nozick

Robert Nozick (1938-2002) has a different response to Rawls' claims about justice. Like Rawls, he thought that justice comes from a just *process*; but Nozick disliked what he called 'patterned' distributions of justice, which are about end-results, as he thought Rawls' two principles were. Nozick thought justice is the proper respect of rights; and that our rights stem from the fact that we are all self-owning individuals. By 'self-ownership', Nozick meant that we have the same rights of use, abuse, loan, sale, rent and, in the end, destruction, over our own bodies as we do over anything else we think of as property – land, pens, books, houses, money. If you withdraw £10 of your wages from a cash machine, you can do as you please with it: spend it, lend it, give it away, burn it, write a shopping list on the back of it, etc, etc, etc; and the same goes for your body, Nozick says. One implication of this way of thinking is that we all *deserve* to have this right respected, and it is a violation of justice if it is not. So long as there is what Nozick calls justice in acquisition and justice in transfer, then whatever *distribution* of resources results, it is a just distribution. It does not matter if inequalities are to the advantage of the least well-off, or even if people's needs are met, as long as the route was a just one, the outcome is also just.

In his book *Anarchy, State and Utopia* (1974), Nozick uses his famous Wilt Chamberlain example to demonstrate this point. Let us call a just distribution 'D1': whatever you think of as a just distribution (of, say, money), that's D1. Starting with D1, let us imagine that Wilt Chamberlain now asks for 25 cents to be added on top of the normal entry fee to a basketball game and then paid directly to him. Let us also imagine that all the basketball fans are happy to pay this – it is a tiny amount, and Wilt Chamberlain is a very great player. Given the gates over a

season, Chamberlain ends up with an extra \$250,000 by the end of it. Now, asks Nozick – how can this be unjust? Everyone consented to pay, and no force or fraud was used to get the money out of them. To complain about this because this is an unequal distribution, and to try and redistribute it, would be an injustice. It would, Nozick says, be to interfere unjustifiably in capitalist acts between consenting adults.

Nozick is a good writer, and lots of people have found his book convincing – and if they are egalitarian, very troubling. Cohen was in this latter position, and he spent a good deal of his life trying to show where Nozick goes wrong. Here are some of the objections he raises to Nozick:

Firstly, it might seem just to us that Chamberlain gets the \$250,000, but we don't live in a society with a just initial distribution of wealth. Perhaps in our society, the 'Chamberlains' (ie, the kids from the ghetto who make good with their own raw talent) are exactly the kind of inequalities we *don't* mind, given the general unfairness of the whole system. But under Rawls' principles, we would not be in this kind of system anymore, and once we had all come together and rearranged society so that there was a just distribution, we might be much more wary of immediately making it unequal. Nozick, therefore, makes his example look convincing through rhetorical sleight-of-hand.

Secondly, we might not agree that self-ownership can be the basis of justice. There are many possible reasons for thinking this, one of which is that self-ownership allows people to sell themselves into slavery, and we might think that that simply could never be just.

Thirdly, according to Nozick's concept of just distribution, we could never tax rich people for anything from which they will not also benefit. (Nozick thinks we might all have to contribute to a police force, for instance, although he would prefer an anarchist society in which even that was voluntary.) If we try and take money from millionaires and use it to buy food for starving children, we are making the millionaires the slaves of the children, according to Nozick. This seems counterintuitive.

Another problem with self-ownership is provided by Cohen's astronaut example. Imagine that an astronaut lands, by chance, on an uninhabited, but habitable, planet. Given that she is the first person ever to arrive there, she claims it as her property, and, according to Nozick, would be justified in doing so, as that counts as just acquisition. Now imagine a second astronaut lands. There is nothing for them to eat, or sleep on or under, or drink, that does not belong to the first astronaut. So, unless the first astronaut charitably gives them a share of the planet as their own property, the second has no choice but to become the first astronaut's slave. This looks unjust.

The power of this example, Cohen says, is that this is precisely the situation almost everyone on Earth finds themselves in: most of the planet's land, food, raw materials and other means of production, as well as articles of consumption, are owned by someone, so when people are born, unless they are born to the property-owning minority, they are in the position of the second astronaut. And this means that when they labour in return for the necessities of life (and sometimes not even that), they are basically slaves. As Nozick has himself said, being made to be someone else's slave is unjust. But this means that any system of private property, such as the one Nozick suggests, is unjust, and self-ownership can't help us with determining what is just.

For Cohen it also means that capitalism is unjust, and that the idea of self-ownership can't save it.

Cohen also has an objection designed to show that we don't have self-ownership. This is his 'eyes' example. Suppose the state were to hold a lottery every time someone went blind, and, if your National Insurance number came up and you still had your sight, it would take one of your eyes and give it to the blind person. This would be unjust. Nozick suggests this is the kind of thing a Rawlsian state could do in order to benefit the least well off, whereas Cohen denies that the state could justly do this because of Rawls' first principle of autonomy, or as Cohen puts it, because this would be a gross and unwarrantable interference in your life by the state. But this injustice is not because we are self-owning, as Cohen's next example shows.

Imagine that we live in a world where no one is born able to see, but where the state has the patent on mechanical eyes which, if implanted shortly after birth, work in adulthood even if they're not in the body of the person they were first transplanted to. Everyone has these eyes implanted at birth, and at death the state takes them back, refurbishes them, and uses them again. They remain the state's property, but it lets people borrow them for free over their lifetimes. Now let us imagine that if both these eyes break for someone, the state has a lottery, and if your number comes up, they take back one of their eyes from you and give it to the person with broken eyes. You might think this is also unjust – but if you do, then this shows it is *not* the idea of self-ownership at work (as the state retains eye ownership), but some other idea about what the state should and shouldn't do. So much, then, for Nozick.

Processes & Outcomes

The last thing to consider is a way of looking at justice which is akin to Rawls', but which by contrast says it's not about the *outcomes* but about the *process*. Thus, if people have equality of opportunity, or equal access to advantage, then this is justice .

The idea of equality of opportunity is built into Rawls' scheme. It is important to see, though, that this might well involve serious redistributions of resources. What would we need in order to have truly equal opportunities? Would it be fair if some people were born more talented than others, for instance – doesn't that create better opportunities for them? Would we all need similar educations? Opportunity egalitarianism certainly seems to require some sufficiency threshold built in (we presumably don't have equality of opportunity if we're starving, illiterate, or blind); but what would we do about the results of our choices? If someone has an unequal opportunity to flourish because they gambled all their savings on a roulette wheel and lost, do we have a duty to provide them with the opportunities they had before? Or with any opportunities?

Cohen wants a world in which the only inequalities are down to *choice*. This means he is less prone to compensate for bad luck arising from voluntary choices (although he proposes a safety-net). It also means he doesn't think we deserve rewards because of natural talents, which are as arbitrary as hair colour (and we don't think *that* justifies inequalities). This position can seem like a welcome relief from the complexities of 'patterned' and 'unpatterned' distributions, but it is by no means the easy option. For example, how would this world operate?

To conclude: distributive justice is a highly contested concept. People disagree about what has to be respected in order for society to be just; what can and cannot be distributed; what kind of outcomes look just: and whether or not we should be interested in *outcomes* rather than *processes*. Perhaps the most famous attempt at defining justice in the last century – and certainly the one which reinvigorated political theory – is Rawls' *A Theory of Justice*. There are several possible problems with Rawls' mechanisms and principles, but there are also serious problems with the counter-arguments. My aim has been not to try and solve these problems, but rather to aid an understanding of each position, what aspect of justice it respects, and whether or not it is compatible with other intuitive claims about justice. We need to do this if we are to come to a good understanding of what justice entails: a task which is vital given its fundamental importance to political philosophy and, more importantly, to society.