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Justice II: Justice as Fairness

Justice as Fairness

* Recall the original position.
* Representatives were to agree on the principles of justice that will govern the basic structure of society as an intergenerational, closed, self-sufficient, fair system of social cooperation between citizens as free and equal persons.
* They were to choose between options on a menu drawn up from the (Western) tradition of moral and political philosophy.
* Rawls argues that they would choose a liberal conception of justice.
* This liberal conception he calls “justice as fairness”.
* We need a “metric” of justice. What is being distributed fairly? How do we evaluate how citizens are doing and whether our institutions are working well?
* Rawls derives his account of *primary goods* from the conception of the citizen as free and equal, reasonable and rational.
* Primary goods are necessary for developing and exercising the two moral powers.
* Primary goods include:
	+ The basic rights and liberties;
	+ Freedom of movement;
	+ Choice of occupation;
	+ The powers of offices and positions of responsibility;
	+ Income and wealth;
	+ The social bases of self-respect.
* **Rational** citizens are assumed to have fundamental interests in getting more of these primary goods.
* Each person has the same indefeasible claim to a fully adequate scheme of equal basic liberties, which scheme is compatible with the same scheme of liberties for all;
* Social and economic inequalities are to satisfy two conditions:
	+ They are to be attached to offices and positions open to all under conditions of *fair equality of opportunity*;
	+ They are to be to the greatest benefit of the least-advantaged members of society (the *difference principle*).
* The first principle is **lexically prior** to the second, and *fair equality of opportunity* is lexically prior to the *difference principle* if the principles come into **conflict**.
* Rawls sees justice as fairness as resolving the tensions between the liberal ideals of freedom and equality (what about fraternity?).
* Rawls holds that justice as fairness is the most egalitarian and realistic interpretation of the liberal tradition.
* Rawls makes an assumption about equality in the liberal tradition.
* Primary goods are to be distributed equally, unless an unequal distribution would be to everyone’s advantage.
	+ Equality sets the baseline for **comparing** possible terms of cooperation.
* Inequalities must be justified to the least advantaged, because they are the justificatory equals of the more advantaged.
	+ Reciprocity is owed to them “as a matter of basic justice”.
* This follows from the fundamental idea of society as a fair system of social cooperation between free and equal citizens.
	+ Intuitive to liberal citizens.

Reflective Equilibrium and Reconciliation

* Rawls is interested in **theoretical stability for the right reasons**.
* Rawls argues that when we come to understand the basic structure of society as **rationally justified**, we overcome our **alienation**.
* We are alienated because of the tension between our **private identities** and our **public identities** as citizens of modern pluralistic societies.
	+ People will have different philosophical, religious, and moral views.
* By inputting our intuitions as liberal democratic citizens, and assuming that our **comprehensive conceptions of the good** are **reasonable**, the result of the thought experiment, justice as fairness, attains **reflective equilibrium**.
* Justice as fairness achieves a **stable overlapping consensus** among plural citizens from their different worldviews and value systems.
	+ The public conception of justice can be justified from *within* our different perspectives.

Critiques of Rawls: The Scope of Justice

* Rawls limits the scope of justice to the basic structure of an intergenerational, closed, self-sufficient society.
* Some **cosmopolitan critics**, like Gillian Brock,have argued that the scope of justice is universal.
* Some cosmopolitans have argued on the Kantian grounds that freedom and equality are intrinsic to humanity.
	+ The scope of justice is **necessarily universal**.
* Some cosmopolitans have argued this on the Rawlsian grounds that the global order constitutes a the primary subject of justice.
	+ The scope of justice is **contingently universal**.
* Martha Nussbaum argues that Rawls **excludes** important classes of persons from the scope of justice as fairness.
* The Rawlsian theory of justice assumes that all individuals are able to be fully contributing members of society throughout their adult lives.
	+ Differences in need and ability.
	+ Chronic debilitating illness, major accidents.
	+ Patterns of dependency across normal human lives.
* What about animals and non-human nature?

Critiques of Rawls: The Metrics of Justice

* Some critics argue against Rawls’s metric of basic goods.
* Rawls holds that just institutions distribute primary social goods fairly.
* Amartya Sen objects we are unequally capable of transforming all-purpose resources (means) into **functionings** (ends).
* What are individuals **able to be and do** with their primary goods?
* The metrics of interpersonal comparisons for a theory of justice should be a measure of people’s **real freedom** to achieve functionings they value in accordance with their conception of the good.

Critiques of Rawls: The Principles of Justice

* Robert Nozick famously argued against Rawls’s theory of distributive justice.
* The appropriate principle is **entitlement**, not **fairness***.*
* Nozick claims there are three sets of rules of justice:
	1. how things not previously possessed by anyone may be *acquired*;
	2. how possession may be *transferred* from one person to another;
	3. what must be done to *rectify* injustices arising from violations of (1) and (2).
* Nozick classifies theories of justice as (1) either end-result or historical, and (2) either patterned or unpatterned.
* A distribution is just if it has arisen in accordance with these three sets of rules.
	+ Radical implications for capitalism, colonialism, and slavery.
* Rawls’s reply: fairness is necessary for **background justice**.

Critiques of Rawls: The Idea of the Person

* “Communitarian” political philosophers such as Alasdair MacIntyre, Michael Sandel, Charles Taylor and Michael Walzer, drawing primarily upon the insights of **Aristotle** and **Hegel**, critiqued Rawls’s assumption that the point of social cooperation is to secure and distribute fairly the primary goods that individuals need to live freely.
	+ Methodological claims about the significance of tradition and social context for practical reasoning.
	+ Ontological claims about the constitution of the self.
	+ Normative claims about the value of community.
* Rawls’s reply: **political liberalism** and the public culture.

Critiques of Rawls: The Idea of Society

* Rawls argues that the right is prior to the good.
* Rawls argues that reasonable pluralism is one of the modern circumstances of justice.
* To reach consensus on the public conception of justice, we must bracket disagreements about God and the good.
* Rosalind Hursthouse argues that institutions can be evaluated as just or unjust against the standard of enabling or preventing members of a society living well together in our environments.
* The human good is “thick and vague” (Nussbaum) and admits of plural forms of the good life, within the limits of human nature. Some options can be ruled out as bad.