RAWLS AND NOZICK

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LECTURE 3

Rawls’s two principles of justice

First Principle: 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.

Second Principle: Social and economic inequalities are to satisfy two conditions:
   (a) they are attached to offices and positions open to all under conditions of fair equality of opportunity;
   (b) they are to be to the greatest benefit of the least advantaged members of society (the difference principle) (See JFR pp.42-43 and TJ pp. 52-78)

The first principle of justice has lexical priority over the second, and (a) has lexical priority over (b).

Basic Liberties

The ‘basic liberties’ mentioned in the first principle of justice include ‘political liberty (the right to vote and to hold public office) and freedom of speech and assembly; liberty of conscience and freedom of thought; freedom of the person, which includes freedom from psychological oppression and physical assault and dismemberment (integrity of the person); the right to hold personal property and freedom from arbitrary arrest and seizure as defined by the concept of the rule of law.’ (TJ p.53)

Rawls distinguishes between a liberty and the worth of a liberty: ‘liberty is represented by the complete system of liberties of equal citizenship, while the worth of a liberty to persons and groups depends upon their capacity to advance their ends within the framework the system defines’ (TJ p.179). Rawls only thinks that the first principle should ensure equal liberties, not the equal worth of those liberties (except for political liberties).

Equality of Opportunity

On Rawls’s favoured interpretation, equality of opportunity doesn’t just require ‘formal’ equality of opportunity (where ‘all have the same legal rights of access to all advantaged positions,’ TJ p.62), but also that ‘all should have a fair chance to attain them’ (TJ p.63); ‘[t]he expectations of those with the same abilities and aspirations should not be affected by their social class’ (TJ p.63). This justifies, for instance, equal educational opportunities for all, since ‘[c]hances to acquire cultural knowledge and skills should not depend upon one’s class position, and so the school system, whether public or private, should be designed to even
out class barriers’ (*TJ* p.63).

**Greatest Benefit**

According to Rawls’s favoured interpretation of the difference principle, for inequalities to be justified the worst off must be maximally better off, rather than just better off. So if a society has distribution D1 and is choosing whether to move to D2 or D3, it should opt for D3:

D1: 100, 150
D2: 110, 300
D3: 120, 200

**Primary Social Goods**

Primary goods are ‘things that every rational person is presumed to want’ (*TJ* p.54). There are two kinds: social and natural primary goods. Social primary goods are directly under the control of the basic structure, and include ‘rights, liberties, opportunities, income and wealth’ (*TJ* p.54). Natural primary goods are not directly under the control of the basic structure, although whether or not someone enjoys such goods are influenced by the basic structure. They include ‘health and vigor, intelligence and imagination’ (*TJ* p.54).

**Social Positions**

Given that primary social goods are the appropriate metric, who counts as being part of the group of least advantaged members of society?

Rawls gives some suggestions. To help us ‘fix ideas’, he appeals to ‘three main kinds of contingencies’ which make people disadvantaged. People are disadvantaged in virtue of (a) ‘family and class origins’ (b) ‘natural endowments’ (c) ‘fortune and luck’ (*TJ* p.83). To identify the relevant group, he suggests we could choose ‘a particular social position’ such as an ‘unskilled laborer’, or identify a group in terms of ‘relative income and wealth’ (*TJ* p.84).

**Criticisms**

1. Does Rawls identify the right basic liberties?

It is far from obvious that Rawls identifies the right set of basic liberties. Why not sexual freedom? Or absolute property rights over anything, not just personal property (Nozick)? Or freedom from alienated labour (Marxists)?

For Rawls it is important that we don’t justify the set of liberties by appealing to a particular ‘conception of the good’, given his commitment to neutrality and anti-perfectionism. So instead he appeals to the ‘two moral powers’, which he thinks allows him to be neutral between different conceptions of the good. To select the correct basic liberties, he says:

‘we consider what liberties provide the political and social conditions essential for the adequate development and full exercise of the two moral powers. Following this we say:
first, that the equal political liberties and freedom of thought enable citizens to develop and exercise these powers in judging the justice of the basic structure of society and its social policies; and, second, that liberty of conscience and freedom of association enable citizens to develop and exercise their moral powers in forming and revising and in rationally pursuing (individually or, more often, in association with others) their conceptions of the good.’ (JFR p.45)

But: (a) Why should we care about the two moral powers (see last week)? (b) Is a commitment to the two moral powers really that different from the kind of non-neutral ‘perfectionist’ liberalism (e.g. that of Mill) which Rawls rejects? (c) Is it true that, in any society that resembles our own, the two moral powers are promoted by the basic liberties? (d) Even if the liberties Rawls lists do foster two moral powers, aren’t there other more important ways to foster them? Education?

The thought might be that, even if in societies somewhat like our own these liberties don’t foster the two moral powers, or are not the best/most important ways to foster the two moral powers, this doesn’t matter. The point is that in an idealised well-ordered society, they are the best way to foster the moral powers. But again this raises the question: why should we care about a well-ordered society?

2. Is it possible to separate (and so distinguish) liberty and equality?

A very old worry (offered by many socialists, among others) is that in order to have liberty, you need equality. Having certain liberties, such as equality between the law, freedom of expression, freedom of association etc, are threatened if there is substantial inequality of income, for instance.

This is a problem for Rawls because: (a) the basic liberties he advocates in the first principle require equality, so it is hard to see how he can separate the two principles and give priority to liberty; (b) the second principle allows inequalities, potentially very large ones, which might therefore undermine the basic liberties he cares about.

Rawls’s response: appeal to the distinction, mentioned earlier, between liberty and its worth. So the poor and the rich are equally free, it is just that the rich can do more with their liberty.

Two problems with this:
(i) Does the distinction between liberty and its worth hold water? How can we make sense of it? If liberty is understood as non-interference (negative liberty), then it might be thought that the poor enjoy liberty since they are not interfered with, even if they have limited opportunities because of a lack of money. But this has been criticised: a lack of money makes the poor liable to interference. (See G. A. Cohen, ‘Freedom and Money’.)
(ii) The reasons that Rawls gives us for thinking that liberty is important also tell in favour of the worth of liberty. Liberties are important for us to be able to exercise our two moral powers, but so are the resources necessary to exercise those liberties (e.g. money).
3. Why primary social goods?

Why pick primary social goods rather than other currencies (happiness, welfare, resources, capabilities etc)? And why primary social goods rather than natural ones?

Again, Rawls’s reason for endorsing primary goods rests on the idea that we should be neutral between different conceptions of the good, and that if we are, we will end up using the two moral powers as the basis for deciding what goods should be distributed. He says that his account of primary social goods

‘represents, in effect, an agreement to compare men’s situations solely by reference to things which it is assumed that they all normally need to carry out their plans. This seems the most feasible way to establish a publicly recognised objective and common measure that reasonable persons can accept. Whereas there cannot be a similar agreement on how to estimate happiness as defined, say, by men’s success in executing rational plans, much less on the intrinsic value of these plans.’ (TJ p.81)

This inherits the problems above. But there are further ones: (a) Why only primary social goods, why not natural ones (e.g. health)? Rawls might be right to say that they are not directly administered by the state, unlike certain political liberties, but if they are goods that every rational person is presumed to want, why does this matter? (b) Is it true that these are the goods we need to pursue any rational life plan? What about the religious ascetic?

4. Problems with lexical ordering

Two problems:

(i) Is it really true that that basic liberties have such absolute priority over other considerations, e.g. equality, suffering? Surely it is ridiculous to say that it is better to let everyone starve to death than (for instance) reduce Rupert Murdoch’s freedom of speech a tiny bit.

(ii) If we should ensure that the first principle of justice is satisfied before we move onto the second then it seems that, in practice, we would never move onto the second.

A Rawlsian might respond by reminding us that these are not principles for any actual society, but for an imaginary well-ordered society where the circumstances of justice apply. So, it doesn’t matter that, in non-ideal circumstances, the lexical priority leads to absurd consequences. But (a) this leads back yet again to the question: why should we care about a well-ordered society, and (b) even in a well-ordered society, these problems might occur.

5. The Difference Principle and the Egalitarian Ethos

Cohen’s argument:

There are two interpretations of the difference principle, the strict and lax reading. According to the principle, we should allow inequalities when they are necessary to bring about the maximum benefit of the worst off. But necessary given what? There are two kinds of reasons why it might be necessary to pay someone more to do a job that is to the benefit
of the worst off:

(i) Because they will not be motivated to do the job unless we pay them more.
(ii) Because, irrespective of want a person wants or desires, they cannot perform the job in question unless they are paid more.

The strict reading of the difference allows for inequality that are necessary given (ii), the lax reading allows for inequalities that are necessary given (i) and (ii). Rawls, and most Rawlsians, seem to opt for the lax interpretation. Cohen argues that the Rawls cannot adopt the lax interpretation.

In a well-ordered society, everyone accepts and is motivated to act in accordance with the principles of justice. There is an ‘egalitarian ethos’. But, Cohen points out, if all citizens are motivated to act in accordance with the difference principle, over and above their individual self-interest, then no one would need to be incentivised with a higher salary to do a job that benefits the worst off. Those who have internalised an egalitarian ethos would take jobs that benefit the worst off because they benefit the worst off.

If a Rawlsian wants to defend the lax interpretation of the difference principle, there are a few parts of Rawls’s theory of justice that they can appeal to:

(a) Division of labour between individuals and the basic structure; the difference principle applies only to institutions. Problem: if only the basic structure has to care about equality, might this lead to huge injustices, e.g. within the family?
(b) Publicity requirement. The principles of justice must be public, so they must be clear and simple, and so cannot concern individual economic behaviour.

‘Since a public conception of justice needs clear, simple and intelligible rules, we rely on an institutional division of labour between principles required to preserve background justice and principles that apply directly to particular transactions between individuals and associations’ JFR p.54

But, as we saw last week when looking at the basic structure, this idea is not unproblematic.