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Justice

Justice is the first virtue of social institutions, as truth is to systems of thought. A theory however elegant and economical must be rejected or revised if it is untrue; likewise laws and institutions no matter how efficient and well-arranged must be reformed if they are unjust.

John Rawls

Some Theories of Justice

Comprehensive/ Principle Based	Contextual/ Casuistical
Utilitarianism	Michael Walzer
John Rawls	Communitarians
Robert Nozick	

Types of Justice

- Procedural justice
 - Level playing field
 - Equality before the law
 - Due process
- Distributive justice
 - Equal opportunity
 - Desert
 - Outcome based versions (patterned principles)
 - Historical theories
 - Rights theories
- Compensatory justice
- Retributive justice
- Transitional justice

How Do We Know what Justice Requires?

- Intuition
 - Utilitarianism
 - Natural law (natural rights)
- Choice/Consent (social contract)
- Experience (casuists)
- Revelation

Utilitarianism

- The “good”: utility (human welfare)
- The “right”: maximize the good

- What maximizes aggregate utility is (also) just

Utilitarianism and Justice

But we regularly come across situations where it seems like utilitarianism may favor acts that we question on grounds of justice (often where it seems as if an individual is being used as a means to a social end)

Mill's Response

“Justice remains the appropriate name for certain social utilities which are vastly more important, and therefore more absolute and imperative, than any others are as a class (though not more so than others may be in particular cases); and which, therefore, ought to be, as well as naturally are, guarded by a sentiment not only different in degree, but also in kind; distinguished from the milder feeling which attaches to the mere idea of promoting human pleasure or convenience, at once by the more definite nature of its commands, and by the sterner character of its sanctions.”

John Rawls

- The Kantian commitment: each individual is a member of the kingdom of ends
- Rawls' theory is intended as a corrective to the possibility that utilitarianism will fail to honor the moral distinctiveness of individuals
- The right is defined prior to the good
- Social contract theory
 - Justice as fairness
- Distillation of modern liberalism
 - Liberal democracy
 - Market economies

Rawls's Social Contract

- Links up moral choice (consent) and rational choice: the original position and the veil of ignorance as a way to avoid the principles of justice being infected by self-interest
- Hypothetical contract that identifies the most basic principles of justice
- Such a contractarian approach could also be (and has been) used to justify utilitarianism

Rawls's Principles of Justice

- 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
- Social and economic inequalities are to be arranged so that they are both: (a) to the greatest benefit of the least advantaged (the difference principle) and (b) attached to offices and positions open to all under conditions of fair equality of opportunity
 - The lexical ordering of the principles (the priority of liberty)
 - Utilitarianism, Rawls's principles, egalitarianism
 - Desert: defined by the principles of justice

The Natural and Social Lotteries

“It seems to be one of the fixed points of our considered judgments that no one deserves his place in the distribution of native endowments, any more than one deserves one’s initial starting place in society.”

“The two principles seem to be a fair agreement on the basis of which those better endowed, or more fortunate in their social position, neither of which we can be said to deserve, could expect willing cooperation of others when some workable scheme is a necessary condition of the welfare of all. Once we decide to look for a conception of justice that nullifies the accidents of natural endowment and the contingencies of social circumstance as counters in the quest for political and economic advantage, we are led to these principles. They express the result of leaving aside those aspects of the social world that seem arbitrary from a moral point of view.”

- Are these features common assets of society?
- Are the advantages and disadvantages of the outcomes of these lotteries appropriate subjects for social rearrangement?

Robert Nozick

- A response to Rawls
- Justice as historical, not patterned
- If we move from a just state of the world to another state via voluntary transactions among individuals, then the new state of the world is just as well.
 - It's the transactions, not the distribution itself, that are at the root of justice
- Justice in acquisition, transfer, and rectification

Nozick

- Basic moral rule: don't violate rights/entitlements
- A property rights theory
- A libertarian account of justice
- Government by unanimous agreement
 - Markets plus the night watchman state
- The Lockean proviso concerning acquisition: enough and as good left for others

Nozick

- The natural and social lotteries
 - You may not deserve the attributes you have as a result of these lotteries, but you are entitled to them (or stuck with them) because no one else's entitlements were violated by the processes that distributed the good and bad luck of these lotteries.
- Problems
 - The cumulative impact of asymmetric bargaining power can be massive inequality—does that square with basic intuitions about justice?
 - What is the moral grounding for the theory?

Michael Walzer

- Casuist/pluralist/contextualist
- Thick and thin accounts of justice
- “Justice is a human construction, and it is doubtful that it can be made in only one way.”
- I want to argue that “the principles of justice are themselves pluralistic in form; that different social goods ought to be distributed for different reasons, in accordance with different procedures, by different agents; and that all these differences derive from the different understandings of the social goods themselves—the inevitable product of historical and cultural particularism.”

Social Goods

- Social goods are the object of distributive justice.
- Distributive criteria and arrangements are intrinsic not to the good-in-itself but to the social good.
- Social meanings are historical in character; and so distributions, and just and unjust distributions, change over time.
- Every social good or set of goods constitutes, as it were, a distributive sphere within which only certain criteria and arrangements are appropriate. This generates a theory of complex equality.
- Spheres of Justice: citizenship, security and welfare, money and commodities, office, hard work, free time, education, kinship and love, divine grace, recognition, political power

Communitarians

- Not so much a theoretical enterprise as a style of discourse
 - “Individual rights and social responsibility”
 - “Diversity within Unity”
- Basic values
 - Moral equality
 - Mutuality: people are knit together by interdependence, reciprocity, and self-interest. This creates the moral infrastructure of cooperation.
 - Community values
 - Stewardship: the exercise of comprehensive and dedicated responsibility for a valued practice, institution, resource, relationship, or group.
 - Inclusion: full membership in the community

Communitarians

- Can morality be grounded in the status quo (the current moral infrastructure)?
- Minority rights
- Illustrations
 - Shaming
 - Difference/allegiance/integration: Muslim headscarves and veils

Non-Anglo-American Thinking about Justice

- Do these ways of thinking about justice resonate outside of the anglo-american world?
- Are there intuitions/accounts of justice that resonate elsewhere but are ignored by the accounts covered today?

The Next Several Weeks

- **Thursday: Moral Rights**
 - **Article 25, Section 1 of the Universal Declaration of Human Rights:** Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.
- **October 13: Equality and Education**
 - What does justice require?
- **October 15: Global Climate Change**
 - Intergenerational and cross-national justice
 - Whose responsibility?
 - What does justice require of whom?

- **October 22: Globalization and Justice**

- Free trade and the size of the global “pie”
- Distribution of the various pieces of the pie
- What does justice require of whom?
- WTO cases

- **October 27: Rationing during a pandemic**

- consequences and distributive justices

- **October 29: Biobanking**

- privacy, consent, and social consequences

- **November 3: Sex offender registries**

- Rights of offenders, fears of the public, and the challenge of effective policies

Thinking about Justice over the Next Several Weeks

- Not: What would Rawls/Nozick/Walzer do?
- Suggested Approach
 - Stay closer to the ground than Rawls and Nozick
 - Begin with the problem at hand
 - Identify the morally relevant considerations
 - Identify your initial intuition about a resolution
 - Generalize your initial intuition—can you turn it into a general principle?
 - Think about relevant analogies—what other problems is this one like? What can we learn about the moral resolution of this problem from our analysis of similar problems?