

NOTES AND QUESTIONS ON RAWLS, CHAPTER 5, DISTRIBUTIVE SHARES FOR THEORIES OF JUSTICE FALL, 2008

Sections 41-43.

What sort of basic structure would satisfy the difference principle? Is Rawls procapitalist or anti-capitalist? Rawls himself says: neither. He is not committed; in different possible circumstances the difference principle could support different economic arrangements. The dispute between socialism and capitalism is not central to justice as Rawls sees it.

Rawls distinguishes the existence or nonexistence of a market economy from the existence or nonexistence of private property in the major means of production. A market economy is probably required by justice, but this leaves the private ownership question open. According to Rawls, a command economy, in which the state assigns people to economic roles and positions, is ruled out by the basic liberty principle. Here I assume the freedom to choose one's career and seek a wide variety of paying jobs and entrepreneurial opportunities is a basic liberty. But a market economy could consist of competition among publicly owned or privately owned firms. Rawls also distinguishes (1) the extent to which economic production is directed toward public goods (national defense, clean air across the national skies) or private goods and (2) the extent to which the economy consists of privately owned or publicly owned firms. A good is public, as opposed to private, to the extent that, relative to a group of people, consumption of the good is nonrival, exclusion of anyone from consumption is impossible or unfeasible, and all must consume the same amount of the good. For Rawls, the choice between public and private goods depends on people's tastes and is not per se a concern of justice. Regarding public ownership versus private ownership, the question is, which works better in achieving the justice goals set by Rawls's principles.

In the "Preface to the Revised Edition" (p. xiv) Rawls says he regrets he did not distinguish more sharply between the idea of "property-owning democracy" and the idea of a "welfare state." What does he have in mind by this contrast? Rawls favors the property-owning democracy over the welfare state, why so?

A property-owning democracy strives to improve the condition of the worst-off over time by limits on inheritance and bequest, and other policies that spread the ownership of wealth, and also by educational policies that achieve improvements in the skills of the least well off, so they can compete in the market economy. In contrast, a welfare state appears to be committed more to achieving gains for the worst off by taxation of income and transfer of income to the worst off. [Question: why should Rawls favor one set of tools to implement the difference principle over another possible set of tools? Shouldn't he favor whatever works?]

Section 44, the problem of justice between generations.

Rawls thinks that intergenerational justice significantly constrains the level of benefits that should be allotted to the worst off in any single generation. Justice requires that we not spend down all accumulated capital and wealth, but that we pass along resources to future generations. What principle tells us how much to save for the future? Rawls does not commit himself to a principle; he says this should be decided behind the veil of ignorance. One considers what rate of savings should be picked for all time, when one does not know to what generation one belongs.

[I do not see why Rawls does not, following his own principles, stipulate that the difference principle should be applied across generations. Apply maximin to the intergenerational justice issue.

[That he does not do this may suggest uneasiness with lexical priority for the interests of the worst off. Suppose in a simple stylized way we set up the intergenerational savings problem as follows: Assume that population remains constant over time, and each generation chooses either to spend all wealth available to it on consumption or pass along wealth to future generations. Each generation is best off if it does not save; each generation benefits from the savings of past generations. If savings occur, assume they take the form of productive long-term investment, such as clearing trees and rocks from land, so it can be farmed through an indefinite future.

[Utilitarian reasoning applied to this problem would lead to the verdict that the early generations, beginning with Adam and Eve, should save to the maximum possible, on the assumption that savings they make will create benefits for all future generations. I could consume a resource or instead use it for long-term investment, but the return to long-term investment is always greater in aggregate utility terms. Assume further the early generations

are poorer and live worse than later generations, who benefit from accumulated capital wealth and technology. Utilitarianism appears to be too demanding in what it requires of Adam and Eve, the first and poorest generation.

[By contrast, the difference principle (maximin reasoning) applied to the intergenerational savings problem appears to require no savings at all ever. Adam and Eve, the first generation, are worst off, so any saving they do makes the worst off even worse off. So no generation should save and every generation has the same low subsistence standard of living. No civilization ever develops. Maximin here appears too stringent: Strict lexical priority given to the interests of the worst off, here as elsewhere, is implausible. Or so say I.

[You could complicate the problem by introducing more realistic assumptions, but I am not sure that the problem stated above does not continue to hold. (One might consider that the present generation has the power to degrade the environment as well as the choice whether to save or not to save, and if one saves, to what extent. Suppose also one can invest in ways that payoff for a limited time, just for the next generation, for instance.) Suppose every generation cares for the welfare of its own children so is disposed to save for their sake. Does this dissolve the difficulty? Adam and Eve will want to share because they benefit from increases in their children's standard of living. So every generation has incentives to save. But the present generation, even if it cares about the next generation, will likely not care about distant future generations, so Adam and Eve may save in ways that help the next generation but leave the environment desolate for the third generation. So the intergenerational fairness problem does not dissolve when one introduces the fact that parents care for their children. In the intergenerational justice case, and perhaps in others, what seems plausible to me is a principle that splits the difference between maximin and utilitarian maximize-the-aggregate doctrines. Be that as it may, it is worth pondering the problem of intergenerational justice as it appears in Rawls's theory.

Sections 47-48, Rawls versus desert.

On p. 268, Rawls notes that his account of justice in deliberation presents "the familiar idea that income and wages will be just once a (workably) competitive price system is properly organized and embedded in a just basic structure." But does the resultant structure match our common sense precepts of justice, such as to each according to her contribution or a fair day's work for a fair day's pay? Rawls: common-sense precepts of justice are at home in local institutional contexts. They should not have independent weight against well-supported first principles. Page 273, the issue is pressed: "There is a tendency for common sense to suppose that income and wealth, and the good things in life generally, should be distributed according to moral desert. Justice is happiness according to virtue." Justice as fairness rejects this idea. As the original position is set up, the parties will pay no heed to who deserves what. But maybe this indicates a defect in the original position?

First, the market does not care about desert. The market is responsive to supply and demand. If we accept the market, and think justice can be compatible with the working of a competitive market economy, we are accepting the idea that institutions are not designed to reward the truly deserving.

Also, we need to distinguish legitimate expectations and moral desert. The institutions and practices established to fulfill the Rawlsian principles of justice will generate legitimate expectations under the rules, e.g. if one has contracted to work for a dollar an hour one then has a legitimate expectation of receiving a dollar an hour for work performed. But no deep sense of desert is involved here, such that institutions and practices should be designed to proportion rewards to individual desert. The notion of rewarding moral desert, unlike the legitimate expectations notion, must be flatly rejected. From the standpoint of justice as fairness, there is no preinstitutional concept of desert, to which institutions must conform. We might try saying that people deserve good fortune according to their true desert, their moral worth. But having moral worth (Rawls asserts) is having a sense of justice, being disposed faithfully to conform to the requirements of justice. If we then say, justice is rewarding people according to their moral desert/moral worth, we have a vicious circle. "For a society to organize itself with the aim of rewarding moral desert as a first principle would be like having the institution of property in order to punish thieves" (p. 275).

Suppose one insists on desert as a first principle by saying, people should get rewards in life in proportion to their effort or conscientious effort put forth. But there is no clean way to separate out the conscientious effort we can take credit for from the element of conscientious effort that is due to favorable circumstances: What we might legitimately take credit for is always tangled up with factors of sheer luck for which we can claim no credit (or discredit). Rawls: "the effort a person is willing to make is influenced by his natural abilities and skills and the

alternatives open to him. The better endowed are more likely, other things equal, to strive conscientiously, and there seems to be no way to discount for their greater good fortune. The idea of rewarding desert is impracticable." Rawls could add that in a diverse democracy there will be many different notions of what makes people deserving, not one we can all agree on. People adhering to different and opposed comprehensive moral conceptions will embrace different and opposed ideas of desert. So a theory of justice acceptable to all cannot advance some controversial conception of desert. This last thought perhaps could be inferred from "Justice as Fairness: Political Not Metaphysical."

[[Objection: The difference principle says the basic structure should be set so as to maximize the primary goods expectations of the least advantaged. Here the least advantaged are those whose expectations of primary social goods are least.

[[But this group is heterogeneous. It includes talented individuals with a strong preference for leisure over paid labor (call them nonneedy bohemians). It includes untalented people who are culpably imprudent in planning their lives (call them the undeserving poor). Moreover, some individuals not in the worst off group will be very prudent, very hard-working people who have not been especially blessed by native talent endowment or happy childhood circumstances (call them the especially deserving nonpoor). In principle, justice should distinguish the responsible and irresponsible individuals and the deserving from the undeserving and treat the different groups differently. In practice, social policies due to problems of administration and limited information will have to compromise on ideal justice, but Rawls is claiming to tell us what justice ideally is.

[[Suppose we try to implement the difference principle by trying to raise the income of those with least by a tax and transfer policy (this assumes those with least income have least primary social goods overall). We implement a negative income tax (if your income is high, you pay taxes; if your income is low, the IRS pays you) or a guaranteed basic income (the state guarantees that if your income is less than a threshold amount, the government will make up the difference) at the highest sustainable level. Rawls (in an essay we are not reading) raises a problem: Consider talented upper-middle class youth who choose to spend all their time surfing off Malibu and so have hardly any income. Must society following the difference principle strive to maximin the primary goods holdings of a group that includes the voluntarily unemployed as well as those who cannot find paid employment? (Rawls responds by suggesting we include leisure within the set of primary social goods.) The deservingness objection says no Rawlsian response to this difficulty will withstand critical scrutiny. In later course readings, this line of thought is developed and made central in the writings of Ronald Dworkin.]]

Section 50, the principle of perfection.

The principle of perfection, Rawls tells us, is "a teleological theory directing society to arrange institutions and to define the duties and obligations of individuals so as to maximize the achievement of human excellence in art, science, and culture. The principle obviously is more demanding the higher the relevant ideal is pitched" (pp. 285-286).

Rawls notes that given the way the original position is set up, the parties in the original position will have no reason to accept the principle of perfection. In the original position, the principle of perfection is a non-starter: there is no case for accepting it. But why does this not show the original position is defective rather than that the principle of perfection is an inadequate conception of justice? Here Rawls would cite his reasons for regarding the set-up of the original position as reflecting our views as to the conditions under which choice of principles would be fair.

Consider a person in the original position contemplating perfectionism. Some standard of excellence must be proposed, but the person will notice that when the veil of ignorance is lifted, he may have a conception of good that is radically at odds with the principle of perfection that society is committed to maximizing. The person might find that he gets no social resources and has no effective liberty to pursue her own ends, because society is dedicated to the juggernaut of perfection and that requires making peons of ordinary people to provide ideal conditions for the achievement of excellence by Alfred Einstein and Tiger Woods and Nicole Kidman and the rest of the achievement elite. Moreover, to repeat a criticism, the society will be dedicated to promoting what are bound to be controversial ideal of excellence. Some may believe that contemplation and spiritual appreciation of the cosmos is superior to an aggressive achievement orientation to the world. In the original position, one would

not discount this possibility. Within private associations in a Rawlsian society, monasteries and clubs and professional associations and the like, no doubt standards of excellence will form and claim the allegiance of some. This is fine, according to Rawls But there is no reason to make human excellence the standard of social justice; this would be objectionable for the same reason that establishing a particular religion would be unacceptable in a just society.

[[Two quick comments. First, perfectionism as described by Rawls is one especially elitist variant of a family of views. We could arrange society to maximize the very best achievements (maximax) in each field or to maximize the overall sum of perfection (maximize) but we could also aim at equalizing human excellence (equalize) or maximizing the human perfection Score of those whose scores are least (maximin or leximin). You might regard Karl Marx as a maximin perfectionist.

[[Second comment: Rawls notes that the standard of perfection might be pitched higher or lower. What achievements count as valuable? Consider a less elitist version of perfectionism: many perfectly ordinary human achievements such as perceiving the beauty of a sunset or falling in love with an appropriate person or attaining some mastery of a craft are valuable forms of excellence. A society dedicated to the pursuit of human excellence so conceived would not be requiring all to toil for the highest achievements of a few individuals. Also, one might regard excellence of achievement as one component of human good, along with other nonachievement components such as pleasure and desire satisfaction. One might hold that the just society maximizes some function incorporating a concern for fair distribution) of human good including perfection or excellence as a component. Suppose people want above all not to satisfy their present aims but to fulfill genuinely worthwhile aims. Then it might be rational to approve principles that direct society to encourage and promote genuinely worthwhile activities and forms of excellence (athletes not couch potatoes) while recognizing that there are many valuable forms of excellence and achievement (and also that our grasp on the nature of human good at any time will likely be incomplete and subject to correction). Maybe perfectionist pluralism would be selected by rational agents choosing principles behind an appropriately set veil of ignorance.]]