

Good, Just, and Rational

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1 Political Agency

Positive part: self-binding -we have to keep our promises:

...a person is required to do his part as defined by the rules of an institution when two conditions are met: first, the institution is just (or fair), that is, it satisfies the two principles of justice; and second, one has voluntarily accepted the benefits of the arrangement or taken advantage of the opportunities it offers to further one's interests. The main idea is that when a number of persons engage in a mutually advantageous cooperative venture according to rules, and thus restrict their liberty in ways necessary to yield advantages for all, those who have submitted to these restrictions have a right to a similar acquiescence on the part of those who have benefited from their submission. We are not to gain from the cooperative labors of others without doing our fair share. The two principles of justice define what is a fair share in the case of institutions belonging to the basic structure. So if these arrangements are just, each person receives a fair share when all (himself included) do their part. (1999: 96)

Negative part: all bets are off -we are not bound to do what we have not promised:

By the principle of fairness it is not possible to be bound to unjust institutions, or at least to institutions which exceed the limits of tolerable injustice (so far undefined). In particular, it is not possible to have an obligation to autocratic and arbitrary forms of government. The necessary background does not exist for obligations to arise from consensual or other acts, however expressed. Obligatory ties presuppose just institutions, or ones reasonably just in view of the circumstances. (1999: 96)

This supposed to be compatible with our “duty of justice”:

From the standpoint of justice as fairness, a fundamental natural duty is the duty of justice. This duty requires us to support and to comply with just institutions that exist and apply to us. It also constrains us to further just arrangements not yet established, at least when this can be done without too much cost to ourselves. Thus if the basic structure of society is just, or as just as it is reasonable to expect in the circumstances, everyone has a natural duty to do his part in the existing scheme. Each is bound to these institutions independent of his voluntary acts, performative or otherwise. Thus even though the principles of natural duty are derived from a contractarian point of view, they do not presuppose an act of consent, express or tacit, or indeed any voluntary act, in order to apply. The principles that hold for individuals, just as the principles for institutions, are those that would be acknowledged

in the original position. These principles are understood as the outcome of a hypothetical agreement. If their formulation shows that no binding action, consensual or otherwise, is a presupposition of their application, then they apply unconditionally. (1999: 99)

Our duty of justice also applies in unjust societies:

When the basic structure of society is reasonably just, as estimated by what the current state of things allows, we are to recognize unjust laws as binding provided that they do not exceed certain limits of injustice. (1999: 308) ...our natural duty to uphold just institutions binds us to comply with unjust laws and policies, or at least not to oppose them by illegal means as long as they do not exceed certain limits of injustice. (1999: 311)

At the same time, Rawls acknowledges that the step from the duty of justice to the duty of compliance is questionable:

The contract doctrine naturally leads us to wonder how we could ever consent to a constitutional rule that would require us to comply with laws that we think are unjust. (1999: 311) ...when they adopt the majority principle the parties agree to put up with unjust laws only on certain conditions. Roughly speaking, in the long run the burden of injustice should be more or less evenly distributed over different groups in society, and the hardship of unjust policies should not weigh too heavily in any particular case. Therefore the duty to comply is problematic for permanent minorities that have suffered from injustice for many years. And certainly we are not required to acquiesce in the denial of our own and others' basic liberties, since this requirement could not have been within the meaning of the duty of justice in the original position, nor consistent with the understanding of the rights of the majority in the constitutional convention. Instead, we submit our conduct to democratic authority only to the extent necessary to share equitably in the inevitable imperfections of a constitutional system. Accepting these hardships is simply recognizing and being willing to work within the limits imposed by the circumstances of human life. (1999: 312)

The question thus boils down to the presumed interest we have in having a well-ordered society at all. It is not clear to me why this question should be answered from the perspective of the original position.

1.1 Self-Respect

The importance of self-respect is an argument in favour of the Rawlsian principles:

...self-respect implies a confidence in one's ability, so far as it is within one's power, to fulfill one's intentions. When we feel that our plans are of little value, we cannot pursue them with pleasure or take delight in their execution. Nor plagued by failure and self-doubt can we continue in our endeavors. It is clear then why self-respect is a primary good. Without it nothing may seem worth doing, or if some things have value for us, we lack the will to strive for them. All desire and activity becomes empty and vain, and we sink into apathy and cynicism. Therefore the parties in the original position would wish to avoid at almost any cost the social conditions that undermine self-respect. The fact that justice as fairness gives more support to self-esteem than other principles is a strong reason for them to adopt it. (1999: 386)

The connection to equality of opportunity is not explicitly spelt out.

1.2 The objection from a Menschenbild (anthropological premisses)

Nussbaum (2011: 85) argues that we have to “consider an alternative to Rawls’s theory” to solve what she claims are three important problems at the “frontiers of justice”: justice across national boundaries, the fair treatment of people with disabilities; and the fairness of our treatment of nonhuman animals. On the second issue, Nussbaum says:

...the assumptions of rough equality and mutual advantage mean that the view cannot deal well with cases in which we find a deep asymmetry of power between the parties that is not easily corrected by simply rearranging income and wealth. Precisely for that reason, people with severe physical and cognitive disabilities are explicitly omitted from the Original Position and are not included under the definition of the capacities of citizens in the Well Ordered Society. Their needs, says Rawls, are to be dealt with at some point but are not taken into account when society selects its most basic principles and structures. In effect, they are to be dominated, though the domination is to be beneficent. (2011: 87)

With respect to the question “what sorts of beings are owed the guarantees of justice”, Rawls says in §77:

...The natural answer seems to be that it is precisely the moral persons who are entitled to equal justice. Moral persons are distinguished by two features: first they are capable of having (and are assumed to have) a conception of their good (as expressed by a rational plan of life); and second they are capable of having (and are assumed to acquire) a sense of justice, a normally effective desire to apply and to act upon the principles of justice, at least to a certain minimum degree. [...] Thus equal justice is owed to those who have the capacity to take part in and to act in accordance with the public understanding of the initial situation. One should observe that moral personality is here defined as a potentiality that is ordinarily realized in due course. It is this potentiality which brings the claims of justice into play. [...] It should be stressed that the sufficient condition for equal justice, the capacity for moral personality, is not at all stringent. When someone lacks the requisite potentiality either from birth or accident, this is regarded as a defect or deprivation. There is no race or recognized group of human beings that lacks this attribute. Only scattered individuals are without this capacity, or its realization to the minimum degree, and the failure to realize it is the consequence of unjust and impoverished social circumstances, or fortuitous contingencies. (1999: 442, 443)

While the appeal to potentialities assures that the principle -“Those who can give justice are owed justice.” (1999: 446) -applies to all humans, non-human animals are excluded. Their treatment raises moral, but not political questions:

...we should recall here the limits of a theory of justice. Not only are many aspects of morality left aside, but no account is given of right conduct in regard to animals and the rest of nature. A conception of justice is but one part of a moral view. While I have not maintained that the capacity for a sense of justice is necessary in order to be owed the duties of justice, it does seem that we are not required to give strict justice anyway to creatures lacking this capacity. But it does not follow that there are no requirements at all in regard to them, nor in our relations with the natural order. Certainly it is wrong to be cruel to animals and the destruction of a whole species can be a great evil. The capacity for feelings of pleasure and pain and for the forms of life of which animals are capable clearly imposes duties of compassion and humanity in their case. (1999: 442, 443)

2 Liberalism

According to Rawls, the central characteristic that qualifies his theory of justice as liberal is the priority of the right over the good:

...In a well-ordered society, then, the plans of life of individuals are different in the sense that these plans give prominence to different aims, and persons are left free to determine their good, the views of others being counted as merely advisory. Now this variety in conceptions of the good is itself a good thing, that is, it is rational for members of a well-ordered society to want their plans to be different. [...] The intense convictions of the majority, if they are indeed mere preferences without any foundation in the principles of justice antecedently established, have no weight to begin with. The satisfaction of these feelings has no value that can be put in the scales against the claims of equal liberty. To have a complaint against the conduct and belief of others we must show that their actions injure us, or that the institutions that authorize what they do treat us unjustly. And this means that we must appeal to the principles that we would acknowledge in the original position. Against these principles neither the intensity of feeling nor its being shared by the majority counts for anything. On the contract view, then, the grounds of liberty are completely separate from existing preferences. Indeed, we may think of the principles of justice as an agreement not to take into account certain feelings when assessing the conduct of others. (1999: 393, 395)

It is precisely this pluralism that speaks against a so-called “private society”, where “each person assesses social arrangements solely as means to his private aims” (Rawls 1999: 457), and in favour of a “social union”, “a community of humankind the members of which enjoy one another’s excellences and individuality elicited by free institutions, and they recognize the good of each as an element in the complete activity the whole scheme of which is consented to and gives pleasure to all”:

...persons need one another since it is only in active cooperation with others that one’s powers reach fruition. Only in a social union is the individual complete. (1999: 460, fn. 4)

Not only do the principles of justice support social unions, they make of society itself a social union:

...we can now see how the principles of justice are related to human sociability. The main idea is simply that a well-ordered society (corresponding to justice as fairness) is itself a form of social union. Indeed, it is a social union of social unions. Both characteristic features are present: the successful carrying out of just institutions is the shared final end of all the members of society, and these institutional forms are prized as good in themselves. (1999: 462)

With respect to the second characteristic, Rawls goes quite far:

...men appreciate and enjoy these attributes in one another as they are manifested in cooperating to affirm just institutions. It follows that the collective activity of justice is the preeminent form of human flourishing. For given favorable conditions, it is by maintaining these public arrangements that persons best express their nature and achieve the widest regulative excellences of which each is capable. (1999: 463)

References

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