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Rawls a theory of justice citation

discussed elsewhere (see the entry on John Rawls), can be defended on their own merits as a theory of social justice for a modern liberal society, even if their contractual grounding proves to be unsound. Rawls presents the contracting parties as seeking to advance their own interests as they decide which principles to favour, but under two informational constraints. First, they are not allowed to know their own 'conception of the good' – what each they personally find it most valuable to pursue – so the principles must be couched in terms of 'primary goods', understood as goods that it is better to have more rather than less of whatever conception of the good you favour. Second, they are placed behind a 'veil of ignorance' that deprives them of any knowledge of personal characteristics, such as their gender, their place in society, or the talents and skills they possess. This means that they have no basis on which to bargain for advantage, and have to consider themselves as generic persons who might be male or female, talented or untalented, and so forth. In consequence, Rawls argues, all will choose to live under impartial principles that work to no-one's advantage in particular. The problem for Rawls, however, is to show that the principles that would be selected in such an original position are in fact recognizable as principles of justice. One might expect the parties to calculate how to weigh the primary goods (which Rawls catalogues as 'rights and liberties, opportunities and powers, income and wealth') against each other, and then to choose as their social principle 'maximise the weighted sum of primary goods, averaged across all persons'. This, however, would bring the theory very close to utilitarianism, since the natural method of weighing primary goods is to ask how much utility having a given quantity of each is likely, on average, to bring (for the claim that utilitarianism would be chosen in a Rawlsian original position, see Harsanyi 1975). Since Rawls wishes to reject utilitarianism, he has to adjust the psychology of the parties in the original position so that they reason differently. Thus he suggests that, at least in developed societies, people have special reason to prioritise liberty over the other goods and to ensure that it is equally distributed: he argues that this is essential to safeguard their self-respect. In later writing his argument is less empirical: now the parties to the contract are endowed with 'moral powers' that must be exercised, and it is then fairly easy to show that this requires them to have a set of basic liberties. When he turns to the distribution of income and wealth, Rawls has to show why his choosers would pick the difference principle, which considers only the position of the worst-off social group, over other principles such as maximising average income across the whole society. In Theory of Justice he does this by attributing special psychological features to the choosers that make it appropriate for them to follow the 'maximin' rule for decisions under uncertainty (choose the option whose worst possible outcome is least bad for you). For example, they are said to be much more concerned to achieve the minimum level of income that the difference principle would guarantee them than to enjoy increases above that level. In his later work, he abandons this reliance on maximin reasoning and gives greater prominence to another argument hinted at in Theory. This portrays the contracting parties as starting out from the presumption that income and wealth should be distributed equally, and then recognizing that all can benefit by permitting certain inequalities to arise. When these inequalities are governed by the difference principle, they can be justified to everyone, including the worst off, thus creating the conditions for a more stable society. But we need then to ask why equal distribution should be treated as the benchmark, departures from which require special justification. When Rawls says that it is 'not reasonable' for any of the parties initially to expect more than an equal share (Rawls 1971, p. 150; Rawls 1999, p. 130), is this simply a corollary of their position as rational choosers behind a veil of ignorance, or has Rawls in addition endowed them with a substantive sense of justice that includes this presumption of equality? Although Rawls throughout presents his theory of justice as contractarian, we can now see that the terms of the contract are in part determined by prior normative principles that Rawls engineers the parties to follow. So in contrast to Gauthier, it is no longer simply a case of self-interested contractors negotiating their way to an agreement. Rawls candidly admits that the contractual situation has to be adjusted so that it yields results that match our pre-existing convictions about justice. But then we may ask how much work the contractual apparatus is really doing (see Barry 1989, ch. 9 for a critical appraisal). 5.3 Scanlon Scanlon (1998) does not attempt to deliver a theory of justice in the same sense as Rawls, but his contractarian account of that part of morality that specifies 'what we owe to each other' covers much of the same terrain (for an explicit attempt to analyse justice in Scanlonian terms, see Barry 1995). Like Rawls, Scanlon is concerned to develop an alternative to utilitarianism, and he does so by developing a test that any candidate moral principle must pass: it must be such that no-one could reasonably reject it as the basis for informed, unforced general agreement (see the entry on contractualism). Scanlon's contractors are not positioned behind a veil of ignorance. They are able to see what effect adopting any proposed principle would have on them personally. If that effect is unacceptable to them, they are permitted to reject it. Each person has, so to speak, a veto on any general principle for regulating conduct. Those that survive this test are defensible as principles of justice – Scanlon concedes that there might be alternative sets of such principles appropriate to different social conditions. It might seem, however, that giving each person a veto would lead straightforwardly to deadlock, since anyone might reject a principle under which he fared badly relative to some alternative. Here the idea of reasonable rejection becomes important. It would not, Scanlon thinks, be reasonable to reject a principle under which one does badly if the alternatives all involve someone else faring worse still. One needs to take account of other people's reasons for rejecting these alternatives. It might then appear that Scanlon's contractualism yields the difference principle, which requires the worst-off group in society to be as well of as they can be. But this is not the conclusion that Scanlon draws (though he acknowledges that there might be special reasons to follow Rawls in requiring basic social institutions to follow the difference principle). The claims of other groups must be considered too. If a policy greatly benefits many others, while slightly worsening the position of a few, though without leaving them very badly off, it may well not be rejectable. Scanlon's position leaves some room for aggregation – it makes a difference how many people will be benefitted if a principle is followed – though not the simple form of aggregation that utilitarians defend. Scanlon also says that a person can have a reason for rejecting a principle if it treats them unfairly, say by benefitting some but not others for arbitrary reasons. This presupposes a norm of fairness that the contractarian theory does not itself attempt to explain or justify. So it looks as though the purpose of the theory is to provide a distinctive account of moral reasoning (and moral motivation) but not to defend any substantive principles of distributive justice. In this respect, Scanlon's contractualism is less ambitious than either Gauthier's or Rawls'. 6. Egalitarianism and Justice In the recent past, many philosophers have sought to establish a close connection between justice and equality: they ask the question 'what kind of equality does justice require?', and to that several competing answers have been given (see, for example Cohen 1989, Dworkin 2000, Sen 1980). But we should not be too hasty to assume that what justice demands is always equality, whether of treatment or of outcome. Perhaps it does so only in a formal sense. As we saw in sect 1.3, justice requires the impartial and consistent application of rules, from which it follows that when two people are alike in all relevant respects, they must be treated equally. But, as Aristotle among others saw, justice also involves the idea of proportional treatment, which implies recipients getting unequal amounts of whatever good is at issue (Aristotle, Nicomachean Ethics, Book V, ch. 3). If A is twice as deserving or twice as needy as B, justice may require that she receives more than B does. So here formal equality of treatment – the same rule applied to both – leads to an unequal outcome. Again, when justice takes the conservative form of respect for existing entitlements or legitimate expectations (see para 2.1) there is no reason to anticipate that what is due to different people will be substantively the same. 6.1 Justice as Equality So we need to ask about the circumstances in which justice requires a substantively equal distribution of advantages. One rather obvious case occurs when the members of the group within which the distribution is going to occur have no relevant distinguishing features, so there are no grounds on which some can claim greater shares of benefit than others. Suppose a group experiences a windfall gain for which no-one can claim any credit: a pot of gold somehow appears in their midst. Then unless any member can make a justice-related claim for a larger-than-equal share – say that she has special needs that she lacks sufficient resources to meet – an equal distribution of the gold is what justice demands, since any other distribution would be arbitrary. Equality here is the default principle that applies in the absence of any special claims that can be presented as reasons of justice. Equality also acts as a default in circumstances where, although people may indeed have unequal claims to whatever good is being distributed, we have no reliable way of identifying and measuring those claims. By sharing the good equally, we can at least ensure that every claim has been partially satisfied. Thus suppose we have limited supplies of a drug that can treat malaria, and a number of patients displaying symptoms of the disease, but lacking specialised medical knowledge we cannot tell whether one person's condition is more serious than another's; then by sharing out the drug equally, we can guarantee that each person at least receives the highest fraction of what they really need. Any other distribution must leave at least one person with less (this of course assumes that there is no threshold amount of the drug beneath which it is ineffective; if that assumption is wrong, justice under the stated conditions might require a lottery in which the chosen ones receive threshold-size doses). If justice requires equality only by default, it might seem to apply only in a narrow range of cases. How could egalitarian justice be made more robust? One approach involves declaring a wider range of factors irrelevant to just distribution. Thus one formulation of the principle holds that no-one should be worse-off than anyone else as a result of their 'morally arbitrary' characteristics, where a characteristic is morally arbitrary when its possessor cannot claim credit for having it. This captures a widespread intuition that people should not be advantaged or disadvantaged by virtue of their race or gender, but extends it (more controversially) to all personal features with a genetic basis, such as natural talents and inborn dispositions. In doing so, it discounts most claims of desert, since when people are said to deserve benefits of various kinds, it is usually for performing actions or displaying qualities that depend upon innate characteristics such as strength or intelligence. In the following section, we will see how egalitarian theories of justice have tried to incorporate some desert-like elements by way of response. But otherwise justice as equality and justice as desert appear to be in conflict, and the challenge is to show what can justify equal treatment in the face of inequalities of desert. A second approach answers this challenge by explaining why it is positively valuable to afford people equal treatment even if they do display features that might justify differential treatment. A prominent advocate of this approach is Dworkin, who argues that fundamental to justice is a principle of equal concern and respect for persons, and what this means in more concrete terms is that equal resources should be devoted to the life of each member of society (Dworkin 2000). (The reference to membership here is not redundant, because Dworkin understands egalitarian justice as a principle that must be applied within sovereign states specifically – so in the terms of 3.2, this is a relational view of justice.) The thought is that showing persons equal respect may sometimes require us to afford them equal treatment, even in the face of relevant grounds for discrimination. Thus we insist on political equality – one person, one vote – even though we know that there are quite large differences in people's competence to make political decisions. 6.2 Responsibility-sensitive egalitarianism As noted above, justice as simple equality of treatment seems open to the objection that it fails to acknowledge the agency of the recipients, who may have acted in ways that appear to qualify them to receive more (or less) of whatever benefit is being distributed. To answer this objection, several recent philosophers have presented alternative versions of 'responsibility-sensitive egalitarianism' – a family of theories of justice that treat equal distribution as a starting point but allow for departures from that baseline when these result from the responsible choices made by individuals (see Knight and Stemplowska 2011 for examples). These theories differ along several dimensions: the 'currency of justice' used to define the baseline of equality, the conditions that must be fulfilled for a choice to qualify as responsible, and which among the consequences that follow from a choice should count when the justice of an outcome is being assessed (it may in particular appear unjust to allow people to suffer the full consequences of bad choices that they could not reasonably have anticipated). The label that is often used to describe a sub-class of these theories is 'luck egalitarianism'. According to luck egalitarians, justice requires that no-one should be disadvantaged relative to others on account of 'brute' bad luck, where inequalities that arise through the exercise of personal responsibility are permissible (for a full discussion of luck egalitarianism, see the entry on justice and bad luck). 'Brute' luck is interpreted widely to include not only external circumstances such as one person's initially having access to more resources than another, but also internal factors such as possessing natural abilities or disabilities, or having involuntarily acquired expensive tastes. All such inequalities are to be ironed out by redistribution or compensation, while people's choices about how to use the assets they are granted should be respected, even if this leads to significant inequality in the long run. Luck egalitarianism has proved surprisingly influential in recent debates on justice, despite the evident difficulties involved in, for example, quantifying 'brute luck disadvantage' in such a way that a compensatory scheme could be established. There are, however, a number of problems it has to face. By giving scope to personal responsibility, it seeks to capture what is perhaps the most attractive part of the conventional idea of desert – that people should be rewarded for making good choices and penalised for making bad ones – while filtering out the effects of having (undeserved) natural talents. But in reality the choices that people make are influenced by the talents and other qualities that they happen to have already. So if we allow someone to reap advantages by, for example, devoting long hours to learning to play the piano at a high level, we must recognize that this is a choice that she would almost certainly not have made unless early experiment showed that she was musically gifted. We cannot say what she would have chosen to do in a counterfactual world in which she was tone deaf. There seems then to be no coherent half-way house between accepting full-blooded desert and denying that people can justly claim relative advantage through the exercise of responsibility and choice (see further Miller 1999, ch. 7) . A second problem is that one person's exercise of responsibility may prove advantageous or disadvantageous to others, even though they have done nothing to bring this change about, so from their point of view it must count as 'brute' luck. This will be true, for example, in any case in which people are competing to excel in some field, where successful choices made by A will worsen the comparative position of B, C, and D. Or again, if A acts in a way that benefits B, but does nothing comparable to improve the position of C and D, then an inequality is created that counts as 'brute bad luck' from the perspective of the latter. One of the most influential exponents of luck egalitarianism seems to have recognized the problem in a late essay: 'unlike plain egalitarianism, luck egalitarianism is paradoxical, because the use of shares by people is bound to lead to a distribution flecked by luck' (Cohen 2011, p. 142). 6.3 Relational Egalitarianism We have seen that equality can sometimes be understood as required by justice; but it can also be valued independently. Indeed there can be circumstances in which the two values collide, because what justice demands is inequality of outcome. The kind of inequality that is independently valuable is social equality, best understood as a property of the relationships that prevail within a society: people regard and treat each other as social equals, and the society's institutions are designed to foster and reflect such attitudes. A society of equals contrasts with one in which people belong to different ranks in a social hierarchy, and behave towards one another as their relative ranking prescribes. Different reasons can be given for objecting to social inequality, and conversely for valuing social equality (see Scanlon 2003). Those who find equality valuable for reasons other than reasons of distributive justice are often described as 'relational egalitarians' (see Anderson 1999, Wolff 1998, Fourie, Schuppert and Wallimann-Helmer 2015). It is tempting to regard relational egalitarianism as a rival theory of justice to the luck egalitarian theory outlined in §6.2, but it may be more illuminating to see it instead as providing an alternative account of why we should care about limiting material inequality. Thus, faced with a world like the one we currently inhabit in which income differences are very large, distributive justice theorists are likely to criticize these inequalities on grounds that they are not deserved, or arise from brute luck, etc., whereas relational egalitarians will say that they create a divided society in which people are alienated from each other, and cannot interact in a mutually respectful way. Relational equality does not address issues of distribution directly, and so cannot function as a theory of justice itself, but it can provide grounds for preferring one theory of justice to its rivals – namely that implementing that particular theory is more likely to create or sustain a society of equals. 7. Conclusion We saw at the beginning of this article that justice can take a number of different forms, depending on the practical context in which it is being applied. Although we found common elements running through this diversity of use – most readily captured in Justinian's 'suum cuique' formula – these were formal rather than substantive. In these circumstances, it is natural to look for an overarching framework into which the various contextually specific conceptions of justice can all be fitted. Three such frameworks were examined: utilitarianism, contractarianism and egalitarianism. None, however, passed what we might call the 'Sidgwick/Rawls test', namely that of incorporating and explaining the majority at least of our considered convictions about justice – beliefs that we feel confident in holding about what justice requires us to do in a wide and varied range of circumstances (for Rawls' version of the test see the entry on reflective equilibrium). So unless we are willing to jettison many of these convictions in order to uphold one or other general framework, we will need to accept that no comprehensive theory of justice is available to us; we will have to make do with partial theories – theories that justice requires in particular domains of human life. Rawls himself, despite the bold title of his first book (A Theory of Justice), came to recognize that what he had outlined was at best a theory of social justice applied to the basic institutional structure of a modern liberal state. Other forms of justice – familial, allocative, associational, international – with their associated principles would be applicable in their respective domains (for an even more explicitly pluralist account of justice, see Walzer 1983; for a fuller defence of a contextual approach to justice, see Miller 2013, esp. ch. 2). One way to loosen up our thinking about justice is by paying greater attention to the history of the concept. We can learn a great deal by reading what Aristotle, or Aquinas, or Hume, has to say about the concept, but as we do so, we also see that elements we would expect to find are missing (there is nothing about rights in Aristotle, for example), while others that we would not anticipate are present. This may in some part be due to the idiosyncrasies of each thinker, but more importantly it reflects differences in the form of social life in which each was embedded – its economic, legal and political structure, especially. Various attempts have been made to write histories of justice that are more than just catalogues of what individual thinkers have said: they aim to trace and explain systematic shifts in the way that justice has been interpreted (for contrasting examples, see MacIntyre 1988, Fleischacker 2004, Johnston 2011). These should not be read as enlightenment stories in which our understanding of justice steadily improves as the centuries roll by. MacIntyre's view, for example, is that modern liberal societies cannot sustain the practices within which notions of justice find their proper home. We can get a better grasp of what justice means to us by seeing the various conceptions that compete for our attention as tied to aspects of our social world that did not exist in the past, and are equally liable to disappear in the future.

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