

# Things I Need to Know About Rawls, Justice and Liberalism

What are the different theories of justice?

Principle	Summary	Evaluation
<p><b>Strict Egalitarianism</b></p>	<p>“Everybody should have the same level of material goods (including burdens) and services” (Lamont and Favor 2017)</p> <p>This principle is justified on the ground that having equality in terms of material goods and services is a way to recognise persons as being morally equal.</p>	<p><u>The Index Problem</u> (i.e. equality of what?): “level” of goods and services hard to measure</p> <ul style="list-style-type: none"> <li>- Equalise bundles of goods; Problem: Pareto in optimal; Suppose everybody was allocated 5 sandwiches and 2 bananas but if I don’t like bananas and you don’t like sandwiches, we would both be better off had we swapped some bananas for sandwiches and vice versa; strict egalitarianism leads to lower welfare</li> <li>- Money; still an incomplete index because it is hard to quantify non-material goods such as opportunities; Possible response: strict egalitarians are only concerned about the distribution of material goods</li> </ul> <p><u>The Problem of Time Frame Specification:</u></p> <ul style="list-style-type: none"> <li>- Starting-gate principles where it is merely required that individuals start off with the same level of goods may nonetheless lead to severe inequality</li> <li>- BUT the starting-gate principles actually involves a lot of redistribution to parents with little income, whether it be from bad luck or bad management, so the distributions may be more equal than one may initially anticipate</li> <li>- Another suggestion is to distribute income evenly in each time frame</li> <li>- BUT this can also lead to wealth inequality if we do not also regulate their savings; to regulate savings is an unduly restriction on freedom</li> <li>- ALSO it conflicts with what people deserve</li> </ul>
<p><b>The Difference Principle</b></p>	<p>See <i>What is Rawls’ argument?</i></p>	<p>See <i>What are some problems with Rawls’ argument?</i></p>

Principle	Summary	Evaluation
<b>Equal Opportunity and Luck Egalitarianism (Resource Egalitarianism – as Dworkin calls it)</b>	See <i>What is Luck Egalitarianism?</i>	See <i>What are some problems associated with luck egalitarianism?</i>
<b>Welfare-Based Principles E.g. utilitarianism</b>	<p>The people's welfare are of primary moral importance. Material concerns over equality are only derivative from welfare considerations.</p> <p>Scholars have conceptualised welfare, or what that has intrinsic value, differently. Their opinions also vary on how we might distribute welfare. For example, among the utilitarians, Jeremy Bentham claimed that pleasure was the only thing with intrinsic value, while John Stuart Mill had a wider concept that encompasses happiness, or fulfilment in mind. However, they agree that one ought to maximise the general level of welfare. To accommodate for uncertainty, the principle may be adjusted to maximise expected utility.</p> <p>Arrow, however, argued that what matters for welfare is preference satisfaction. Welfare, understood in this sent, attaches positive weights to preference satisfaction and negative weights to unsatisfied preferences. The arithmetic sum of preference satisfaction is to be maximised, where preferences are weighted by their intensities (accommodate as many preferences as possible).</p>	See <i>What are some problems with welfare based theories of distributive justice, such as utilitarianism?</i>

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<p><b>Desert-Based Principles</b></p>	<p>Desert-based principles hold that people should be guaranteed the fruits of their own labour (or lack thereof).</p> <p>There are three main variants on this broad notion within modern political theory. While some theorists argue that people should be awarded based on their contribution – the value they add to the social product, others argue the rewards should be imparted based on the effort agents expend on the task. Finally, some theorists argue that remuneration should depend on the costs agents incur in their work activity (compensation-based idea).</p> <p>As Lamont and Favor (2017) summarises, “Distributive systems are just insofar as they distribute incomes according to the different levels earned or deserved by the individuals in the society for their productive labours, efforts, or contributions.”</p> <p>In light of the above characterisations, there are two points of clarification to be made. <i>First</i>, although the modern theories all feature some form of social product (or standard of living) being the basis for income, the idea that one ought to increase social product is distinct from the idea of desert itself. For example, while falsely criticise another due to a misunderstanding may not affect the social product in a significant way, it is undesirable for those who hold desert as important because the person who got criticised did not deserve it.</p> <p><i>Secondly</i>, desert is distinct from entitlement. Illustratively, Feinberg (1970) notes that an individual may be entitled to be President while not deserving the position. Conversely, someone may deserve compensation or rewards for their efforts or contribution, yet not be entitled to it. Barry (1965) makes the further distinction that incentives are entitlements, since incentives are “forward-looking” while desert payments are “backward-looking.” For desert theorists, just institutions are those that make economic entitlements that track people’s desert.</p>	<p><u>Desert-based principles are incomplete</u>; They mostly cover the relations between the material distributions of adults who can contribute to the social product but fail to give a clear account of what the relations between children and society would be, since they cannot yet readily make contributions. Thus, they need to be supplemented with other principles of justice.</p> <p><u>Desert-based principles are difficult to implement</u>; It is hard to specify what counts as a contribution, effort or cost. Even if one could specify the exact activity types, these factors remain extremely difficult to measure. Effort, for example, is often unobservable</p> <p><u>Desert-based principles are based on factors people cannot control</u>; Desert theorists hold that people should be responsible for engaging in more or less productive activities; People’s productivity tends to depend on factors beyond their control so basing distributions on individuals’ output is not “desert based”; Can be resolved by subscribing to the effort variant but will still run into problems of measurement</p>

Principle	Summary	Evaluation
<b>Libertarian Principles</b>	See <i>What is the libertarian principle of justice?</i>	See <i>What are the strengths and weaknesses of the libertarian principle of justice?</i>

## What is Rawls' argument?

- Unlike his predecessors like Hobbes, Rawls does not view human nature to be as competitive or beast-like; he instead view citizens as being reasonable, capable of genuine toleration and mutual respect.
- Rawls characterises society to be an embodiment of what he calls **reasonable pluralism**. In *Justice as Fairness*, Rawls describe society as having “profound and irreconcilable differences in citizens’ reasonable comprehensive religious and philosophical conceptions of the world, and in their view of the moral and aesthetic values to be sought in life.”
  - To understand society as such is quite plausible. We have many co-existing religions in our modern societies today; we have Catholics who believe in one God yet take it to be reasonable some people are Hindu and believe in many gods and, equally, take it to be reasonable that some people do not believe in God at all.
  - Similarly, we tolerate variation in aesthetic values. When one opens a catalogue at the wallpaper shop, one will see many wallpapers suited for different decorative styles, yet we take it to be that each customer may have different views on what is aesthetically pleasing and they are reasonable to hold such views.
- His understanding of human nature as being reasonable also grounds his doctrine of **public reason**. Wenar (2021) summarises Rawls’ idea of public reason as follows: “Citizens engaged in *certain political activities* have a *duty of civility* to be able to justify their decisions on *fundamental political issues* by reference only to *public values* and *public standards*.”
  - This means that citizens have to be able to justify their political activities using public values citizens. They have a legal duty to act in a way that their actions can be justified by the principles of justice. However, the scope of this duty only extends to the constitutional essentials, such as on matters of who gets to vote, which religions are to be tolerated, who gets to won public property, and so on. On less politically fundamental issues, the doctrine of public reason still applies but only weakly.
- Rawls also gives importance to the idea of *publicity*. In a well-ordered society, not only do all citizens accept the principles of justice, they also know that their fellow citizens do so too. With all citizens accepting that basic structure is just, any free persons would be coerced to do so too by public scrutiny.
- Rawls seeks to resolve the tension between liberty and equality under a democracy
- Through his political philosophy, Rawls aims to complete four goals (Wenar 2021):
  - (1) to propose grounds for reasoned agreement in the face of sharp political divisions
  - (2) to help citizens orient themselves within society
  - (3) to describe workable political arrangements that are as close to the ideal social order as possible
  - (4) to reconcile how the imperfect present political structures have formed
- His principles of justice, however, can be thought of focusing on (1) and (3). That is, he aims to outline a system which is *legitimate*, compatible with the context of reasonable pluralism (thus focussing on (1)). Additionally, his principles must be able to achieve *distributive justice* – a fair distribution of goods within the social order (thereby focussing on (3)).
- There are two circumstantial prerequisites needed for justice to arise. First, justice can only arise in times of *moderate scarcity* – an intermediate between extreme abundance, such that there is no need to have principles for distribution, and extreme scarcity, when there is hardly anything to distribute. Secondly, justice arises only when citizens have *limited beneficence*; that is, people are neither purely altruistic, since then there would be no social demand for justice, nor are citizens excessively selfish, since then justice would have no place in society.

- Rawls' description of a just arrangement begins with the **basic structure** – major social and political institutions and how they determine the most basic benefits citizens get whether it be in the form of protection of rights, opportunities for employment, social recognition or distribution of wealth. The basic structure, according to Rawls, is prominent because it is profound and present from the start of one's life (and at the beginning of each civilisation).
- He then exercises a thought experiment, positing that a legitimate principle of distributive justice must be one accepted by citizens in the original position under the veil of ignorance.
  - Parties in the original position are given some social contracts to assess. They each are self-interested but have limited information about themselves to decide upon, for under the veil of ignorance, they do not have knowledge of their social circumstances, endowment of natural talents or even their preferred conceptions of the good (e.g. do not know which religion they follow). The veil of ignorance is designed to offer a degree of impartiality.
  - Isolating one from one's social circumstances under the veil of ignorance is Rawls' way of modelling equality. Like many luck egalitarians, he believes we should not be favoured or unflavoured in life based on personal circumstances that arise from brute luck. If we prefer some principle of fairness, we should prefer it just because we a reasonable person, not because we happen to have a talent for cooking, or because we are discriminated or impoverished.
  - In the same vein, Rawls models the freedom of persons by shielding them from their individual conceptions of the good under the veil. He views the conceptions of the good as only derivative, or as having secondary importance, to the principles of justice to be assessed. This would be to say it does not matter if one is a Buddhist or a Sikh; as members of the community, one has a civil duty to conform to this overarching principle. Moreover, the principle of the good should have a shared basis. It should not be good for persons with a particular conception of the good but not another.
- Rawls argues that agents in the original position would accept the following two principles of justice, the first of which has lexical priority over the second:
  - (1) Each person has the same inalienable claim to a fully adequate scheme of equal basic liberties, which scheme is compatible with the same scheme of liberties for all
    - In *A Theory of Justice*, Rawls gives examples of basic liberties; they are such as “political liberty 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; the right to hold personal property and freedom from arbitrary arrest and seizure as defined by the concept of the rule of law.”
    - E.g. we cannot exempt a college student from being enlisted, even on the grounds of increase social productivity, because if one is able to serve, one ought to be equally subject to it; as we see, these basic liberties or duties take precedence over any economic policy
    - This principle is distinctive because it requires fair value of the political liberties, which is a subset of the basic liberties. This requirement means that it is insufficient for all citizens to be able to vote (formal equality) but they also have to be able to exercise a similar amount of influence over the political sphere (substantive equality), which does not immediately follow from having the right to vote, as demonstrated in real life examples of the rich having disproportionate political influence through exercising “quiet politics” (Culpepper 2011)
  - (2) Any social or economic inequality must:
    - Be attached to offices and positions open to all under conditions of *fair equality of opportunity*
      - Citizens are to be guaranteed equal education and economic opportunities
    - Be to the greatest benefit of the least advantaged members of society (this part is also known as the **difference principle**)
      - The difference principle regulates the distribution of wealth and income and is a key defining feature of Rawls' political philosophy
      - It allows for some social inequalities on the grounds that those inequalities help improve the total welfare, and specifically the welfare of the least well-off
      - While people do not deserve the distribution of natural assets, for example one does not deserve the benefits of developing a skill in high demand as a result of being born with talents in such a field, this does not necessarily mean that everybody should get the same shares. We can instead use the fact that some people are endowed with talents in

high demand to help further the social good. They are allowed to use the natural endowment assigned to them by brute luck to further their own good as long as in doing so they further the good of the worse off in society too.

- The difference principles can be interpreted as expressing the positive ideal of social unity where everybody contributes in order to further the social good.
- In the table below (adapted from Wenar 2021), and assuming the first principle of justice and that citizens have equal educational and economic opportunities, Rawls would select economy C as the most preferred.
  - We see that C is not as preferred in terms of total benefits since it is exceeded by economy D
  - The only column that matters for this decision-making is the least advantaged column

Economy	Least Advantaged	Middle Group	Most Advantaged	Total Benefits
A	10	10	10	30
B	12	30	80	122
C	30	90	150	270
D	20	100	500	620

- For a city to be just, citizens must have **primary goods** such as basic rights and liberties, freedom of movement, and free choice among a wide range of occupations, the powers of offices and positions of responsibility, income and wealth and the social bases of self-respect: the recognition by social institutions that gives citizens a sense of self-worth and the confidence to carry out their plans (Rawls 1985). These goods are argued to be fundamentally desired by all citizens and are essential to having a good life.

### What are some problems with Rawls' argument?

- Difference principle allows for too little inequality
  - People choose to spend their time differently so they should be entitled to the consequences of their choices
  - Kymlicka-style thought experiment
    - Andy chooses to spend his life playing online games, and while he is not good enough to participate in any e-sports competition or make any kind of money out of it, he still finds gaming much more pleasurable than anything and so sticks with it. Hence, Andy is poor.
    - Bella is an actress. She has worked very hard, attending numerous drama classes to perfect her craft. As a result of her efforts, she has been recognised by many leading award committees for her skill, landed many lead roles and have become very affluent as a result.
    - Rawls' difference principle would mean that Bella is only allowed to make money insofar as she benefits Andy who is part of the worst-off group. For example, she would have to donate to him somehow.
    - The problem is that Bella actually put in lots of effort, dedicated her time, disciplined herself in order to get to where she is, but Andy had just decided to not care about supporting himself, waiting for donation money from people like Bella. We would think that Bella deserves to further her own good without being required to help people like Andy, even if that means greater inequality in society.
    - Rawlsian reply: we can make leisure a primary social good; since the just distribution is assessed with respect to primary social goods, we would find Andy, who enjoys a lot of leisure, no longer in the worst-off group
      - BUT wasteful leisure activities such as gambling could compromise the agent's overall endowment of primary social goods
        - Callum is an avid gambler but always loses on his gambles. He is impoverished as a result. While he has lots of leisure (since he gambles so much) his endowment of other primary social goods is very low as a result of his behaviour. Bella would be

required by the difference principle to support his welfare. Obviously, this is an undesirable situation to be in.

- Second principle of justice allows for too much inequality
  - Fair equality of opportunity too weak a requirement
    - While formal equality of opportunity is based on non-discrimination on basis of gender, race, disability, Rawls instead advocates for fair equality of opportunity, requiring that those who are equally talented and equally motivated have equal chances. This is the idea that one's chances should not be affected by one's social class.
    - However, usually one's level of motivation or talent is affected by one's social class
      - A poor student who works part-time after school and gets little sleep as a result is unlikely to end up being as talented in maths as a richer child who gets enough sleep to power their brain, despite putting in the same level of effort into their studies
      - Gender discrimination means girls are discouraged from taking on STEM subjects (such that they are likely to lack the motivation to take the class) which leads to them lacking the necessary skills to pursue more high-paying STEM-related careers
    - Dworkin (1981): the difference principle is insufficient for achieving equality; some people are extremely unlucky (e.g. severely ill or disabled) such that they need a considerably greater share of of primary goods to achieve a a reasonable life; Rawls' difference principle addresses natural inequality only insofar as it mitigates the worst of its affects by ensuring that the worst off group, measured in primary social goods, are as well off as possible. It still means that there may be some people who are very badly off in virtue of natural disadvantages who do not get any extra help in view of this.
  - Moral arbitrariness does not provide the relevant distinction
    - In the original position people are stripped of knowledge of their race, gender and talents. This is because they affect people's chances eventhough they are assigned on a morally arbitrary basis. Yet, under the difference principle, people are still able to use their difference in talents to benefit themselves insofar as they benefit the worse off too. However, we are not allowed to benefit off our race or gender in the same way the difference principle allows us to benefit from our talents.
    - Rawlsian reply: morally arbitrary does not mean "bad" but means "there is no morally special reason for it"
      - Still, the distinction that makes us able to benefit from some morally arbitrary qualities and not being allowed to do so for others is unclear.
  - Cohen (1992): Large differences in economic power can lead to unequal political opportunities
    - Rawlsian reply: first principle takes lexical priority; if the economic inequality disrupts political power balance then there is a need to redistribute to the worst off
    - Still, if any inequality is allowed, this does not benefit the worst off in the long term
  - Cohen (1992): wage argument; see *Is justice about the institution or the individual?*
- Difference principle neglects the sources of injustice
  - Justice is socio-political so coming up with principles based on the political sphere alone is inexhaustive
    - Justice remains relevant for the private sphere including the family as an institution; they, too, are profound and present from the start
    - But for Rawls, justice does not apply directly to the family's internal life. They only impose essential constraints on the family as an institution and guarantee the basic rights and liberties and fair opportunities of all its members
    - Rawlsian reply: the principles of justice are only meant to regulate the basic structure, not personal conduct
      - The function of the principles are: (1) to provide a basis for shared agreement, (2) to give citizens space to pursue their own conceptions of good ("moral division of labour") and (3) to provide a background of justice
      - Leaving space is an important element
      - BUT if principles of justice only applies to the basic structure, Rawlsian justice provides no room for regulating interpersonal relationships e.g. interpersonal acts of racism
- Rawlsian justice allows for a market system but market systems – by construction – seek inequality
- Mismatch to other principles of justice
  - Utilitarian concern: Rawlsian justice does not maximise welfare

- Libertarian concern: Rawlsian justice may require redistributing to the poor but this is an infringement of liberty e.g. to tax is to disregard one's self-ownership
- Desert theorist concern: Rawlsian justice downplays desert; people may have earned their unequal distributions
- Luck egalitarian concern: Rawlsian justice does not fully capture the role of luck in morality since it has some elements which focus on equality of outcome e.g. the difference principle

### **What are some problems with Rawls' understanding of reasonable pluralism?**

- Rawls ultimately appeals to a conception of reasonableness which presupposes his own view
  - For normal people, something is reasonable if it is sensible i.e. rational taking into account the evidence available
  - However, Rawls has a very specific idea of reasonableness in mind: someone is reasonable if they recognise the freedom and equality of others AND is willing to propose fair terms of cooperation on them
  - The problem with understanding reasonableness in this way is that makes one's acceptance of some principle of justice a pre-requisite to one being reasonable
  - Yet, agents being reasonable is supposed to be one of the building blocks towards the principle of justice, since public reason is defined as engaging with one another in terms that other reasonable people could accept
  - Thus, anyone who accepts Rawls' argument would have to have had the same idea of reasonableness he has in mind
  - His argument, then, requires a further justification of why one should take on this view of reasonableness; Rawls would argue that it is the relevant way of respecting others as free and equal.
- Requires too much in order for someone to be respected
  - For Rawls, only when one is able to exercise public reason can one enter the social contract
  - Only when we engage in public reason do we respect people as ends, as agents with value of their own
  - Dworkin, in contrast, would grant respect to persons even if they did not exercise this particular kind of rationality
    - Autonomy is what is of primary value to people

### **What is Luck Egalitarianism?**

Whereas strict egalitarians vouch for egalitarian outcomes, luck egalitarians have emphasised that equality should be in opportunity rather than the end distribution.

This is the "level playing field" idea where inequalities may be justified insofar as they flow from choices or factors for which one can reasonably be held responsible for. In order to achieve a level playing field, formal discrimination based on grounds such as a person's race, ethnicity, age or gender are disallowed. This is the formal equality of opportunity principle.

Yet, for luck egalitarians, it is insufficient to have formal equality of opportunity (or fair equality of opportunity), which still allows talented people to justly gain reward over others. Equality of opportunity, means that any inequalities that are not appropriately the product of individual choices should be eliminated. For instance, if someone is born with greater natural ability than others, this does not justify their advantages over others.

Dworkin (1981) distinguishes between "ambitions" – the results of our choices – and "endowments" – what brute luck assigns to us. He maintains that people ought to have equal resources but inequality can arise if it results from ambitions and not endowments; people should live with the outcome for their choices.

Dworkin proposed a hypothetical compensation scheme to mitigate differences in natural endowments. It is assumed that people do not know their natural endowments. However, they can buy insurance to protect against being naturally disadvantaged in terms of talents (they know that the insurance money will go towards helping the actually naturally disadvantaged).



To arrive at the materially just distribution, agents are to exercise a thought experiment where everyone is endowed with equal purchasing power, bidding for equal bundles of goods. Although agents may end up with different economic benefits, it is fair in the sense that each bundle has been given equal consideration. Had an agent wanted another bundle more, they would have bid more on that bundle.

Thus, crucially for Dworkin, the equal distribution is the distribution in which no one prefers anyone else's bundle. This is the distribution that passes the "envy test."

### **What are some problems associated with luck egalitarianism?**

The formal requirements are insufficient in achieving equality of opportunity. More substantial principles are needed to extend coverage to access of education and healthcare. Yet, if we keep adding requirements, equal opportunity collapses into equal distribution. The list of things to equalise would be inexhaustive. The principle would have to be extended indefinitely for there are other factors (e.g. natural endowment of ability) which seem to be a product of luck, but nonetheless has a profound effect on one's life chances.

Rawlsian response: because the extent to which we can guarantee equality of opportunity is limited, we should instead adopt the Difference Principle

A strength of Dworkin's resource egalitarian concept is that it leaves room for responsibility; people are responsible for their choices. The concept of responsibility is less specific than desert, which holds that good choices should be rewarded with good consequences and bad choices should result in bad consequences. For the luck egalitarian, the result of one's choices are fair inequalities; even if one ends up in a bad position due to making virtuous choices, the disadvantage they face is fair since it is made by choice. Illustratively, the principle of desert would disapprove of a gambler winning the jackpot since the act of gambling is bad yet it brings good consequences, but the luck egalitarian has no such issues with the gambler's success since it is a product of their choice to shoulder the risks.

The luck egalitarian faces practical concerns:

- Problem of measurement: natural talents are very hard to measure, and if it cannot be appropriately measured then it cannot be compensated for
- It is also unclear how the compensation will be implemented, with some exceptions such as care-taking for the severely ill and disabled; how do you cure stupidity – one cannot be trailed their whole lives by a life choices advisor (and if they did then it would be to disrespect the individual's deliberative capacities)

The luck egalitarian allows for too much inequality and this hinders justice. Anderson (1999) holds that justice should emphasise equal respect for people, which may be manifested as equal social standing or equal political participation. Allowing for choice-driven disparities prevents people from having equal political participation because the rich will inevitably have more influence in politics, or other agents' employment prospects.

### **What is the libertarian principle of justice?**

Libertarians emphasise that a society is just by virtue of the exchanges that occur in it; particular distributive patterns are unimportant to the principle.

Nozick (1974) was one of the most well known advancers of this principle. Claiming that the complete principle of distributive justice would simply say that a distribution is just if everyone is entitled to the holdings they possess under the distribution, he proposes a three-part "Entitlement Theory" by which just distributions may be arrived by.

Entitlement Theory:

- (1) Anyone who acquires a holding through the principle of justice in acquisition is entitled to it;
- (2) Someone in receipt of a holding is entitled to the holding if it was transferred to them from someone initially entitled to it and if the transfer is done in accordance to the principle of justice in transfer;

(3) No one is entitled to a holding unless it has been arrived at via (1) or (2)

The principle of justice in transfer used in (2) is easy to construe with respect to common sense. It is designed to specify fair contracts that exclude stealing, fraud and the like.

The principle of justice in acquisition, however, is more controversial. He posits that “a process normally giving rise to a permanent bequeathable property right in a previously unowned thing will not do so if the position of others no longer at liberty to use the thing is thereby worsened.” For example, if an explorer discovers a new, previously unowned and uninhabited island, then they can justly acquire it insofar as they do not prevent others from using it (e.g. to visit) as well.

The principle of justice in acquisition is grounded in ideas of self-ownership. Kymlicka (1990) summarises Nozick’s self-ownership argument as follows:

(1) People own themselves.

(2) The world is initially unowned.

(3) You can acquire absolute rights over a disproportionate share of the world, if you do not worsen the condition of others.

(4) It is relatively easy, without worsening the condition of others, to acquire absolute rights over a disproportionate share of the world. Therefore:

(5) Once private property has been appropriated, a free market in capital and labour is morally required

### **What are the strengths and weaknesses of the libertarian principle of justice?**

#### Nozick's idea is an improvement on Locke's Proviso

Like its predecessor, the *Lockean Proviso*, the Nozickean proviso argues for private ownership of the material world through self-ownership. However, there is an important distinction. While Locke claims that, since one has self-ownership, mixing one’s labour with a material good is sufficient for one to acquire it given that after the acquisition, there is “enough and as good left in common for others.” There are two difficulties with this claim that Nozick’s suggestion seeks to resolve. First, it is unintuitive that merely mixing one’s labour with a material good should result in one coming to have ownership of it. He counters Locke’s claim using the example of spilling a can of tomato juice into the sea; mixing what one owns, such as one’s labour, with something else does not intuitively imply one comes to own it, just as how mixing one’s can of tomato juice with the sea does not mean one subsequently comes to own the sea, insofar as there is enough and as good ocean left for others. Nozick identifies value-creation as a result of mixing labour as the missing ingredient from Locke’s suggestion. Second, Locke’s argument does not provide a clear justification of why the first person to acquire it should have the right to exclude others from it.

To counter these flaws, Nozick’s proviso emphasises not worsening others’ conditions, or their liberties, by owning it. If one worsens the societal value of the good by having absolute ownership of something, then one cannot be entitled to it, or, in other words, one cannot have justly acquired it. On this view, people can own things if that means they create value to it (such that nobody’s conditions would be worse of as a result of their appropriation), or they own it but do not bar others from using it too.

#### The Nozickean Proviso is too weak

Nozick’s proviso can be satisfied without looking at the counterfactual alternatives. Cohen (1995) uses the example of the acquisition of a beach to show why this is problematic. It is in line with Nozick’s proviso for one to claim ownership of a beach and charge an entry fee of – for argumentative purposes – £10 insofar as their ownership of the beach returns users with at least as much benefit, for example the same amount of utility gain by having a clean beach as the utility lost from paying £10 to the beach owner. However, the Nozickean notion fails to account for the fact that different individuals have different talents; people would be much better off had the beach owner been someone with more efficient organisational skills such that they could offer the same service for a much lower rate at £1. Failure to consider the counterfactual cases in Nozick’s proviso results in a sub-optimal outcome for society.

However, per Kymlicka's conception of Nozick's self-ownership argument, this may be less fatal a flaw than Cohen suggests. It is possible to read "worsen" in stages (3) and (4) of the argument as having a lower state of welfare than what one could possibly have. This is exactly what happens when an inefficient person owns the beach, so such ownership cannot be justified under the Nozickian idea. However, there will always be a possible "less worsening" of welfare such that to have anyone less efficient adopt ownership of the property worsens the conditions for the general population up until the point where the most efficient person gains ownership of it. While Nozick does not seem alarmed by the concentration of wealth his proviso calls for, it seems that justice is to allocate property to those who are most efficient at managing it: one cannot acquire a disproportionate share of the world if one cannot efficiently manage it to maximise welfare for others. Taken down this route, Nozick's suggestion collapses into a welfare-maximising principle; no transaction can be just unless it leads to a just, welfare-maximising end state.

#### Nozick's principle allows for too much inequality

The egalitarian's concern with Nozick's proviso is that it allows for too much inequality in the distribution of material goods. While this criticism may not carry weight against libertarians who deny the importance of resultant allocations in assessing societal justice, a number of scholars, known as left libertarians, have been able to adapt the libertarian notion to be compatible with equality. Hillel Steiner's (1994) work, for instance, subscribes to the notion that everyone is a full self-owner (the libertarian component) and also has a right to an equal share of natural resource value (egalitarian component). In the same vein, Van Parijs (1995) defends unconditional basic income for all, an idea which combines the view that natural resources should be used to promote equality with the libertarian notion of self-ownership. Vallentyne (2009) added an element of equal opportunity to the libertarian idea, claiming that "those whose initial internal endowments provide less favourable effective opportunities for well-being are entitled to larger shares of natural resources."

#### No prescriptive force

Nozick does not provide a complete set of principles for rectifying past injustices. His theory can only describe, through tracing transactions of property, whether or not a current distribution is just, but is unable to prescribe a remedy for possible injustices. He merely notes that one should figure out what the just distribution would be had the historical injustices not occurred and adopt that distribution instead. Without detailing the method of arriving at a just distribution given previous injustice, his largely incomplete and inapplicable to the real world.

#### **What is structural injustice?**

Jugov and Ypi (2019): Structural injustice is injustice that is more deeply rooted than merely having unjust distributions but is manifests itself in persistent power-differentials between groups; "One particularly salient feature of structural injustice lies in the fact that systems of social rules seem to be self-perpetuating"

Alternatively, I.M. Young understands structural injustice to be the situation when otherwise innocent choices of individuals coalesce together to produce disadvantages or injustices which no particular agent is necessarily morally responsible for.

#### **Liberalism VS Libertarianism**

According to Rawls, liberal ideas of justice 'contain three main elements:

- (1) A list of certain basic rights and liberties and opportunities (familiar from constitutional democratic regimes);
- (2) A high priority for these fundamental freedoms, especially with respect to claims of the general good and of perfectionist values; and
- (3) Measures assuring all citizens adequate, all-purpose means to make effective use of their freedoms.'

In other words, the central components of a liberal view are a range of highly prioritised rights and liberties and, in Rawls' view, the provision of the means to make effective use of those freedoms.

On the other hand, for the libertarian (and in particular libertarians who ground their view on self-ownership e.g. Nozick), there are certain absolute or near absolute rights of self ownership that should be first and foremost prioritised. The range of rights and liberties libertarians call for will often differ from those warranted under liberalism because libertarians usually only affirm *negative* rights (rights not to be interfered with, coerced, or killed etc.) but not rights which require *positive* provision from others (rights to education, and to political representation etc.).

Liberalism and libertarianism are not to be used interchangeably. Many liberals are not libertarians. There is an interesting question (debated in the literature) as to whether it is appropriate to call libertarians 'liberals'. Libertarians believe a certain set of *negative* rights have very high priority, but that also commits them to denying that certain *positive* rights exist. Some may argue that the existence of these positive rights is essential for something to be a liberal view. Libertarians also tend to justify redistribution on different grounds from non-libertarian liberals, justifying redistribution on the basis of past injustice or on the basis of a “Lockean proviso” (e.g. people are entitled to have an equal share of the world's resources).

## Justice and the Market

Theory	Market System	Private Property	Taxation	Inheritance	Inequality
Strict Egalitarianism	Egalitarian state with lots of intervention	Permitted if everybody has the same level of private property	Either tax no one or tax everyone	Strictly prohibited	Strictly prohibited
Rawls (Difference Principle)	Free trade with redistributive elements according to the difference principle	Permitted according to the difference principle	Permitted according to the difference principle	Not permitted unless the inheritor is the worst off	Permitted according to the difference principle
Dworkin (Resource Egalitarianism)	Free trade with some basic provision of welfare	Permitted if a result of choice, not brute luck	Could be thought of as the insurance against being naturally endowed with less talent; giving of income to enable society to provide minimal welfare is required	Not permitted since people did not do anything to deserve it; being born into a particular family is due to brute luck	Permitted if a result of choice, not brute luck

Theory	Market System	Private Property	Taxation	Inheritance	Inequality
Utilitarianism	Free trade (since it concerns maximising agents' utility)  OR also compatible with lots of state intervention if the state knows how to best maximise utility	Permitted if utility is maximised	Permitted if utility is maximised	Permitted if utility is maximised	Permitted if utility is maximised
Desert-based Principles	State that allocate based on desert  OR market mechanism	Permitted if the agents deserve it, given their actions	Not permitted as it is a hindrance on people's fair share of the rewards of their labour	Not permitted since people did not do anything to deserve it	Permitted if the agents deserve it, given their actions
Nozick (Libertarianism)	Free market in capital or labour is morally required	Permitted if it does not worsen anyone's condition  Nozick defends exclusive property rights on this ground but it is hard to determine why such property must be so exclusive based on the fact that it does not make things worse for others alone	Taxation is banned because it involves taking partial ownership of someone else (contradicts with principle of self-ownership)	Permitted if in line with the principle of justice in transaction and if the person giving the inheritance was initially entitled to that property	Permitted if it does not worsen anyone's condition

### Transactional VS End-State Theory

- Reasons for adopting a transactional theory of justice
  - Transactional theories of justice hold that what matters for justice is how the goods are transacted
  - People's choices should matter
  - Lack of respect for people as rational beings capable of decision-making if we were to implement an egalitarian outcome regardless of their choices – the projection of their identity
- Reasons for adopting an end-state theory of justice
  - End-state theories of justice hold that what matters for justice is the resulting distribution
  - People's utility is what matters
  - The amount of utility one gets depends on the bundles of goods one receives

Theory	Transactional VS End State
Rawls (Difference Principle)	End-state
Dworkin (Resource Egalitarianism)	<p>Transactional with initial egalitarian requirement</p> <p>Luck egalitarianism holds that patterns of distribution matter, taking into account choices, including transactions.</p> <p>E.g. if a person wastes their money and is worse off than others, the reason why that pattern of inequality is just is because it involved a certain choice. On the other hand, if a person distributes all of their income equally to everyone else, luck egalitarianism usually holds that this is just, but it is only because it involved a transactional choice (the individual chose to distribute it equally to others). However, if the individual chooses to give the money to only some and not others – much like inheritance – this creates unfair inequality.</p>
Utilitarianism	End-state
Desert-based Principles	Transactional
Nozick (Libertarianism)	Transactional

### What is cosmopolitanism?

- Cosmopolitanism is the idea that all people are entitled to equal respect and consideration, regardless of their citizenship status or other affiliations may be
- One is responsible to everyone in the global community even if they may never come to know them
- The borders of the state are merely there to restrict the scope of justice but the responsibility to treat people with equal respect extends beyond borders

### Is justice about the institution or the individual?

- Rawls allows for inequality
  - In a just society, members of those societies accept the principles of justice including the difference principle
  - One way in which inequality can be justified is when the worst off are made better off through individuals being financially incentivised to use their talents to increase overall productivity
  - Cohen's criticism: if individuals accept the difference principle and realise that the only inequalities that can exist are ones that are necessary, talented individuals would realise that they could have worked just as hard (hence, equally benefit the worst off in society) for a lower wage
    - Economic rent is not necessary
    - Rawlsian reply: adopting principle just means obeying the rules but it is not required that individuals internalise those principles in their own market conduct
      - Justice is about the basic structure and is not located the individual level
      - The basic structure should matter because it is profound and present from the start
  - Cohen's response: If whatever that is profound and present from the start is the site of justice, then socio-political institutions as well as individual market choices and familial relationships would also be the sites of justice (not just rules like the basic structure)
    - Any informal conglomeration of people's choices can also have profound and present effects from the start (like how small acts of inequality by a lot of individuals lead to societal inequality)

- Family is profound and present from the start so Rawls' argument does not justify the cut between public institutions and private behaviour
- Alternative views
  - Scheffler: Justice in individuals different from justice in institutions
    - Justice at the institutional level provides background justice, which facilitates the possibility of just transaction between individuals
  - Andrew Williams: The basic structure has rules that are relatively public; publicity is important

## Reciprocity

The Rawlsian idea of justice is based specifically on grounds of relationships of reciprocity that tend to only arise among citizens. We find ourselves in a mutually cooperative scheme where we contribute to a social product. Justice, then, is the question of how we divide up the burdens of production.

Nussbaum questions the element of reciprocity. The Rawlsian idea of justice follows from the Hobbesian view for common coordinated project for mutual advantage. Given such, if an individual cannot provide an advantage to others, there is no duty to care for them on the grounds of justice. These non-contributors may be those outside society (e.g. refugees), the poor who lack the means to contribute, and those who are severely ill and disabled.

The Rawlsian reply to this concern would be that we should include the probability of being mentally impaired, or being a non-contributor, in the veil of ignorance. We can, thus, conceptualise a society where non-contributors may be cared for, while holding that they are not counted when we determine who is the "worst off" in society as they cannot enter the social contract.

## Duties of Justice VS Duties of Humanitarian Assistance

Duty	Grounds	To whom is this duty	Enforcability
Justice	Interpersonal relations	Other members of	Coercively enforceable
Humanitarian	Humanity	Any "persons"	Not enforceable

## What are some problems with welfare based theories of distributive justice, such as utilitarianism?

- Rawls (1971): utilitarianism fails to take seriously the distinctness of persons
  - It may be acceptable for one person to shoulder some burdens in the present in order to enjoy a better future and hence a pleasurable life overall, but this notion cannot be applied at the societal level, for one cannot reasonably expect others to shoulder burdens on their behalf so they can gain more pleasure such that society is at a greater level of utility overall
  - Individuals will not choose to take the burdens for others' gain
  - ALSO there is also no consent mechanism for such sacrifices
- Utilitarianism fails to appropriately capture a priori moral intuition
  - For example, in a racist society, greater pleasure would be achieved had ethnic minorities were mistreated
  - The utilitarian reply: racism would rarely occur in utilitarian societies because (1) there is the recognition that each agent is morally equal, and (2) in the long run racism comes with a high cost to utility (e.g. civil war) so the utilitarian would prefer educational programmes against racism
  - This is disconcerting still because one ought to take racism as wrong because it is just wrong *a priori*, not because one finds out it is sub-optimal after some advanced probabilistic calculations
  - Similar arguments can be made against the utilitarian on issues like sexism
  - The indirect/institutional utilitarian reply: Since the consequences of individual actions are determined in conjunction with other agents' actions and rarely determined in isolation, morally intuitive institutions such as constitutional rights, human rights and various property

- rights would be endorsed; racist or sexist policies the traditional idea of utilitarianism sanctions will not occur
- Feinberg (1997): Welfarism ignores the idea that people should be responsible for or deserve the products of their choices/actions
  - Resolvable with institutional utilitarianism
- Interpersonal comparisons of utility are inappropriate
  - It is counterintuitive to compare the utilities derived by distinctly disparate goods (e.g. utility from going cave diving to utility from playing with a cat at home)
  - BUT is it really that counterintuitive? We deliberate life choices based on money etc. even for extremely different things
  - Still there is the problem of expensive tastes; suppose we have two individuals, one who is easily satisfied and the other who requires a lot more material resources to gain the same amount of utility; the utilitarian way would allocate much more resources to the person with cheap tastes compared to the person with expensive tastes; it seems that what matters for a just distribution in society is the individuals' tastes, not their moral worth as a human being
- Problems with implementation
  - One thought too many
    - Requires too much deliberation when immediate action is required (e.g. saving someone's life a split second before the disaster)
    - Resolvable with rule utilitarianism
  - There are challenges to determining agents' utility functions

### **What are the variants of the views on perfectionism and anti-perfectionism?**

- Something is controversial if reasonable people disagree about it
  - E.g. people disagree about how good/enriching/valuable opera, sport, having a healthy lifestyle, chess, going on a countryside walk, poetry is
  - If something is recognised by a reasonable agent that it may be valuable to other reasonable people but not to them, then this demonstrates that there is controversy in the goodness of that thing
- Perfectionism: the state is *permitted* in justifying policy by invoking or depending on conceptions of the good which are controversial
  - Two types of perfectionism
    - Strong perfectionist: The state is justified in making policies and forcing people to follow controversial ideas of the good (e.g. the state can force people to attend an opera)
    - Weak perfectionist: The state justified in making policies based on controversial ideas of the good but cannot force people to follow them (this is the view Raz takes; people have to have a range of choices but the state cannot force people to choose a particular option)
- Anti-perfectionism (neutrality): the state is *not permitted* in justifying policy on controversial conceptions of the goods
  - Anti-perfectionism preferred as a label than neutrality because neutrality may be misleading since the view only requires the state to be neutral with respect to the conception of the good
  - Two types of neutrality
    - Justificatory neutrality: The state's justification of their has to be anti-perfectionist (this is the view Rawls takes)
    - Consequential neutrality: The outcome of the state's policies has to be anti-perfectionist (not particularly supportive of a controversial idea of the good)



	Perfectionism	Anti-Perfectionism
<b>Political</b>	<p>Typically the political perfectionist view is not viable because if we truly believed that people are free and equal, then one would not impart policies that are grounded in controversial ideas of the good on them because that could be considered as disrespectful.</p> <p>However Joseph <u>Chan</u> offers a way to reconcile the two views. According to Chan, we can have a political, non-controversial reason for state to enforce perfectionist policies if those policies are the outcome of a politically neutral process.</p> <p>This is based on the idea that a large range of what we encounter will be important yet controversial, yet the state has to do something. For the state to remain politically neutral but can take actions, people can agree on a procedure on what the state should do. Thus, the outcome is perfectionist in substance.</p>	<p>The state needs to be anti-perfectionist because people are free and equal so the state cannot rule over them with principles they do not necessarily accept (since these principles are controversial).</p> <p>This argument applies irrespective of what a good life is.</p> <p><u>Rawls</u> and <u>Quong</u> are Political Anti-Perfectionists.</p>

	Perfectionism	Anti-Perfectionism
<b>Comprehensive</b>	<p>Comprehensive anti-perfectionists are essentially, anyone who has a vision of what makes an individual's life good and who is happy for the state to promote that in one way or another.</p> <p>Comprehensive anti-perfectionists, thus, span from fascists to liberals. On the liberal front, some comprehensive perfectionists, like their comprehensive anti-perfectionist counterparts, hold that autonomy is valuable. However, they differ on their idea of autonomy.</p> <p>For <u>Raz</u>, a comprehensive perfectionist, what it means for an individual to be autonomous is that they have the space to choose between a range of relevantly valuable options. On this view, if agents had a choice but only between a few options or only between bad options, then the agents is not considered as autonomous.</p> <p>The role of the state, then, is to guarantee its citizens a suitably large range of relevant options, for example by getting involved in a cultural marketplace.</p> <p>Mill's view can also be taken as a comprehensive perfectionist view. While Mill would disapprove strong perfectionism because he believes people should not be coerced to behave according to a particular conception of the good, he does not prohibit the state from encouraging a particular good, even if the value of that good remains controversial.</p> <p>Therefore, it would be wrong to equate neutrality (anti-perfectionism) and liberalism for Mill was both a liberal (holding that people should have negative freedom from interference) and a perfectionist.</p>	<p>We justify anti-perfectionism based on what we think is a good life.</p> <p>For example, the most common form of comprehensive anti-perfectionism is <u>Dworkin's</u> view. He argues that the autonomous life is the good life. So, the state cannot intervene because their intervention, prescribing things to us via policies, undermines the autonomy of our lives.</p> <p>There are also other forms of comprehensive anti-perfectionism which does not invoke autonomy.</p>

### Rawls VS Dworkin on Anti-Perfectionism

- Rawls holds that when it comes to constitutional essentials (the basic structure and the principles of justice that governs it) the state cannot do anything controversial
- However, it is permissible to have perfectionism elsewhere for non-constitutional essential liberties or distributions (e.g. making parks and roads) and the state can still be legitimate in making decisions on those policies
  - They can just decide through democratic procedure
  - Controversial policies can be decided upon between neutral people through a neutral process
- Problem 1: the basic structure is almost all of the state's functions, or all that is of importance
  - Not enough room left for state to act (if state is anti-perfectionist then it cannot do much)

- Problem 2: Dworkin would argue that even subsidising on non-constitutional essentials infringes on people's autonomy
  - Government subsidies come from tax revenue
  - No one's tax revenue should go towards things they do not think is good; to use that pool of money on controversial subsidies disrespects citizens' autonomy
    - Response 1: We can have different budgeting pools; one central pool for non-controversial goods and government can source budget for controversial goods based on crowdfunding
      - Impractical
    - Response 2: Government can support through giving tax breaks instead of giving subsidies
      - Opportunity cost
      - The state is indirectly supporting controversial views anyway so it still damages autonomy
      - Merely relocates the problem
  - Response 3: Maybe the state can declare something as being meaningful without providing financial support
    - State position meaningful to every citizens' lives
    - State should be equally representative of everyone's views, not just some particular group's
    - Violation of autonomy in the sense that you disrespect my autonomy in voting you into office by supporting an idea of the good I do not support of
    - Waldron-type argument: insulting and disrespectful to citizens for the state to involve itself in the cultural market place second guess what people find valuable in life
      - For the state to declare something as being meaningful, they must believe that their statements can change people's mind
      - This means the state has to doubt people's autonomy to go forward with such an act

## State Legitimacy

A state is legitimate if:

- Its citizens have an obligation to obey the law
- The state is justified in coercing it

Internal VS External legitimacy

- Empirical legitimacy = whether or not people believe the regime is legitimate
- Internal legitimacy (de-facto legitimacy) = the state or the law is accepted by citizens
  - Some argue that internal legitimacy is necessary or sufficient (as realists do) for normative legitimacy (normative legitimacy = a set of standards by which an institution or regime is judged)
- External legitimacy = legitimacy with respect to other state/non-citizens (e.g. migrants)
  - Rawls: internal legitimacy
    - If ideas are sufficiently shared then states may be perfectionist (provided basic structure follows principle of justice)
- Quong: everywhere the state governs the state needs to be anti-perfectionist
- The state does not need to be internally legitimate to be externally legitimate (they just need not to be on the brink of collapse)

## References

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