Justice in a Changing World

Cécile Fabre
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Acknowledgements

This book began as two different series of lectures I gave at the London School of Economics between 2001 and 2006. Before assuming its present shape, it became a course guide for the University of London’s external degree programme. Turning lecture notes into a coherent text has proved much harder than I had anticipated. I am grateful to Kate Barker, the administrator of the programme, and to Iain Sharpe, who copy-edited the guide, for their encouragement and support. Likewise, I would not have found the energy to expand the lectures and the course guide into a book had it not been for Louise Knight’s commitment to the project. She and her team at Polity Press (most notably Caroline Richmond) have been a remarkable and steadfast fountain of advice, ranging from the academic to the editorial. Axel Gosseries and Andrew Williams helped with future generations; Dan Butt, Clare Chambers, Nicola Dunbar, Paul Kelly, and Phil Parvin read parts of the typescript and provided advice of various kinds; Matthew Festenstein and an anonymous reader for Polity Press helped me knock the whole thing into shape.

This book differs somewhat from other well-known introductory texts on justice and/or contemporary political philosophy. Unlike Adam Swift’s Political Philosophy: A Beginners’ Guide for Students and Politicians, it does not spend much time analysing concepts such as liberty and equality (Swift, 2006). Unlike Will Kymlicka’s Contemporary Political Philosophy and Harry Brighouse’s Justice, it does not conduct a detailed exploration of contemporary theories of justice (Brighouse, 2004; Kymlicka, 2001). Rather, it takes three of them – egalitarian liberalism, communitarianism, and libertarianism – as a framework within which to present debates on topical issues such as global justice and justice towards future generations. Unlike Jonathan Wolff’s An Introduction to Political Philosophy, it does not say much about pre-twentieth-century philosophers (Wolff, 2006): in fact, Locke is the only
major pre-twentieth-century thinker who appears in these pages. Like all four, however, it is unremittingly committed to presenting, as clearly and lucidly as possible, a wide range of arguments on some of the most pressing issues which face us today. Each in its own way has been an inspiration.

Above all, however, I want to express my gratitude to my students, who sat through badly timed lectures (at 2 p.m., immediately after lunch), commented on the accompanying handouts, politely tried not to yawn through yet another discussion of Rawls’s original position, worried about the non-identity problem, enthusiastically endorsed Nozick’s defence of private property in the second week of term only to reject it a month later, and insisted that a Briton is not entitled to give priority to the lives of his co-nationals (understandably so, perhaps, given the wonderfully international composition of the LSE’s student body). Were it not for them, I would find my job rather boring. Thanks to them, it is an astoundingly privileged way of earning a living.

London, 2 February 2007
1 Setting the Stage

1 Introduction

One of the most important questions in contemporary political philosophy is that of which principles ought to regulate major social and political institutions, so as to ensure, as much as is feasible, that we are given what we are due. An answer to this question provides a theory of social justice: of social justice, in that it addresses the issue of what we owe to each other, and of social justice, in that it attends to the organization of societies. My aim, in this book, is not to provide such a theory. It is, rather, to describe some of the most important debates about social justice of the last thirty-five years – since, in fact, the publication of John Rawls’s seminal A Theory of Justice. A theory of justice sets out what is owed to whom. In other words, it sets out the content of justice and delineates its scope. With respect to the question of scope, and until fairly recently, justice was seen, for the most part, as regulating what we owe to fellow, contemporary, citizens. On that view, then, justice requires, for example, that all citizens of the state be treated in the same way, regardless of their religion; or it requires that no citizen be allowed to live in poverty and destitution. Put differently, theories of justice sought to defend the territorially bounded and culturally homogeneous welfare state. As many commentators have argued, this is what A Theory of Justice does. In the last three decades or so, however, a number of challenges have been pressed against this rather simplistic (for some) understanding of justice. States are not culturally homogeneous: they are made up of many different ethnic and religious groups, who dispute the ideal of equality which underpins much of traditional thinking on justice, and some of whom want to set up their own state. Moreover, although they are, in some sense, territorially bounded, states are also subject to the growing pressures of an increasingly globalized world. They have to
deal with transnational issues such as immigration and the distribution of resources across borders. In addition, greater awareness of the cost, for our successors, of our current economic and environmental policies has led some philosophers to argue that justice does not impose on us obligations merely to our contemporaries, but also to our successors (a point which Rawls in fact does address in *A Theory*).

Finally, growing demands, on the part of the descendants of victims of injustice, for reparations (sometimes several hundred years later) question the view that only victims are owed compensation.

This book addresses these challenges to this understanding of the scope of justice, by examining the following six topics: justice between generations, justice between cultural groups, national self-determination and territorial justice, justice between foreigners, immigration, and reparations for past injustices. However, although the question of scope is analytically distinct from the question of content, one cannot secure a good grasp of the former without getting a sense of the latter. Merely to say, for example, that we have obligations of justice to distant strangers and not merely to fellow citizens, is misleading, as it might suggest that our obligations to the former are as weighty as our obligations to the latter. And yet, most people, both within and outside academia, believe that we owe more to fellow citizens than to foreigners, even though the scope of justice crosses national borders.

At this point, it is worth clarifying exactly what this book does, and how it does it. It does not articulate and defend a theory of its own: it is mainly descriptive and exploratory. Nor does it describe every single possible position on each of those topics. Nor does it present all the theories of justice which are currently being debated. It focuses on three such theories, namely egalitarian liberalism, communitarianism, and libertarianism. It does so, because those three theories each have something to say on the aforementioned issues. This calls for two comments. First, I do not mean to imply that other theories of justice are uninteresting or unimportant in their own right. Feminism, for example, is a rich and fascinating body of thought, which every student of political theory should familiarize herself, indeed *himself*, with. However, I will not treat it, here, as a distinct theory of justice alongside the aforementioned three schools of thought, simply because there does not seem to me to be a distinctively feminist position on, say, national self-determination or justice towards future generations. Instead, I will flag up feminist concerns on some of the topics at hand, as and when appropriate. (For a very good overview of gender in recent political theory, see Squires, 1999.)
Second, the treatment of our specific topics will on the whole lend itself well to a distinction between, say, communitarian and libertarian positions – in that there is, recognizably, a set of texts and arguments within those schools of thought on the issue at hand. Sometimes, however, one will not be able easily to apply those labels to a body of arguments on a particular issue. But one will be able to discern, in those arguments, some concerns raised by, respectively, egalitarian liberals, communitarians, and libertarians.

We will begin by setting out our three schools of thought. We will start with egalitarian liberalism (section 2), and in particular with Rawls’s theory of justice (section 2.1). For it is with Rawls that the topic of social justice was given an enhanced profile in political philosophy. It is with Rawls too that perennial issues such as the relationship between individuals and communities and the distribution of resources from the affluent to the poor have returned to the fore of our discipline. Predictably, then, Rawls’s theory is the basis for subsequent egalitarian liberal theories of justice, such as luck egalitarianism (section 2.2) and sufficientism (section 2.3). No less predictably, it is against Rawls that a number of philosophers have articulated and defended their own theories of social justice, most notably communitarians (section 3), and libertarians (section 4).

2 Egalitarian liberalism

A theory of justice is liberal in so far as it defends fundamental individual freedoms. It is egalitarian in so far as it assumes that all individuals are morally equal and mandates an extensive distribution of material resources (income and wealth) towards those who have fewer such resources. In contemporary political philosophy, egalitarian liberalism sprang from Rawls’s major work, *A Theory of Justice*, which was first published in 1971 (Rawls, 1999a). Rawls’s theory is rich and complex. Much attention has been focused on its distributive dimensions. In particular, egalitarian liberals disagree on the extent to which inequality matters. According to luck egalitarianism, inequality is intrinsically bad and individuals should not be made worse off through no fault of their own. According to sufficientism, inequality is not bad in and of itself, and all that matters is that individuals have enough resources.

2.1 Rawls’s theory of justice

In *A Theory of Justice*, Rawls argues that a just society must distribute so-called primary goods, that is to say, the resources (income and
wealth) and freedoms which all of us, as rational and moral agents, need to implement our conception of the good life. And it must do so according to two principles. The first principle, also known as the liberty principle, says that all individuals ought to enjoy basic liberties such as freedom of association and freedom of speech. The second principle states that inequalities in income and wealth are legitimate if, and only if, they benefit the worst-off members of society; in addition, such inequalities should attach to jobs and positions open to all.

Showing how we choose those principles of justice, and why we should choose them, is one of Rawls’s main tasks in A Theory. As he puts it, we are very different from one another, we have different ideas as to how to lead our lives, have different talents and skills, and come from different backgrounds. Moreover, we are self-interested and thus primarily concerned with maximizing our own good. If we were to choose principles of justice in full knowledge of these facts, we would in fact choose principles which would systematically advantage us, at the expense of others. This would be wrong, for two reasons. First, we would obtain those advantages on the basis of social and natural contingencies (Rawls, 1999a, p. 17). For example, if we know that we are talented and thus have a high earning power, we will choose a tax system solely on the basis that it advantages us. But (according to Rawls) there is something deeply wrong about this. Take, for example, a supremely talented footballer who, in a Western country, is likely to earn millions of pounds a year. Why should he gain so much from something as arbitrary as the fact that he is lucky enough to be good with a football? After all, we are all moral equals, and such factors, which are traceable to pure luck, should not affect how we lead our lives.

Second, the most important thing about us is that we are autonomous agents. In other words, we have the capacity to frame, revise, and pursue a conception of the good life, and what matters to us is that we should be able to implement it. If we were to know what our conception of the good is, we would choose principles of justice by focusing on those rights and freedoms which are necessary to us, to the cost of rights and freedoms which are necessary to others. For example, if we know that we are, say, Catholic, we might be tempted to protect freedom of religion for Catholics only, unfairly overlooking the importance of their own religion for other groups.

Our task, then, is to ensure that primary goods are distributed in such a way as to nullify the impact of bad brute luck on our lives, and to enable us to implement whatever conception of the good we have.
In order to do so, we must put ourselves in a hypothetical situation and imagine how we would allocate primary goods if we did not know who we are, where we come from, in short, if we were behind a *veil of ignorance*. This contractual situation is called the *original position* and is a position of equality, since natural and social inequalities do not affect the principles of justice. In that sense, the principles we choose are the product of a *fair* agreement. That is why Rawls’s theory is called *justice as fairness*.

In the original position, parties choose two principles. The liberty principle stipulates that each individual has a right to enjoy basic liberties, consistent with a similar and equal right for others. Rawls does not say much more than that, but we can surmise that he has in mind, apart from liberty of conscience, freedoms such as freedom of movement, private property, etc. – in short, the essential rights and freedoms of a liberal society.

So much, then, for the first principle of justice. The second principle comprises two parts: a principle for allocating material resources and a requirement that equal opportunities be secured to all. That is, social and economic inequalities are permitted provided that (a) they benefit the worst-off members of society, and (b) they attach to positions and offices open to all (Rawls, 1999a, p. 72). The first part of the second principle is also known as the difference principle, and the second part is known as the equal opportunity principle.

Note that the difference principle stipulates that income and wealth ought to be distributed equally, *unless* inequalities would benefit the worst-off members of society. This is quite a radical view, since it says, in effect, that equality is the default position – in other words, that it is inequality, and not equality, which stands in need of justification. However, Rawls believes that resources can be distributed unequally. This is because (according to him) talented people will not work to the full extent of their capacities if resources are distributed equally, with the effect that fewer resources will be available, through tax returns, for the worst off; but if the talented are rewarded more than the untalented while working at full capacity, then they will have an incentive to work to the full, and that will yield extra resources for the worst off. Suppose, for example, that I can work either as a doctor and earn a lot, or as a gardener and earn rather less. Suppose also that I would rather be a gardener. To distribute resources equally means imposing a 100 per cent rate of tax, and sharing the proceeds equally among all. Under that system, I get the same amount of income after tax no matter what I do, and so I have no incentive to take up medicine. Instead I will take
up gardening and, as I will earn less than if I were a doctor, will contribute less to social wealth by way of taxes. As a result, there will be less wealth available for redistribution. If we distribute resources unequally, however, by imposing a lower rate of taxation, I may have to pay more tax as a doctor than I would as a gardener. But I would still get a higher income, and so I have an incentive to become a doctor. Since I will earn more than if I were a gardener, I will contribute more to social wealth by way of taxes, and there will be more wealth available for distribution. Clearly, the worst off, those who are in a position to earn less, will have more under an unequal distribution than under an equal distribution. Therefore, it would be rational for them to accept inequalities (Cohen, forthcoming).

To recapitulate briefly, then, Rawls argues that a just society is governed by the aforementioned two principles of justice, which are chosen by individuals themselves, in ignorance of their specific, individual characteristics such as their gender, race, and talents.

2.2 Egalitarian liberalism after Rawls, I: luck egalitarianism

Rawls’s theory of justice is the bedrock, as it were, for one of the dominant theories of distributive justice, namely, luck egalitarianism. In academic and non-academic circles, the debate about equality is often framed as a debate between proponents of equality of opportunity, whereby you give people equal chances and leave it up to them to take those chances, and proponents of equality of outcomes, whereby you ensure that all end up with the same bundles of resources. Most egalitarians endorse equality of opportunity rather than equality of outcomes. Whether or not there is any space at all for equality of outcomes in a coherent theory of distributive justice remains a matter for debate (Phillips, 2004). In those stark terms, at any rate, luck egalitarianism does not seek to equalize outcomes. Its central position is not that individuals should have equal amounts of income, or resources, no matter how they came to be worse off than others. Rather, luck egalitarianism seeks to equalize opportunities. As a theory of equality of opportunity, however, it goes further than standard interpretations of that ideal. Not only does it clearly subscribe to the uncontroversial view that the law should not discriminate against individuals on the basis of arbitrary and unchosen factors such as gender and race. It also holds that inequalities arising from individuals’ social and familial background should be remedied. However – and herein lies its claim to radicalism – it mandates the eradication of all inequalities which arise for reasons beyond indi-
viduals’ control – including inequalities which arise from differences in natural talents and ability to command earning power.

At this juncture, we must draw two important distinctions which we will use throughout this section. First, we must distinguish between being made worse off as a result of the choices that we make, and being made worse off through bad luck. Suppose that I, unlike you, choose not to save any money at all, as a result of which, ten years later, I am worse off than you are. The inequality between us can be traced to choice. Suppose instead that I was born into a very poor family, whereas you were born into a rich one, as a result of which, in adulthood, I am worse off than you are. In this case, the inequality between us can be traced to luck.

Second, we must distinguish between bad brute luck and bad option luck. Suppose that we both choose to play the lottery. I end up losing a lot of money, whereas you end up winning. We both chose to run a similar risk of losing: I lost, you won, bad luck for me, good luck for you. But in so far as we both chose to play, the inequality between us can be traced to option luck. Contrast that case with the following: I become blind in an accident for which I am not responsible; you are fully sighted. The inequality between us can be traced to brute luck. Luck egalitarians believe that there is an important moral difference between those two inequalities. On their view, justice only requires the eradication of inequalities which are due to bad brute luck – not those which are due to bad option luck.

With this clarification out of the way, let us begin by revisiting Rawls’s theory. According to Rawls, it would be unfair to choose principles for the allocation of primary goods on the basis of natural and social contingencies such as being very talented, being able-bodied, and coming from a privileged background: hence the original position and the veil of ignorance. Rawls insists, then, that primary goods in general, and income and wealth in particular, should be distributed in such a way as to neutralize the impact of bad brute luck on people’s life: hence the two principles of justice, particularly the difference principle.

On closer inspection, however, and as Ronald Dworkin notes, the difference principle simply does not remedy inequalities due to bad brute luck (Dworkin, 1981a, 1981b). Consider the following case, involving two individuals of similar natural talents and background, who start off on an equal material footing. Peter decides to be a poet (which pays very little); Dan, by contrast, decides to become a doctor (which pays a lot). Predictably, Peter becomes worse off than Dan.