

Philos 117AC, Fall 2017

Main Texts:

John Rawls, *Political Liberalism*, pp. 257–9, 265–71

John Rawls, *Justice as Fairness*, §§14–16

The contrast between Rawls and Nozick: the basic structure as primary subject of justice
Nozick presents his historical entitlement theory as a sharp contrast to Rawls's theory of distributive justice. But Rawls's theory has two interlocking parts, and the second part looks a lot like Nozick's historical entitlement theory.

- Part 1: The basic structure—basically, the rules of the system—is just insofar as it achieves certain broadly defined aims. It should give everyone basic liberties and equality of opportunity, and it should leave the worst-off group in society as well off as possible. This part alone can't tell us whether it's just that some particular person has some particular thing: e.g., that Veronica has a job as a pharmacist, from which she took home \$50,000 after taxes, a bit more than her co-workers, because she put in some overtime.
- Part 2: Which particular person gets which particular things is a matter of "pure procedural justice": *any* outcome that results from people following the rules of the system, so long as the system is just, is itself just. (Compare lotteries: anyone's winning is just, so long as no one tampered with the lottery.) Suppose that the system is just; it achieves the aims described in part 1. Is it just that that Veronica has a job as an optometrist, from which she takes home \$50,000 after taxes, because of a little overtime? Yes, if she and everyone else involved complied with the rules of the system. This looks a lot like Nozick's historical entitlement theory, which says that what you have is just if you and everyone else involved complied with its rules (i.e., the principles of justice in original acquisition, transfer, and rectification).

So the real contrast between Nozick and Rawls is that Nozick sees no role for anything like part 1, whereas Rawls insists on it. Why? Why treat the basic structure as the "primary subject" of justice?

First kind of reason for the basic structure as primary subject:

Rawls grants that the historical entitlement theory has genuine and deserved appeal. Suppose we begin, Rawls says, with "the attractive idea that persons' social circumstances and their relations with one another should develop over time in accordance with fair agreements fairly arrived at" (52). And suppose we start from a state in which everyone's holdings are just. Then so long as everyone respects rights and follows the property rules, the resulting states, it would seem, are also just. Suppose, for example, that we were to rectify all past injustices. Starting from this clean slate, would we have any need for centralized redistribution? Couldn't we just sit back and let things run their course, putting our trust in the free choices of individuals?

However, we need not only a just initial state and fair agreements, but also *just social conditions* under which fair agreements are to be made. The accumulated results of seemingly fair agreements will, over time, undermine the conditions for free and fair agreements in the future.

Some people will be born into great wealth, which gives them vastly superior bargaining power. Locally, these agreements may look perfectly free and fair. Yet when seen in their global context, these agreements are revealed as less than free and fair. This is why we need institutions to preserve background justice.

Why do we need centralized institutions to solve the problem? “Why big government?” the libertarian will say. Why not provisos on individual activities? For example, we might endorse the principle for individuals: Do not make exchanges that will lead to rampant inequality. Wouldn’t this decentralized solution be more in keeping with “the attractive idea that persons’ social circumstances and their relations with one another should develop over time in accordance with fair agreements fairly arrived at” than an institutionalized tax and transfer system?

The difficulty is that any set of provisos that would ensure that background justice is preserved would be unmanageable. Instead of facilitating individual choice, these provisos seem to paralyze it. Each individual must constantly second guess their decisions.

This is why we need some coordinated, institutional solution. We rely on the basic structure to ensure that free and fair background conditions are maintained. This represents a kind of division of labor. So long as the basic structure is just, people can go about their business, secure in the knowledge that social institutions are doing what is necessary to preserve background justice.

Second kind of reason for the basic structure as primary subject:

Rawls’s second kind of reason for taking the basic structure as the primary subject of justice is that the basic structure has a profound and pervasive influence on life-prospects of the persons who live under it. People’s life-prospects are shaped in fundamental ways by two important kinds of contingency: the social class of their birth and their native endowments.

Why must we rely on institutions to mitigate the effects of these contingencies? Why not leave it up to individuals to make sure that these contingencies do not have excessive influence? To leave it up to individuals would be too little too late. These contingencies shape who we are, what we aspire to, and what we can reasonably hope for. By the time we are in a position to do anything as individuals about these contingencies, those contingencies have already had their most profound impact. So we need a system of institutions that ensures that the society into which individuals are born is already structured to mitigate the effects of these contingencies on their lives.