Essay 2.

See final pg. for feedback.

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Contemporary discourse on 'social justice' owes much to Rawls' 'theory of justice' for the moral justification of its approach. Do you agree?

In this essay a brief outline will be given of the innovative ideas propounded by John Rawls and the immediate reaction which they provoked. The difficulty of justifying any moral approach is discussed, and then evidence produced to suggest that contemporary discourse is substantially taken up with disagreements concerning both the principles and the detail of his moral justification. Rawls himself remained active in the discussions over the next thirty years after publishing *A Theory of Justice* in 1971 and to some extent modified his position. Originally he was advocating the universal imposition of a set of principles on the way public institutions operate, justified by deriving those principles from the 'original position' - viewing our place in society '*sub specie aeternitatis:* from all social but also from all temporal points of view.' [1] He later took a less absolutist line which emphasised public reason in producing political consensus to achieve the appropriate institutional change.[2]

His three moral principles intended to produce social justice are: the Principle of Greatest Equal Liberty, the Principle of Fair Equality of Opportunity, and the Difference Principle. At first sight the first two seem relatively straightforward but the third is more complicated: it asserts that any social inequalities are arranged so as to be of the greatest benefit to the least advantaged - or that some inequality is tolerated only if its overall effects contribute to maximise the condition of the least well off.[3] In fact the first two principles were not uncontroversial, the first principle being supposed to lay the foundations (such as the right to vote and to run for political office, have freedom of thought and freedom of the person) upon which institutions are then built according to the requirements of the second principle with the intention of rectifying social and economic inequalities.[4]

In a series of lectures on the history of moral philosophy, Rawls identifies modern moral discourse as being 'deeply affected by the religious and cultural situation within which it was developed', so that 'by the eighteenth century many leading writers hoped to establish a basis of moral knowledge independent of church authority and available to the ordinary reasonable and conscientious person.'[5] He goes on to say that while most writers shared a general view of what is good or bad, right or wrong, and that people have rights, duties and obligations, the problem was how one can know the basis of morality and what might be the motivation to act in a moral manner.[6] Writing in 1985, Bernard Williams said that 'Morality is not one determinate set of ethical thoughts' and while he considers that Kant gave the 'purest, deepest, and most thorough representation of morality', it is 'not an invention of philosophers.'[7] Rather, in line with the

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[1] Rawls J. *A Theory of Justice* 2nd edition (Cambridge, Mass: Belknap Press, 1999) p514.
[2] Rawls J., *Political Liberalism* (New York: Columbia University Press, 1993).
[3] Rawls J., (1999) p65.
[4] Rawls J., (1999) pp52-56.
[5] Rawls J., *Lectures on the History of Moral Philosophy* ed. Barbara Herman (Cambridge Mass: Harvard University Press, 2000) p8.
[6] Rawls J.(2000) pp10-11.
[7] Williams B., *Ethics and the Limits of Philosophy* (London: Fontana, 1985) p174.

suggestion that it is a concern of every conscientious person, Williams says that morality is 'an outlook of almost everybody'. His starting point is Socrates' question of how one should live. That question was already several centuries old when Marcus Aurelius opined:

'Begin each day by telling yourself: Today I shall be meeting with interference, ingratitude, insolence, disloyalty, ill-will, and selfishness - all of them due to the offender's ignorance of what is good or evil'[8]

No doubt being a Roman Emperor tends to ensure an acceptance of one's moral judgements about the actions of others and the purpose of institutions, but the rest of us should be prepared to more carefully justify the conclusions of our moral reasoning. Finding a common outlook about a moral issue amongst like-minded individuals no doubt enhances group solidarity but it relies for its validity purely on that consensus until it can be derived in a rational fashion from some fixed point. Williams suggests that there are three questions to be asked of anyone who proposes a specific moral justification: 'To whom is it addressed? From where? Against what?'[9] I think that in philosophical discourse the proposition is largely addressed to other philosophers, and if it is to make a difference then it needs to influence the political agendas of the powerful. Over time decisions governing how institutions are run determine the ethos informing how they *should* be run. Challenging that ethos and its practical effects becomes part of the moral discourse about society.

In the preface to *A Theory of Justice* (1971) John Rawls wrote that it was an elaboration of his earlier works regarding social justice and a reaction to 'the predominant systematic theory (which) has been some form of utilitarianism.'[10] At that time the other two major systems contributing to ideas about tackling unfairness, inequality, and unhappiness in society were either Kantian demands on autonomous agents to act dutifully according to categorical obligation, or Marxist solutions to exploitation. Rawls is unequivocal in saying that justice as fairness is an example of a 'contract theory', and the contract contains an agreement, arrived at by rational means, obliging the parties involved to abide by certain moral principles.[11] As a contrast he analyses classical utilitarianism saying: 'The main idea is that society is rightly ordered, and therefore just, when its major institutions are arranged so as to achieve the greatest net balance of satisfaction summed over all the individuals belonging to it.'[12] For Rawls the problem is that 'Utilitarianism does not take seriously the distinction between persons.'[13]

In his justification of the 'original position' which underpins his theory, and from which the three principles are derived, Rawls expects rational people, as a matter of self interest, to choose fundamental agreements which provide a fair distribution of resources for all, taking into account

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[8] Aurelius M., *Meditations* trans. Maxwell Staniforth, ed. Robin Waterfield (London: Penquin, 1995) p 1.
[9] Williams B., p23.
[10] Rawls J.(1999) xvii.
[11] Rawls J.(1999) p14.
[12] Ibid, p20.
[13] Ibid, p24.

They only have general knowledge. 3

individual circumstances in which disabilities in terms of illness, physical deformity, or mental impairment inevitably create some people with greater needs than others. Those in the original position choosing the conditions of the agreement are not aware of their own circumstances - there is a 'veil of ignorance' as to their personal attributes, including race, gender, and family situation - and they must recognise that their choices permanently seal the situation for themselves and society. He comments that the contract may need to be hammered out so as to meet convictions about what is judged to be fair, and there may be some alteration (to obtain a 'reflective equilibrium') of the accepted principles which underlie the final contract. Although he stresses that all this is hypothetical, he claims that we already accept the conditions embodied in the original position - or if not, then we can be persuaded by philosophical argument. The original position is a way of arguing for an initial situation of equality.[14] Once the principles of justice (as the first virtue of social institutions[15]) are established, change begins to drive society in the direction of respect for human dignity - 'without conflating all persons into one but recognising them as distinct and separate, it enables us to be impartial'.[16]

Could you say a bit more about this?

But → Difference principle relevant here.

Rawls' 'distinction between persons' is precisely the point at which Libertarians attack what they say is the unfairness of his system. Whereas Rawls emphasises that when a pie is cut between ten people each person is entitled to a slice that is one tenth of the total, they complain that the pie had to be baked by somebody with the resources to provide it - the pie's owner. Libertarians contend that the pie-owner has a right to the whole pie and no duty to divide it amongst the needy. Even in the original position they would not sign up to the Rawlsian contract because they believe they have the moral right to make and keep the best of their own efforts whether they begin with either an advantage or a disadvantage. The 'Wilt Chamberlain' example (of a champion basketball player) given by Robert Nozick[17] is particularly effective in arguing that those profiting by giving pleasure to an audience who freely pay their entrance fee are done an injustice if their earnings are arbitrarily removed from them by the state and redistributed to the poor (although I agree that Wilt should pay a fair contribution to the maintenance of a peaceful society which allows sporting pursuits to take place). On the other hand, Communitarians such as Michael Sandel[18] and Charles Taylor[19] deny that the individual has any right to ownership of special talents or abilities (and therefore cannot justly profit from them) - the talent belongs to the society which nurtured and educated him or her. Taylor comments that the 'advocacy issue' concerning one's moral priorities (ranging from individual rights to the good of the collective) tends to get mixed up with ontological views about the nature of individuals. Liberals favour individual rationality and agency in moral affairs but Communitarians stress the influence of society on individual decisions.

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Good.

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[14] Ibid, pp18-19.
[15] Ibid, p513.
[16] Ibid, p514.
[17] Nozick R., *Anarchy, State and Utopia* (Oxford: Blackwell, 1974) pp160-164.
[18] Sandel M., *Liberalism and the Limits of Justice* (Cambridge:Cambridge University Press, 1985) pp82-95.
[19] Taylor C., 'Cross-purposes: the Liberal-Communitarian Debate' in *Debates in Contemporary Political Philosophy* eds. Derek Matravers and Jon Pike (London: Routledge, 2003) pp195-212.

Sandel thinks that the 'atomistic' Rawlsian individual, detached from its interests and aims while in the original position is just 'too thin' to have a reliable idea of what he or she is agreeing to. As part of the Rawlsian contract such individuals 'implicitly agree..... to conform their conceptions of the good to what the principles of justice require, or at least not to press claims which directly violate them.'[20] So individual desires are contractually restricted by the principles of justice. Even if capable of the commitment, Sandel does not think it possible to stand outside oneself and regard a conception of the good as a personal choice because we are all enmeshed in particular social circumstances which partly define who we are. Amy Gutmann[21] counters Sandel's point about community-generated identity by pointing out that if that is true then in our present society, which makes a feature of liberal justice, our identities must already include a commitment to liberal justice - which is therefore an unavoidable fact of life. Gutmann does support the view that we can make a rational choice about the value of justice but Sandel suggests that values arise from the way society happens to be. I think that Sandel and Gutmann agree that social justice is a moral requirement but justify it differently.

More pointed criticism of Rawls was mounted by G.A. Cohen in the 1990s on the grounds that his moral principles licensed too much inequality. In particular, the difference principle allows society to offer incentives to the talented to work hard and profit from their efforts provided the least well off are benefitted as well (the 'rising tide lifts all boats' argument). Cohen questions why the decision to employ talent is left to those who possess it, saying that they *ought* to do so for the benefit of others and that coercive rules on institutions (provided by the difference principle) are not enough: an ethos of justice informing individual choices is also required.[22] The later Rawls, responding to this sort of criticism, does acknowledge that 'There is no set of conditions or first principles that can be plausibly claimed to be necessary or definitive of morality and thereby especially suited to carry the burden of justification.'[23]

Given that apart from Libertarians many moral philosophers regard inequalities as unjust, one might wonder why the debate has become so intense. In the absence of any necessary principles guaranteeing social equality perhaps a Rawlsian contractual approach, democratically endorsed, is at least rationally defensible and is better than doctrinaire pronouncements. Elizabeth Anderson[24] distinguishes two sorts of egalitarian: those such as G.A. Cohen who are 'Luck Egalitarians' (inequality is unjust when it is due to accident of birth) and those like Rawls and herself who are Relational Egalitarians (inequality is unjust when it disadvantages others). She also attributes a midway position to Ronald Dworkin who recognises that markets deliver unequal outcomes to people who 'do not differ in moral desert' but this is justified if the inequalities are the result of the choices those people made having come from similar starting

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[20] Rawls J., (1999) p27.
[21] Gutmann A., 'Communitarian Critics of Liberalism' in *Debates in Contemporary Political Philosophy* eds. Derek Matravers and Jon Pike (London: Routledge, 2003) pp182-193.
[22] Cohen G.A., *If You're an Egalitarian, How Come You're So Rich?* (Harvard: Cambridge University Press, 2000) p128.
[23] Rawls J., (1999) p506.
[24] Anderson E., 'The Fundamental Disagreement between Luck Egalitarians and Relational Egalitarians', *Canadian Journal of Philosophy* Supp. Vol 36, Dec.2nd 2010, pp1-23.

points. The Luck Egalitarians demand regulations justified 'as instrumental to achieving equal distribution' whereas Relational Egalitarians are 'disposed to trust individuals in accordance with principles that express, embody and sustain relations of social equality.'[25]

In his dialogue between the talented and the untalented G. A. Cohen has the latter question why the former exploit their advantages to gain more for themselves while relying on the difference principle to justify this when they could in fact give everything to the disadvantaged. The untalented declare the lack of generosity of the talented to be unjust.[26] Anderson[27] borrows Stephen Darwell's idea that moral rightness is what we owe to each other, grounded in the duty of others to pay attention to an individual's interests (especially avoidance of injury), and she says that Cohen is here advocating the need to avoid the occurrence of envy as a moral principle but envy doesn't count as an injury so there is no injustice. Similarly, in a free society of individuals, unrequited love may lead to unhappiness but it is not unjust. Surprisingly Cohen seems prepared to countenance individual harm in favour of reducing inequality when he says 'justice can be mean and spiteful.'[28] Anderson's conclusion is that justice is 'fundamentally a virtue of agents, not a distributive pattern'[29] and those who cry injustice but don't identify an injury or a responsible agent are merely expressing a theological grievance.

There is a problem with the rational contractual approach if substantial groups in society do not recognise the moral force of the arrangements, despite them conforming to Rawlsian principles of justice. This is especially so if the focus of discrimination and inequality is not on individuals but on minority groups. As an example, Iris Marion Young cites violence against members of a minority group simply because they are members of such a group.[30] Distributive justice concerning goods supplied to individuals does not address this form of oppression. Changing societal attitudes requires a long-term educational strategy highlighting the stereotypical representations of groups, contesting the influence of cultural norms, and the sources of political power. Christopher Heath Wellman in his review of post-Rawlsian egalitarianism and the bounds of justice comments that 'the bargainers in the original position assume they are designing principles to govern a self-contained community which will exist in perpetuity.'[31] The real world is multi-cultural and increasingly diverse. Wellman offers 'justice as mutual advantage' to answer the fundamental question 'why be just?' Unfortunately this fails to incorporate those who cannot contribute to society due to incapacity, though I think people would recognise that enshrining 'do as you would be done by' as an inviolable moral principle

Good.

Only people who have a conception of the good are included

[25] Anderson E., p2.
[26] Cohen G.A., *Rescuing Justice and Equality* (Cambridge Mass: Harvard University Press, 2008) pp75-76.
[27] Anderson E., p7.
[28] Cohen G.A. (2008) p318.
[29] Anderson E., p22.
[30] Young I.M. *Justice and the Politics of Difference* (Princeton NJ: Princeton University Press, 1990) pp61-62.
[31] Wellman C.H. 'Justice' in *Social and Political Philosophy* ed. Robert Simon (Oxford: Blackwell, 2002) p75.

might defend them if and when they are suddenly struck down, or just become old and infirm, so that they are not immediately consigned to social oblivion.

My conclusion is that contemporary discourse on social justice does owe much to *A Theory of Justice* but more for the stimulation to criticise the Liberal conception of justice than to fully adopt a Rawlsian justification of what counts as a moral argument. There are still those who support a contractual basis for morality but I agree with Bernard Williams that such contemporary moral philosophy is 'unreflectively appealing to administrative ideas of rationality.' [32] The pursuit of principles which will bind together a community of reason is too far away from the messy reality of ordinary life.

Rephrase.

[32] Williams B., p199.

References

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✓ V. well laid out.

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This is an excellent piece of work that evaluates a range of arguments related to the question set, & which does not avoid difficulties in the topic. There is a clear, critical engagement with the reading material, & with that material being analysed in an in-depth manner & in a way which shows a generally excellent understanding of the topic. There are some points that could be developed in more depth, and this would involve being a bit more selective about (P10)

the number of texts you discuss. Indeed, you've covered a lot of ground here, and while there is, overall, a successful balance between complexity of argument & conciseness, in places some points deserve further analysis (in a way that more explicitly leads to the question set).