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Module code: CSPH7041	Student University Number:	Educational support needs: YES OR NO
Module title: Self & Society	1806281	NO
Module tutor: Dr Rebekah Humphreys		
Assignment title: Contemporary discourse on 'social justice' owes much to Rawls' 'theory of justice' for the moral justification of its approach. Do you agree?		
Assignment due date: 31 August 2019		
I confirm that this is my original work and that I have adhered to the University policy on plagiarism. Name: Adam Smith		

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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?

“The multiple ways social justice has been conceptualized over the past 40 years and, particularly, the diversity of views that have emerged in the past decade, have made it a ‘cultural keyword’, that is to say a term the meaning of which is contested as part of a larger political debate” (Thrift and Sugarman, 2019: 9). The very notion that is at the heart of this question is polysemic, but I propose not to enter that debate, since it should be possible to talk about discourse on social justice without, in this paper, attempting to define what social justice means. Instead, after some preliminary points, I try to identify the moral underpinning of *A Theory of Justice* (“*ATOf*”) before looking briefly at some more recent notions of social justice, concluding with a short overview of Sen’s *The Idea of Justice*, that he dedicated to Rawls. It will be apparent that Rawlsian morality only goes so far and that it is entirely possible to theorise social justice in other ways.

I shall begin by getting two obvious points out of the way. The first, supportive of the question’s thesis, is that *ATOf* is so influential that “political

philosophers must now either work within Rawls's theory or explain why not" (Nozick, 1974: 183). Rawls's voice is so loud, it is sometimes hard to hear anyone else speaking, and yet other conceptions are possible, as will be seen. The second obvious point is that my research has mainly focused on the Western liberal tradition: it seems likely that someone coming at social justice from within, say, the context of Islamic philosophy might indeed have no use at all for Rawls.

A third point can also be discarded: the notion of social justice arguably first arose in Mill's *Utilitarianism* (1863), where it seems to mean the same as 'distributive justice'. So clearly there were moralised notions of social justice before Rawls. However, the question relates only to contemporary discourse so I shall not devote further space to pre-Rawlsian approaches.

In the following section of this paper, I propose to summarise the moral justification underpinning *ATOF*, since only when we know what an elephant looks like can we distinguish a cat. However, another preliminary remark needs to be made: the indefinite article in Rawls's title illustrates that all present moral theories "are primitive and have grave defects" (*ATOF*: 52).

Rawls did not expect his 'reflective equilibrium' to be permanent; rather it was the best approximation to the truth that he could derive at the time. Indeed, in his later work (e.g. 1996), Rawls rows back from the idea that there can be only one notion of justice, the liberal notion, seeing justice rather as "the product of an overlapping consensus between reasonable metaphysical positions" (Brown, 2010, note 7).

The moral theory underlying *ATOf* is contractarian, underpinned by a social contract deriving from a hypothetical choice situation that Rawls calls the 'original position'. A major difficulty of analysing the issues of social choice is that societies don't make choices: individuals do. So Rawls shifts from the social to the particular, using individual choice as a proxy and working out from there. He needs to explain how an individual would choose, and thus comes up with the thought experiment of the original position. A few epistemological points can be made here. First, the result of the thought experiment necessarily depends on the assumptions and constraints that Rawls builds into it, and his choices are not above criticism. Most notably, his "substantive doctrine is a rather pure form of egalitarian liberalism, whose controversial elements are its egalitarianism, its anti-perfectionism and anti-meritocracy, the primacy it gives to liberty, and the fact that it is more

egalitarian about liberty than about other goods” (Nagel, 1973: 222). I do not have space to unpack all this here, but it is evident that a slight change to one or more of these settings could lead to a different outcome. The second point to make is that, as Nagel says, “the notion that a contract is the appropriate model for a theory of social justice depends on the view that it is fair to require people to submit to procedures and institutions only if, given the opportunity, they could in some sense have agreed in advance on the principles to which they submit” (223). This is why Rawls calls his theory ‘justice as fairness’. But although the social contract methodology delivers a result that feels ‘right’ to a Western liberal mind, we need to ask whether the contractarian approach is more easily justified than any other, something that Rawls does not resolve in *ATOF*. Just because people might agree to something doesn’t mean that it is morally right: it depends why they agreed to it. To this end, Rawls sets up severe restrictions on the hypothetical grounds of choice (the ‘veil of ignorance’). “In this position, individuals would be motivated to choose the principles fairest to all and not just those that would benefit themselves or their loved ones, Rawls reasoned” (Thrift and Sugarman, 2019: 7). Again, Rawls believed this would generate a ‘fair’ result but this claim can be challenged: why should people not be allowed to take into account their own perception of a good life? Nagel comments that “the suppression of

knowledge ... is not equally fair to all parties because the primary goods are not equally valuable in pursuit of all conceptions of the good” (1973: 228). Harsanyi (1975) also objects that Rawls’s choice of the ‘maximin principle’, which perhaps reflected the prevailing decision-making methodology in the mid 1950s, “cannot fail to have highly paradoxical implications” (595) and should be replaced by a Bayesian rule of ‘expected-utility maximisation’. This probabilistic model would swing the moral basis for social justice more towards a utilitarian justification and remove the need for “rigid, artificial and often highly discriminatory rules of priority” (605).

As a final criticism of the original position, why should people not be allowed to challenge the primacy of liberty? Again, tweaking this constraint could lead to a substantially different outcome, as will be seen below.

Given the settings Rawls dialled in, his thought experiment delivers two guiding principles that he believed would supply the greatest justice for all in the real, multicultural world, given the differences of opinion that obtain in it. First, and prior in the sense that liberty is paramount in his model, there should be the greatest equal liberty compatible with a like liberty for all.

Second, differences in the distribution of basic goods are only permitted if they benefit the worst off. These two principles generate an approach to social justice that seemed attractive precisely because they had already been implicitly guiding institutionalised social justice practices in the West for decades (Fleischacker, 2004) without being adequately theorised as such. In other words, Rawls's ethical model was widely accepted because it fitted the prevailing liberal ideology.

However, Thrift and Sugarman remark that “what the term ‘social justice’ was not used to describe in midcentury America, was brewing movements addressed at racial and gender injustice” (2019: 8). The leaders of the civil rights movements, the Black Power movements or the feminist movements did not appeal to ‘social justice’ to justify their causes, precisely because ‘social justice’ at that time was synonymous with Rawls's conception of the fair distribution of material goods and power among eligible persons in a nation state. But this definition excluded some segments of society entirely.

The years following *ATOf* therefore saw a number of challenges to Rawls's calculus. On the left, these were often based on a feeling that his principles

were too narrow in scope. For example, Young (1990), whilst agreeing that the fair distribution of material goods was relevant, claimed that recognition and identity were equally important. Indeed, identity politics became the predominant form of claims to social justice by groups who considered their interests had been bracketed out by what Fraser (2009) calls the 'Keynesian-Westphalian framework'.

At the other end of the political spectrum, 'neoliberal' ideology maintained that distributive justice was best served by a free market. Pushed to its logical conclusion, this meant for Hayek that social justice was not only impossible but meaningless: "in a free society ... the differences in reward simply cannot meaningfully be described as just or unjust" (Hayek, 1973: 69). Hayek is not relying on Rawls for the moral basis of social justice: he denies the very existence of such concept. However, Pellissier-Tanon and Moreira (2007) believe Hayek may have missed the classical distinction between distributive and commutative justice, and point out that Bertrand de Jouvenel, whose arguments prefigured Hayek's, was comfortable that "the reign of Justice is achievable if the spirit of justice presides over all decisions that imply sharing" (de Jouvenel, quoted in Pellissier-Tanon and Moreira, 2007: 150). Moreover, *pace* Hayek, "there is now a distinct neoliberal version of social

justice [in which it] becomes an individual virtue enacted through choice and facilitated by a market that proliferates the choices one can make” (Thrift and Sugarman, 2019: 9). As Brodie describes it, the moral justification of neoliberal social justice revolves “around the primacy of individual choices and open systems that empower people to make their own choices about how they will live their own lives” (2007: 103), which in a sense substitutes autonomy for Rawls’s overriding virtue of liberty.

To characterise, where Rawls stressed freedom, ‘neoliberal’ versions of social justice stress autonomy, and ‘identity’ versions tend to emphasise equality. As an example, Sen (1980) argues for an approach based on equality of capabilities. Nussbaum and Sen “both argue that Rawls’s theory would be better able to give an account of the relevant social equalities and inequalities if the list of primary goods were formulated as a list of capabilities rather than as a list of things” (Nussbaum, 2003: 51). One strong argument made by Nussbaum is that a capabilities approach can correctly value issues of care, which are fundamental to achieving sex equality, but are undervalued by Rawls’s contractarian methodology.

Another perceived failing of Rawls's approach is his inability to theorise international justice, since *ATOf* only works within the 'Keynesian-Westphalian model'. Here, I wish to consider the work of Amartya Sen, who is much engaged with such issues but goes even further in his gentle assassination of *ATOf*. In particular, *The Idea of Justice*, which arguably constitutes the most significant 'contemporary discourse on social justice', cuts away at Rawls's moral foundations. It does so in three key ways. First, like Fraser, Sen notes that contractarian theories only work if all citizens take part in (theoretically) negotiating the contract, whereas they are often excluded, leading commentators like Pogge (1989) to claim that the whole world should be regarded as the 'society' that forms the contract. Second, Sen takes aim at the notion that an 'ideal-theory' version of social justice can ever be posited: "the idea that there is only one kind of just society - a liberal society defined by principles set out in Rawls' model - ... does not seem a plausible response to the pluralism that undoubtedly exists in the modern world (Brown, 2010: 312). Thirdly, Sen disagrees with the importance Rawls attaches to institutions, particularly on the international stage. The Sanskrit terms *niti* and *nyaya*, both translate as 'justice'. *Niti* refers to procedures, rules and institutions, whereas *nyaya* is more outcome-oriented. Sen sees the reflection of this in European thought: Kant and Rawls focus on the correctness of the institutions, whereas

Smith, Bentham and Mill look more holistically at the social outcomes. In particular, Smith's notion of the 'impartial spectator' in his *Theory of Moral Sentiments* seems to Sen to provide a less cumbersome methodology than that of the original position, and does not pretend to be an ideal-theory. *The Idea of Justice* encourages us to consider social arrangements as wholes, rather than being obsessed with procedures or formal rules "in short, to embrace *nyaya* rather than *niti*, Smith rather than Kant" (Brown, 2010, 318).

Social justice is a phrase that has become a 'cultural keyword'. A tenet of Catholic theology since Pope Pius XI's *Quadragesimo Anno* encyclical (1931), it means different things to different people and so can be morally justified in different (including religious) ways. Rawls's *A Theory of Justice* theorised one such way, which seemed appealing at the time, but Rawls himself moved away from that monolithic approach, and other commentators have found fault either with its ontological emphasis on liberty, or on the rigid constraints that Rawls dialled in. Whilst some on the right doubt that social justice even makes sense, more recent interventions use new moral criteria such as 'capabilities' or indeed aim for a more holistic view focused on outcomes rather than institutions. Not surprisingly, conceptions of justice are contingent on the societies in which they are postulated and Rawls's model, whilst appropriate for a mid-twentieth

century liberal state, holds less relevance for the distributive issues we face in today's globalised world.

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