

ASLP 1976/77

Copyright:
Dr. Jackson &
ASLP

U N I V E R S I T Y O F S Y D N E Y

F a c u l t y o f L a w

Department of Jurisprudence and International Law
(Institute for Advanced Studies in Jurisprudence)

A CONTRADICTION IN RAWLS:
DESERT, DETERMINISM AND JUSTICE

M.W. JACKSON,
Department of Government,
University of Sydney.

I Distributive Justice

Philosophic discussions of distributive justice usually take their lead from Aristotle¹. Aristotle held that the political goods of honour and office should be distributed on the basis of proportionate equality of merit. The man better able to make use of a good by virtue of his known merits or qualities should receive the good. An office the duties of which are best performed by a wise man should go to a wise man. Moreover, the best man and the best goods should be matched. The best flautist should have the best flute², and this player then is responsible for making the best use of the flute. In short, the red shoes go to the best dancer.

Modern states have a great many goods to distribute, notably income and wealth, in all manners of transfer and service policies, including taxation, tariffs, education, and social welfare, to name but a few. It is not surprising that distributive justice remains an important subject in political theory³. This paper focuses on an alleged contradiction in one aspect of John Rawls's widely acclaimed theory of distributive justice⁴.

Perhaps it is best if we let Rawls himself introduce our subject⁵. Rawls asks that we view society as a self-sufficient co-operative venture for mutual advantage. As such, it is characterized both by conflict of interests and identity of interests. A basic identity of interests exists since social co-operation makes possible a better life for all than would be the case if each were to try to live by their own efforts. Yet people are not indifferent as to how the greater benefits produced by their joint labours are distributed among themselves. To further their own individual aims, each person is likely to prefer a larger to a smaller share of the benefits of the better life secured by social co-operation.

Distributive justice is a set of principles giving us a standard against which to judge the basic structure of a society. This standard also allows us to judge between the different social arrangements which might be instituted to distribute the goods and services produced by

social co-operation. All in all, the principles of a conception of distributive justice underwrite a consensus as to the proper shares of the burdens and benefits of a given social order.

Many alternative conceptions of distributive justice have been propounded. Most of them stem from an elaborate political theory. Possibly the best concise illustration of a conception of distributive justice is the catch-cry of 19th century French socialism: 'From each according to his ability, to each according to his needs',⁶ a precept embraced by Karl Marx⁷. On this view, burdens are distributed according to people's ability to bear them. The strong do heavy work; the dextrous do precise hand-work. The benefits produced by the social co-operation in the distribution of burdens are distributed according to one's needs, not on the basis of the quality or quantity of one's work, nor on the market value of one's work. Marx is rather distinctive in looking at the distribution of burdens. Most other conceptions of distributive justice are content to offer basis for the distribution of benefits only. Among the other basis are merit, desert, entitlement, welfare, and utility.

II Rawls's Theory of Distributive Justice

Twenty years in the making, Rawls has produced in A THEORY OF JUSTICE a conception of distributive justice suited to a contemporary liberal, industrial state⁸. Armed with his principles of justice as standards we may assess the justice of the basic structure of our society. If the structure is remiss, we may gain some direction from Rawls's theory as to how remedies can be sought¹⁰.

The embarkation point on the road to Rawls's two principles of justice is the question 'What is justice?' Rawls's answer is that justice is what is unanimously agreed to in a fair decision-making procedure. This procedure is the original position. It suffices for Rawls to show analytically what principles would be chosen via such a procedure. Empirical evidence or objection is not brooked. A fair procedure of decision-making is one in which the participants are morally equal. Essentially morally equal persons are persons ignorant

of their own particular self-interest. A number of other objective and subjective conditions are specified to insure moral equality in the original position¹⁰. Together these conditions are termed the veil of ignorance.

Now Rawls asks 'What principles would be chosen by persons in the original position behind the veil of ignorance?' He argues two principles would be chosen, in the following order of priority. First, for the basic structure of a society to be just equal shares in a system of basic liberties must be provided to each person. The second principle has two parts. One part is that opportunities be open to talents, i.e., equality of opportunity. Similar abilities should have similar fruits. The other part is that inequalities in the distributions of goods and services are just only to the extent each inequality contributes to the absolute well-being of the least advantaged members of the society. Concretely, the high income of a corporation chief is just if and only if the incentive it provides to the chief leads to more or better work so that the lot of the least advantaged members of the society is better than it would be were the incentive removed. Rawls adds much to these bare bones in his six hundred pages.

In advocating his own two principles of justice as the basis for distributive justice, Rawls rejects the various alternative conceptions available. Of these alternatives, his rejections of what will be termed justice as desert and justice as fate are, at least, inconsistent and, perhaps, contradictory.

III Desert and Fate as Alternative Conceptions of Distributive Justice

As a foundation for distributive justice, justice as desert may be typified as the belief that goods should be distributed to actors 'on the basis of characteristics possessed or things done by that thing or person'.¹¹ Just as persons are held to deserve punishment on the basis of what they themselves have wilfully done, so too it is held that persons are held to deserve a share of the goods produced by social life due to their own characteristics and efforts which are highly valued socially. The basis of desert are effort, determination and skill, combined. In other words,

one can only deserve treatment on the basis of one's own voluntary actions, or on the basis of characteristics one has voluntarily acquired.¹² So that the essential point of desert is voluntary action or effort. If an action is involuntary, no desert accrues to the actor. Only when an action could have been otherwise, does an actor deserve reward for acting in the socially approved way. Hence, a person's having been able to do otherwise is a necessary condition of ascribing desert.¹³ Attaching rewards to socially approved voluntary actions will affect behaviour. Attaching rewards to involuntary actions will not do so.¹⁴

Justice as fate is a simpler, more primitive but enduring conception than either justice as desert or Rawls's justice as fairness. It is the belief that all things are fatalistically determined. Hence, no human action is voluntary in the sense discussed above. Each action is ordained. So no individual is praised or blamed personally. On the walls of Troy Priam rebukes not Helen for starting the war to end Illium, but rather says 'it is not you who are to blame', but the gods.¹⁵ Equally, no human action can change the pre-determined course of fate, however superogatory the action may be. Hector's great valor only hastens the fall of his fated lot and the demise of blameless Troy, it does not alter either.

Now the conceptions of justice as desert and justice as fate are predicated on mutually exclusive and jointly exhaustive assessments of the efficacy of human agency and action. Justice as desert is predicated on the twin assumptions that the acts of men are voluntary and that the acts determine or alter affairs. People are praised and rewarded for voluntary acts which are socially esteemed, as when I try to save a drowning swimmer. They are praised and rewarded still more for accomplishing the end of the action, as if I succeed in my rescue.

Contrastingly, justice as fate sees human action as determined, by gods, by nature, or by society. Human action is not voluntary. It could not be otherwise than that I would try to rescue the drowner. I deserve no credit for deciding to try to do so. Nor do I deserve praise or reward if I succeed. The outcome, too, is a matter of fate. The

drowner may die even as I propell him to shore.

Diametrically opposed though they be, on this point of efficacy, Rawls rejects both justice as desert and justice as fate. What is more, in part implicitly and in part explicitly, he rejects each alternative conception of justice precisely because of its assessment of the efficacy of human action.

IV. Justice as Desert Rejected

Justice as desert is discussed earlier and more systematically by Rawls than is justice as fate. Desert also has received the more attention in the secondary literature.¹⁶

Desert is rejected, unequivocally, as a basis for distributive justice. Rawls claims that 'it seems to be one of the fixed points of our considered judgments that no one deserves his place in the distribution of native endowments any more than one deserves one's initial place in society'.¹⁷ Which is to say that no one deserves to be born tall. Nor to be rewarded, then, simply for having been born so as to grow tall. Similarly, no one deserves to be born the daughter of a family of great wealth. Nor to be rewarded because of that accident of birth. As we shall see, Rawls also holds that these children do not deserve any of the fruits to be harvested from their respective fortunes of birth. The tall youth will deserve no laurels for converting his height into basketball skill. Nor will the hoyden deserve rewards if she uses her social position to publish insightful character studies of the very rich. In Rawls's view the more advantaged person cannot claim to deserve a certain share of benefits, because of their advantages.

Many of the arguments one might put against desert are scarcely mentioned by Rawls, who contents himself with showing desert would not be chosen as the conception of distributive justice in the original position. First, he argues desert is often confused with entitlement. Entitlement is nothing more than expectations of individuals generated by publicly recognized conventions of the social order. It has nothing

to do with voluntary and efficient actions.¹⁸

To support his earlier claim that our considered judgement rejects desert, Rawls uses the example of wages and salaries in a competitive economy, which incomes depend on supply and demand. He asks, who believes a person's moral worth, or desert, varies because of the variance of supply and demand.¹⁹ No one singer is the less deserving because in one city there are but a thousand other singers, while in another there are a hundred. Again what might seem to be individual desert, in one's choosing to be a singer and achieving a certain skill at it, turns out to be a function, on Rawls's view, of the social order.

The shell of desert Rawls suspects is the hardest to crack is the precept that distribution should be related to relative proportion of effort.²⁰ Upon inspection Rawls finds this conception wanting, too, for 'it seems clear that the effort a person is willing to make is influenced by his natural abilities and skills and the alternatives open to him'.²¹ So neither the sinewy youth nor the sociological authoress deserve reward for the conversion of their talents and positions into socially valued activities. It was only to be expected. Those better endowed with physical assets and social place will strive, and apparently he means they will strive harder than those less well situated. What may seem to be voluntary actions which some undertake and which others do not are in fact linked to the physical and social accidents of birth for Rawls.

Thus his conclusion is that the conception of desert fails to provide an acceptable principle of distributive justice. Seeing things the way Rawls does, people in the original position would not choose desert. Those traits of character and their associated actions which we might have thought demonstrative of desert are rather the products of a 'natural lottery'.²²

Rawls's renunciation of desert has drawn some philosophical fire. However, for the purposes at hand we may accept his claim. In so doing, what is of interest is the implication that he is denying

to some considerable extent the voluntary nature of human action and affirming some sort of natural and social determinism. Determinism shows no action to be voluntary in the sense required by desert.²³ If acts are not volitional in the desert-relevant sense, neither are they efficient in the appropriate sense. Sometimes thought to be an achieved status, desert is in fact an ascriptive status on Rawl's showing, and so would not be chosen in the original position.

V. Justice as Fate Rejected.

Now let us consider Rawls's handling of justice as fate.²⁴ A feudal or caste system as an alternative conception of justice is mentioned late in the book.²⁵ This alternative is briefly rehearsed much earlier, in connection with and seemingly consistent with the discussion of desert. There Rawls says 'caste societies are unjust because' their 'basic structure....incorporates the arbitrariness found in nature'.²⁶

Rawls provides a sufficient, if cryptic and scattered description of what has been termed for convenience justice as fate. The basic description occurs in his consideration of feudalism as another way 'of affirming self-respect and coping with envy and other disruptive inclinations'.²⁷ In such a system 'each person is believed to have his allotted station in the natural order of things'.²⁸ These stations and the persons called to them are given 'independently of human control'.²⁹ To explain this view as a conception of justice Rawls might well have quoted the words of Alcibiades, poised before the disastrous invasion of Syracuse: 'the way that men find their greatest security is in accepting the character and the institutions which they actually have...and in living as nearly as possible in accordance with them'.³⁰

Few will venture to question the feudal society or their own particular station in it. Those that do will quickly resign themselves to it. For 'all may view themselves as assigned their vocation, everyone is held to be equally fated and equally noble in the eyes of providence'.³¹ In sum, 'the basic structure is said to be already determined, and not something for human beings to affect'.³²

The basic structure is pre-determined and unchangeable so human action cannot be efficient. As well, men are viewed as assigned their vocations and actions by the fate of providence, leaving no scope for volition. In short, there is a belief in determinism of a high order, both natural and social.

Justice as fate is predicated on the denial of volition and efficiency. Justice as desert is predicated on the affirmation of both volition and efficiency. In rejecting desert Rawls denies both volition and efficiency by reference to natural and social determinism. But now Rawls rejects justice as fate as being unchoiceworthy in the original position because it denies volition and efficiency.

He writes 'I have assumed all along that the parties (in the original position) are to be guided in their choice of a conception of justice by a knowledge of the general facts about society. They take for granted then that institutions are not fixed but change over time'.³³ Change is taken to be a matter of knowledge included in the general facts of a society.

Moreover, foremost among the causes of change which is regarded by Rawls as being common knowledge are 'the activities and conflicts of social groups'.³⁴ While the constraints of nature are recognized...men are not powerless to shape their social arrangements', implying that men do have the power to change their social arrangements.³⁵ Human actions are efficient. Men are not to be resigned to their positions, as in feudalism. To exercise their power to shape social arrangements persons must consider alternatives, weigh probabilities, take risks and make decisions. Their actions will not be determined. Were they to be determined, choice in the original position itself would be irrelevant, since determinism and not agreement to principles of justice in the original position would affect our post-original position actions.³⁶

VI. Conclusions

By way of conclusion it can be seen that to reject justice as desert Rawls embraces some kind of determinism. Yet to reject justice as fate he denies determinism. It seems then that Rawls both affirms and denies determinism (and its opposite, volitional and efficient human action) in different places in his theory. At the very least, this is inconsistent.

If it is correct to say the justice as desert and justice as fate are predicated on mutually exclusive and jointly exhaustive assessments of the voluntary and efficient nature of human action, then Rawls is contradictory.

Whether or not the two conceptions are mutually exclusive and jointly exhaustive in their assessment of the deterministic nature of human action as relevant to Rawls's theory of justice depends on untangling the interacting levels of volition and efficiency. His discussion of desert emphasizes volition, while that of fate emphasizes efficiency. Inference has been required at both points to unite the two levels of action and free will. These inference may be the weak link in the argument advanced here.

1. Stanley Benn, 'Justice', ENCYCLOPEDIA OF PHILOSOPHY, Paul Edwards, ed. (New York: Macmillan, 1967), pp.298-301; Georges Gurvitch, 'Justice', ENCYCLOPEDIA OF THE SOCIAL SCIENCES, Volume VIII, Edwin Seligman, ed. (New York: Macmillan, 1932), pp.509-15; Edmond Cahn, 'Justice', INTERNATIONAL ENCYCLOPEDIA OF THE SOCIAL SCIENCES, Volume , David Sills, ed. (New York: Macmillan, 1968), pp.341-7; Brian Barry and Douglas Rae, 'Political Evaluation', HANDBOOK OF POLITICAL SCIENCE, Volume I, Fred Greenstein and Nelson Polsby, eds. (Reading, Massachusetts: Addison-Wesley, 1975), pp.384-6.
2. Aristotle, THE POLITICS, Translator T.A. Sinclair (Harmondsworth: Penguin, 1960), Book III, Chapter 12, p.128.
3. The preoccupation with distributive justice is attested to by the high caliber of its critics, e.g., F.A. Hayek, LAW, LEGISLATION AND LIBERTY, Volume 2, THE MIRAGE OF SOCIAL JUSTICE (Chicago: University of Chicago Press, 1976) and Robert Nozick, ANARCHY, STATE AND UTOPIA (Oxford: Basil Blackwell, 1974).
4. John Rawls, A THEORY OF JUSTICE (Cambridge: Harvard University Press, 1971). By my count about 200 articles have appeared on Rawls's book since 1971 in the fields of political science, sociology, economics, law and philosophy. An extensive bibliography and an account of the impact of the book are to be found in Norman Daniels, ed., READING RAWLS (Oxford: Basil Blackwell, 1975).
5. The following account derives from John Rawls's, 'Distributive Justice', PHILOSOPHY, POLITICS AND SOCIETY, THIRD SERIES (Oxford: Basil Blackwell, 1967), pp.58-9.
6. Quoted without citation in Robert Tucker, 'Marx and Distributive Justice', THE MARXIAN REVOLUTIONARY IDEA (New York: Norton, 1969), p.38.
7. Karl Marx, 'Critique of the Gotha Program', (1875), MARX AND ENGELS: BASIC WRITINGS ON POLITICS AND PHILOSOPHY, Lewis S. Feuer, ed. (Garden City: Doubleday, 1959), p.119.
8. Taking as the beginning 'Justice as Fairness', PHILOSOPHICAL REVIEW, 67 (1958). A most lucid gloss on Rawls is Samuel Gorovitz, 'A Theory of Justice', CONTEMPORARY POLITICAL PHILOSOPHERS, Anthony de Crespigny and Kenneth Minogue, eds. (London: Methuen, 1976), pp.272-90.
9. Applications of Rawls's principles to specific problems include aspects of W.G. Runciman, RELATIVE DEPRIVATION AND SOCIAL JUSTICE (London: Routledge and Kegan Paul, 1966); Glenn Withers, CONSCRIPTION: NECESSITY AND JUSTICE (Sydney: Angus and Robertson, 1972); David Harvey, SOCIAL JUSTICE AND THE CITY (London: Edward Arnold, 1973); and Ross King, Urban Studies and Distributive Justice: A Sydney Case Study, Centre for Environmental Studies, University of Melbourne, 1975.
10. Rawls, A THEORY OF JUSTICE, p.137.
11. J. Kleinig, 'The Concept of Desert', AMERICAN PHILOSOPHICAL QUARTERLY, 7 (1971), p.72.

12. David Miller, SOCIAL JUSTICE (Oxford: Clarendon Press, 1976), p.95.
13. Brian Barry, POLITICAL ARGUMENT (London: Routledge and Kegan Paul, 1965), p.108.
14. IBID., p.109.
15. Homer, THE ILLIAD, Translators A. Chase and W. Perry, Jr. (New York: Bantam, 1950), p.71.
16. C. Frankel, 'The New Egalitarianism and the Old', COMMENTARY, 55 (1973), pp.54-61; V. Gourevitch, 'Rawls on Justice', REVIEW OF METAPHYSICS, 28 (1975) 3, pp.485-519; S. Hampshire, 'A New Philosophy of the Just Society', NEW YORK REVIEW OF BOOKS, 24 February 1972, pp.38 ff.; L. Holborow, 'Desert, Equality and Injustice', PHILOSOPHY, 50 (1975), pp.157-68; D. Norton, 'Rawls's Theory of Justice: A Perfectionist Rejoinder', ETHICS, 85 (1974), pp.50-8; J. Schaar, 'Reflections on Rawls's Theory of Justice', SOCIAL THEORY AND PRACTICE, 3 (1974) 1, pp.75-100; M. Slote, 'Desert, Consent and Justice', PHILOSOPHY AND PUBLIC AFFAIRS, 2 (1973), pp.323-47; J. Sterba, 'Justice as Desert', SOCIAL THEORY AND PRACTICE, 3 (1974) pp.101-16.
17. Rawls's A THEORY OF JUSTICE, p.104.
18. IBID., p.311.
19. IBID.
20. IBID., p.312.
21. IBID.
22. IBID., p.104. Rawls's terminology is imprecise here. 'Character depends in large part upon fortunate family and social circumstances' (emphasis added). Logically, to say 'in large part', it seems to be a particular, not a universal, assertion. Nonetheless, he draws from this particular premiss the universal conclusion that 'there is no basis for making a claim' for a share of the goods to be distributed 'on the basis of one's character.'
23. Miller, SOCIAL JUSTICE, p.95.
24. Though less well emphasized than desert, fate has been considered by some of Rawls's critics, such as Frankel, 'The New Egalitarianism and the Old'. Added importance may attach to justice as desert if it is noted that Rawls links the feudal system as a conception of justice with the caste system (547). Earlier he linked the caste system with an aristocratic (102). Aristocracy is governance by the best citizens, a conception akin to Aristotle's view of justice. Hence, even if only slightly, Rawls does touch on Aristotle's conception of justice and does not totally neglect it as charged by John Schaar, 'Reflections on Rawls' Theory of Justice'.
25. Rawls, A THEORY OF JUSTICE, p.547.
26. IBID., p. 102.
27. IBID., p. 547.

28. IBID.

29. IBID.

30. Thucydides, THE PELOPENNESIAN WAR, translator Rex Warner (Harmondsworth: Penguin, 1954), p.380. Callow judgements that 'feudalism needs to be condemned because it is an unjust style of life involving cruelty, degradation, armed hostility, and unacceptable inequality', J. DeMarco, 'Some Problems in Rawls's Theory of Justice', PHILOSOPHY IN CONTEXT, 2 (1973), p.46, would find needed antidote in Marc Bloch, FEUDAL SOCIETY, Volume I, THE GROWTH OF TIES OF DEPENDENCE, translator L.A. Manyon (Chicago: University of Chicago Press, 1961 /1940/)

31. Rawls, A THEORY OF JUSTICE, p. 547.

32. IBID.

33. IBID.

34. IBID.

35. IBID.

36. Rawls's whole approach may be culturally biased in its methodology and not universalistic, as he wishes it to be, in that the original position is only sensible on the assumption that the production, distribution, consumption and enjoyment of primary goods is subject to human will. See P. Pettit, 'A Theory of Justice', THEORY AND DECISION, 4 (1974) 3-4, pp.311-24.