



Social Justice: From Rawls to Hume

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SOCIAL JUSTICE: FROM RAWLS TO HUME

It is said that "the implacable Professor," John Langshaw Austin, once set as a final examination question: "'Power politics': what other sorts of politics are there?" Had Hume been requested to discourse about social justice, he might well have responded in a parallel way: 'What non-social kinds is the insertion of that adjective intended to exclude from consideration?' For, as Hayek has urged,¹ Hume chose an unfortunate label for the second of the two kinds of virtue distinguished at the beginning of Part II of Book III of the Treatise.

Certainly "the circumstances and necessities of mankind," which give rise to the "artifice or contrivance" of what Hume calls artificial virtues, are "the circumstances and necessities" of social living; something which, he would always be the first to insist, is altogether natural to our species. So, if only he had thought to label this sort of virtues 'social' rather than 'artificial,' he would not have had to end that Section I with an awkward final paragraph protesting that, "Tho' the rules of justice be artificial they are not arbitrary. Nor is the expression improper to call them Laws of Nature; if by natural we understand what is common to any species, or even if we confine it to mean what is inseparable from the species."

In fact, it is just worth remarking, no contemporary ever would have asked Hume for his views about social justice; or, at any rate, not in those words. For, as my friend Roland Hall tells me, the first employment known to the revisers of the Oxford English Dictionary of what has since become one of the most popular of political cant phrases dates only from 1861. It occurs in Utilitarianism, at pp. 57-58

in the Everyman edition. There J.S. Mill first insists: not that society should treat all equally well, period; but "that society should treat all equally well who have deserved equally well of it." He continues: "This is the highest abstract standard of social and distributive justice; towards which all institutions, and the efforts of all virtuous citizens, should be made in the utmost possible degree to converge."

Mill himself says nothing here, or perhaps anywhere, to explain what the adjective is supposed to be doing. It seems to have been a favourite, which he was the first to preface, with equally little particular reason given, to several other nouns. So if, as seems most likely, it is intended to be no more than a superfluous synonym for 'distributive,' then it becomes important for us to notice that to Mill, as to so many of his successors, the scope of "social and distributive justice" is universal: it is what determines who is the rightful possessor of any good whatever. Thus, in contemporary courts of distributive justice, everything is up for grabs. Yet it was not ever thus, and we ought to demand reason why it should have become so.

Aristotle in the Nicomachean Ethics, was, so far as we know, the first philosopher to distinguish distributive from corrective justice. He ruled that the former "is exercised in distributions of honour or wealth or of anything else which is to be divided among those who have a share in the constitution; since in these it is possible for one to have an allocation either equal or unequal to that of another" (1130B30-4).

A generation dazed by the drum-beat rhetoric of equality and social justice will no doubt be

inclined to construe these words as making the very modern assumption that there has been an active and collective distribution of all goods, and ought now to be an active and collective redistribution. Yet such anachronistic assumptions are ruled out as Aristotle proceeds: first, to entertain the oligarchic suggestion that the relevant criterion of entitlement might be the possession of wealth; and then to conclude that this "Justice in distributing common property ... when a distribution is made from the common stock ... will follow the same ratio as that between the amounts which the several persons have contributed to the common stock" (1131A 25-9 and 1131B 28-33). The common stocks from which these distributions are to be made clearly cannot be the only stocks there are. Throughout, therefore, Aristotle is presupposing the subsistence of private and justly acquired holdings, holdings which presumably did not all result from any sort of previous active and intended distributions.

Continuing our enquiry into the meaning of the question to be put to Hume, we notice next that John Rawls offers his enormous book as A Theory of Justice. However, once we have read a few pages, we find that this title is over-ambitious. In fact Rawls proposes to treat nothing but social justice. Indeed - with apologies to J.V. Stalin - it is nothing but social justice in one country.

"Justice," Rawls proclaims, "is the first virtue of social institutions.... Our topic is ... social justice. For us the primary subject of justice is the basic structure of society or, more exactly, the way in which the major social institutions distribute fundamental rights and duties and determine the division of advantages from social cooperation"² (pp. 3 and 7).

This makes it clear that Rawls is trying to find arrangements of these major social institutions which he would consider to be in some way ideal. But what never becomes clear is why what might be agreed by hypothetical contracting parties behind a veil of ignorance should be thought to be normative for every actually existing society; or, in particular, why this should be presented as justice. Rawls displays, for a philosopher, a quite remarkable lack of interest in the concept of justice. Indeed, towards the end of his long journey he actually congratulates himself on an assumption which "allows us to leave questions of meaning and definition aside and to get on with the task of developing a substantive theory of justice" (p. 579). In consequence he could, surely, claim egregious distinction as the first author of something presented as a treatise on justice unable to find space for the traditional definition.

Hume, by contrast, remembers enough from the days when he was supposedly not "poring upon Voet and Vinnius" to quote "The vulgar definition of justice ... a constant and perpetual will of giving everyone his due." (T 526)³ So, if we accept this, and conjoin it with the Rawlsian explanation of the scope of the social kind, we can infer that a society becomes socially just - or, perhaps and simply, a just society - to the extent that its members are assured of obtaining and retaining whatever they each severally deserve, or to which they are in some other way entitled. Given this concept of social justice, then a conception of social justice - what Rawls calls "a substantive theory of justice" - becomes an account of the bases of true desert and of the proper principles of entitlement.

In this understanding Hume does after all supply a conception of social justice, and one instructively different from that of Rawls. Section 1 of Part II of Book III of the Treatise distinguishes justice as an artificial rather than a natural virtue. In Section 2, 'Of the origin of justice and property,' Hume tackles "two questions, viz. concerning the manner, in which the rules of justice are establish'd by the artifice of men; and concerning the reasons, which determine us to attribute to the observance or neglect of these rules a moral beauty and deformity." (T 484)

It is vital to recognize: both that for Hume the first is a question, not of philosophical analysis, but of historical social science; and that, by giving the sort of answer which he does give, he stakes a claim to be one of the founding fathers of such disciplines.⁴ For this "artifice of men" is no more a deliberate device than Adam Smith's "invisible hand" is really a hand controlled by intelligence, or Darwin's natural selection is a sort of conscious choice.⁵ The crux is that "the rules of justice" neither were nor could have been negotiated and established through any kind of conscious social contract: "This, however, hinders not, but that philosophers may, if they please, extend their reasoning to the suppos'd state of nature; provided they allow it to be a mere philosophical fiction, which never had, and never cou'd have any reality." (T 493).

There are, however, two things which it ought to hinder. The first is any assumption that principles derived from such "a mere philosophical fiction" will necessarily be, whatever their other merits or demerits, principles of justice. The second thing which this Humean insight should

discourage is a radical disrespect for norms which have grown up over the centuries, and which are at present firmly established: it is, and was by Hume seen to be, in this sense, a conservative insight.⁶

Hume's answer to his first question in Section 2 is that "rules of justice" - in so far, though he does not himself insert this qualification, as these refer to property - have evolved as conventions not grounded in any prior promise. Social cooperation is essential: "By the partition of employments, our ability encreases: And by mutual succour we are less expos'd to fortune and accidents;" and so on. (T 485) But

when men, from their early education in society, have become sensible of the infinite advantages that result from it ...; and when they have observ'd, that the principal disturbance in society arises from those goods, which we call external, and from their looseness and easy transition from one person to another; they seek for a remedy, by putting these goods, as far as possible, on the same footing with the fix'd and constant advantages of the mind and body. (T 489)

Before continuing with Hume to his conclusion we must notice the diametrically opposite movement of the thought of Rawls. For he has decided "to look for a conception of justice that nullifies the accidents of natural endowment and the contingencies of social circumstance as counters in the quest for political and economic advantage."⁷ The reason offered is that these are, it is alleged, "those aspects of the social world that seem arbitrary from a moral point of view."⁸ Rawls thus arbitrarily eliminates, as morally irrelevant, all those differences between individuals upon which any differences in desert or entitlement might be

grounded; including, apparently, even differences in conduct.

It is, therefore, no wonder that it later seems inescapably obvious to him that, "in the original position," his hypothetical contractors would "acknowledge as the first principle of justice one requiring an equal distribution."⁹ More immediately to the present point, Rawls wants to detach "the fix'd and constant advantages of the mind and body," and to turn them, by what he regards as a loose and easy transition, into the same sort of fundamentally collective asset as his contractors see in all "those goods, which we call external" - whether these external goods have already been or are only to be produced. The result is that they undertake "to regard the distribution of natural abilities as a collective asset, so that the more fortunate are to benefit only in ways that help those who have lost out."¹⁰

Returning to Hume's conclusion, it is that the only possible remedy - which, he insists, evolved and was not consciously contrived or deliberately adopted - is "a convention enter'd into by all the members of the society to bestow stability on the possession of those external goods, and leave every one in the peaceable enjoyment of what he may acquire by his fortune and industry." (T 489) This conclusion is perhaps somewhat more specific than Section 2 originally promised. That is supposed to investigate only the historical origin of "rules of justice," and the social-evolutionary reason for having any institution of property at all. Only in Section 3 is Hume supposed to go on to ask about the content of such rules, and who should have what.

Section 3 begins:

Tho' the establishment of the rule, concerning the stability of possession, be not only be useful, but even absolutely necessary to human society, it can never serve to any purpose while it remains in such general terms. Some method must be shewn, by which we may distinguish what particular goods are to be assign'd to each particular person, while the rest of mankind are excluded from their possession and enjoyment. (T 501-2)

When Hume speaks of "the stability of possession" in Section 2 he is, I suggest, usually urging only that there should be some recognized property rights: "Our property is nothing but those goods, whose constant possession is establish'd by the laws of society; that is, by the laws of justice." (T 491) But in Section 3 'Of the rules, which determine property,' possession or at any rate legally uncontested possession, is offered as not merely nine but ten points of the moral law. For Hume - to adapt a phrase from one of Nozick's objections against Rawls - the status quo rather than equality is "the rest (or rectilinear motion) position of the system, deviation from which may be caused only by moral forces."¹¹

It is, surely, significant that an equal distribution, or even an equal distribution qualified either by the Rawlsian Difference Principle or in some other way, does not here occur to Hume even as an alternative demanding attention. The one alternative which Hume mentions in the Treatise, only to dismiss it, is precisely not egalitarian. It is that justice requires that everyone should have whatever is appropriate to their particular and different natures and circumstances:

'Twere better, no doubt, that every one were possess'd of what is most suitable to him, and proper for his use: But besides, that this relation of fitness may be common to several at once, 'tis liable to so many controversies, and men are so partial and passionate in judging of these controversies, that such a loose and uncertain rule wou'd be absolutely incompatible with the peace of human society. The convention concerning the stability of possession is enter'd into, in order to cut off all occasions of discord and contention; and this end wou'd never be attain'd, were we allow'd to apply this rule differently in every particular case, according to every particular utility, which might be discover'd in such an application. (T 502)

This is neither the place nor the time for attempts either to defend or to refute Hume's position. Yet it is worthwhile to point to two areas of twentieth century experience to which any contemporary defenders would do well to appeal. The first is that of national incomes policies. These have been intended to ensure that every set of people, if not every individual, is "possess'd of what is most suitable ... and proper for [its] use." Certainly in my own country they have been "liable to so many controversies," and both men and women have been "so partial and passionate in judging of these controversies," that every attempt to date has in very short order broken down into a free for all inflationary wage explosion; which must, presumably, count as something "incompatible with the peace of human society."

The second area of relevant twentieth century experience is - with apologies to Sherlock Holmes - The Case of the African Frontiers. One of the things, indeed one of the remarkably few things, upon

which the Organization of African Unity has from its beginning been almost unanimously united is that, save by uncoerced and uncoercing mutual agreement, there must be no frontier changes. Yet everyone agrees that a plenipotentiary, equipped with an adequate knowledge of the human and physical geography of Africa, and approaching the whole problem with a fresh and historically unencumbered mind, would drastically redraw almost every existing frontier. The consensus for nevertheless preserving the status quo is in fact most sensibly supported with Humean reasons. And who is to say that the dictators of Balkanized Africa, with the Balkan experience perhaps in mind, are on this account misguided?

When later, in Section III (ii) of the second Enquiry, Hume does entertain the notion of "an equal distribution of property" it is still not as "the first virtue of social institutions" proposed by Rawls. Hume at once dismisses it as really impracticable, and in any case pernicious:

Render possessions ever so equal, men's different degrees of art, care, and industry will immediately break that equality. Or if you check these virtues, you reduce society to the most extreme indigence; and instead of preventing want and beggary in a few, render it unavoidable to the whole community. The most rigorous inquisition too is requisite to watch every inequality on its first appearance; and the most severe jurisdiction, to punish and redress it.

We have to notice, perhaps in our time somewhat ruefully, that Hume was in his day sufficient of an optimist, and sufficient of the happy innocent, to believe that any authority so intrusive and inquisitorial as this - which "must

soon degenerate into tyranny, and be exerted with great partialities" - would be inherently precarious and self-destructive. Perhaps he may be excused, because, "in such a situation as is here supposed," the assumption is that everyone's holdings are in fact equalized. But, of course, in the real world, there always are and always will be both equalizers and equalized. Even if these equalizers, being strictly principled Procrustean, were rigorously to eschew all perquisites of office, they would still be enormously unequal to the equalized in respect of power; which is more important than any merely economic good - as our professedly egalitarian radicals are always truly telling us.

Returning to the Treatise, Section 3 'Of the rules which determine property' is followed by Section 4 'Of the transference of property by consent' and Section 5 'Of the obligation of promises.' So in Section 6 Hume can begin by asserting: "We have now run over the three fundamental laws of nature, that of the stability of possession, of its transference by consent, and of the performance of promises." (T 526) It is, he insists,

on the strict observance of those three laws, that the peace and security of human society entirely depend; nor is there any possibility of establishing a good correspondence among men, where these are neglected. Society is absolutely necessary for the well-being of men; and these are as necessary to the support of society. (T 526)

It is, in the present context, worth insisting that the free operation of these three principles is bound to destabilize any ideal pattern of distribution. In order to maintain the Procrustean idea of 'social justice' the equalizers

would necessarily have, in Nozick's charming phrase "to forbid capitalist acts between consenting adults."¹³ For, given "the stability of possession," whatever is - as Rawls would say - "assigned" to anyone must become that person's property; to be given or exchanged as they see fit through "transference by consent." And, though Hume has strangely little to say about income, it is as income received, in contractual or quasi-contractual return for services rendered, that most of us originally acquired most of whatever property we now possess. So, if the Procrustean ideal is to be fully and completely enforced, all these principles - principles, in Hume's view, "necessary for the support of society" - will have to be continually and drastically disrupted and repressed.

Rawls, on the other hand, sees "the first principle of justice" as "one requiring an equal distribution." For him this is the substantive affirmation of a supposed universal human right. It is not to be confused with a merely methodological insistence that any deviation has to be warranted by some kind of sufficient reason. For in his opening manifesto Rawls himself proclaimed, in the most unequivocal way, that the claims of justice are indefeasible:

Justice is the first virtue of social institutions, as truth is of systems of thought ... laws and institutions no matter how efficient and well-arranged must be reformed or abolished if they are unjust. Each person possesses an inviolability founded on justice that even the welfare of society as a whole cannot override.¹⁴

Notice now that Rawls immediately supplements, rather than qualifies, this radically egalitarian ideal with one important concession: "If

there are inequalities in the basic structure that work to make everyone better off in comparison with the benchmark of initial equality, why not permit them?"¹⁵ Why not indeed, we may ask. But, consistent with the manifesto, Rawls cannot allow such violations of rights unless the rights-bearers grant their consent: volenti non fit injuria. It is, therefore, revealing to regard any inequalities which Rawls can consistently tolerate as the outcomes of hypothetical productivity bargains: those who are to be relatively less well off agree to trade, in return for some advance beyond the absolute level at which all would otherwise have been equal, some part of a most fundamental putative human right - the right not to be excelled!

My final comment takes us even further away from the conservative Hume, but in a direction likely to make most of us inclined to align ourselves with "the good David." Although Rawls himself, like so many others, applies his fundamentally egalitarian conceptions only to a single society, he offers us no reason for holding that state frontiers properly either invalidate or weaken "the first principle of justice ... requiring an equal distribution." Yet that principle implies, not only a right not to be excelled, but also a duty not oneself to excel. It is - notoriously, albeit very understandably - more difficult to find sincere and consistent spokespersons for the second than for the first of these complementary implications; and this embarrassment is displayed most vividly by extreme international comparisons.

Consider, for example, electorally attractive policies for, in the gleefully sadistic words of a recent British Labour Chancellor, "making the rich howl in agony." On what grounds of egalitarian

principle can enthusiasts for this programme justify the redistribution of the proceeds of thus 'soaking the rich': not to feed the poorest of the poor in - say - Ethiopia or Bangladesh; but either to benefit the British not so rich or to sustain the bottomless pits of the National Coal Board and all those battenning thereon?

It is hard to excogitate any answer which does not refer to British rights to capital stocks built up by previous British generations; and parallel responses are in fact regularly given to similar challenges by spokespersons for the various fully socialist countries of the Soviet bloc. But to make any appeal of this sort is to abandon the Rawls "first principle of justice ... equal distribution," in favour of a more Humean foundation in "the stability of possession." The enormous difference between any such new move and that old original lies in the dimension of collectivism. For Hume morally legitimate owners are, typically, flesh and blood individuals. For the others all, or at any rate most, property is properly and in the first instance vested in some collectivity - the people, that is, or society. Hence, in practice, the state.

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1. F.A. Hayek, Studies in Philosophy Politics and Economics (London: Routledge and Kegan Paul, 1967), Chapters VI-VII, especially pp. 97-9.
2. John Rawls, A Theory of Justice (Oxford: Clarendon, 1972), pp. 3 and 7.

3. Citations are from the Selby-Bigge edition of the Treatise, hereafter T. Exactly this formulation - constans et perpetua voluntas suum cuique tribuere - is found in Book I of the Institutes of Justinian.
4. Compare, again, the two chapters recommended in Note 1, above.
5. Compare Antony Flew, Darwinian Evolution (London: Granada Paladin, 1984), III 2.
6. On Hume as a major conservative thinker, and anticipator of Edmund Burke, see Donald Livingston, Hume's Philosophy of Common Life (Chicago and London: Chicago UP, 1984).
7. Rawls, op. cit., p. 15.
8. Ibid., p. 15.
9. Ibid., pp. 141 and 150-7.
10. Ibid., p. 179: a comma and emphasis have been supplied. For a development of these fundamental and, I believe, devastating criticisms of Rawls, see Antony Flew, The Politics of Procrustes (Buffalo: Prometheus, 1981), Chapters III-IV.
11. Robert Nozick, Anarchy, State and Utopia (Oxford: Blackwell 1974), p. 223.
12. Enquiry concerning the Principles of Morals III (ii): p. 194.
13. Nozick, op. cit., p. 163.
14. Rawls, op. cit., p. 3.
15. Ibid., pp. 150 and 151.