

# Aristotle's Theory of Justice as the Basis of Rawls' Justice as Fairness

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Aristotle distinguishes between general justice and particular justice. I argue that this distinction identifies a fundamental issue of justice that remains even in what Rawls terms a "well-ordered society". This is the issue of the fair distribution of the burdens and benefits of social cooperation. Rawls develops Aristotle's conception of particular justice through arguing that the proper subject of justice as fairness is the "basic structure" of society. Further, his distinction between "ideal" and "non-ideal" theory clarifies Aristotle's otherwise confusing distinction within "particular" justice between distributive and corrective, or regulative, justice.

## 1. Introduction

In *Nicomachean Ethics*, Aristotle (1130a15–1130b5)<sup>1</sup> subtly distinguishes between two meanings of "just" and "unjust". First, people can be said to be "just" because they refrain from wronging others. The disposition to refrain from wronging others constitutes "perfect virtue" (1129b25–30) in relations with others. Aristotle calls this general or universal justice because it covers all ways of being just. He then says that he really wants to investigate justice or injustice in a special sense, illustrated not by the person who breaks the law but the one who takes more than a fair share.

As Aristotle (1130a15–20) says, "when a man displays ... Cowardice ... though he acts unjustly, he is not taking more than his fair share of anything". Nor do people who take more than their fair share necessarily display any other lack of virtue than this. In taking more than their fair share they are being unjust but merely unjust. In other instances of injustice, a vice goes by another name, such as Cowardice but, in this instance, it is simply being unjust. Aristotle (1130a30–1130b) reinforces this point by pointing out that if one person commits adultery for gain

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<sup>1</sup> I follow the usual convention in referring to passages in Aristotle, which is to refer to the page numbers and column letters of the standard edition of the works of Aristotle, edited by Bekker. These page numbers and column letters are repeated in all modern editions of Aristotle's works.

or profit, while another commits it from desire and possibly loses from it, both are unjust but only the second person is “profligate” or wanton. Aristotle shows that there is a specific form of injustice in distribution, for which the usual term is simply that the gain or avoidance of burden is “unfair” or “unjust”. Aristotle possibly presses his point a bit far here, since we could say that the specific vice in question is “greed”, just as the specific vice in running away from battle is cowardice. However, the crucial point is that this possibility of injustice remains and is vitally important to the well being of people, even when no other complaint of injustice can be made.

One way of isolating this specific form of injustice would be to suppose that people are otherwise virtuous. This is the supposition that Rawls (1971, 1999:7–8) makes to identify his specific concern with justice, which he distinguishes from other issues of justice by asking what principles of justice would apply when people by and large do the right thing. For, if people are by and large just or do not wrong others, we can remove from consideration issues involved in Aristotle’s other instances of injustice, such as cowardice, adultery or bad temper, and ask what it would be to take only one’s fair share in these circumstances. Thus both Aristotle and Rawls seem concerned with identifying what is involved in what Aristotle calls “particular” justice. And this, as Aristotle and Rawls make clear, is a matter of determining how to share fairly the burdens and benefits of social cooperation. As Aristotle (1129a25–1129b10) notes, the unjust man will take more than his fair share of the things on which good fortune depends and avoids his fair share of burdens.

Although Aristotle and Rawls share this common concern, as Santas (2001:1, 5–7) notes, Rawls consciously distinguishes his view of justice from that of Aristotle in at least one important respect. Rawls aims only for a theory of justice that articulates the principles of a shared understanding in a community of what is just and unjust, without presupposing a comprehensive theory of the good, as Aristotle does. Rawls only assumes that a thin conception of the good as all-purpose means of action (“primary goods”) will be shared among members of a political community. As we will see, such differences are important, but my primary purpose here is to show how Rawls also consciously builds on Aristotle’s theory of justice, starting from their shared concern to separate distributive justice from other issues of justice.

Rawls not only restricts his theory to distributive justice but is more specifically concerned only with what constitutes just social arrangements for a society rather than just arrangements for local associations within the state or for relations between states. Rawls’ thus stipulates that his theory provides a political conception of justice. This is a second point of continuity with Aristotle (1134a25–30), who implicitly stipulates that his concern in the *Nicomachean Ethics* is with justice within a community. However, there is also a degree of discontinuity on this point. Aristotle separates household justice, including domestic justice, from political justice (1134b10–20), while Rawls intends his political conception to cover at least part of the distributive

arrangements within households. This part is the arrangement of rights and duties between men and women, who are taken as equal citizens. A separate sphere of domestic justice in Rawls' (2001:162–66) theory covers only the relation between parents and children and a personal division of labour and resources between parents within the household, though this must be consistent with their equal status.

Rawls' (1971, 1999:214) concern with political justice thus in part accords with Aristotle's concern with the constitutive element of human communities, which is their shared sense of what is good and bad, just and unjust: "For it is the peculiarity of humans, in contrast to the other animals, to have perception of good and bad and just and unjust and the like; and community in these things makes a household and a city-

John Rawls (1921–2002).

state" (1253a15). As I have already noted, this accord is only partial because Rawls' commitment to political liberalism, with its allowance of diverse views of what is good and evil within a community, requires that he take only a shared conception of what is just and unjust to be constitutive of a political community. On the other hand, in the case of the family or household, Rawls agrees with Aristotle that this specific community relies on a shared conception of the good as well as of justice if it is to function adequately. For Rawls (2001:163) presumes that the proper constitution of the family involves a shared perception of good and evil as well as of justice, including those forms of justice peculiar to the family, such as the morally proper relation between parents and children, even though these would be constrained by principles of justice (Rawls, 2001:165). Because it constrains domestic justice by social justice, Rawls' theory also opens the possibility of families whose foundation is undermined by conflict between the requirements of political justice and the requirements of a conception of domestic justice, such as that typical of the Greek culture of Aristotle's time, which gave the male head of the household authority over his wife and treated children as virtually his slaves. Nevertheless, despite such differences, Rawls (1971, 1999:9–10) is thus to a significant degree correct in claiming that, despite appearances to the contrary, his concerns with justice accord with traditional treatments, of which Aristotle's is exemplary.

## 2. Aristotle and Rawls on the Subject of Justice

Rawls initially fails to note one important point of difference between his theory and that of Aristotle. Rawls (1971, 1999:9) does note an important difference between his theory and Aristotle's concern with the justice of individual acts of *pleonexia*, or unfair gain. For Rawls, the subject of justice is not the comparative advantages of particular individuals but rather the "basic structure" of society: the structure of social institutions that distribute rights and duties and the burdens and benefits of social cooperation. For Rawls (2001:32–33), general kinds of outcomes for individuals that a basic structure permits determine whether it can be accepted as just within an overlapping consensus but we cannot test whether a basic structure is just by comparing its outcomes for particular individuals with what a prior, independent criterion of justice would require.

True, as Rawls (1971, 1999:10) also points out, Aristotle's concern with individual acts of unfairness is in some ways not remote from his. In the first place, it presupposes an account of what for individuals are just shares of the divisible goods of society. Secondly, Rawls claims that there is no reason to think that Aristotle would disagree with Rawls' view, which is that these entitlements flow from social institutions. Further, as Rawls (1971, 1999:73) suggests, Aristotle does recognize the influence of social institutions on the justice of distribution, in so far as any view of justice will consider the basic structure to be important, though in differing ways. In *Politics*, Aristotle (1253a) regards justice as an element of the state, since it regulates the political partnership or community for the common good.

However, Aristotle clearly takes the primary subject of justice to be individuals and their situations rather than the basic structure of society. Aristotle (1131a, 15–20) claims that "[the just] mean ... implies certain extremes between which it lies ... and certain persons for whom it is just. It follows therefore that justice involves at least four terms, namely two persons for whom it is just and two shares which are just. ... [I]t is when equals possess unequal shares, or persons not equal [have] equal shares, that quarrels and complaints arise".

In initially overdoing the degree of agreement between his and Aristotle's treatments of justice, Rawls fails to make it clear from the start that there is a fundamental difference between a theory of social justice like Aristotle's, in which the justice of institutions is judged by reference to its accord with what would be just outcomes for particular individuals, and a theory like his, where the justice of outcomes for particular individuals is a consequence of their being outcomes of just social institutions.

Rawls (1971, 1999:76) later argues that the task for justice set by Aristotle is practically impossible. On Aristotle's view, it would be necessary to keep track of the relative position of different individuals. It would be necessary to determine their relative merit and what unequal shares would be appropriate to their inequalities in merit (1134b5). True, Aristotle does not think that the merit of individuals is to be determined daily or weekly — as parents might determine the merit of their children for good behaviour rewards — but by their established virtue.<sup>2</sup> Neverthe-

less, in a complex society, it would still be practically impossible to determine whether each and every change in shares of the burdens and benefits of social cooperation is in accord with the relative established virtue of individuals.

In addition, we have reason to consider that such a criterion of justice cannot be applied, even in principle, when it is taken as an absolute touchstone of just distribution rather than a rule of thumb for particular situations. There are many different kinds of merit and many different burdens and benefits of social cooperation. In today's world, the benefits of wealth and income are salient and commensurable through money. But burdens and kinds of merit are as incommensurably diverse today as they were in the Ancient world. The problem is that unequal individuals are not unequal in the same way: one may be a better musician but a lesser philosopher than another; one may show virtue in the home, while another shows it in public life. It is clear that these virtues are not the same but not clear how different their reward should be.

Therefore, since an independent criterion of what is just for individual cases seems impossible, Rawls makes the basic structure of society the subject of justice, with the aim of establishing conditions that fair distributive procedures must satisfy. Rawls thus proposes that particular justice in the form of fairness in the distribution of the burdens and benefits of social cooperation must rely largely upon devices of what he terms "pure procedural justice". The point of distribution in accordance with pure procedural justice is that the focus shifts from particular outcomes, and judgement of the justice of these through some criterion such as merit, to determining what type of distributive device will be fair, even though the judgement of this will take into account the range and general kinds of outcomes for individuals that it permits.

In the case of pure procedural justice, if a device is fair, then its outcomes will automatically be fair. Rawls illustrates this with a lottery. The outcome of a lottery is fair just in case it is conducted fairly. A lottery is conducted fairly if the winner is determined by chance, according to procedures that are not subject to bias in favour of any individual. A further consideration of fairness may be the ratio of the take to the payout to winning tickets. In a charitable lottery, the take can be relatively great, since those participating are not simply after reasonable prospects of windfall gain but to donate to charity. Without an understanding that the purpose of the lottery is other than windfall gain, a large take would clearly be exploitative.

Outcomes play an even more important role in what should count as fair distribution of the burdens and benefits of social cooperation, since this determines everyone's prospect of good fortune in life. Here the distributive device should be chosen so that outcomes are determined not so much by circumstance but by the contribution of each to the benefits to be distributed. Distribution by lottery would

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<sup>2</sup> Aristotle (1131a25) compares overall or established virtue with other forms of desert, such as free birth or wealth, as supposed bases of distributive justice.

thus be unfair. If Aristotle had posed the question of the fairness of a device for the distribution of the burdens and benefits of social cooperation, he would have been appalled at the idea that this should be significantly determined by participation in the market. Aristotle thought that fair market transactions would leave the position of people unchanged, since they could only involve exchange of equals for equals, for mutual benefit. In Aristotle's world, citizens derived their income from their own — or their slaves' — efforts rather than from the market.<sup>3</sup> In today's world, markets are not only the primary source of income but we also have public debate over whether distribution should be left overwhelmingly to market forces.

However, my aim here is not to go into Rawls' arguments for giving a constrained role to the market, especially in determining overall incomes, and for maintaining a relatively equal distribution of wealth in social distribution. My claim is only that he is asking the right question: if distribution is to be determined by ongoing social arrangements, what are the fundamental conditions for these to be fair? In answering this question, Rawls takes the crucial step of initially assuming that people will generally do the right thing and then addresses the residual but fundamentally important question of what people in such circumstances would impartially consider a fair distribution of the burdens and benefits of social cooperation.

### 3. "Ideal" v. "Non-ideal" Theory: Distributive v. Regulative Justice

What if people do not comply with the requirements of justice? Or what if circumstances are not favourable to equal participation in social cooperation? Rawls does not address these questions directly. However, he does think that a fair basic structure must make provision for non-ideal conditions, at least when these could be consistent with society's having a just basic structure. With regard to unjust (wrongful) individual actions, Rawls (1971, 1999:243) notes that, even in a well-ordered society, coercive institutions that are ready to deal with wrongdoing may be necessary for security. In less ideal circumstances, such institutions will not only be present but also will act to punish and prevent widespread wrongdoing. Principles for dealing with wrongdoing constitute one part of non-ideal theory, according to Rawls (1971, 1999:216). The other part "consists of principles for governing adjustments to natural limitations and historical contingencies".

This distinction between ideal and non-ideal theory coincides with the separation of issues of distributive justice from those of corrective justice, although as I indicated above, the issues of distributive and regulative justice are not absolutely separate. This distinction also promises to make sense of one confusing aspect of Aristotle's treatment of "particular" justice. Having initially distinguished particular from general justice by establishing that the former is concerned with fair as

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<sup>3</sup> In ancient Athens, metics derived their income from the market but could not be full citizens.

opposed to unfair gain, Aristotle (1130b30–1131a) then distinguishes between two kinds of particular justice: one is concerned with fair shares of divisible assets; the other “supplies a corrective principle” in private transactions. Aristotle terms it Corrective Justice, which clearly corresponds with one part of Rawls’ non-ideal theory. Corrective justice turns out to be concerned with two further types of issue: regulation of agreements or transactions that a person voluntarily enters into with others; and rectification, including punishment, of injustices to which a person is involuntarily subjected (1131a5–10). Aristotle (1131b25–1132a5) interestingly distinguishes this from distributive justice by pointing out that the principles for achieving justice in these cases pay no regard to the character or position of the parties but only to the nature of what was done by one party to another. For Rawls, ideal theory is concerned with representative positions in the basic structure, whereas the two parts of non-ideal theory concern particular instances of wrongdoing or unfortunate circumstance.

Now Aristotle (1130a25–1130b) introduces particular justice by pointing out that the injustice involved committing adultery from lust rather than gain is not an issue of particular justice by contrast with committing adultery for profit. Yet, clearly, an act of adultery is an issue for corrective justice, which Aristotle later includes within the scope of particular (corrective) justice. On the face of it, this is confusing. However, Rawls offers a way of making sense of Aristotle’s distinction. Distributive justice is the only concern of political justice in ideal theory. However, political justice must also involve non-ideal theory, which is concerned with corrective justice. Both ideal and non-ideal theory are concerned with institutions required to establish and protect justice. But the object of one is a basic structure which operates even in a “well-ordered society”, whereas the other concerns institutions which only come into operation when wrongdoing or misfortune reaches a significant level. On this account, universal justice is concerned with violations of standards of justice or right conduct. Particular justice, on the other hand, is concerned, firstly, with our collective obligations to establish the fundamental distribution of rights and duties in society fairly and, secondly, with our collective obligation to secure citizens — so far as it is possible through punishment and compensation — from unfair changes to their fair expectations due to misconduct or misfortune.

#### 4. Conclusion

It is clear that Rawls’ theory of justice builds on issues of justice raised by Aristotle in his *Nichomachean Ethics*. From this perspective, we can better understand the aims of Rawls’ theory. It could also be said that Rawls can fully be understood only from this perspective. However, there are two ways in which Rawls improves upon Aristotle: Rawls takes the subject of distributive justice to be the basic structure of society rather than individual acts of wrongful gain; and he shows us how to

understand particular justice as being concerned with both distributive and regulative institutions of justice without appearing thereby to muddle the distinction between distributive justice and justice in general.

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