

Contents

<i>Preface</i>	ix
1 The ‘Principled Paradigm’ of Ideal Theory	1
1.1 Introduction	1
1.2 A simple illustration of the complexity of justice	8
1.3 Some caveats	16
2 The Virtues of Fair Social Cooperation	25
2.1 Introduction	25
2.2 The four convictions grounding ‘civic liberalism’	28
2.3 The virtues of fair social cooperation	39
2.4 The central prescriptions of civic liberalism	44
3 The Simplifying Assumptions of Rawlsian Justice	48
3.1 Introduction	48
3.2 The ideal/non-ideal theory distinction	49
3.3 A parody of the original position	52
3.4 Maximin and the cost-blind approach to rights	55
3.5 Problems with the second principle of justice	64
3.6 The unreasonable stringency of the difference principle	68
4 The Cost-Blind Approach to Rights (Continued ...)	72
4.1 Rawls and Nozick on property rights	72
4.2 Nozick against taxation	75
4.3 Nozick on rectification	78
4.4 Dworkin and equality of resources	84
4.5 Kymlicka and the rights of national minorities	90
5 Dualism, Incentives and the Demands of Justice	95
5.1 Introduction	95
5.2 Why opt for dualism?	99
5.3 The concern for stability	101
5.4 The duties in non-ideal theory	103
5.5 The duties in ideal theory	111
5.6 Responding to Cohen’s question	114
5.7 Conclusion	120

6	Should the Left Embrace Left-Libertarianism?	122
6.1	Introduction	122
6.2	Otsuka on initial acquisition	124
6.3	Making the unjust pay for the disabled	130
6.4	Hypothetical consent vs actual consent	136
6.5	Intergenerational sovereignty	139
7	A Citizen's Basic Income, Workfare and Reciprocity	145
7.1	Van Parijs and 'real libertarianism'	145
7.2	Leisure and the Crazy-Lazy challenge	147
7.3	Fair reciprocity and workfare	152
7.4	Self-respect	160
7.5	Conclusion	162
8	Neutrality and Toleration	163
8.1	Introduction	163
8.2	The principle of state neutrality	165
8.3	Toleration and hate speech	169
8.4	Pornography and the issue of harm	174
8.5	Conclusion	177
9	The 'Dialogical Model' of Judicial Review	178
9.1	Introduction	178
9.2	The 'dialogical model' of judicial review	184
9.3	Freedom of expression: A deeper analysis	191
9.4	Why protect freedom of expression?	194
9.5	The underlying rationale of the two-step model	197
9.6	The concentration of communicative power	202
10	Deliberative Democracy	206
10.1	Introduction	206
10.2	The <i>ethics</i> and <i>limits</i> of civility	208
10.3	The problem of large scale	213
10.4	The threat of bureaucratic domination	220
11	Concluding Thoughts and Review	223
	<i>Notes</i>	233
	<i>Bibliography</i>	242
	<i>Index</i>	248

1

The 'Principled Paradigm' of Ideal Theory

In a world that is inherently indeterminate, a suitable theory of distributive justice must perhaps itself be indeterminate, and its indeterminacies must accommodate those of the world where relevant

Russell Hardin, *Indeterminacy and Society*, 2003, p. 103

1.1 Introduction

Consider the following scenarios which could occur in any affluent, liberal and democratic society:

Scenario #1: Intelligence-gathering operatives believe that there is a good chance that the country will be the target of a terrorist attack within the next 48 hours. The exact nature of the attack is unknown but there is good reason to believe that the risk of attack is significant. Military personnel and equipment have been stationed at airports and some airlines have cancelled flights. Much debate takes place in the media concerning how much is being done to guard against this possible attack. Critics of the existing government claim that more should be done. One prominent critic complains that 'citizens should not have to be fearful of such attacks in their own homes, schools or airports; the government needs to do more to eliminate these threats!'

Scenario #2: Leroy has been diagnosed with bowel cancer and is not expected to live until the end of the year. A new expensive drug therapy could, however, extend Leroy's survival by 5 months. This would permit him to spend one last Christmas with his family and friends. However, the drug is available only to sufferers with private health care, which

Leroy could not afford. Leroy's family find this predicament unacceptable. They write to their local politician complaining about the state of the publicly funded health care system. They believe we have a collective responsibility to ensure that patients like Leroy have the chance to experience one last Christmas with their loved ones.

Scenario #3: Tragedy hits a small rural community. A young child has been abducted from her home. The local community is mounting pressure on the media and government to commit more resources to the search for the child and the kidnapper. Details about the abduction are sketchy but one eyewitness did see a suspicious vehicle in the neighbourhood shortly before the abduction. The community demands that more investigators should be assigned to this case. Furthermore, the community demands that more be done to ensure that such crimes do not occur again in the future. More police officers are needed and they should be equipped with the most modern and effective crime-fighting equipment.

Scenario #4: Our beef industry is reeling from the repercussions of a recent report that the tests done on a dead calf confirm that it had BSE. Other countries have since banned imports of beef from our country. Much debate now takes place concerning not only the issue of how to improve existing procedures so further cases of BSE do not occur, but also about what the government should do to help the crippled beef industry.

Scenario #5: The economy is rapidly moving towards a *knowledge-based economy*, an economy built on technology and innovation. Long-term projections suggest that stable economic growth will require a much needed investment in the education sector. More skilled educators are needed, better research facilities are required and some concerted effort must be made to keep the current 'knowledge workers' in this country. Reports suggest that a significant number of such workers have left the country for work in a neighbouring country.

Scenario #6: Beth is a single mother of three and juggles two part-time jobs. Her family live in low-income housing. The government and Beth's local parish help her to provide for her family by providing various forms of social assistance (e.g. affordable housing and clothes for her children). Despite this assistance, Beth feels that she is fighting a losing battle. She barely scrapes enough money together to make ends meet but is unable to save anything for the future. There is a chance she might lose one of her part-time jobs. Given the high

unemployment rate and Beth's limited skills, she knows that losing that job will have dire consequences for her family and will extinguish any remaining hopes she has of helping her family escape life in poverty.

As human beings we are all *vulnerable*. We are vulnerable to innumerable misfortunes – disease, malnutrition, illiteracy, murder, theft, assault, unemployment, injury at work, terrorist attack and so on. One of the primary functions of government is to reduce, as far as is reasonable, our vulnerability to these various misfortunes. Each of the scenarios described above are ones that occur in real, affluent, liberal democratic countries. In each of the scenarios we see different demands being placed on society. These include the following:

We should do more to *protect ourselves from terrorist attack*.

We should do more to *provide the necessary medical treatment to those in need*.

We should do more to *prevent and solve crimes*.

We should do more to *protect industries vital to our economy*.

We should do more to *improve our education system*.

We should do more to *reduce poverty*.

Behind each of these different demands are claims of *distributive justice*. Distributive justice concerns the fair division of the benefits and burdens of social cooperation. But what 'terms of agreement' would constitute fair terms of social cooperation among members of large, pluralistic, unequal liberal democracies that exist in an era of rapid globalization? Consider, for example, the country that I am from – Canada. Canada is made up of approximately 32,000,000 people. These people are from diverse ethnic, religious and cultural backgrounds. They also greatly differ in their level of skills and abilities, their income and wealth and their work habits. They also have different preferences ranging from the kinds of automobiles they prefer to drive, to the food they enjoy eating and the habits and values they wish to instill in their children.

All Canadians have certain legal rights and freedoms that are enshrined in the *Charter of Rights and Freedoms*. These include the right not to be arbitrarily detained or imprisoned, the right to move and to take up residence in any province, freedom of expression and freedom of association. Canada is also a democratic country. We hold regular elections, have a secret ballot and there is much competition between

political parties and leaders for securing political office. The resources of my country are diverse and this influences our industry and commerce. Our economy is subject to the pressures of a global market. The fate of our prosperity is not completely in our own hands but there are steps we can take to better position ourselves so that we prevent capital flight and encourage investment so that we are, and can remain, a competitive country in an era of rapid globalization. As I write these words, the current national debt of my country is \$510,576 million.¹ By the time you read these words that figure will no doubt have changed. And the factors that influence these changes will be a mix of things within our collective control and things beyond our control.

Every year many of my compatriots suffer misfortunes ranging from losing their job, to being the victim of a crime (e.g. property crimes and sexual assault) and premature death (e.g. caused by disease and traffic accidents). We have some influence over how vigorously we can pursue mitigating these diverse misfortunes, but we cannot prevent all of these misfortunes from occurring. And our efforts to mitigate these misfortunes will be influenced by a variety of factors, ranging from budget constraints and dietary habits, to the level of our medical expertise and the threat of international insecurity.

I often find myself pondering the question – How *just* is my country? This sounds like a simple question but in fact it is anything but easy to answer. For a number of years, I found it troubling that answering this question perplexed me so much. As a citizen I felt that having an informed answer to that question was essential for taking the responsibilities of citizenship seriously. How could I make a decision about which political party to vote for or which private charities to support, for example, if I did not have some diagnosis of what was right or wrong with the current state of affairs? As an academic who teaches political philosophy to bright young students I was deeply troubled that I, the person who teaches them about the concepts of justice and democracy, was perplexed by what was seemingly a simple question. But I have learned that the answer to this question is far from simple. In fact, it is a very complex answer, one that is constantly changing and, ultimately, *indeterminate*. This now seems to me pretty obvious, but in fact it is not that obvious when one reflects on the way many contemporary political philosophers address the issue of justice.

Following the publication of John Rawls's *A Theory of Justice* in 1971, the issue of distributive justice has been central to debates in contemporary political philosophy. Theories of distributive justice are concerned with the following abstract question – What constitutes a *fair*

distribution of the benefits and burdens of social cooperation? Political philosophers adopt a diverse range of theoretical positions that posit diverse accounts of what the currency of justice is (e.g. resources, welfare and capabilities) and they champion a diverse range of principles that are to govern the things they believe justice requires a fair distribution of (e.g. principle of need, equality, liberty and democracy). The argument advanced in this book goes against the grain of a good deal of contemporary political philosophy. Most contemporary theories of distributive justice are principle-oriented theories of justice that function at the level of what is called 'ideal theory'. Ideal theorists bracket or ignore a variety of real, non-ideal considerations, for example, the facts of non-compliance, scarcity or pervasive disadvantage. In the chapters to come I shall elaborate on what ideal theory is and why I believe it is inherently problematic. When we function at the level of ideal theory, our deliberations about justice are constrained in such a fashion that it might seem perfectly natural to conceive of distributive justice in terms of satisfying 'principles' or 'rules'. But in this book I make a case for approaching the issue of distributive justice in a manner very different from the principled paradigm of contemporary theories of distributive justice.

Among contemporary political philosophers, the dominant metric for measuring the justness of a society is a *principle-oriented* metric. Such a metric is one that measures the degree to which a society fulfils the principles (or serially ordered principles) of justice. Liberals, egalitarians, democrats and libertarians disagree over what their favoured principles of justice are, but they share the conviction that the primary aim of a theory of distributive justice is to derive and defend the principles of justice. The details of these principles will vary from theorist to theorist, but the following is a partial list of some of the main contemporary contenders:

1. Principle of *equal basic liberties*. (Rawls, 1971, 1996)
2. Principles of *entitlement*. (Nozick, 1974)
3. Principle of *state neutrality*. (Rawls, 1971, 1996; Ackerman, 1980; Dworkin, 1985; Barry, 1995)
4. Principle of *need*. (Walzer, 1983; Miller, 1999)
5. Principle of *desert*. (Walzer, 1983; Olsaretti, 2003)
6. Principle of *equality of ___X___*.²
7. Principle of *sufficiency*. (Fabre, 2000; Nussbaum, 2000; White, 2003)
8. Principle of *democratic equality*. (Young, 2000)

9. Principle of *minimax relative concession*. (Gauthier, 1986)
10. The *difference principle*. (Rawls, 1971, 1996)

In this book I aim to help lessen the strangle hold the principled approach to justice has on political philosophers. A defensible theory of justice must be able to function both as a *motive* and as a *guide* for our individual and collective action.³ I believe the principled paradigm of ideal theory fails in both these respects. Such theories only appeal to a limited range of moral convictions (e.g. impartiality and respect for autonomy) which, once formulized as an appropriate 'principle of justice' (e.g. equal basic liberties principle and principle of self-ownership), yield impotent or misguided practical prescriptions.

The main proponents of ideal theorizing are not completely blind to non-ideal considerations. Rawls, for example, defends a theory of justice that seeks to take seriously what David Hume called the 'circumstances of justice'. These include the facts of moderate scarcity and limited altruism. Furthermore, in *Political Liberalism* Rawls revised his earlier theory of justice because he believed it failed to take the fact of reasonable pluralism seriously enough and thus it could not secure the stability of a just democratic regime. Ronald Dworkin, a second liberal that I shall argue functions at the level of ideal theory, sees his defence of equality of resources as superior to Rawls's theory of justice because Dworkin takes inequalities in natural endowments and concern for personal responsibility more seriously than Rawls. Furthermore, the entitlement theory of justice defended by the libertarian Robert Nozick appears to be a theory well positioned to address non-ideal considerations, as it is, by its very nature, an *historical theory* of justice. In particular, its principle of rectification requires us to compensate past injustices. And finally, deliberative democrats and multiculturalists might retort that they take real non-ideal considerations seriously as well. Deliberative democrats emphasize the importance of our democratic practices and institutions and multiculturalists emphasize the fact of cultural inequality.

Despite all of the qualifications that one could make in defence of the theories of liberal egalitarians, libertarians, deliberative democrats and multiculturalists (and I shall address these positions in greater detail in the chapters to follow), I argue that they do not deflect the central criticism I make against principle-oriented theories of justice. Namely, that such theories tend to function at the level of ideal theory and thus yield *impotent* or *misguided* normative prescriptions. Liberals who

function at the level of ideal theory adopt a *cost-blind* approach to rights and a narrow view of possible human misfortune. The former issue leads liberals to give priority to a serially ordered principle of equal basic liberties (Rawls, 1971, 1996) or to treat rights as 'trumps' (Dworkin, 1978) or 'side-constraints' (Nozick, 1974); and the latter to a stringent prioritarian principle (Rawls's difference principle), problematic principle of rectification or luck egalitarianism. Taken together, the cost-blind approach to rights, coupled with the narrow view of human misfortune, mean that contemporary liberal theories of justice cannot address the issue of trade-offs that inevitably arises in real non-ideal societies that face the fact of scarcity.

Furthermore, the rights-based theories of Rawls, Dworkin and Nozick are primarily *state-centric* theories of justice that provide little guidance in terms of addressing the injustices that exist in non-ideal scenarios. Despite the historical nature of Nozick's entitlement theory of justice, he glosses over the actual history of current capitalist regimes. The principle of rectification is marginalized by Nozick's principled opposition to redistributive taxation. This stems from his emphasis on the right to self-ownership and his neglect of real-world history. Theories of justice that are premised on a right to self-ownership yield impotent conclusions that do not remedy the injustices of current capitalist regimes. I believe this is true even of *left-libertarianism*, which attempts to combine the right to self-ownership with equal ownership of worldly resources. I bring these concerns to the fore by criticizing the arguments of Michael Otsuka (2003) and Philippe Van Parijs (1995).

Deliberative democrats who champion the ideals of reasoned deliberation often ignore the challenges imposed by the problem of large scale or the possible dangers of the ideal (e.g. conformity, cascades and group polarization). Some deliberative democrats (Robert Goodin, 2003) propose tackling the problem of large scale by asking us to transcend our cognitive limitations (e.g. by holding contemporaries, future generations and all species imaginatively present in our minds). I argue that this leads to an unrealistic and disconcerting conception of the ideal. And finally, some multiculturalists (Will Kymlicka, 1989a) who champion the case for granting self-government rights for national minorities do so on the basis that cultural inequalities are an unchosen inequality that warrants compensation. But this argument ignores the fact that there are *many* existing forms of inequality in contemporary pluralistic societies, and it is not self-evident that mitigating cultural inequalities should trump the effort to mitigate socio-economic inequalities.

1.2 A simple illustration of the complexity of justice

I myself was once seduced by the appeal of the ‘principled paradigm’ of contemporary political philosophy. I believed that one could make quick judgements about how just a society is by simply asking if the society in question satisfied the principle of equal opportunity, or Rawls’s difference principle or if all citizens passed a minimum threshold for functioning. But I now view such judgements as being rather naïve and of little help. The justness of a society cannot be determined by simply pointing out that a certain distribution of goods (e.g. income and wealth) conforms to or contravenes a certain principle, or list of serially ordered principles, of justice.⁴

The justness of a society will be influenced by a wide variety of innumerable factors. Consider the following simple comparison which I believe will illustrate my point rather effectively. Imagine we have two societies that have comparable levels of affluence and equality (Diagram 1.1). To make the example simple let us say the relevant metric of comparison is ‘standard of living’. The example does not require us to get bogged down in discussions of how we measure standard of living. My main point is that something like this metric informs many of the judgements egalitarians are likely to make about the justness of a cooperative system.

Citizens in these two societies (let us call them society A and society B) enjoy at least a decent standard of living (one which allows all to live a minimally flourishing life) and the gap between the richest and poorest is modest. This snippet of information is likely to lead many principled egalitarian political philosophers to endorse the view that the justness of both societies is *roughly comparable*. If the distribution of primary goods in both societies are comparable then the assessment of how just these societies are must also be comparable.

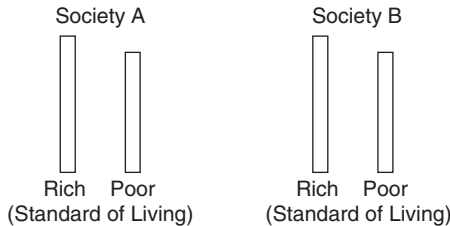


Diagram 1.1 Simple synchronic comparison.

I shall now introduce a number of new considerations which will illustrate how the fact that the pattern of distribution in both societies is comparable does *not* provide an adequate basis for the judgement that they are comparably just. First, suppose these two societies have radically different political regimes. Society A is ruled by a benevolent dictator and society B is democratic. While it is true that citizens in the two societies have comparable standards of living, only the people in society B can be described as 'self-governing'. Does this consideration have any impact on our assessment of how just these two societies are? I believe it does. We take democracy to be intricately connected to justice. While democracy is not intrinsically just, justice is intrinsically democratic. But the value of democracy is undermined if the main metric of a theory of justice is the maintenance of some pattern of material goods. Such a metric endorses what Nozick calls an 'end-state' theory. The only thing that matters is where we end up in terms of the distributive pattern of the goods we take to be important. *How* we arrive at that distribution is unimportant.

I suspect that many who might have initially been inclined to claim that society A and society B were comparably just will now back away from that conviction and claim that they were assuming that other things were equal in the initial example. Now that I provide this further bit of information, they will claim that of course society A is more unjust than society B. Contemporary proponents of patterned principles of justice do not endorse 'end-state' theories. Rather, they endorse a more sophisticated account of justice, one which is committed to principles that govern how a distributive pattern is to be arrived at and maintained. John Rawls does this, for example, when he gives a priority to the equal basic liberties principle over the principle of fair equality of opportunity and the difference principle. So by Rawls's metric of justice, society A is grossly unjust as it violates the first principle of justice, while society B does not. But, as I shall argue in the chapters that follow, many principle-oriented theorists (including Rawls) have failed to take democracy seriously enough. In fact, those who advocate principles that give a priority to democratic rights, but also endorse a specific patterned distributive principle, face a dilemma. The dilemma is that the patterned principles of justice they advocate might not be ones that real people actually endorse or would consent to. Either this raises questions about the legitimacy of the patterned principles they defend or, if they insist that these principles can be legitimate even when they do not have popular support (because parties in an original position would endorse them), they make democracy superfluous. If the political philosopher

can determine what constitutes a just distribution of primary goods, independently of any real democratic process, then it seems we really do not need democracy. In which case there appears to be no substantive difference between society A and society B after all.

Perhaps introducing a consideration like the political arrangements of the two societies is not the most effective way of illustrating my point, so let me provide some further examples. Let us assume that society A and society B are both democratic. Does this information, coupled with the fact that citizens in both societies have comparable life prospects, provide a basis for the judgement that both societies are comparably just? No. I will now tell a more complex story that further illustrates the deficiency of pattern-principled approaches to justice. Imagine it is the case that society B is actually much worse off than society A in terms of the useful natural resources it has available for its citizens to make use of. Given this predicament, we might expect that the standard of living for people in B to be much lower than that in A. The fact that it is not stem from the *work habits* of the citizens in society B. They are a more productive people. In fact, a strong work ethos is the only way, given their poor natural resources, that society B could ensure that all its citizens live a minimally flourishing life. Society A does not have this work ethos, nor does it need that ethos to ensure that everyone lives a minimally flourishing life. If the people in society A lived by the work ethos of society B then A would be transformed into a society which had an even higher standard of living for all its citizens. But the people in society A do not care about ensuring that everyone has a minimally flourishing life. It just turns out that, given the fortunate situation of their natural resources, everyone can have a minimally flourishing life without such an aim being a conscious part of the political culture of the society.

Attitudes towards work may be one way in which the ethos of the two societies differ. But let us introduce another consideration to further strengthen my point. Not only is society B less well off than society A in terms of its natural resources, but B is also more populated and more diverse. All the people in society A (3,000,000 of them) speak the same language, share the same religion, cultural heritage and so on. This contrasts sharply with the people in society B. There are 300,000,000 people in society B and many of these people have migrated from other countries (some immigrants are skilled and wealthy, others are poor and uneducated), they speak different languages, have different cultural practices and religious beliefs and so on. Furthermore, society B was for centuries a racially divided society, with members of one race enslaving

those of another race. It was only through a long and hard process, one that put an end to both slavery and discrimination, that society B developed into the tolerant, fairly equal society that we see today. In order to foster a fraternal ethos that could bind these diverse people, and mend the past injustices of its historical legacy, the citizens of society B forged a compassionate and active sense of citizenship. A vision of citizenship that encourages citizens to be tolerant of those who have beliefs very different from their own, and to build on the progress that has been made in terms of rectifying the injustices of the past. This vision of citizenship does not exist in society A. Society A is a small, culturally homogenous society that has not faced the obstacles that society B has faced. But yet it still offers its citizens a comparable standard of living.

So while these two societies share the same pattern of distribution, in terms of standard of living, the story of how they got to this distribution is very different. Is this story relevant to our assessment of how just either society is? I believe it is. The history of society B is one of misfortune, slavery and immigration. The only reason society B has the high standard of living it has is that it possesses a fraternal ethos that informs both the work habits and the sense of citizenship of its citizens. Society A does not possess this ethos. The main reason for its high standard of living is the fact that it is rich in natural resources. The fact that a fraternal ethos exists in society B, but not in A, should have an impact on our assessment of how just these two societies are. There are numerous reasons why one might want to argue that such a consideration is a relevant component of the metric of justice. For example, the prosperity of the poor in society A is *contingent* upon A's fortunate supply of natural resources. If that supply of natural resources should run out, then the poor would be much more vulnerable in society A than the poor in society B. There are a number of instrumental benefits that come from having the sense of community that binds the citizens of society B, benefits that extend beyond caring for one's contemporary compatriots (e.g. influencing our attitudes towards future generations and non-nationals).

The reason I introduced the story of societies A and B was not to argue that there are benefits that come from having a fraternal ethos. Rather, my point is that the *pattern of distribution* does not give us sufficient information for making a competent judgement about how just the two societies are. So I wish to make a final modification to the example to make my point more salient. Imagine we are now given further information about the history and circumstances of both societies, as well as future projections of where the societies are headed (thus covering a

50-year period). Society B has less valuable natural resources than society A, B is also more populous and culturally diverse, and this meant that 25 years ago it was poorer and more unequal than society A (Diagram 1.2).

Twenty-five years ago society B was in a transition stage, one where the fraternal ethos was beginning to take root but there was still much work to be done to rectify the injustices of its tainted history and overcome its unfortunate circumstances and the challenges raised by immigration. Society A was also in a transition stage 25 years ago. The transition was not one of developing a fraternal ethos; rather it was beginning to develop technologies that would allow the society to better reap the fruits of its natural resources. This explains A's transition from 25 years ago to the present. However, after reaping these benefits, things become more challenging for society A, and thus the standard of living for the poor declines quite noticeably and the gap between the rich and the poor also grows (as illustrated in the depiction of 25 years from now).

Once we are given this picture of justice over time, what are we likely to conclude about the justness of society A and society B? Is society B more or less just than society A? The point of my addressing justice over time, and providing the details of the history and circumstances of both societies is not to persuade my readers that either A or B is more just.

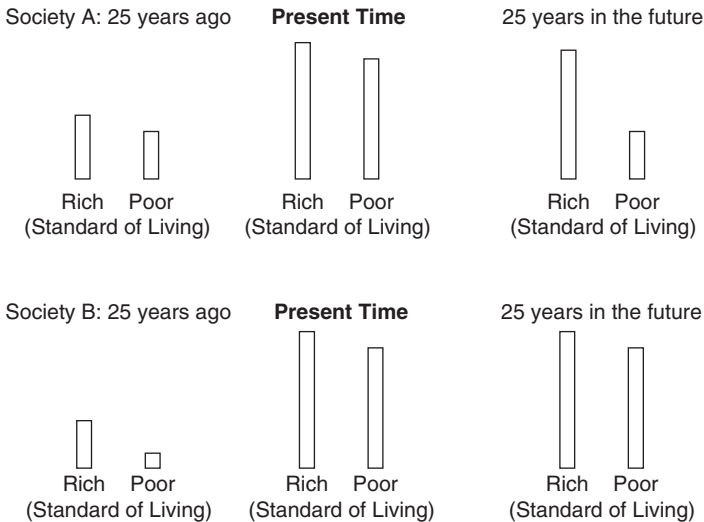


Diagram 1.2 Distributive patterns over time.

Rather, my intention was to make it clear that any judgement about the justness of either society requires much more information than simply the pattern of distribution of some goods that happen to pertain at a certain time. Comparing societies A and B, with their different histories and circumstances, is like comparing apples and oranges. No fruitful and enlightening comparison can be made if one fixates only on the pattern of distribution that exists in both societies without looking at the *underlying reasons* for those distributions. I introduced the issue of a fraternal ethos not for the purposes of telling a story about the benefits of such an ethos (though I do believe such an ethos has benefits) but to show that such a consideration, like the consideration of democracy I introduced earlier, might be one that we believe is important in measuring the justness of a society. Such a consideration is ignored if we simply compare patterns of distribution.

The justness of one's society cannot be determined by simply accumulating statistics on some metric one believes is important (e.g. levels of wealth and income) and then seeing how such statistics match-up against one's favoured patterned principle of justice (e.g. equality, desert). Like the stories of societies A and B, a diverse array of factors will influence the justness of one's society. Factors such as the quality of our media, the vitality and flexibility of our democratic practices and institutions, how educated and reflective our citizens are, how loving and caring we are as spouses, parents and children and so on. These kinds of factors are marginalized when we take the primary goal of a theory of justice to be the apprehension of the principles that apply to the institutions of government.

There are of course many reasons why political philosophers prefer not to get tied down with all the kinds of intricacies I have just mentioned. Many believe that principles of justice only apply to the government (or what Rawls calls the 'basic structure of society'), and not to things like the media or the behaviour of private citizens, at least not in any substantive sense. Such a 'state-centric' conception of justice, argue its proponents, demonstrates respect for value pluralism. This position is most staunchly defended by Rawls in *Political Liberalism*. Rawls advocates what he calls a 'political conception' of justice. Such a theory endorses principles of justice that only apply to institutions and thus it adopts a restrained posture towards questions concerning how individuals are to live their daily lives. A theory of justice that transcends the boundaries of a state-centric political theory, claims Rawls, runs the risk of undermining stability as it could not be the object of an overlapping consensus. Reasonable citizens

of contemporary liberal democracies endorse diverse moral, religious and philosophical doctrines. This diversity is a *fact* of modern life and thus a defensible theory of justice should take such pluralism seriously. A theory of justice that has expansive scope, or is what Rawls calls a 'comprehensive'⁵ (or partially comprehensive) doctrine, will fail to secure the stability of a liberal democracy. In Chapter 5 I shall illustrate how Rawls's defence of political liberalism undermines the viability of 'justice as fairness' as a conception of social justice. Rawls mistakenly presumes that stability, rather than justice, is the first virtue of institutions.

In addition to the aspiration for endorsing a strictly political conception of justice, I think there are serious methodological considerations about the nature of political philosophy that make it prone to ignore or overlook real-world considerations. Political philosophers like to engage in abstraction, and such a theoretical engagement is going to be complicated, and perhaps undermined, if one gets entangled in the complex empirical issues that arise when we consider the way democratic practices and institutions function, or the role the family plays in society, or the influence of the media and so on. So hammering on about what most of us take to be everyday commonsensical insights (like the fact that we have familial obligations, are influenced by the media, etc.) will threaten to undermine what it is that political philosophers like to do best when they attempt to derive the principles of justice – namely, contemplating abstract hypothetical scenarios that yield pristine theories. I am not disputing the claim that such abstract exercises can be valuable ones. But I think political philosophers need to take more seriously the question of what such abstraction is supposed to accomplish and to recognize the limitations of such an exercise.

In this book I seek to displace the dominant principle-oriented metric of justice with one that focuses instead on the *exercise of the virtues of fair social cooperation*. Appealing to abstract principles of justice often results in impotent or misguided normative prescriptions. This is not to say that the appeal to principles of justice is never appropriate or useful. Of course principles have a role to play, but the real challenge is knowing when the appeal to principles is appropriate and when it is not, as well as whom these principles apply to. Does the principle of equality of opportunity, for example, apply to every conceivable advantage – such as health, health care, education, security, procreation, companionship, attractiveness, friendship, employment, height and so on? Why does it only apply to some of these goods and not to others? And whose responsibility is it to fulfil the requirements of this principle (e.g. legislators, judges, parents)? Furthermore, if we think that *quality* education,

health care and security matter, and not only equal opportunity for these things,⁶ what do we do when we cannot have them all, when we are forced to make trade-offs between these competing demands? What guidance does the appeal to equality of opportunity provide in such a scenario? The search for principles of justice should not be the main preoccupation of a theory of distributive justice that seeks to take the complexities of real life seriously.

As I made explicit in the Preface, the argument advanced in this book is one that is informed by a specific conception of political theory/philosophy – what one could call *practical political philosophy*. It is the vision of political theory that John Dunn (1990) endorses when he claims that the purpose of political theory is to diagnose practical predicaments and to show us how best to confront them. I think the role a political philosopher can play in helping us determine what constitutes fair terms of social cooperation in any given society is very limited, though still important none-the-less. Many political philosophers may take such a comment as a slap in the face but I hope that the argument advanced in this book will show them that recognizing what the limits of political philosophy are is a good thing. Many political philosophers will be offended by my comments because they like to engage in what Jeremy Waldron (1999, p. 1) calls 'I-expect-you'd-all-like-to-know-what-I-would-do-if-I-ruled-the-world' normative theorizing. I find such arrogant theorizing deeply troubling, and the fact that most political philosophers see nothing wrong with such grandiose theorizing is even more troubling. A topic as important and wide-ranging as justice is not something that academics should approach in an insular, all-encompassing fashion; as if they could determine what justice requires by simply pondering and reflecting from the ivory tower of academia.

Many political philosophers will interpret the absence of grandiose policy prescriptions as evidence that the arguments I advance in this book lack precision and ambition, or that my position presupposes cultural relativism. But I believe one can defend an analytically rigorous and ambitious theory of distributive justice without making too many bold armchair proclamations. Such a project will have more modest ambitions than some theories of justice. For example, my arguments will address specific predicaments that some liberal democracies face and the prescriptions I make will be tentative ones that are appropriate to some particular political regimes and cultures but not necessarily all societies. The very nature of the argument I advance in this book (i.e. defending a virtue-oriented theory of justice) requires us to be cognizant of the *context* of any particular practical predicament one is discussing. So the

specific examples I utilize are meant to be illustrative of the application of a virtue-oriented theory of justice rather than an argument for exporting policies or institutions from one society to another (though there may be cases where that is a good idea).

1.3 Some caveats

In order to articulate and defend a theory of justice that is both theoretically expansive and has wide-ranging practical import, one must be willing to sacrifice certain things. So let me be upfront about what I am willing to sacrifice in this book for the sake of being able to give attention to the issues I wish to focus on. A virtue-oriented theory could be designed to apply to an endless number of topics. There are a diverse array of virtues one could identify (e.g. justice, prudence, humility and industriousness) and policy issues they could be applied to. I defend a political theory that focuses on *three* central civic virtues and I apply this theory to a fixed number of important practical issues. The three virtues are *toleration*, *civility* and *fairness*. The topics I consider include limiting rights, judicial and legislative supremacy, welfare reform, multiculturalism, taxation and economic incentives. By focusing on these particular virtues and these particular applied topics, I hope to show how a virtue-oriented theory is better able to make sense of some of our most basic moral and political commitments, and how such a theory takes seriously the complexities of the non-ideal world.

From the list of topics I address it should be apparent that the argument advanced in this book is concerned with the issue of *domestic justice*. More specifically, justice in affluent unequal liberal democracies. By focusing on domestic justice I leave myself open to the (justified) charge that considerations of global justice are ignored and that one cannot answer what is required of domestic justice without also tackling the question of what the demands of global justice are. This criticism would be a fair criticism. I believe concerns of global justice must be taken seriously but I do not address them in this book as my central focus is an account of domestic justice. The conception of justice I defend subscribes to what David Miller (1995) calls 'ethical particularism'. Ethical particularists maintain that the duties we owe to compatriots are different than those we owe to non-nationals. I accept this as a starting assumption and will not provide a defence of that assumption in this book. To engage in such a defence would have resulted in my writing a book about ethical particularism versus ethical universalism, of which there are many, instead of a book about domestic justice. So

I admit upfront that ethical universalists will have reason to take me to task on some of my starting assumptions but my main project is not one that seeks to convince ethical universalists that they should accept my theory. Rather, I seek to convince those who, like myself, are committed to the four moral/political convictions I address in Chapter 2 – namely liberalism, democracy, prioritarianism and partiality.

Let me now briefly mention some of the other things I shall omit from the current project. Because I seek to bring out the *practical* importance of a virtue-oriented conception of justice I will not say much about the historical and contemporary discussions of virtue ethics⁷ or feminist theories⁸ or republican (or indeed liberal) theories⁹ which emphasize the importance of certain civic or political virtues. Such theories do inform the version of liberalism I defend but I am not so interested in articulating to what degree my version of liberalism is or is not distinct from, for example, communitarianism, republicanism or feminism. I am more concerned with explaining what I take the *practical* importance of the position I defend to be. Civic liberalism appropriates ideas from a diverse range of political traditions. It adopts the social conception of the self endorsed by communitarians and it endorses the feminist motto 'the personal is political'. It shares with liberalism a concern for individual rights. It also emphasizes the robust conception of democracy endorsed by deliberative democrats. And finally, it seeks to take seriously the importance of identity and difference which multiculturalists, for example, have emphasized. But in typical virtue theory fashion, it does not give an absolute priority to any of these distinct commitments. Rather, it seeks to find a reasonable balance between the different demands put forth by liberals, egalitarians, feminists, deliberative democrats and multiculturalists.

Because the theory I defend is a hybrid of theoretical commitments, one might wish to quibble with the label I give the theory – 'civic liberalism'. Again, my main concern is not to quibble with labels. The theory I defend could also be characterized as a version of what Kymlicka (2002, p. 294) calls 'instrumental republicanism' or what Rawls calls 'classical republicanism' (1996, p. 205).¹⁰ The version of liberalism I endorse shares some common ground with Michael Sandel's (1996) version of republicanism. Like Sandel's project, I criticize the liberal ideal of state neutrality, though my criticism is more limited than Sandel's project. Furthermore, the virtue-oriented theory I develop is not a perfectionist doctrine, if one takes that term to denote an account of what constitutes a truly excellent human life.¹¹ My critique of state neutrality does not stem from the kind of concern that Sandel premises his republican

theory on – namely the belief that neutrality inspires a public philosophy that undermines community and the conditions for self-government. As shall become evident in Chapter 8, my critique of neutrality is that it is a much more limited ideal than neutralist liberals commonly recognize. Like most of my central criticisms of contemporary liberal theory more generally, the underlying concern I have is that state neutrality does not take non-ideal considerations (e.g. the fact that fundamental rights and freedoms often conflict) seriously and thus it has impoverished contemporary liberalism.

I realize that the charge that ideal theory is inherently flawed is a difficult charge to sustain. Such a claim presupposes a particular (and contentious) view about what constitutes a defensible political theory. Furthermore, there are a plurality of moderate ideal theorists each of whom takes some non-ideal considerations seriously (e.g. pluralism, human nature and cultural inequality). Thus, it is hard to sustain a generalized criticism against ideal theory without jeopardizing an appreciation of the nuanced differences between distinct principled accounts of justice. But the general problem with functioning at the level of ideal theory is (at least) twofold. First, ideal theorists (falsely) assume that a political philosopher can easily determine (or has privileged access to) what constitutes the ‘best foreseeable conditions’. And secondly, by assuming full compliance (which I take to be a *necessary* assumption of ideal theory), ideal theorists violate the constraints of a *realistic* utopia. Determining what is feasible in partially compliant societies that exist in the modern era of rapid globalization is perhaps one of the major sources of political disagreement in contemporary democratic societies. Rather than side-stepping such disagreement, political philosophers should advance theories of justice that adopt a critically reflective attitude towards their own background empirical assumptions concerning what is realistically possible.

By surveying and criticizing a diverse range of political theories I hope to convince the reader that there is a sound basis for thinking that political philosophers should shift from ideal theory to non-ideal theory. And in doing so, they should also shift from principle-oriented debates about justice to a virtue-oriented debate. One may of course agree that non-ideal theory is where the action is but believe that a principle-oriented approach can function at the level of non-ideal theory. Utilitarians, for example, invoke a cost-benefit analysis that is well suited to non-ideal scenarios. Others, like David Miller (1999), invoke principles like desert, need and equality but give them a contextualist analysis.¹² That is certainly a possibility and I do not critically assess principled non-ideal

positions in this book. Given the range of principled ideal theories I wish to criticize, I felt that casting a wider net that also included non-ideal principled theorists would be too ambitious for this book. So an assessment of non-ideal principled theories of justice shall have to remain the project for another day.

The bar for successfully executing the second, more ambitious, part of my project is of course much higher than criticizing the principled paradigm. It is much easier to highlight the shortcomings of someone else's theory than develop your own theory that is itself not subject to obvious shortcomings. I recognize that the virtue-oriented theory developed here is far from complete. It does not provide an exhaustive list of civic virtues, nor a full account of these virtues (or virtue itself), nor does it engage (in any detailed fashion) with the historical traditions upon which it relies (e.g. virtue-ethics and republicanism). Rather, the account is developed to highlight the attractions a virtue-oriented approach to justice can have in terms of functioning as a motive and guide for our individual and collective action. I believe this is an important contribution to debates about distributive justice, though I recognize that there are numerous questions critics will raise against a virtue-oriented theory. I share many of these concerns and I welcome the debate attending to such considerations would inspire. Recall that, for me, the central aim of civic liberalism is to *enhance* our deliberations about justice (rather than pre-empt them); to bring new considerations to the fore that have been neglected by the principled paradigm. And to offer new insights into how we can progress towards a more humane social existence. Civic liberalism is not intended to be the latest contribution to the long list of 'I-expect-you'd-all-like-to-know-what-I-would-do-if-I-ruled-the-world' theories.

In the next chapter I outline the basics of civic liberalism. I begin by detailing the moral and political convictions which motivated me to advance a virtue-oriented rather than principled account of justice. I also provide a brief overview of the central prescriptions of civic liberalism. I then turn, in Chapter 3, to the main principled account of justice in ideal theory – John Rawls's account of 'justice as fairness'. I critically assess the idealizing assumptions that Rawls invokes in *A Theory of Justice* and *Justice as Fairness: A Restatement*. I argue, contra Rawls, that parties in the original position would not choose the two principles of justice over the principle of utility as the former are cost-blind and thus impotent principles of justice. Furthermore, Rawls's account of who the least advantaged are is incomplete and, once one takes seriously the

question of who the least advantaged are, one sees that the attempt to serially order a strict prioritarian principle of justice is untenable.

In Chapter 4 I illustrate how the cost-blind approach to rights also informs other egalitarian, as well as libertarian, accounts of justice. Particular attention is given to the position known as 'luck egalitarianism', with a primary focus on the arguments of Ronald Dworkin (2000). Dworkin attempts to improve Rawls's theory by taking more seriously the issue of personal responsibility and natural inequalities. But like Rawls, Dworkin adopts a cost-blind approach to rights and a narrow view of possible human misfortune. The hypothetical insurance scheme which Dworkin champions is a severely limited theoretical exercise, one that cannot provide useful practical prescriptions in the non-ideal context. I illustrate this by criticizing two theorists who adopt the Dworkinian story to justify policy prescriptions dealing with the state provision of fertility treatment (Justine Burley, 2000) and minority rights (Will Kymlicka, 1989a). By considering these two applications of Dworkin's theory I hope to further illustrate the limitations and dangers inherent to ideal theory.

Opposition to higher rates of taxation, or even existing levels of taxation, are often made on grounds that such taxes are *unfair* burdens. This fairness argument can be given a number of further, more specific, formulations. Libertarians like Robert Nozick (1974), for example, argue that taxation of income is unfair because it violates individual rights. Libertarians invoke an entitlement argument which presumes that the appropriate baseline of property rights is *pre-tax income*. Others take issue with specific policies that are supported by taxation, such as welfare provisions, and argue that welfare reform is necessary as tax burdens are only legitimate when they satisfy some form of *reciprocity thesis*. In Chapter 4 I also critically assess these arguments. Like liberal egalitarians, libertarians assume that rights are costless. The fact that rights have costs means that redistribution is omnipresent (Holmes and Sunstein, 1999) and this raises a number of problems for the libertarian defence of the minimal state. Furthermore, the moral entitlement dimension of the libertarian argument rests on an indefensible claim concerning a natural right to pre-tax income. And finally, once ample attention is given to Nozick's brief discussion of the application of the principle of rectification, one sees that a libertarian theory equipped to tackle non-ideal considerations must transcend the state-centric theory of Nozick and the belief that justice only necessitates the *minimal* state.

In Chapter 5 I return to Rawls's theory of justice. In this chapter, I defend the early Rawls (1971) against the later Rawls of *Political*

Liberalism. Rawls's shift to a political conception of justice has resulted in making his theory a 'state-centric' theory of justice and this undermines the version of dualism he advocated in *A Theory of Justice*. In normative political theory 'dualism' refers to the position that maintains that the two practical problems of institutional design and personal conduct require, at the fundamental level, two different kinds of practical principle. A state-centric conception of justice ignores the principles that apply to our personal conduct and as such Rawls's later theory is open to the criticisms raised by monists like Liam Murphy (1999) and G. A. Cohen (1992, 1997, 2000). A state-centric conception of justice offers us little in terms of a transformative public ethic equipped to address the concerns of real, non-ideal societies. In this chapter I make a case for Rawls's earlier theory, in which he placed an emphasis on the natural duties to uphold justice, mutual respect and mutual aid. But I illustrate how an analysis of what the requirements of these duties are (in both ideal and non-ideal theory) is largely dependent upon our ability to exercise the virtues of fair social cooperation. I conclude that we are better off abandoning a dualistic principled theory in favour of a comprehensive virtue-oriented theory of justice (i.e. civic liberalism).

Chapters 6 and 7 focus on the theory known as 'left-libertarianism', another exemplary example of a principled ideal theory. In Chapter 6 I focus on the latest contribution to left-libertarianism made by Michael Otsuka (2003). Left-libertarians premise their account of justice on two principles – the principle of self-ownership and the principle of equal ownership of worldly resources. My central criticisms of Otsuka's version of left-libertarianism focus on three of the main prescriptions he advances in *Libertarianism Without Inequality*. The following are these prescriptions:

1. We should partially replace universal taxation with taxation of the unjust.
2. We should ground political obligation on *actual* consent rather than on hypothetical consent.
3. Every 20 years we should hold a referendum on the Constitution.

I argue that each of these central prescriptions undermines important egalitarian commitments. First, Otsuka's argument for taxation of the unjust undermines equality, retributive justice and the self-respect of the disadvantaged. Secondly, his account of political obligation fetishizes autonomy to a degree that it makes left-libertarianism insufficiently attuned to the realities of the injustices of real capitalist societies.

Thirdly, Otsuka's argument for intergenerational sovereignty inspires a stagnant and unstable ideal of democracy, one that jeopardizes both liberal and egalitarian aims. Taken together, I believe these criticisms warrant the charge that there is little that the left can take from Otsuka's version of left-libertarianism in terms of utilizing it to inspire a truly emancipatory public ethic equipped to address the injustices of current capitalist societies.

In Chapter 7, I continue my critical appraisal of left-libertarianism by addressing Philippe Van Parijs's proposal for a citizens' unconditional basic income (UBI). Van Parijs (1995) advances one of the most sophisticated philosophical arguments in favour of a citizen's basic income. He defends what he calls 'real libertarianism', in which the ideal under current conditions is the regime 'that could afford, and would actually implement, the highest sustainable unconditional income, subject to the constraint that everyone's formal freedom should be protected' (Van Parijs, 1995, p. 1). Unlike Otsuka's version of left-libertarianism, Van Parijs's account takes many non-ideal considerations of existing capitalist societies seriously (e.g. unemployment). So from the perspective of non-ideal theory, Van Parijs's argument is the more attractive theory of the two. However, despite being attuned to non-ideal considerations, Van Parijs's arguments for UBI are subject to a number of possible criticisms. Van Parijs claims that 'a quick look at Rawls's list of socio-economic advantages arguably establishes a strong presumption in favour of a basic income' (Van Parijs, 1995, p. 95). I argue that this claim is mistaken. I develop three virtue-oriented objections which cast doubt on the idea that a principled appeal to UBI can play a foundational role in a viable theory of social justice.¹³

The virtue of toleration is the focus of Chapter 8. A tolerant society is one which protects a diverse array of fundamental freedoms ranging from freedom of conscience and religion to freedom of expression and freedom of association. However, in non-ideal liberal societies fundamental rights and freedoms can conflict. Freedom of expression, for example, can come into conflict with the right to security of the person. Should racists be free to burn crosses as a sign of their disdain for racial minorities? Should pornographers be free to distribute violent depictions of explicit sex for the purposes of monetary gain?

The extent to which toleration will be justice-promoting, and thus a political virtue, will depend on the extent to which it accommodates the other virtues of fair social cooperation, such as civility and fairness. Many contemporary liberals tend to neglect the importance of these other virtues when articulating what fair terms of agreement are. For

example, many liberals emphasize the ideal of state neutrality.¹⁴ In this chapter I argue that the ideal of neutrality does not get us very far. State neutrality does overlap to some degree with toleration but once we consider the contentious cases that liberal societies face it becomes clear that the ideal of neutrality does not necessarily secure fair terms of social cooperation. Unlike Saladin Meckled-Garcia (2001), I believe that neutralist liberals should not give up toleration in favour of neutrality. Toleration is often *a matter of degree*. A determination of what degree best achieves fair terms of cooperation will require legislators and judges to make a number of judgements concerning how best to reconcile the conflicting values which characterize a free and democratic society. The extent to which such judgements will be justice-promoting is determined by how informed they are by the virtues of civility and fairness.

Unlike principled theories of distributive justice, which seek to protect the vulnerable in society by endorsing a version of either *judicial* or *legislative supremacy*, civic liberalism inspires a public philosophy that seeks to take seriously the moral and pragmatic demands of toleration, civility and fairness. Such a public philosophy, I argue in Chapter 9, ought to embrace a 'dialogical model' of judicial review.¹⁵ Such a model currently informs Canadian Constitutional law and I draw upon the Canadian experience in order to develop a virtue-oriented political theory that takes seriously what Robert Bork (1990, pp. 139–43) calls the 'Madisonian Dilemma'. This dilemma is the seemingly paradoxical nature of liberal democracy. Liberals believe that constitutional constraints need to be imposed upon democracy in order to ensure that individual rights are taken seriously. And yet democrats champion the ideal of self-government, an ideal that appears to be compromised by the constitutional constraints imposed by liberalism. Civic liberalism does not see the Madisonian dilemma as paradoxical. Instead, it defends a virtue-oriented conception of liberal democracy that takes both sides of the Madisonian dilemma seriously.

The final chapter, Chapter 10, examines the conception of deliberative democracy the virtue of civility can inspire in non-ideal theory. Civic liberalism endorses a two-pronged strategy for overcoming the problem of large scale. Namely, that we explore both external strategies (e.g. representation) and internal strategies (e.g. capacity for empathy) for enhancing a more inclusive deliberation of political questions. Furthermore, civic liberalism cautions against being blind to the possible dangers of appeals to 'reasoned debate' and the idea of making mute interests 'conversationally present' (Goodin, 2003). The former include, à la Sunstein's (2003) work on conformity, cascades and group

polarization, the danger of losing accurate information and competing arguments. The danger of Robert Goodin's proposal that we extend equal concern to all species is that it imposes an unrealistic conception of empathetic imagination (given the cognitive limitations of humans) and jeopardizes the privileged position the needs of humans should have on our deliberations about justice (at least in the non-ideal world that contains pervasive human disadvantage).

Index

- Aboriginal self-government rights, 90
Ackerman, Bruce, 5
ACLU *see* American Civil Liberties Union (ACLU)
American Civil Liberties Union (ACLU), 29–30, 37
Anarchy, State and Utopia, 74, 75, 79, 81–82
Anderson, Elizabeth, 84, 225
Anti-pornography law, Indianapolis, 196
Aristotle, 33, 44, 235
Arneson, Richard, 65
Asch, Solomon, 212
- Ballooning deficits, 64
Barry, Brian, 5, 235, 241
Basic income, 22, 123, 145, 149, 153, 162
Body-possession right, 124
Bork, Robert, 23, 45
British Race Relations Act (1976), 170
Buchanan, Allen, 152
Burley, Justine, 20, 88–89
- Calhoun, Cheshire, 41
Canadian Criminal Code, 171–174, 199, 200
Carens, Joseph, 49
Catholicism, 27
Central civic virtues, 16
Chain-connection, 70
Charles, 157, 158, 159
Charter of rights and freedoms, 3–4, 141, 184–190, 197
Choice/chance distinction, 84, 225–226
Christman, John, 126
Circumstances of justice, 6, 54, 55, 57, 58, 59, 61
Civic liberalism, 25–26, 27, 42, 46, 152, 154, 156, 158, 186–192, 204, 206, 208, 209, 212, 213, 216–218, 220–223, 227, 228, 230, 231
central prescriptions of, 44–47
convictions *see* Civic liberalism, convictions
foundational premises of, 26
virtues of *see* Civic liberalism, virtues of
- Civic liberalism, convictions, 28–29
ethical particularism (partiality), 29, 32–35
limited government (liberalism), 29
limits of, 36–39
prioritarianism (priority), 29, 31–32
self-government (democracy), 29, 30–31
- Civic liberalism, virtues of
civility, 16, 22, 41–42, 176, 182, 206, 210
fairness, 14, 19, 42–44, 78, 96, 146, 186
toleration, 16, 28, 39–41, 46, 163–177
- Civility, 16, 22, 41–42, 176, 182, 206, 210
- Classical republicanism *see* Instrumental republicanism
- Close-knittedness, 70
Cody, 157, 158, 159
Cohen, G. A., 21, 44, 49, 73, 95, 96, 97, 98, 100, 101, 102, 103, 104, 106, 107, 108, 109, 111, 112, 113, 114, 115, 116, 119, 120, 124, 225
- Communicative power, concentration of, 202–205
- Community, 27
Constitutionalism, 42
Contractualism, 27
- Convictions, civic liberalism, 28–29
ethical particularism (partiality), 29, 32–35
limited government (liberalism), 29

- limits of, 36–39
- prioritarianism (priority), 29, 31–32
- self-government (democracy), 29, 30–31
- Cost-blind approach to rights, 7, 20, 48, 51, 66, 68, 71
- Dworkin and equality of resources, 84–89
- Kymlicka and the rights of national minorities, 90–94
- maximin, 55–64
- Nozick against taxation, 75–78
- Nozick on rectification, 78–84
- Rawls and Nozick on property rights, 72–74
- Cost-blind theory of rights, 76
- The Costs of Rights*, 61, 75, 156
- Crazy–Lazy challenge, Leisure and, 147–152
- Dagger, Richard, 234
- Dahl, Robert, 241
- Dancy, Jonathan, 236
- Daniels, Norman, 66
- Deliberative democracy, 23, 206–208
 - bureaucratic domination, threat of, 220–222
 - ethics and limits of civility, 208–213
 - large scale, problem of, 213–220
- Deliberative turn, 208
- Democracy and justice, 182
- Democracy *see* Self-government
- Democratic Autonomy, 220–221
- Department of Social Services (DSS), 76
- Deshaney, Joshua, 76
- Deshaney decision, 76
- Devlin, Patrick, 167, 168
- 'Dialogical model' of judicial review, 184–191
- Distributive Justice, 3–15, 19, 23, 44, 48, 54, 71, 75, 77, 78, 79, 81, 84, 90, 96, 98, 103, 182, 192, 229, 230, 231
- Dryzek, John, 208, 213
- DSS *see* Department of Social Services (DSS)
- Dualism, 99–101
- Dunn, John, 15, 49, 123, 228, 229
- Dworkin, Ronald, 6, 7, 29, 127, 183, 195
 - egalitarianism, 85
 - and equality of resources, 84–89
 - 'luck egalitarianism', 25, 48
 - theory of equality, 88
- Egalitarianism, 85, 97
 - defence of luck, 48
 - luck, 7, 20, 25, 84, 91, 224, 225, 226
- Egalitarian proviso, 126
 - welfarist specification of, 126–127
- Elster, Jon, 240
- Equal importance, principle of, 85
- Equality of resources, 6, 55
 - Dworkin and, 84–89
- Equal opportunity, 8, 15, 53, 59, 65–66, 114, 128
- Estlund, David, 101
- Ethical particularism, 16–17, 29, 32–35
- Extensive inheritance tax, 120
- Fabre, Cécil, 181, 187
- 'Fair dues' conception of reciprocity, 154
- 'Fair work-test' requirement, 155, 156
 - market security, 155
 - minimized class division, 155
 - non-immiseration, 155
 - self-realization, 155
- Fairness, 14, 19, 42–44, 78, 96, 186
- Fair reciprocity and workfare, 152–160
- Farrelly, Colin, 233
- Feinberg, Joel, 39, 174
- Foot, Philippa, 234
- Freedom of expression, 191–194
- Fried, Barbara, 122, 130
- Galston, William, 234
- Gauthier, David, 6
- Goodin, Robert, 7, 24, 36, 208, 213–214, 215, 216, 217, 218
- Groundwork of the Metaphysics of Morals*, 238
- Hardin, Russell, 1
- Harm, racial equality and prevention of, 170–171

- Harsanyi, John, 56
 Hate speech and toleration, 169–174
 Heard, Andrew, 241
 Hegel, Georg 244
 Heterosexuality, 167
 Hogg, Peter, 187, 188
 Holmes, Stephen, 20, 59, 61, 75, 76, 77, 78, 182, 192
 Homosexuality, prohibitions, 167–168
 Horton, John, 163
 Hume, David, 6, 55
 Hursthouse, Rosalind, 234, 235
- Ideal/non-ideal spectrum, 51
 Ideal/non-ideal theory distinction, 49–51
 Idealization, 55–56
 Ideal theory, 5
 duties in, 111–114
 Rawls and Cohen, 114–120
 Incentives, 97
 Income-possession right, 124–125
Indeterminacy and Society, 1
 Indianapolis, anti-pornography law, 196
 Inequality, 27
 in enforcement of notional social duty, 157
 Instrumental republicanism, 17
 Intergenerational sovereignty and left-libertarianism, 139–144
 Intergenerational rectification, 80, 82, 83
 Intragenerational rectification, 83
- Jefferson, Thomas, 139, 193
 Judicial virtues, 183
Just Health Care, 66
 Justice
 circumstances of, 6, 54, 55, 57, 58, 59, 61
 complexity of, 8–16
 and democracy, 182
 political conception of, 13, 14, 21, 27, 95, 98, 101, 102, 103, 115, 165
 principle-oriented approach, 26–27, 28
 principle-oriented theories of, 192
 state-centric theories of, 7
 virtue-oriented (non-perfectionist) approach, 26–28
 Justice as fairness, 14, 19, 25, 48, 49, 54, 55, 60, 65, 96, 99, 100, 102, 103, 115, 116, 121, 165
 Justificatory neutrality, 166
- Kant, Immanuel, 74, 101, 109, 195, 234, 236, 238
 Kantianism, 27
 Kavka, Gregory, 81
Keegstra, R.v. section 319 in, 171
 King, Preston, 240
 Korsgaard, Christine, 233
 Kymlicka, Will, 165
 liberal theory, 90–94
 rights of national minorities, 90–94
- Larmore, Charles 244
 Lawson, Nigel, 97
 Lax Maximin Rule, 58
 Left-libertarianism, 21, 48, 122–124
 disabled, unjust pay for, 130–136
 hypothetical consent vs actual consent, 136–139
 intergenerational sovereignty, 139–144
 Otsuka on initial acquisition, 124–130
 Leisure and Crazy–Lazy challenge, 147–152
 Liberal democracy, 14, 23, 40, 42, 46, 67, 156, 182, 191, 204, 231, 232
 Liberal egalitarians, 132–133
 theories of justice, 50
 Liberalism *see* Limited government
 Libertarianism
 without foundations, 74
 variants of, 25
Libertarianism Without Inequality, 21, 123, 129, 130, 131, 136, 139, 143
 Limited government, 29–30
 Litan, Robert, 80
 Locke, John, 123
 position, interpretation of, 126
 Luck egalitarianism, 7, 20, 25, 84, 91, 224, 225, 226

- Macedo, Stephen, 183
 MacIntyre, Alasdair, 234
 MacKinnon, Catharine, 176, 196
 Madison, James, 182
 Madisonian dilemma, 45–46, 182
 Manfredi, Christopher, 191
 Market security, 155
 Mason, Andrew, 49, 50
 Maximin, 56, 68, 147
 Maximin and the cost-blind approach
 to rights, 55–64
 Mead, Lawrence, 240
 Meckled-Garcia, Saladin, 23, 164
 Meiklejohn, Alexander, 40, 194
 Mill, John Stuart, 40, 194
 Miller, David, 16, 18, 49, 230
 Minimized class division, 155
 Monism, 96
 Moon, Richard, 175, 193, 194, 195,
 197, 198, 199
 Murphy, Liam, 20, 77–78, 95, 96
 Musgrave, Richard A., 147
The Myth of Ownership, 77
- Nagel, Thomas, 74, 77, 78
 Negative rights, 45, 75, 192, 231
 Neutrality
 constraint, 169–170
 types, 165–166
Nicomachean Ethics, 33
No Net Harm Criterion, 81, 82
 Non-ideal insurance scheme, 86–87
 Non-ideal theory, duties in, 103–104
 mutual aid, 109–111
 mutual respect, 106–109
 uphold justice, duty to, 104–106
 Non-immiseration, 155
 Non-Walrasian economy, 153
 Nozick, Robert, 6, 7, 20, 72
 against taxation, 75–78
 entitlement theory of justice, 48
 on rectification, 78–84
 Nussbaum, Martha, 5
- O'Neill, Onora, 55
 Okin, Susan, 149
 Otsuka, Michael, 7, 21, 22, 25, 48,
 122, 123, 133, 134, 135, 136, 137,
 138, 139, 140, 141, 142, 143, 144
- and left-libertarianism, 124–130,
 132
Libertarianism Without Inequality, 21,
 123, 129, 130, 136, 139, 143
 welfarist specification of egalitarian
 proviso, 127–128
Ownership, The Myth of, 77
- Pareto and inequality, 96
 Parfit, Derek 239
 Parijs, Philippe Van, 7
 Partiality *see* Ethical particularism
 Perfectionism, 103
 'Pie-cutting' approach to distributive
 justice, 78–79
 Pluralist egalitarians, 128
 Pogge, Thomas, 238
 Political conception of justice, 13, 14,
 21, 27, 95, 98, 101, 102, 103, 115,
 165
Political Liberalism, 6, 13, 14, 27, 62,
 63, 98, 101, 102, 121, 165, 233,
 236, 237, 238, 240
 Pornography
 harm of, 201
 restriction in Canada, 164–165,
 174–176
 Positive rights, 45, 192, 231
 Power of legislative override, 184
 Practical political philosophy, 15
 Principle of equal importance, 85
 Principle of equality of opportunity,
 9, 14, 53, 56, 59–60, 65, 66, 71,
 108, 111, 114, 129
 Principle of reciprocity, 152
 Principle of special responsibility, 85
 Principle-oriented approach, 26–27
 foundational premises of, 26
 Prioritarianism, 29, 31–32
 Priority *see* Prioritarianism
 Property rights, 72–74
 Public political culture, 27
- Racial equality and prevention of
 harm, 170–171
 Raphael, D.D., 240
 Rawls, John, 4, 6, 7, 55, 56, 57, 72, 112
 defence of inequality-generating
 incentives, 97

- Rawls, John – *continued*
 difference principle, 7, 8, 9, 48,
 55–64, 66, 68–71
 dualism, 95–121
 dualistic framework, 115
 metric of justice, 9
 political conception of justice, 95
 political liberalism, 6, 13, 14, 27,
 62, 63, 98, 101, 102, 121, 165
 political virtues, 17, 40, 41, 169,
 171, 172, 174
 socio-economic advantages, 148
 theory of justice as fairness, 14, 19,
 25, 48, 49, 54, 55, 60, 65, 96,
 99, 100, 102, 103, 115, 116,
 121, 165
- Rawls and Nozick on property rights,
 72–74
- Raz, Joseph, 240
- Real-freedom-for-all *see* Real
 libertarianism
- Real libertarianism, 145–147, 149, 152
- Rectification, principle of, 79, 80–81
- Reform the Patriot Act, 30
- Reflective Democracy*, 213
- Report, Wolfenden, 167
- Republicanism *see* Instrumental
 republicanism
- Richardson, Henry, 214, 220–221, 222
- Right-based theory, Rawls and Nozick,
 73
- Rights
 aboriginal self-government, 90
 body-possession, 124
 cost-blind approach *see* Rights,
 cost-blind approach
 costs of, 61, 75
 income-possession right, 124–125
 maximin and the cost-blind
 approach to, 55–64
 of national minorities, 90–94
 negative, 45, 75, 192, 231
 positive, 45, 192, 231
 property, 72–74
 to self-ownership, 74
- Rights, cost-blind approach
 Dworkin and equality of resources,
 84–89
- Kymlicka and the rights of national
 minorities, 90–94
 Nozick against taxation, 75–78
 Nozick on rectification, 78–84
 Rawls and Nozick on property
 rights, 72–74
- Risse, Mathias, 122
- Roach, Kent, 181, 187
- Sandel, Michael, 17, 35, 194, 195,
 196, 197
- Scanlon, Thomas, 27, 195
- Scheffler, Samuel, 99
- Schwartz, Adina, 161
- Section, 319 of Canada's Criminal
 Code, 171–174
- Self-government, 29, 30–31
 and justice, 182
- Self-ownership, thesis of, 73, 78, 124
- Self-realization, 155
- Self-respect, 160–162
- Sen, Amartya, 55
- Shapiro, Ian, 55
- Sher, George, 166
- Singer, Peter, 35, 44
- Slote, Michael, 234
- Socialists and capitalism, 153
- Society, basic structure of, 13
- Solum, Lawrence, 234, 241
- Sovereign Virtue*, 84, 87, 157
- The Special Status of Basic Liberties,
 62
- Stability, 101–103
- Standard of living, synchronic
 comparison of, 8
- State-centric theories of justice, 7
- State neutrality, principle of, 165–169
- Steiner, Hillel, 122, 123
- Stringent Maximin Rule, 58
- Sumner, Wayne, 171, 172
- Sunstein, Cass, 20, 59, 61, 75, 76, 77,
 78, 182, 192
- Swanton, Christine, 234
- Tessman, Lisa, 234
- Thatcher tax, 105
- Theories of justice, 1–6, 7, 25, 60–61

- A Theory of Justice*, 4, 19, 21, 54, 95,
96, 98, 99, 101, 102, 103, 111,
116, 120, 149, 235, 237
- Thesis of self-ownership, 73, 78, 124
- Tolerant society, 163
- Toleration, 16, 28, 39–41, 46, 163–77
- Toleration and hate speech, 42–44,
169–174
- UBI *see* Unconditional basic income
(UBI)
- Unconditional basic income (UBI), 22,
123, 145, 146, 149, 153, 162
- Vallentyne, Peter, 122
- Van Parijs, Philippe, 123
civic liberalism, 145
conception of justice, 146
and real libertarianism, 145–147
social justice, 145
and socio-economic advantages,
145
- Virtue of fairness, 14, 19, 42–44, 78,
96, 146, 186
- Virtues of civic liberalism, 145
civility, 16, 22, 41–42, 176, 182,
206, 210
fairness, 14, 19, 42–44, 78, 96, 146,
186
toleration, 39–41
- Waldron, Jeremy, 15, 54, 55, 181, 190,
229
- Walzer, Michael, 213
- Welfare Reform Act, 152
- Wenar, Leif, 236
- White, Stuart, 152, 154, 155, 156, 157
- Williams, Andrew, 100
- Williams, Bernard, 99
- Wolff, Jonathan, 72
- Workfare, fair reciprocity and,
152–160
- Young, Iris Marion, 36, 41, 207, 208,
213, 214, 218, 219, 220, 222