

1

Introducing Justice

Justice

It will help to start out by making a few distinctions about justice, so as to specify precisely what the subject matter of this book is. The first known writing about justice comes down to us from the ancient Greek philosophers. It was common in their time to apply the adjective ‘just’ both to city states and to individual men. Indeed, it is only quite recently that the phrase ‘a just man’ has fallen out of use (replaced, I think, by the phrase ‘an ethical man’). Plato, in *The Republic*, develops an account of justice in the state which he then uses as a model for describing justice in the individual. People organize into cities (states) because they cannot be self-sufficient, so they will more efficiently have their needs met in society with others. The city has three classes – the rulers, the soldiers and the citizens. The rulers and soldiers have specific functions and virtues, and justice is achieved when all parties develop their specific virtues and perform their functions well. The just city is, then, like a flourishing or thriving organism, in which each part plays its specified role well.

The just individual is modelled on the just city state. Like the city, the soul has three parts – the rational, the spirited and the appetitive. The just man is defined not in terms of

2 *Introducing Justice*

how well he abides by the strictures of the city state, but by how well the three parts of his soul perform their particular functions. So the spirited part of the soul should be appropriately courageous, the rational part appropriately wise, and all three parts of the soul should be moderate.

To the modern mind it seems odd to evaluate an individual's status as a 'just' person in terms of how well their internal constitution mirrors that of the just state. In so far as we think of people as just or unjust, we tend to make that judgement about their relationship to the state – those who either infringe the law or act in such ways as to undermine the rule of law might be impugned as unjust. But Plato and other ancient thinkers thought of justice as a much more comprehensive aspect of people than we would – they mean something more like 'moral' or 'flourishing'. Anyway, the purpose of introducing Plato's approach is to distinguish matters of personal justice from matters of social, or political, justice. My focus in this book, following the modern tendency, is on the justice or otherwise of social institutions.

A second common distinction is between distributive and retributive justice. Distributive justice concerns the way in which what Rawls calls 'the benefits and burdens of social cooperation' are distributed among people, whereas retributive justice concerns the appropriate treatment of those who violate the laws and norms of society. In this case 'justice' is probably systematically ambiguous, and it is clear only from context whether someone is using it to talk about distribution or retributive issues. But they are quite different (though not unrelated) topics, and my focus here will be on distributive questions. The fundamental question is this: how, and to what end, should a just society distribute the various benefits (resources, opportunities and freedoms) it produces, and the burdens (costs, risks and unfreedoms) required to maintain it?

Conflicting values

Answering this question requires us to make judgements about the relative importance of the different benefits and

burdens, and the relative importance of different values. In public debate about values a common strategy is to assume that when one has shown that two values conflict in some circumstances, and one is more important than the other, something has been settled. But that is, in fact, rarely the case. Consider the simple, and common, view that freedom and equality conflict, so we have to plump for one over the other. On any natural understanding of freedom and of equality, that seems to be true. If Rodney and Charles are equally well off, and we want to ensure that they remain equally well off, and either of them wants to be better off than the other, then we shall have to either restrict their freedom to engage in remunerated labour, or ensure that they cannot benefit financially from it (which requires taxing them, and redistributing the proceeds). This shows the instability of strict equality of wealth, and it also establishes that freedom and equality conflict. But demonstrating a conflict shows neither that freedom matters more, nor that equality does not matter at all. For example, we might think that it would be wrong, all things considered, to restrict freedom to achieve equality as needed, but still believe that a world in which Rodney and Charles refrained from wanting and trying to be better off than one another would be better than a world in which they competed for unequal positions. In other words, we might think that freedom trumps equality, but still think that equality matters morally, somewhat. Another response to the observed conflict would be to say that certain freedoms matter enormously, but that other freedoms do not fundamentally matter; and that the important freedoms must not be violated for the sake of equality, but that the unimportant freedoms may be. So, for example, we might think that as long as someone can benefit a reasonable amount from their own decision to work more hours, or take certain risks with their capital, their freedom as an economic agent is adequately protected, and it is morally acceptable to redistribute some of their gains for the benefit of others. Or we might think that no measures would be acceptable if they prevented parents from enjoying flourishing relationships with their children, but that the liberty to send one's child to the school of one's choice was not important enough to override our concern with equality.

4 *Introducing Justice*

A similar argument against equality is often made by appeal to the importance of efficiency and its conflict with equality. Economic equality is opposed because achieving it has bad effects on efficiency, in that individuals would have no incentive to be more innovative and productive, since they would not reap the benefits of their behaviour. So, the story goes, equality would make us all worse off than we would be under inequality.

In fact there is very little evidence that economies with relatively egalitarian net incomes (like Sweden, the Netherlands and Germany) do worse in the long run than economies with relatively inegalitarian net incomes (like the United States). But there must be something in the claim that equality would be bad for efficiency: it is easy to believe that under a strict regime of economic equality many people would work less hard, and take fewer productivity-enhancing economic risks. What follows from this, however? It does not follow directly that equality has no place in justice, for, again, two reasons. First, we would have to show that the economic benefits of inequality outweighed the non-economic benefits that equality might have. But even if we did this, we would not have shown that equality did not matter at all – if it really does have some non-economic benefits, those might be of a kind that justice takes into account.

So, observing that two values conflict, and even that one of those values is more important, is not sufficient to show that the less important value has no part to play in justice. A theory of justice has the task of assigning relative weights to different values to decide exactly which value should prevail and how in particular situations. Exactly how we go about this task I shall look at in the next chapter, and shall illustrate throughout the book.

The practical significance of justice

Is there any *practical* point in thinking about justice? A cynic might point out that in undemocratic countries rulers can do as they please, only within the constraints necessary to keep themselves in power. In democratic countries, by contrast,

politicians try to please voters, who are using their votes to try to secure their own interests. What role could a theory of justice play in such a world? Not, surely, an action-guiding role, except for a few idealists whose ability to influence events will usually be limited.

There is, of course, some truth in the cynic's outlook. Most of us most of the time pay at least some attention to our own interests, and will attempt to protect them. But even conceding a great deal to the cynic, we can observe that in both undemocratic and democratic regimes there are frequent occasions when political actors might want recourse to a theory of justice. Most obviously, when an undemocratic regime is unstable, and citizens discover they have the power to change the regime, they may well be spurred to actions by motivations more noble than their own individual interests. They frequently deploy some ideals of justice not just to rally support for their actions, but also to guide them: to ensure that the ensuing regime will be better, that is, more just, than the one they are replacing. In such situations it is better for them to have well-justified views about justice than for them to have confused or wrongheaded views. Less obviously, there are many situations in the ordinary course of life within democracies where voters or interest groups have to choose among policies which are equally good for them, or which bear very little on their interests. In such situations justice is free to guide them.

But I'm not sure we should even concede so much to the cynic. People have very complex motivational structures, and while in favourable circumstances their motivations are often constrained by the inclination to ensure that their own interests will not be badly damaged, people are often moved in significant part by moral ideals. They are more energetic and effective, perhaps, if those moral ideals mesh well with their sense of what will be to their own benefit; but even when they do not mesh well, many people can do as they see that justice requires.

We can point to some historical events, especially in the modern period, in which self-interest does not seem to have been a force which drove out considerations of justice, and even in which awareness of philosophical thinking about justice was of value. Most strikingly, the founders of the

6 *Introducing Justice*

American nation deployed ideas drawn from John Locke's theory of justice in their design of the US Constitution; throughout Eastern Europe in the period following the fall of the Berlin Wall constitutional design was similarly influenced by thinking about justice, and not just by the self-interest of the framers, or their desire to favour particular political constituencies (though those motivations also had some effect).

Justice, social science and policy

Why would a book on justice qualify for a series on Key Concepts in the Social Sciences? Most of the disagreements in the social sciences are highly technical in nature; what social scientists are interested in is describing and explaining social processes, and for that they need fundamentally explanatory concepts, not normative concepts such as justice. But in fact what counts as an interesting problem for some purposes turns on what one thinks about justice, especially when one is doing social science that one hopes to be of use for policymakers.

Think of some of the debates about social mobility. Scholars of social mobility disagree about how best to conceive of classes or strata. They differ in particular in how much relative weight to assign to occupational type, education level and income. Now one obvious, and legitimate, consideration here will be which variables they can actually get data about. But assuming that they can get good data about a good number of variables, it makes sense then to consider the following question: why would social mobility matter from the perspective of justice? If in answering this question you found that it mattered a great deal that children's prospects were not influenced by their parents' income and wealth, but that it did not matter much if their prospects were influenced by their parents' level of education, it would make sense to give more weight to income than to education in conceiving of class.

Policymakers should have a particular interest in justice when deciding what kind of social scientific studies to commission for policy purposes. Suppose that you are running an

Education Ministry, and are trying to figure out how best to spend a sudden increase in resources. Obviously, you should try to spend it on effective programmes. But different programmes are liable to have different effects on different kinds of students; it will be a rare policy (or package of policies) that benefits all students equally. If justice demands that we maximize the achievement of the lowest-achieving students, that might require different policies than if justice demands that we maximize average student achievement. Suppose justice requires giving priority to the achievement of low achievers. Then you will want to commission studies of policies and programmes that you have reason to believe might benefit the low achievers rather than those which might benefit total achievement.

Of course, politicians will typically be unwilling to concede in public that there are trade-offs between benefit to the low achievers and overall benefit – they like to claim that their policies are for the benefit of everyone. Sometimes they prefer to use apparently non-normative concepts to justify policies. So, for example, recent documents from the World Bank have deployed the concepts of human and social capital in justifying various interventions in the developing world (see, e.g., World Bank 2001). Human capital consists of the skills and knowledge embodied in people, and the idea is that economies will be more productive (other things being equal) if people are better educated. Social capital consists of the relationships of trust and reciprocity that enable people to interact productively without the high transaction and monitoring costs involved in making and enforcing precise contracts; and again, the idea is that economies are more productive and the quality of life is better if there are higher levels of social capital. Human capital and social capital are empirically observable, and they both obviously matter a great deal, so it is tempting to use their development as the sole justification of a policy. But consider the task of increasing the stock of human capital. Different policies will have effects on different people. For example, maximizing the total stock of human capital in the short to medium term might involve focusing on developing a domestic intellectual and technocratic elite, and providing sufficient material incentives to keep them from emigrating (and taking their capital with

8 *Introducing Justice*

them). This might do very little for the least advantaged within the society; it might, nevertheless, be justified, but whether it is or not will turn on what justice requires concerning the distribution of resources, education, and so on. The trade-offs between benefits to some and benefits to others are unavoidable. Many politicians privately understand very well that the real world contains trade-offs, and their civil servants are bound to focus attention as those trade-offs demand. But without a normative theory of justice to tell them which variables matter, they cannot know what information they need to find.

The plan of the book

The book proceeds as follows. In chapter 2 I discuss some methodological issues in theorizing about justice. If, as I claim, the task is to demonstrate the relationships between a cluster of values, how on earth can we do that? Not, certainly, by collecting empirical data and formulating hypotheses explaining the relationships between the data. In this chapter I explain some of the methods political philosophers use to think about justice, and defend their use. I also defend a constraint on theorizing – that it must make realistic assumptions about what is feasible given the limits of human nature.

In chapter 3 I present and discuss John Rawls's theory of justice as fairness. This is the longest, and most difficult, chapter, but both the length and the complexity are unavoidable. Rawls's theory was developed in the 1960s and first defended at length in his 1971 book *A Theory of Justice*. All theorizing about justice in the English language since that time operates within a framework set by Rawls. Even if a theorist disagrees, absolutely, with everything Rawls says, the theorist has to explain why, so it is worth having as full a grasp of the theory as an introductory text like this can provide.

In chapter 4 I look at what has been called the 'capability' approach developed by Amartya Sen and Martha Nussbaum. The capability approach was originally developed as an alter-

native to gross domestic product and other income-based measures of how well off different countries are relative to each other. Sen's insight is that money is not always a good indicator of how well off people truly are, and that their real freedom to do things that they have reason to value might be a better measure. But, in saying that, he is advancing a normative position – an idea about what matters from the point of view of justice – and this chapter explores the arguments for that position.

The theories surveyed in chapters 3 and 4 demand considerable redistribution away from the kinds of economic outcomes we would expect from the operation of relatively free capital and labour markets. In particular, both theories demand that the return to people's talents be limited in various ways. Chapter 5 looks at two theories which object to the large-scale redistribution licensed by the previous theories. Milton Friedman argues that a proper understanding of the role of freedom in a democratic society severely limits the scope of redistribution, and Robert Nozick argues that respect for persons requires that we permit individuals to benefit from their productive activity: he says that 'taxation is on a par with forced labour'.

Whereas the classical liberal and libertarian theories surveyed in chapter 5 complain that the egalitarian theories of Rawls and Sen are insufficiently individualistic, the group-rights theorists I look at in chapter 6 claim that such theories are too individualistic. I survey arguments that justice requires that groups, as well as individuals, should be the bearers of some basic rights, and that in some circumstances some groups may be entitled to rights that other groups are not entitled to. I look in detail at the work of Will Kymlicka, whose work on group-differentiated rights has been extremely influential on policymakers and non-governmental organizations the world over.

Chapter 7 has an institutional focus. Having presented some of the main contending theories, I look at how they apply to three policy issues, each of which arises in some form or another in many developed countries. The first is affirmative action – should members of historically disadvantaged groups be given preference in access to jobs or places in higher education? The second concerns what measures, if

10 *Introducing Justice*

any, the state is required to take to promote social mobility. And the third concerns the division of labour in the household and the inequality of position between men and women in the paid workforce. Each of the contending theories is tested by what it says, or should say, about these issues.

Chapter 7 paves the way for the following chapter. Most of the theories I survey recognize that in principle some areas of human activity should not be judged by the standards of justice, and should be regarded essentially as private. Many of the disagreements over issues arising in chapter 7 reveal differences between the theories about what kinds of behaviour and problem should count as being in the private sphere. So in chapter 8 I look at some attempts to make the private/public distinction much more problematic than the major contenders take it to be. I look, in particular, at G.A. Cohen's objection to Rawls's claim that the Basic Structure of society (rather than the choices and actions of individuals) is the primary subject of justice, and at Nancy Fraser's theory which tries to integrate the values of distribution and of recognition.

Finally, in the conclusion, I shall note some of the common ground of the several theories surveyed, and also explore some conservative reflections on justice.