

Rawls and the Market¹

Draft: Not to be Quoted or Used without Express Permission

A Theory of Justice was published at a time of enormous political conflict. The events of the late nineteen-sixties – above all, the Vietnam war – had led a generation of students into revolt against their own government. It is not perhaps surprising then that in such a febrile atmosphere Rawls's liberal account of the nature of justice was initially dismissed by many on the political left as simply an apologia for American capitalism. Yet it did not take long for readers to realize that Rawls's theory was potentially strongly critical of existing free-market economies. In particular, the difference principle embodies a commitment to the welfare of the least advantaged in society that at least looks to be radically redistributive.

In this paper I wish to examine what Rawls has to say about the market from the point of view of its openness to criticism from the Left. My starting point is a puzzling feature of Rawls's account: his defence of market forms of economic organization as instances of pure procedural justice. The idea of pure procedural justice is sufficiently important to my argument to bear brief summary here. The idea is part of a distinction between three forms of procedural justice that Rawls calls perfect, imperfect and pure. The best way to grasp the difference between these three forms of procedural justice is to compare them in the light of the responses they make to two questions: is there an independent just outcome which the procedure aims to track?, and does the procedure do so successfully? If the answer to both of these questions is "yes" and the procedure tracks the independently just outcome then it is perfectly just. For our purposes, however, the important cases are ones in which the answer to

¹ I am greatly indebted to Vijay Joshi and Margaret Stevens for advice concerning the economic aspects of this paper (although they bear no responsibility for any errors on my part). References to *TJ* in the text are to *A Theory of Justice* (Oxford, 1972).

one or both of the two questions is “no”. In the case of imperfect procedural justice, although there is an independently just outcome, the procedure does not, in fact, track that outcome. How, then, can it be said to be just? The answer, according to Rawls, is that a procedure may be just if it is the case that “while there is an independent criterion for the correct outcome, there is no feasible procedure which is sure to lead to it” (*TJ*, p.86) provided that the procedure comes as close as possible to the correct outcome. Thus, to use Rawls’s own example, the object of a jury trial is to convict the guilty and free the innocent. Yet sometimes an innocent person is convicted or a guilty one set free. What makes the jury system just is that it gets as close as is possible to achieving its object. Although the conviction of an innocent person is an injustice, it is an injustice perpetrated by a just system. In the case of pure procedural justice, by contrast, there is no independent criterion of a just outcome. In this case what makes the procedure just, if just it is, is the intrinsic fairness of the conditions under which the procedure takes place. Rawls’s example of a gambling game makes the idea clear: what makes the game just is not any particular distribution of gains and losses to the players but the fairness (or otherwise) of its rules and their application.

The idea of imperfect procedural justice has a very important role to play in Rawls’s theory. As is well known, Rawls’s theory of justice is a theory that operates in stages. In the first stage Rawls sets out to establish the principles of justice that follow from his underlying conception of justice as fairness. In the second, he gives an account of the institutions through which these principles may be realised. Clearly, we live in an imperfect world and so it seems to follow that the test for institutions should be that of imperfect procedural justice: do those institutions come as close as is feasible to what is ideally required by the principles of justice? And this is indeed what Rawls says: “In the case of a constitutional regime, or indeed of any political form, the ideal of perfect procedural justice cannot be realized. The best attainable scheme is one of imperfect procedural justice.” (*TJ*, p. 198) Now the market, one might think,

is also such an institution. Notoriously, market outcomes involve many contingencies: the initial endowments of agents, the distribution of tastes, limited information, scarcities arising as a result of natural events, good or ill fortune in the timing of innovation and investment, are among the features of economic life that have very significant consequences. Yet all of these features are, from Rawls's point of view, without moral standing: those who benefit from them do not have an intrinsic claim upon the rewards they bring. On the other hand, Rawls does have a clearly identified conception of what constitutes an independently just outcome when it comes to distribution: the difference principle; inequalities must work to the benefit of the least advantaged. So one might expect that Rawls would see the question of distributive justice as a matter of imperfect procedural justice: an attempt to identify that system of economic arrangements that comes closest to realizing the difference principle. But instead of imperfect procedural justice Rawls proposes that we should treat the question of distributive shares as "a matter of pure procedural justice" (*TJ*, p. 85). Why does he think this and what consequences does it have for his position?

"The intuitive idea", writes Rawls, "is to design the social system so that the outcome is just whatever it happens to be, at least as long as it is within a certain range." (*TJ*, p. 85). The social system in question is what Rawls identifies as the "basic structure",

... a public system of rules defining a scheme of activities that leads men to act together so as to produce a greater sum of benefits and assigns to each certain recognized claims to a share in the proceeds. What a person does depends upon what the public rules say he will be entitled to, and what a person is entitled to depends on what he does. The distribution which results is arrived at by honouring the claims determined by what persons undertake to do in the light of those legitimate expectations. (*TJ*, p. 84)

The importance of distribution being conducted according to a system of fixed rules is easily appreciated. Let us say that a given resource would benefit Agnes more than it does Beryl and that Agnes is worse off than Beryl. It is good that people can live their lives in stable and predictable ways, without having them constantly disrupted by the interventions of the felicity police, and so it may be wrong to allow the state to intervene to take the resource from Beryl, if it is hers, and pass it to Agnes. This point has long been appreciated by utilitarians, as readers of Mill know. But the need for rules does not explain why we should use pure procedural justice in distribution for it could just as well be a reason to adopt imperfect procedural justice. Rawls's example of a gambling game, by contrast, illustrates the most usual reason for adopting a pure procedure: we do so when no particular pattern of distribution is more just than any other. In the case of a gambling game we do not have an independent conception of a just distributive outcome – indeed, part of why we value the game is precisely that its distributive outcome is antecedently unknown. But that is, of course, not so with economic systems, for Rawls. On the contrary, the difference principle gives us very clear guidelines regarding desirable distributive outcomes. Rawls himself makes this clear when he says that, according to his conception of distributive justice as a matter of pure procedure, the outcome will be just “whatever it happens to be, *at least so long as it is in a certain range*” (*TJ*, p. 85, my emphasis) – the range, presumably, being set by the difference principle.

The fact that Rawls does not use the concept of imperfect procedural justice to guide the design of a system of rules for economic life is no oversight. Not only does he use imperfect procedural justice to give an account of the design of political institutions – a just constitution is, he says, “an instance of imperfect procedural justice” (*TJ*, p. 353, see also §31) – but he is explicit that imperfect procedural justice governs the design of institutions for distributive justice in a theory that he himself opposes, namely, utilitarianism:

The point to note here is that utilitarianism does not interpret the basic structure as a scheme of pure procedural justice. For the utilitarian has, in principle anyway, an independent standard for judging all distributions, namely, whether they produce the greatest net balance of satisfaction. In his theory, institutions are more or less imperfect arrangements for bringing about this end. Thus given existing desires and preferences, and the natural continuations into the future which they allow, the statesman's aim is to set up those social schemes that will best approximate an already specified goal. Since these arrangements are subject to the unavoidable constraints and hindrances of everyday life, the basic structure is a case of imperfect procedural justice. (*TJ*, p.89)

This passage is troubling. On the face of it, the reasoning that Rawls here presents on behalf of utilitarianism would seem to apply *mutatis mutandis* just as well to his own theory. The utilitarian has "in principle, anyway" an independent standard for judging all distributions, Rawls says. But then so too does Rawls himself. So why should not the Rawlsian too try to establish the "basic structure" in a way that best approximates to his already specified goal? If we are not indifferent to the distributive outcome produced by an institution yet will not allow that the goal of promoting that outcome should act as a constraint upon the institution's design then it seems as though there can only be one explanation: the goal of promoting the distributive outcome is overridden by some further, more important consideration. And this, of course, may cause suspicion among Rawls's left-wing readers: what could trump the claims of the worst-off to have their welfare maximised?

To examine this issue it is necessary to look at Rawls's ideas regarding the institutions that are to carry out the task of distribution in a just society. Rawls makes clear that economic institutions should be so designed that they will "tend to satisfy the difference principle". (*TJ* p. 87) They will do this, he says, if markets are competitive, resources fully employed,

property and wealth widely distributed and “a reasonable social minimum” guaranteed to all citizens. (*TJ* p. 87) To the extent that such arrangements do not tend to satisfy the difference principle, they can be made to “by setting the social minimum at the appropriate level”. (*TJ* p. 87) Although Rawls does not commit himself to the private ownership of the means of production (see *TJ* pp. 271-73) he makes it clear that, whether capitalist or socialist, he favours a market economy. The market economy, as he presents it, has important advantages. Rawls identifies seven: (1) it promotes efficiency (*TJ*, p. 271); (2) it is “consistent with equal liberties” (*TJ*, p. 272) and (3) “fair equality of opportunity” (*TJ*, p. 272); (4) It “decentralizes the exercise of economic power” (*TJ*, p. 271). (5) Only by the use of market arrangements is it possible for the problem of distribution to be “handled as a case of pure procedural justice” (*TJ*, p. 274). Furthermore, (6) in choosing a market system “we ... protect the important liberty of free choice of occupation” (*TJ*, p. 274). Apart from all this, (7) competitive markets properly regulated, says Rawls, “set a weight on the conventional precepts associated with wages and earnings” (*TJ*, p. 276). Yet the market, notoriously, produces outcomes that are very unequal and it does so, as we have said, for reasons that are (from Rawls’s point of view) morally without standing.

The market that Rawls favours is not unmitigated. It must operate, he says, in the context of a set of “background institutions”, whose role is to ensure that, when “the notion of pure procedural justice [is used] to handle the contingencies of particular situations ... the resulting distribution is just however things turn out”. (*TJ*, pp. 274-75) The nature of the background institutions of economic life consists in what Rawls terms four “branches” of government economic activity. The first two – the allocation and stabilization branches – will not concern us here since their function is to ensure markets are competitive and to carry out general macro-economic management. The transfer branch and the distribution branch are of considerable importance, however. The transfer branch, according to Rawls, “guarantees a

certain level of well-being and honors the claims of need” (*TJ*, p. 276). Two aspects of the distribution branch’s activity should be distinguished. First, it aims “gradually and continually to correct the distribution of wealth and to prevent concentrations of power detrimental to the fair value of political liberty and fair equality of opportunity” (*TJ*, p. 277). Second, it raises the revenue that justice requires – in particular, to fund the payments to be made by the transfer branch.

Is this picture – a fair distribution of wealth, a market system and a guaranteed social minimum – enough to reconcile the egalitarian to Rawls? It may seem so, but there are, I think, three reasons for doubt. The first is that Rawls’s characterization of the social minimum that it is the task of the transfer branch to secure focuses on the notion of *needs*. As Rawls says, “the essential idea is that the workings of this branch takes needs into account and assigns them an appropriate weight with respect to other claims” (*TJ*, p.276). A competitive price system, he continues, “gives no consideration to needs” and “since the market is not suited to answer the claims of need, these should be met by a separate arrangement”. (*TJ*, pp. 276, 277) Rawls’s reference to the concept of needs is surprising. For the difference principle (which is, of course, the guiding principle of distributive justice) is not a principle of needs. In a society governed by the difference principle, the claims of the least advantaged extend to that point that they can no longer practically be further advanced (subject to the other parts of the two principles of justice). So the worst-off in society should not just have their needs met; they should be made as well-off as they can be made. Now – although this is, of course, an empirical matter – surely in an affluent society this will mean providing them with a level of welfare (a set of primary goods) that goes beyond merely meeting their needs. It is true that Rawls says that the principles of justice require that “the total income of the least advantaged” must “maximise their long-run expectations” yet it

seems as though he is assuming that the way to do that is to establish a social minimum that confines itself to meeting their needs.

My second doubt concerns the role of the redistribution branch in reallocating wealth. The distribution branch has two parts, the first of which “imposes a number of inheritance and gift taxes, and sets restrictions on the right of bequest” in order “gradually and continually to correct the distribution of wealth” (*TJ*, p. 277). This might seem to give us an answer to the first doubt. If it is the case that distributions of wealth are made more equal by the taxation system then perhaps the idea that the best way of maximising the well-being of the least-advantaged is by leaving the distribution of income to be determined by the market, subject to the guarantee of a needs-based social minimum, becomes less implausible. Since each individual will (presumably) enter the market system with a fairly significant level of resources, the chances of their sinking to the needs-based minimum will be low. However, there is something important to note. The purpose of this redistribution, Rawls says, is “to prevent concentrations of power detrimental to the fair value of political liberty and fair equality of opportunity” (*TJ*, p. 277); “to secure the institutions of equal liberty in a property-owning democracy and the fair value of the rights they establish”. (*TJ*, p. 279) In other words, its purpose is not to establish a base-line level of equality as a way of helping to realize the difference principle but simply to provide that degree of equality that is required to prevent the perversion of the political process by unequal wealth or the undermining of equality of opportunity. It is not at all clear how much equality of wealth this requires: how unequal do resources have to be before they undermine the worth of liberty or fair equality of opportunity? Rawls occasionally mentions the deleterious consequences of allowing the wealthy to exercise disproportionate weight in the political process (by funding political parties or by ownership of vehicles of political expression) but there are ways of dealing with such issues by public funding and anti-monopolistic restrictions that would not require much

redistribution. In any case, if such redistribution promotes the difference principle then it does so only accidentally, as a side-effect. Finally, there is a third reason for the egalitarian to feel uneasy about Rawls's account of the economic institutions for distributive justice. This concerns the system of taxation. As we have seen, the first part of the distribution branch imposes inheritance and transfer taxes. But it must also raise the revenue to fund the social minimum (as well as to pay for public goods). Ideally, Rawls argues, such taxation should take the form of a proportional expenditure tax. Such a tax is preferable to an income tax, he claims, because it is proportional to how much an individual takes out of the wealth of society rather than to how much he or she contributes. (*TJ*, p. 278)

What is notable is that Rawls refuses to employ the most obvious weapon available to the egalitarian: progressive income tax. He explicitly rejects the idea of a progressive income tax as part of an ideal scheme for a well-ordered society. "Even steeply progressive income taxes" may be justified, he concedes, "in unjust circumstances" (*TJ*, p. 279). But he does not envisage their use in just ones. The question of what rate of income tax would best serve the interests of the least advantaged has been much discussed in the recent economic literature and certainly some economists believe that the optimal income tax schedule is, for practical purposes, linear (to which an expenditure tax of the form that Rawls favours would be very similar). Yet many economists have rejected this claim and it is, to say the least, surprising to think that Rawls should accept it without acknowledgement of its controversial nature. Rawls, as we noted (p.6 above), presents the market economy as having several advantages: among other things, it is consistent with equal liberties and fair equality of opportunity; it decentralizes the exercise of economic power; it protects the liberty of free choice of occupation and it sets a weight on the conventional precepts associated with wages and earnings. Yet none of these would seem compelling reasons for rejecting a progressive income tax. It is hard to believe that progressive income tax is incompatible with equal

liberty, fair equality of opportunity or the free choice of occupation. Nor does it centralize economic power. For most of us, I believe, progressive income tax actually accords more closely with “conventional precepts associated with wages and earning” (surely the rich should pay a higher proportion of their income in tax) than a system without such a tax – although, since such conventional precepts have no independent force for Rawls, this does not constitute any very strong argument in its favour.

So if any of the considerations that Rawls presents in favour of the market economy is going to be held to rule out progressive income tax it can only, one supposes, be that of efficiency. Yet here again the case is far from convincing. “Efficiency” is used in a number of different ways by economists (as Rawls himself recognizes). The most familiar is simply that of Pareto-efficiency: the idea that a distribution is efficient if it is not possible to make any person better off without making at least one other person worse off. If we give priority to efficiency, it might seem that this would be a reason against redistributive taxation. It would, however, be a very bad one. Certainly, taking from a rich person to give to a poorer one would lead away from a Pareto-efficient distribution. But the new distribution itself would in all likelihood also be Pareto-efficient: if we move away from one Pareto-efficient point but arrive at another there is no clear sense that the redistribution involves a “loss of efficiency”. When economists discuss the loss of efficiency involved in redistributive taxation – often referred to as equity-efficiency trade-offs – they generally assume that what is “lost” in redistribution is a reduction in a society’s welfare. Often that is taken to be determined by a welfare function that is a sum of the welfare of all the members of the society (the basic utilitarian assumption). But, of course, Rawls is no utilitarian. The Rawlsian welfare function gives no weight to potential welfare losses in any individual other than the worst off: it is maximin. As Rawls himself notes, “The second principle of justice is lexically prior to the principle of efficiency” (*TJ*, p. 302).

So I end this paper on a note of puzzlement. I can find no good reason for Rawls to reject the idea of imperfect procedural justice as the guiding idea behind the organization of economic life in favour of that of pure procedural justice. On the other hand, the *bad* reason that one could imagine – that Rawls thinks that any distributive outcome that is freely generated by the market system is just in the way that the outcome of a fair gambling game is just – is one Rawls clearly does not accept: market institutions should “tend to satisfy” the difference principle (*TJ*, p. 87). Redistribution is clearly necessary for this. And yet why does Rawls not accept the most obvious way by which modern democratic, capitalist states have tried to achieve this redistribution: the use of progressive income tax? Does he think that it is unnecessary? Yet his own preferred method of redistribution (inheritance and transfer taxes) will still allow a very great deal of inequality. Does he think that it is ineffective? But that is a very controversial empirical claim which, at the least, requires argument. Or does he think that it is impermissible? Yet I can see no overriding reason with which it is in conflict. I should like to be able to offer a better resolution of these issues, but I cannot.

Michael Rosen

Lincoln College, Oxford

26.x.2003