Substantive principles of justice

• We know that we are to treat like cases alike and unlike cases unalike.

• But how do we tell what counts as “like” and “unalike”?

• We appeal to a principle that tells us, what is called a substantive principle, giving substance to the formal principle.
What do substantive principles do?

• They distribute goods -- the best seats in the house, the best grades, the best food, the best fudge.

• Most importantly, they distribute social goods -- wealth, income, opportunity, and liberty.

• These are goods that can only exist within and because of a social system. Robinson Crusoe could not be wealthy until Friday came.
Substantive principles

• People disagree wildly on what they think are the proper substantive principles of justice.
  
• Those principles which provide the greatest happiness for the greatest number?
  
• From each, according to his ability, to each, according to his needs?
Substantive principles

• We will examine two theories of what is just:
  • John Rawls -- justice as fairness
  • Robert Nozick -- justice as transfer
Nozick’s theory of justice

• Suppose we play Monopoly.

• We all start out with the same amount of money ($1500) and no property.

• We all play under the same rules -- though the rules vary from game to game. E.g. putting tax money in Parking and taking it if you land on it.
Nozick’s theory

• We roll a die to see who goes first, and the highest score gets to go first, the person to that person’s left second, and so on.

  • That is meant to be a pure procedure, designed to ensure that everyone has an equal chance at starting.

• In most versions, you are not allowed to purchase any property until you have been around the board once or twice.
Nozick’s theory

• The reason for the delay is to discount the advantage of luck and placement. Rolling the highest die is a matter of luck, and if you are to the right of the player who rolled the highest die, you are last -- bad luck.

• So one way to make things fairer at the beginning is to allow chance to even up the odds as you go around the board once or twice.
Nozick’s theory

- Once you can buy property, you can purchase whatever you decide to purchase provided only that you land on property that has not been purchased and you have the money to buy it.

- When you purchase property, you hand the bank the money, and the bank hands you the title to the property -- a transfer of money for property.
Nozick’s theory

- When you pass Go, the bank hands you $200 -- another transfer of money, this time merely for going around the board.

- If you buy all the pieces of property for a particular subdivision -- e.g. Board Walk and Park Place -- you may purchase houses and then trade in the houses for a hotel. You are transferring money to the bank for these structures.
Nozick’s theory

- If someone lands on your property, you are entitled to rent, the amount depending upon whether you have buildings on it and what kind of building you have.

- We have another transfer -- money to the owner of the property from a passerby who makes use of the property temporarily.
Nozick’s theory

• The end of the game comes when one player has amassed the fortunes of all the other players in the game.

• The whole game is amounts to a set of transfers from one player to another to the bank and back to the players.
Nozick’s theory

• The variations that occur in who has what -- who has a lot and who a little money, who has a lot of property and who a little property -- reflects luck and the different skills each player brings to the game.

• We can call those skills “game sense.”
Nozick’s theory

• “Game sense” is a term which covers both calculating skills, persistence, a desire to win, and other features essential to winning a game.

• Some people are born or develop a wonderfully sensitive game sense -- e.g. my daughter and backgammon.
Nozick’s theory

• So such individuals are advantaged in this game and some disadvantaged. Through no fault of their own, some are simply not going to be able to compete well.

• And, at the end, one person wins and everyone else loses.
Nozick’s theory

• Is that fair?

• We might answer this by pointing out that all agreed to play, but though true, they may not have quite known what they were getting in for.

• The more appropriate answer is that no one has any ground for complaint because the game is fair.
Nozick’s theory

• The rules of Monopoly lay out a procedure that is pure.

• So the game’s result is just provided that no one cheats or coerces anyone.
  
  • E.g. bankers who cheat
  
  • E.g. my brother’s insistence that I not buy any of the railroads
“Um, O.K., yes, Boardwalk for Connecticut Avenue.”
Nozick’s theory

• We can presume the result was skewed by the cheating and coercion; so the outcome of the game was unjust.

• But if there was no cheating and no coercion, no one has any right to complain about the end result not being just: if the procedure is pure, the result is just.
Nozick’s theory

• Monopoly is capitalism writ small.

• We engage in transactions all the time, and as long as we all start at the same place and there is no cheating or coercion as we engage in our transactions, the end result, whatever it may be, is just.
Nozick’s theory

• Or so Nozick argues.

• But there are some problems with this theory:

  1. We do not all start out on an equal footing, with the same resources. E.g. inheritance

  2. We do not all start out with the same natural talents. E.g. game sense, math whiz, musical.
Nozick’s theory

3. There are winners and losers, with the winners winning big and the losers really losing. There is no social safety net.

4. There is no way to ensure that the procedure is pure, without coercion and, especially, without cheating.
Nozick’s theory

5. The game helps reinforce a certain kind of personality -- think of Katie and the cake here -- that is manipulative, taking advantage of others.

6. And that is just the sort of personality we ought not to want in a society.
Nozick’s theory

• Indeed, Nozick’s theory encourages free-loading on other people’s cooperation.

• We cannot have any system without cooperation among the participants -- a willingness to play their part for the broader end of society at large.

• But Nozick’s theory encourages players to ferret out the weaknesses of other players and to prey on them.
Nozick’s theory

• So, although I suspect we would all agree that if fairly played, Monopoly is a fair game, as a model of how we should fashion our economic system, it leaves much to be desired.

• Justice as transaction seems to work in some relatively restricted instances where we can, in particular, start out equal and can choose to participate or not.
Rawls’s theory of justice

- Rawls’s theory of justice begins with two features we are all born with, over which we have no control and so for which we cannot be blamed and should not be praised:
  - Social contingencies
  - Natural fortune
Social contingencies

• We are all born into different social positions — determined primarily by the economic and social status of our parents, by where we live, by how the society within which we live treats us, and so on.

• So some are born poor, some rich, some nouveau rich, some of the moneyed class, some without prospects, some with their future gilded for them.
Social contingencies

• These differing social contingencies can make all the difference to how well we succeed in realizing our different life dreams.

• Born to a wealthy family, a person can go to schools otherwise inaccessible and get positions otherwise unattainable — e.g. Bush and Yale, Quayle and the vice-presidency.

• Born to a poor family, a person has to struggle just to get by, let alone succeed.
Social contingencies

- A man from the ghetto played the lottery because, he said, it was the only thing in his life in which he had an equal chance -- a powerful comment about the influence of being born into different social positions.

- E.g. my own family history -- trader on the Mississippi, farmer, entrepreneur, college graduates and masters degree, Ph.D, Ph.D & MBA. Each social position positions the next generation for further success.
Social contingencies

• But just as we do not deserve blame for being born into a disadvantageous social position,

• So we do not deserve praise.

• It is an accident for which we can take no credit or blame because it is not within our control.
Social contingencies

• Because the social positions we are born into are not our responsibility, we should not be burdened by them in our quests to achieve the best lives for us we can, to realize our dreams, whatever they may be.

• We are therefore going to have to arrange matters so that it does not matter what social position we are born into so far as achieving the best for ourselves -- e.g. equal opportunities for a good education.
Natural fortune

• Besides being born into a particular social position, we are born as a person -- in a body not of our choosing, with a mind and its capabilities not of our choosing.

• Some of these natural features are advantageous in our quests for the best lives for ourselves, and some are not.
I’m driving Katie back from kindergarden; she is 5; and she says, “It must be terrible to be ugly.”

She, I should add, is not ugly.
I wondered what this was all about, hesitated, but then asked, “Why do you say that?”

“Because if you’re ugly, no one will play with you. You sit by yourself, and you’re always the last one chosen for games.”

“Well,” I said, after a pause, “you’re certainly right about that.”
We drove on for quite a long time, and she was clearly thinking about something.

Just as we were driving into her driveway, she said, “And you know what?”

I thought, “Uh oh, I wonder what now?”

But said, “What is that, Katie?”
She said, “It’s not her fault she’s ugly.”

“That’s right,” I said.

Long pause, and then she said, “But you know what? She’s still ugly.”
Natural fortune

• Think about that sequence of thoughts: it is not her fault that she is ugly, but she still is ugly.

• I took Katie to be saying what Rawls is saying. We are born with certain natural features for which we are not responsible, and yet...we all make judgments about those natural features, judgments like “She is ugly” and judgments that display themselves in how we react to others -- by not playing with them, for instance.
Rawls’s theory

• And Rawls thinks that is unjust. We ought not to live in a society in which it matters what our fortune was in the lottery for natural features or in the lottery for social position.

• Everything ought to depend just upon our being a person, with whatever social and natural contingencies we happen to have.
Rawls’s theory

• He suggests a thought experiment to determine what theory of justice we ought to adopt if we discount our natural and social features.

• Imagine that we are in what he calls an original position, prior to a society, where we are ignorant of what our natural features will be and ignorant of what our social position will be.
• Suppose as well that the decision we make will make all the difference to our life’s prospects. If we make the wrong choice, we may end up without any chance to live a good life.

• So it should be a risk-averse decision made under conditions of uncertainty.
Rawls’s theory

- We know how to make such choices: we choose so as to minimize our maximum possible loss, minimax.

- So if we are gambling, and we could win or lose $1000 with one bet or, with another, lose at most $10 while gaining only $1, we choose the second alternative. Our gains are significantly less, but our losses are as well, and minimax tells us to play it safe and minimize our losses.
Rawls’s theory

- Just so for decisions made from the original position.
- If we choose a society in which the social or natural elite get the largest amount of each social good — wealth, income, opportunity, or liberty — then we risk finding ourselves not among the social and natural elite and so having nothing.
Rawls’s theory

• One way of putting this is to imagine that from the original position we go to a way stop on the way to society, and at the way stop is our worst enemy. That person is going to give us our social and natural characteristics.

• So if we choose a racist society, we’ll end up being the wrong race; if sexist, the wrong sex; and so on.
Rawls’s theory

• The only choice we can make that will minimize our losses is one in which social and natural differences make no difference in how social goods are distributed.

• Because our society is economically advanced, we are unwilling to give up liberty in order to obtain more wealth and income.
• So we would choose two principles from the original position:

• First, “each person is to have an equal right to the most extensive scheme of equal basic liberties compatible with a similar scheme of liberties for others.” In some societies, we might deny liberty to some to advantage others economically, but not in our society.
• Second, “Social and economic inequalities are to be arranged so that

a. they are to be of the greatest benefit to the least advantaged members of society (the difference principle), and

b. offices and positions must be open to everyone under conditions of fair equality of opportunity.”
Rawls’s theory

• To the benefit of the least advantaged? What does that mean?

• Imagine that in this class I grade on a curve, with only 5% getting an A, 10% getting a B, 70% a C, 10% getting a D, and 5% an F. There would be competition for the better grades, and competition to stay out of the bottom, but also complaisance since most are getting a C and it is easy to stay in the middle.
Rawls’s theory

• Neither competition nor complaisance are good outcomes. So suppose I give everyone the grade of whoever gets the lowest grade except that those who help the student achieve even that get a higher grade.

• We would have equality of grades for everyone but a few, and I would be justified in giving those few better grades because they have benefited the least advantaged members of class, those with the lowest grades.
Rawls’s theory

• On Rawls’s theory of justice, that is how society ought to work.

• There is not complete equality in regard to social goods. Not everyone is equally wealthy, or gets the same income.

• But the only justification for any inequality is that it benefits the least advantaged.
Rawls’s theory

• Joseph Kennedy told his children that they were doubly blessed with wealth and with natural talents, but that since they did nothing to deserve either, they had an obligation to use their wealth and their talents to benefit those worst off than they.

• That sentiment is captured in Rawls’s theory of justice.
Rawls’s theory

- We are not permitted to use our natural talents to advantage ourselves at the expense of others or to leverage our social position for our own benefit.

- Natural talents and social positions are to be used to benefit society as a whole by, Rawls says, benefiting the least advantaged and so, in that way, benefiting all less advantaged.
Rawls’s theory

• One advantage of Rawls’s theory of justice is that we are to look at each other as persons, not as persons of color -- or not, old persons, beautiful and ugly persons. We are to respect individuals as individuals.

• A second advantage is that there is to be equality unless an inequality is to everyone’s advantage.
Rawls’s theory

• We aim for justice not for the greatest number, but for everyone.

• Justice for the greatest number is consistent with injustice for many.

• Justice for everyone is not.
Rawls’s theory

• Rawls has an additional advantage.

• Justice in transfer is a procedure that must begin with equality, and we do not start out equal.

• Justice in fairness specifies a goal to be achieved, regardless of how we start out.

• So Rawls’s theory specifies a possible theory; Nozick’s does not.
Rawls’s theory

• The theory does have some disadvantages:

• Maintaining a relative equality of social goods will require constant tinkering with who has what. Tornadoes and factory closings constantly rearrange social goods.

• It is difficult to know how to connect an inequality of social goods with benefits to the least advantaged. How do we know that raise or bonus is justified?
Rawls’s theory

- Rawls does not specify how much more someone can gain by helping the least advantaged and still only have a fair share: do I raise the grades of those who help by one? Two? Three?

- And there is something constraining about using our natural talents, for instance, only to help others, not ourselves.
Substantive principles

- We have two main contenders for a theory of justice by which to order our society and make it just:
  - Nozick’s transfer theory
  - Rawls’s justice as fairness
Substantive principles

• These are substantive principles of justice because they tell us what counts as like and unalike.

• Rawls? Everyone is alike in that natural and social differences are not to matter.

• Nozick? Not everyone is alike. Social and natural features can advantage and disadvantage us in the quest for a good life.
How do all these fit together?

• We have to distinguish (a) the formal principle of justice from (b) substantive principles from (c) procedural principles.

• We should note that Nozick’s substantive theory of justice is a procedural principle.

• But let us look at a particular case of injustice to see how we might use these three different features of justice.
Substantive principles

• Suppose I give you, and only you, a D when you deserved a C. You would have two complaints:
  • I failed to satisfy the proper substantive principle of justice for this course: give individuals the grade they earn and so deserve.
  • I failed to satisfy the formal principle of justice: I failed to treat you the way I treated others similarly situated.
Substantive principle

• So, hearing you complain, I now give everyone who got a C, and only those who got a C, a D instead.

• You no longer can complain that I am treating you differently than I am treating others similarly situated. I am now satisfying the formal principle of justice: treat like cases alike and unlike cases unalike.
Substantive principle

• The lesson here is that satisfying the formal principle of justice does not in itself guarantee justice.

• We ought to treat like cases alike and unlike cases unalike, but doing that is not itself sufficient. We need to have a substantive principle of justice.
Substantive principles

• So...where were we? I had put you in a class by yourself -- got a C, get a D -- and you complained. So I gave you company: everyone who gets a C gets it converted into a D.

• I suspect that everyone who is now in the class with you will complain that I am treating them unfairly: they are not getting what they deserve.
Substantive principles

• So let me take care of that: I had adopted the substantive principle of justice that you get the grade you earn, or deserve.

• But if that is a problem, let me change it: you get the grade you earn unless it is a C, in which case you get a D.

• That is my new substantive principle of justice.
Substantive principles

• So now neither you nor anyone who is being treated like you can complain: everyone who is getting a D when they got a C is being treated fairly. Why?

• Well, first, I am treating like cases alike and unlike cases unalike. I am not giving a C to anyone and am not giving a D to anyone who did not deserve a D or did not get a C.
Substantive principles

• Second, I am treating everyone in accord with my new substantive principle of justice: you get what you earn unless you earn a C, in which case you get a D.

• So clearly you now have no reason to complain of any injustice, right?
Substantive principles

• Wrong. You do have a reason to complain, but now you will need to complain that the substantive principle of justice I adopted is not, well, just.

• And for that you will need some sort of moral argument -- with premises that imply the conclusion that I should be giving those who got C a C, not a D.
Substantive principles

• The lesson here? That having a substantive principle of justice does not guarantee justice, even if we satisfy the formal principle of justice as well.

• Substantive principles are a dime a dozen, as it were, and we need to justify whatever principle we choose.
Substantive principles

• We have examined three: Nozick’s transfer theory and Rawls’s justice as fairness.

• Choosing between them, or choosing another substantive principle, means giving a sustained argument with whatever principle you argue for as the conclusion.