1. Justice as the first virtue of social institutions

- Justice is the set of principles for allocating the benefits and burdens of social cooperation.
- Justice applies to social institutions, or what Rawls calls the basic structure of society:
  “For us the primary subject of justice is the basic structure of society, or more exactly, the way in which the major social institutions distribute fundamental rights and duties and determine the division of advantages from social cooperation. By major institutions I understand the political constitution and the principal economic and social arrangements. Thus the legal protection of freedom of thought and liberty of conscience, competitive markets, private property in the means of production, and the monogamous family are examples of major social institutions.”

- Problems with the “basic structure argument”:
  i. Which other institutions are part of the basic structure?
  ii. In what way must the family conform to principles of justice?

2: The Original Position and the Veil of Ignorance

- The ‘original position’ is a hypothetical thought-experiment.
- In the original position, one is behind the ‘veil of ignorance’.
- The veil of ignorance denies knowledge of:
  i. Status
  ii. Talents
  iii. Conception of the good
- Why should principles of justice be chosen behind a veil of ignorance?

2.a: Why should there be a veil of ignorance at all?

- Idea is to produce a theory of justice as fairness. Ignorance of particular circumstances helps to ensure fairness, by preventing people from privileging their own position. Comparison with cake-cutting example.
• Fairness also requires that individuals in the original position are self-interested and rational. This does not entail selfishness or egoism, as everyone has to imagine the position of everyone else.
• Further criterion of the original position: risk-aversion. Will result in “maximin” reasoning: maximising the minimum position.

2.b: Why should the veil of ignorance conceal status, talents and conceptions of the good?

• Aim to enshrine values of freedom and equality.
• Equality is secured by ignorance of talents and status.
• Freedom is secured by ignorance of conceptions of the good.

3: The two principles of justice

• First principle of justice: “each person is to have an equal right to the most extensive basic liberty compatible with a similar liberty for others.” (Rawls, A Theory of Justice (OUP, 1973) p. 60)
• Second principle of justice: “Social and economic inequalities are to be arranged so that they are both (a) to the greatest benefit of the least advantaged and (b) attached to offices and positions open to all under conditions of fair equality of opportunity.” (Rawls, A Theory of Justice (OUP, 1973) p. 83)
• The principles are often known as:
  1. The equal basic liberty principle
  2. (a) The difference principle
     (b) The equal opportunity principle
• Order of priority: 1 is most important, followed by 2 (b), followed by 2 (a).

3.a: The equal basic liberty principle

• The priority of the equal basic liberty principle indicates that, for Rawls, the ability to “frame, revise and rationally to pursue” a conception of the good is of paramount importance to individuals.

4. Communitarian criticisms: Sandel and the unencumbered self

• Rawls’ theory involves a conception of the self as unencumbered. The self is unencumbered by her conception of the good, which she chooses.
• The unencumbered self appears in the original position, but (Sandel argues) is also an essential metaphysical component of Rawls’ theory. It is because individuals are conceived of as prior to their ends that the ability to choose one’s conception of the good takes such a prominent and supposedly neutral place in Rawls’ theory of justice.
Sandel: the unencumbered self is problematic because:
- People may discover their ends, not choose them. Some conceptions of the good are based on inheritance rather than choice.
- People’s ends, and the ends that they have in common with others, may be integral to their identity.
- Some conceptions of the good are based on communal unity. Rawls does not allow for the political and communal enshrinement of a particular good.
- Further argument: neutrality between conceptions of the good implies that individual conceptions of the good are morally arbitrary – i.e. the right is prior to the good. But if this is the case, how can the highest social virtue be that of enabling us to pursue our arbitrary conceptions of the good as fully as possible?

5. Conclusions

Readings from the lecture

- Sandel, Michael, *Liberalism and the Limits of Justice* (CUP, 1982)