

What is the difference between justice and fairness? Which is more important?

Introduction

The notions of justice and fairness are very difficult to disentangle. It is often assumed that there is no difference between the two ideas and hence that justice and fairness are of equal importance. I shall argue, however, that there are significant differences between justice and fairness. Firstly, it is necessary to see that justice and fairness refer to substantively different *concepts*, that is, we might say they have different 'definitions'. In addition, justice and fairness mean different things in practice, and here I disagree with the arguments of John Rawls and others who adopt fairness as a 'conception' of justice, and who claim that although the *concepts* of justice and fairness may be distinct, a society can only be just if it is fair. I shall attempt to show that this view is mistaken by highlighting an important feature of fairness and demonstrating its implications. The concept of justice makes it inherently more important than fairness. I focus only on justice and fairness *in society*, because the two concepts can be applied to so many areas such as society, legal systems and the actions of individuals, that it is difficult to address them in their entirety in one essay.

The concept of justice

It is generally agreed that the basic concept of social justice is that people must receive from the state their due. This responsibility of the state derives from the responsibilities of individuals towards each other, as the role of the state is to ensure that these responsibilities are upheld. It is important to note that this is not quite the same as saying that the state should make the individual act in a morally *good* fashion. Justice is concerned only with what it is morally *required* to do as opposed to what it is morally commendable to do. A good example is charity. The very notion of charitable giving supposes that it is not a requirement of justice. It implies something extra, something that, whilst morally good, we are not compelled to do. John Rawls does well therefore, to remind us that 'Justice is not to be confused with an all-inclusive vision of a good society'. (Rawls 1958) Of course, what should be regarded as charitable giving and what as a requirement of justice is a matter for considerable debate. Do the rich have a moral obligation to give some of their money to the state as tax in order to help poorer members of society? This is the kind of question that will be answered by different 'conceptions' of justice, by different views on what our responsibilities are towards each other. A key idea that will help us answer these questions is that of 'relevance', which is to say, to continue with the above example, that there must be 'relevant reasons' for the rich having more than the poor. By using the term 'relevance', I do not mean to imply that it is necessarily the state's role to be the arbiter of what positions in society different citizens *deserve*. Libertarians such as Nozick would be very unhappy at this suggestion, and would argue instead that justice is merely about protecting property rights and the freedom of the individual, and that if these rights are upheld, any resulting inequalities are justified by 'relevant reasons', regardless of whether this distribution of

wealth reflects what people deserve. One may feel then that the concept of justice does not tell us very much and this is an unfortunate aspect of justice. It is not clear from the mere *idea* of justice what we should regard as ‘relevant reasons’ for treating people differently, and we should be wary of those who make claims to the contrary, by *defining* justice as being not only about moral obligation but also a number of other things, as this is effectively to say these other things, *by definition*, come within the scope of our moral duty. There may well be many features which come within the scope of moral obligation, but that is surely not to say that these features are part of the definition of moral obligation.

The concept of fairness

The concept of fairness is more difficult to pin down. There are some people who use the word ‘fairness’ simply to mean justice, and even those who do not employ the term in this way generally use it in a somewhat confused and principally emotional manner. Perhaps when used in everyday speech, the word ‘fairness’ does not actually refer to any discernible concept. However, there is at least an aspect of fairness, even when used in everyday language, that is unique and distinct from justice, and it is this aspect of discussions of fairness that I wish to bring to light. For example, even if we think that the rich do not have an obligation to help the poor, I think we can understand the claim that it is *unfair* that there are many disadvantaged people in society who are less well-off than others. Consider for example those who inherit large sums of money. Why, the advocate of a fair society might say, should certain people benefit from having rich families and not have to do any work, whilst there are others who work extremely hard for little gain? Another example of a fairness claim might be the education system in the UK. Even if it is *justified* and correct that less than ten per cent of children attend private schools and yet these children occupy approximately half of the places at the universities of Oxford and Cambridge, we can see why one might say that this is *unfair*. After all, what child can determine whether their parents can afford to send them to private school? I shall suggest that the common factor in discussion of *fairness* rather than of justice is the notion of control. The rich person who inherited her money did nothing to earn it, in the same way that the privately educated child had nothing to do with her parents being able to give her better schooling that might enable her to do better in the future. This ties fairness to the elimination of luck. If justice demands that a citizen’s position in society is due to ‘relevant reasons’, then fairness is about a citizen’s position being determined by factors within her control, as opposed to influenced by luck. This is the principal difference between the concepts of justice and fairness.

The significance of moral obligation

In distinguishing fairness from justice, we distinguish it from moral obligation. That is, we can no longer take it as given that a society has to be fair. It is the principles of justice, not of fairness, that society must adhere to because justice is about doing what is morally required. It is this aspect of justice that makes it inherently more important than fairness or

any other virtue. We simply *have* to carry out our duties to each other. If we establish that society has a duty to treat people in a certain way, it is no use arguing that this responsibility is somehow subordinate to claims of fairness; it is the very nature of moral obligation that it trumps any other kind of consideration. Even if one argues that it is morally required that society is fair, one is simply arguing that justice requires us to be fair. Justice comes first, and fairness only comes into play if justice tells it to. We can thus again agree with Rawls when he says, 'Justice is the first virtue of social institutions, as truth is of systems of thought'. (Rawls 1999)

Justice as fairness?

I have shown that the concepts of justice and fairness are distinct and that justice is more important, but the discussion of the differences between the two ideas does not end at this point. A number of philosophers, Rawls being one, have adopted fairness as a 'conception' of justice, arguing that justice and fairness mean the same thing in practice. I argue that this is a mistake and thus that the distinction between justice and fairness extends beyond the differences between the mere *ideas* of the two concepts. Given the concepts of justice and fairness that I have outlined, one who believes in 'justice as fairness' believes that having one's due determined by 'relevant reasons' (justice) means having one's due determined by 'factors within one's control' (fairness). Thus, a society with a 'conception' of justice as fairness must see any inequalities of outcome determined by these controllable factors. To assess the viability of this 'conception' of justice, we need to know what fairness means in working terms. That is, we need to decide what factors can be regarded as within people's control.

Many regard a fair society as one governed by the principle of equality of opportunity, and looking back at the examples of fairness claims examined earlier when trying to identify the concept of fairness, this seems to make sense. We therefore need to know what equality of opportunity is. G. A. Cohen (2009) distinguishes between three types of equality of opportunity. Firstly there is the traditional, liberal view of equality of opportunity, whereby differences of outcome are not affected by factors such as gender, race, sexuality, etc. This is what Cohen calls 'bourgeois' equality of opportunity, and there can be little doubt that this is a step in the direction of fairness. Gender, race and sexuality are not within a person's control. However, it does not go far enough. This is clear from Cohen's second 'conception' of equality of opportunity, described as the 'left-liberal' view. This view, as well as removing 'socially constructed status restrictions', prevents people being judged according to social circumstances. For example, the education system in the UK does not currently promote the left-liberal view because it would appear that those who attend private schools have wider opportunities when it comes to obtaining places at top universities and highly-paid jobs, and in general it is a child's background and social circumstances that determine whether she will attend private school. Nobody is in control of whether they are born into a poor or a rich family. On the left-liberal view, differences of outcome reflect talent, effort and choice.

This still is not quite enough though, because a society that endorses a left-liberal view of equality of opportunity does not account for 'inborn' disadvantage. It is difficult to escape the view that it is unfair to be judged according to natural talent. Who is in control of whether or not they are born talented? Accordingly, Cohen favours the 'socialist' 'conception' of equality of opportunity. On this view differences of outcome reflect 'nothing but difference of taste and choice'. It is only this version of equality of opportunity that is completely fair.

It is interesting to note just what the socialist position requires. Significantly, it does not permit inequalities of outcome on the basis of effort, because even how hard one works is beyond one's control. Certain people have a natural ability to work hard or have 'pushy' parents who encourage effort from an early age; others are not so lucky. Even if we accept the idea of free will, it is impossible to escape the view that people's decisions will be so influenced by natural and social factors (exactly the things that the socialist position aims to compensate for) that it is impossible to determine who deserves what. Given that the socialist position does not permit inequality of outcome based on natural ability or social circumstances either, we are left with a view that does not permit any inequality at all in the normal sense. Although this would be no reason to insist that everyone has an equal opportunity to enter different jobs, it would mean that it would not be justified for any job to receive a higher salary than others. With everyone being paid the same hourly rate, there may be inequalities in the amount of money people have, but this will only reflect the fact that people choose to spend differing amounts of their time working. Those who choose to work fewer hours will have less money, but they will have more leisure time as a result. In a society that promotes socialist equality of opportunity, there will be differences of outcome, but no *inequality* of outcome. Cohen states that people will have 'a comparable aggregate enjoyment of life'. Thus, in order to ensure that people's position in society is not affected by criteria beyond their control, we are not able to permit any inequality at all. Given that the socialist version of equality of opportunity is the only one that is fair, this means that fairness is egalitarianism.

Rawls (1999) disagrees. He describes himself as an advocate of fairness, calling his position 'justice as fairness', but he permits certain inequalities of outcome. This is because Rawls believes that certain inequalities would be agreed to in the 'original position' behind a 'veil of ignorance'. Although Rawls is consistent with the idea of fairness as described in this essay when he states that luck is not morally significant, and when he explains that the people in the 'original position' are unaware of their talents, their place in society and what they value – all considered to be morally insignificant things as they are determined principally by luck, he believes that these people would agree to inequalities that are to 'the greatest benefit of the least advantaged'. They would do this, Rawls believes, due to the belief that incentives are required to produce wealth. If we pay everybody the same amount, there will be no reason for talented people to use their skills and thus there will be less for everyone. Equality might be a just way of distributing a given amount of goods, but

the problem seems to be that the way we distribute goods in society itself affects the amount there is to distribute. The people in the 'original position' will realise this and accordingly permit inequalities that benefit those who have lost out in terms of talent.

However, it is not clear why Rawls thinks that inequalities that are in accordance with the difference principle are fair. By rejecting self-ownership and regarding talents as what Nozick (1974) calls 'manna from heaven', Rawls establishes that no person is more *entitled* than any other to large portions of goods; the only reason that some people do receive more is because otherwise *everybody* would get less. The fact that people might agree to this behind the 'veil of ignorance' does not mean that the principles are fair, even though they might be just. As has been shown by the discussion of equality of opportunity above, in a Rawlsian society, we might still say that it is unfair that some people have more than others, because this inequality will have been determined by factors outside the control of the people affected. One of the least well-off citizens in a Rawlsian society might say something like: 'I understand why there are others who get more than me and I am grateful for it, as I thus have more than I would otherwise, but it is still *unfair* that *I* should be one of those who is least well-off. I had no say in whether I was born talented or not.' Perhaps Rawls is working with a less specific concept of fairness than the one outlined in this essay. However, as I noted when discussing the concept of fairness, this is unlikely to be a distinct idea and by using it we risk slipping back into the realms of justice and losing the distinction between the two concepts. Thus Rawls misses the aspect of control which is vital to the concept of fairness.

Where does this leave fairness as a 'conception' of justice? At first glance it might seem that egalitarianism is a reasonable approach to justice. Why should we regard anything other than factors within one's control as 'relevant reasons' for judging people? However, as Rawls explains, absolute equality does not help anyone. Not only would it not be agreed to in the 'original position', it would most likely not be agreed to in normal society, given that it reduces any incentive to work hard. It is thus difficult to see why the egalitarian thinks her goal is desirable. Those such as Rawls who believe that nobody is entitled to her natural abilities reject egalitarianism on the grounds that it seems ridiculous that these talents should not be used to benefit society as a whole, or perhaps in particular, those who have had the bad luck to miss out, and those who believe in property rights and self-ownership such as Nozick disagree with Rawls, but still reject fairness because of their belief in the freedom of the individual to do what she wants with what is hers.

Cohen indicates the desirability of the values of community and of socialist equality of opportunity that would be achieved by a fair society, but even if inequalities are *intrinsically* undesirable, it does not follow that they are unjustified. The value of certain inequalities is that they are *instrumentally* as opposed to intrinsically valuable; over time they produce wealth for all, and history teaches us this, showing the triumph of incentives and market systems.

Conclusion

Justice and fairness refer to different concepts. Justice is about the state giving to people their due, whilst fairness is about people's position in society being determined by factors within their control. Fairness is not appropriate as a principle of justice because as Cohen shows, it is impossible to have inequalities of outcome determined by factors within people's control, and egalitarianism fails to provide incentives for the gifted to use their skills to benefit all. Rawls rejects egalitarianism, but claims to support fairness, and thus misses this aspect of control that is crucial to fairness. The concepts of justice and fairness ideas make justice inherently more important because of its links with moral obligation.

2,999 words excluding bibliography.

What is the difference between justice and fairness? Which is more important? – Chris Cooke

Bibliography

Rawls, J. (1958) *Justice as Fairness*, *The Philosophical Review*, Vol. 67, No. 2. (Apr., 1958), pp. 164-194. Available at: <http://www.jaredwoodard.com/wp-content/uploads/rawls.pdf>

Rawls, J. (1999) *A Theory of Justice* (Revised Edition), Harvard University Press.

Cohen, G.A. (2009) *Why not Socialism?*, Princeton University Press

Nozick, R. (1974) *Anarchy, State, and Utopia*, Basic Books, Inc.

Swift, A. (2006), *Political Philosophy: A Beginners' Guide for Students and Politicians*, Polity Press