

Why Social Justice Is Not All That Matters: Justice as the First Virtue*

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In *Why Social Justice Matters*, Brian Barry's "object . . . is to elaborate a conception of social justice of a kind that will support the case for institutions of the [following] kind":

1. The power of capital must be curbed by strong trade unions (perhaps also worker representation) and by regulation to ensure that people come before profit. . . .
2. The distribution of income and wealth created by capitalism [is] unacceptably unequal and should be changed by appropriate measures of taxation and transfer. . . .
3. Education and health services of uniformly high quality should be provided universally in a way as to be equally available to all, thus eliminating the market criterion of "ability to pay."¹

The great bulk of the book is devoted to practical issues of that sort, a catalog of the inequities increasingly created by the market and of the bad arguments given for allowing them to persist.

Barry thus sees his book as a political intervention rather than a philosophical one. "I doubt if it will do anything for my standing among professional political philosophers," he writes in the preface, "but it is not intended for them. To the best of my ability, I have aimed to reinforce the convictions of those who think things are bad and getting worse and to provide them with intellectual ammunition that will be of use in the fight for a better future." Put a little less flamboyantly: "A theory of social justice can provide a systematic critique and a programme that follows from it. That," Barry says, "is why social justice matters."²

* I am grateful for comments on earlier drafts from Jerry Cohen, John Deigh, Lina Eriksson, Michael Freedon, Nic Southwood, and Adam Swift.

1. Brian Barry, *Why Social Justice Matters* (Cambridge: Polity, 2005), 5–6.
2. *Ibid.*, ix, viii; see further 249–50.

Ethics 117 (April 2007): 413–432

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Now, no one wields a sharper pen than Brian Barry. He pursues that agenda with great verve over almost three hundred pages. I commend these pages warmly to connoisseurs, but I leave them to discover those delightfully pointed political barbs for themselves. The readership of *Ethics* represents precisely the audience that Barry himself eschews for this particular book, so I shall here take a different tack.

Barry writes that, although the aim of *Why Social Justice Matters* is “to argue for concrete conclusions in an accessible way[, t]his does not mean that I have given up on the belief . . . [in] the apparatus developed in *Justice as Impartiality* . . . I do not think that any very elaborate chain of argument is called for to show that the principles appealed to in this book satisfy the ‘reasonable rejectability’ test put forward in *Justice as Impartiality*.”³ We are invited to see *Why Social Justice Matters* as being not only continuous with but, indeed, as informally completing Barry’s larger project *Treatise on Social Justice*, further volumes of which “will never be written.”⁴ Publication of *Why Social Justice Matters* therefore marks an appropriate occasion for political philosophers to reflect upon that larger project and the still-larger Barry oeuvre within which it was situated.

I. JUSTICE AS THE FIRST VIRTUE

Like most of his generation, Barry has lived his philosophical life in the wake of John Rawls. Barry made more waves than most, of course, and he sent several crashing heavily back over Rawls in return. Thus, for example, an early article of his was among the three published critiques that Rawls acknowledged as having influenced the final form of *A Theory of Justice*.⁵ Barry’s *Liberal Theory of Justice* remains perhaps the most “uncompromisingly analytic” critique of Rawls.⁶ Barry’s multivolume *Treatise on Social Justice* was one of the most sustained attempts at sympathetic construction of an alternative to Rawls within broadly the same tradition.⁷

3. *Ibid.*, ix.

4. *Ibid.*

5. Brian Barry, “On Social Justice,” *Oxford Review* (Trinity Term, 1967), 29–52, reprinted in *Concepts in Social and Political Philosophy*, ed. Richard E. Flathman (New York: Macmillan, 1973), 422–33; John Rawls, *A Theory of Justice* (Cambridge, MA: Harvard University Press, 1971), x.

6. To paraphrase a compliment paid Barry’s first book, *Political Argument* (London: Routledge & Kegan Paul, 1965), by Anthony Quinton in the introduction to his collection *Political Philosophy* (Oxford: Oxford University Press, 1967), 3. Brian Barry, *The Liberal Theory of Justice* (Oxford: Clarendon, 1973).

7. Formally comprising Brian Barry, *Theories of Justice* (Berkeley: University of California Press, 1989), and *Justice as Impartiality* (Oxford: Oxford University Press, 1995), and perhaps informally incorporating *Culture and Equality: An Egalitarian Critique of Multiculturalism* (Cambridge, MA: Harvard University Press, 2001) and *Why Social Justice Matters*.

Critical though Barry has frequently been of many of Rawls's moves, the very title of his last book—*Why Social Justice Matters*—reveals the extent to which he succumbed to what is perhaps the core feature of the Rawlsian program. On the opening page of *A Theory of Justice*, Rawls proclaims that “justice is the first virtue of social institutions.” Indeed, justice is for Rawls the preeminent virtue of social institutions: as he goes on to say, “laws and institutions no matter how efficient and well-arranged must be reformed or abolished if they are unjust.”⁸ Furthermore, the “justice” whereof Rawls speaks is of a distinctly “distributive” sort. It provides “a standard whereby the distributive aspects of the basic structure of society are to be assessed”; it is “defined . . . by the role of its principles in assigning rights and duties and in defining the appropriate division of social advantage.”⁹ Whatever the “general justifying aim” of basic social institutions might be, justice in distribution (of rights and duties, benefits and burdens) is for Rawls thus intimately connected to it.¹⁰

Barry follows Rawls not only in giving justice pride of place among his social concerns but also in focusing on justice of a distributive sort. For Barry as for Rawls, “the primary subject of justice is . . . the distribution of rights, opportunities and resources.” Those, Barry says, are “the three key ideas around which this book”—*Why Social Justice Matters*—“is organized.”¹¹

No doubt distributive justice matters. It matters hugely, in all the ways that Barry goes on to detail in his critique of contemporary societies that have so largely lost sight of it. But, I submit, only someone under the spell of a philosophical system could remotely imagine that it matters

8. In full: “Justice is the first virtue of social institutions, as truth is of systems of thought. A theory however elegant and economical must be rejected or revised if it is untrue; likewise laws and institutions no matter how efficient and well-arranged must be reformed or abolished if they are unjust” (Rawls, *Theory of Justice*, 3–4).

9. *Ibid.*, 9, 10. This formulation has remained constant throughout iterations of Rawls's theory and appears essentially unchanged in his final work, *Justice as Fairness: A Restatement* (Cambridge, MA: Harvard University Press, 2001), 7.

10. H. L. A. Hart's “Prolegomenon to the Principles of Punishment,” in his *Punishment and Responsibility* (Oxford: Clarendon, 1968), argues that some social institutions—punishment being his example—might have principles for distribution (of rights and duties, benefits and burdens) that are very different from their general justifying aims. Rawls's claim that justice in distribution is the first virtue of the basic social institutions he is talking about seems to suggest that with those the two are one and the same. Hart only ever claimed that the two can come apart, not that they always necessarily do so. Still, Rawls's claim seems to amount to a substantial narrowing of the range of cases to which Hart's proposition applies. It is surprising that Rawls—who knew Hart's work well—did not himself make the connection or comment on these implications of his view for Hart's.

11. Barry, *Why Social Justice Matters*, 16, 19; see also 22.

exclusively, or even quite so preeminently as Rawls and Barry suggest, in the arrangement of social affairs.¹²

Barry at least intermittently agrees. Although distributive justice is clearly his preeminent concern in *Why Social Justice Matters* and several works preceding it, there and elsewhere Barry also offers important pointers to the many other things that matter, apart from justice narrowly distributively construed. Reflecting upon these other elements of Barry's own work can remind us of what all else matters and of some of the reasons why.

II. WHY SO?

So why might Barry and so many others be tempted to endorse the Rawlsian thought that "justice is the first virtue of social institutions"? Here are three ways of defending that claim, none of them to my mind altogether persuasive.

A. *Special Features of Basic Social Institutions*

One approach—arguably Rawls's own original one, but parentage matters not—might be to emphasize that the claim is not that "justice is the first virtue" *tout court* but that it is merely the "first virtue of social institutions."

"Social institutions," this argument would emphasize, are very particular sorts of things. That is particularly true of those social institutions that constitute the "basic structure." Rawls—and Barry following him¹³—characterizes those as "major social institutions" such as "the political constitution and the principal economic and social arrangements." Those institutions are peculiar in having, as their particular function, to "distribute fundamental rights and duties and determine the division of advantages of social cooperation."¹⁴

Suddenly the claim about "justice" being the "first virtue" of such institutions begins to look more plausible. If what we are talking about are institutions with peculiarly distributional functions, then it might indeed follow in the quasi-analytic way Aristotle taught us to think about these things that the peculiar virtue of such institutions should be to

12. Interestingly, G. A. Cohen is not under this particular spell, judging from the portions of his work in progress on *Rescuing Justice and Equality*, which he sent me in response to an earlier draft of this article, where he arrives by different routes at many of the same conclusions.

13. Barry, *Why Social Justice Matters*, 16.

14. Rawls, *Theory of Justice*, 7. Barry, *Why Social Justice Matters*, 16, echoes that characterization of "the basic structure." He declines to join Rawls in describing it as the "subject of justice," on the grounds that "the primary subject of justice is not institutions themselves but the distribution of rights, opportunities and resources that exists in a society. . . . Institutions are not an end in themselves: they are a means to getting [those] things done."

perform such functions aright, justly. Distributive justice is a virtue of institutions whose function is to distribute, in the same way that sharpness is a virtue of a knife whose function is to cut. Or so the argument might go.¹⁵

Of course, the argument from functionality does not necessarily imply that those are the “exclusive” virtues of a distributive system and a knife. If the function of a knife is to cut, then another virtue it might display would be being “not too heavy to lift.” If the function of distributive institutions is to distribute, then another virtue of those institutions would presumably be that they “distribute efficiently and effectively,” exhaustively allocating everything that there is to allocate rather than leaving some of it to spoil, for example.

In making the case for prioritizing justice as “first” among those several possible virtues of basic social institutions, we might start from the following observation. Maybe there are a few things (ranging from unowned land and broadcasting bandwidths to basic social rights and duties) that social institutions sometimes distribute *de novo*. Perhaps in times gone by that class represented a preponderance of things. Most things that social institutions distribute nowadays, however, they actually redistribute. Those are things (like natural endowments or social bequests or products of one’s labor or gains from trade) that start out under the distributive rules now in place in the hands of someone or another; the (re)distributive institutions of a society either intentionally leave them there, or else they intentionally transfer them to the hands of another. That is what society’s (re)distributive institutions do when they go about their assigned tasks of mitigating the effects of “the natural lottery,” inheritance, market power, and so on.

There might well be a particularly strong case for supposing that “justice” might be the “first virtue” of institutions whose function is to redistribute. In redistributing, the prime imperative is not to get all of the goods allocated. Redistribution, after all, proceeds from a baseline in which a distribution is already in place. The function of redistribution is to redo that distribution. The “first virtue” of redistribution would arguably be to do that aright. “Justice” is the generic term, filled out in

15. For the companion Rawlsian proposition that “truth is the first virtue of systems of thought” (*Theory of Justice*, 3), this line of analysis would invite us to regard “systems of thought” as having the function of “generating propositions,” the “first virtue” of which would be to be generating “true” ones. The sort of enlargement of understanding that systems of thought are supposed to supply might or might not be reducible to a set of true propositions. If not, then either this functionalist way of analyzing Rawls’s claim must be rejected or else, perhaps, Rawls was simply wrong to suppose that truth is the “first virtue” of systems of thought.

different ways by different theorists, to describe (re)distributions that are right in that way.¹⁶

Reasoning along such lines, we might persuade ourselves that “justice” might indeed be the “first virtue” of the major social institutions of the sort Rawls and Barry are talking about as the “basic structure” of society. A defining feature of those particular institutions is that they are charged with basic (re)distributive functions, and maybe it follows from that fact that redistributing rightly, “justly,” is necessarily their “first virtue.”

That success, however, would come at the cost of restricting the range of sociopolitical activities of which “justice” is the “first virtue.”¹⁷ As Rawls acknowledges, there are a great many other “social institutions” and “social practices” that are not “basic” or “major social institutions” of that sort, and (as he put it later) “one should not assume in advance that principles that are reasonable and just for the basic structure are also reasonable and just for institutions, associations, and social practices generally.”¹⁸ Not only might other standards of “local” justice apply to those nonbasic institutions.¹⁹ Those other institutions and social practices might have as their peculiar virtues things that lie altogether outside the scope of “justice,” understood in any narrowly distributive way after the fashion of Rawls and Barry.

In short: the thought that “justice is the first virtue of social institutions” might be plausible, provided the social institutions under discussion are construed sufficiently narrowly. Doing so makes the claim more plausible but also much more limited and hence far less interesting.

Whether or not that is the right way of reading Rawls’s original text, that is in any case not the way the Rawlsian slogan has been taken up in the subsequent literature. Instead of being regarded as a reference narrowly to “basic” or “major” social institutions, the Rawlsian slogan that “justice is the first virtue of social institutions” is more typically taken as a reference to politics as a whole. The general uptake of the Rawlsian slogan—by Barry in *Why Social Justice Matters* like many others—is that justice defines the “core concern” of political philosophy *tout*

16. Which is of course to say, as Barry (*Justice as Impartiality*, 44) does against Thrasymachus and Hume, that “‘justice’ is doing no real work here.” But maybe those pursuing this line are not counting on it to do any.

17. Indeed, as Rawls himself at one point admits, justice is “but one part of a social ideal,” even as applied to the basic structure (*Theory of Justice*, 10). I return to this concession at the start of Sec. II below.

18. Rawls, *Justice as Fairness: A Restatement*, 11.

19. *Ibid.*, 11, and Rawls, *Theory of Justice*, 8.

court.²⁰ The political right, and sometimes even the political good, is understood as being dominated (if maybe not quite exhausted) by “justice,” understood as a set of principles about the proper distribution of the benefits and burdens and rights and duties of social life.

B. *Special Features of Liberal Institutions*

A second approach would rephrase the claim to assert that “justice is the first virtue of *liberal* social institutions.” This approach, too, might be Rawls’s own: after all, his first book was a distinctly “liberal theory of justice” (as Barry dubbed it, not altogether approvingly at the time),²¹ and Rawls’s second book proclaimed as much in its very title.²² Again, however, parentage matters not. The question is merely how promising this approach might be in making plausible the claim that “justice is the first virtue of social institutions,” at least of the relevant (liberal) sort.

One temptation would be to try to connect this argument to the last, by providing reasons for thinking that the “basic structure” is all that political philosophy concerns itself with. The thought is just this. Liberal reticence to prescribe or proscribe any “theory of the good” precludes us from saying anything about the substantive goals of political life.²³ Liberalism permits us to discuss only form, not substance: “basic structure” and “major social institutions,” rather than anything that is done by or through them. If basic institutions are all liberals can prescribe or proscribe, and if (as the previous argument purports to have shown) justice is the first virtue of basic social institutions, then we have a reason for thinking that a philosophy of justice exhausts the subject of political philosophy.

That attempt at piggybacking on the previous argument flounders, however, on the same liberal reticence to prescribe or proscribe. The previous argument crucially presupposes that “the” function of “redistributive institutions” is to “redistribute rightly”; that is the ground on which it claims to have established “justice” as the “first virtue” of such institutions. But liberals should surely be equally reticent, for identical reasons, to prescribe or proscribe any particular specification of “the function” for social institutions as they are to prescribe or proscribe any

20. Among the “many others,” see in their very differing ways: G. A. Cohen, “On the Currency of Egalitarian Justice,” *Ethics* 99 (1989): 906–44; and Will Kymlicka, *Contemporary Political Philosophy* (Oxford: Clarendon, 1992).

21. Barry, *The Liberal Theory of Justice*, 166–68. In U.S.-speak, of course, Barry describes his own politics in just those terms, as “liberal egalitarian” (*Justice as Impartiality*, 3) or even “liberal” simpliciter (*Why Social Justice Matters*, 8).

22. John Rawls, *Political Liberalism* (New York: Columbia University Press, 1995).

23. Barry so characterized it in *Political Argument*, chap. 4, thus anticipating the subsequent discussions along these lines by Rawls, Dworkin, and Ackerman.

particular specification of “the good” for individuals. Thus, while liberalism might provide grounds for thinking that “basic social institutions” are indeed all that we can or should concern ourselves with in our political philosophy, it does so in a way that undermines any reason the last argument might have given us for supposing that justice is the first virtue of those basic social institutions. It does so, anyway, unless “justice” becomes merely a placeholder for “whatever virtues those basic social institutions ought to display”—in which case the proposition becomes an uninformative tautology.

A second and more standard way in which we might derive “justice as the first virtue” from “liberalism” about social institutions is this: liberalism purports to be neutral as among views of “the good.” It prioritizes “the right” over “the good,” politically. And, the argument might go, “justice” is nothing more or less than the name we give to “the right” as applied to politics, or anyway as applied to its “basic structure.”

Quite how successful liberal theories can be in getting substantive conclusions out of purely formal premises has long been questioned. Barry is skeptical concerning the neutrality of liberal neutrality.²⁴ The only people who will suppose it treats their vision of the good neutrally will, he says, be those who have “already swallowed a large dose of liberalism.”²⁵

Barry’s solution is to bite the bullet and to admit that he is advocating liberalism on ideal-regarding grounds. “A liberal,” he supposes, “must take his stand on the proposition that some ways of life, some types of character, are more admirable than others.”²⁶ Over the years, Barry has become increasingly adamant in that judgment. The blandness of that 1973 formulation had by 1990 hardened into the conclusion that “very likely we are headed for a new Dark Age, and nothing philosophers of a liberal persuasion can do will prevent it. But given the choice between trying to persuade non-liberals to accept the principle of neutrality and trying to discredit their beliefs, I think the second is clearly the better strategy.”²⁷ Barry’s more first-order contributions to the public debate a decade later—*Culture and Equality* and *Why Social Justice Matters*—simply extrapolate from that.

Barry’s suggestion that we base the case for liberalism on ideals in this way points to some of the other sorts of things that might matter in a political philosophy other than merely justice in the distribution of want

24. Of course, even if they are not completely neutral, liberal institutions can nonetheless be more so than others. Nonliberal institutions are nonneutral to a greater extent and in ways additional to those of liberal ones.

25. Brian Barry, “How Not to Defend Liberal Institutions,” *British Journal of Political Science* 20 (1990): 1–14, 1.

26. Brian Barry, “Liberalism and Want-Satisfaction: A Critique of John Rawls,” *Political Theory* 1 (1973): 134–53, 152.

27. Barry, “How Not to Defend Liberal Institutions,” 14.

satisfaction. I shall return to that larger point later. But for now a simpler point will suffice. Suppose liberals are right in thinking that a political philosophy can and should confine its prescriptions to “the right” and scrupulously avoid prejudicing the case for or against any particular view of “the good.” Even so, there is no reason to think that “the right” is exhausted by a theory of “justice,” distributively understood.

There are plenty of ways of “wronging” people, politically, without doing them an “injustice” of any of the distributional sorts captured in Rawls’s or Barry’s specification of social justice. Exterminating a whole people or enslaving a whole race or subjugating a whole country might all involve a great many distributional wrongs to a great many people. But multiple and grievous though those distributional wrongs might be, even taken collectively and interactively they do not seem wholly to exhaust the wrong of those acts. Indeed, this does not even seem to be an apt way of characterizing those wrongs. That is certainly so if we think that intentions matter: the description under which the agent chose those wrongful acts was not, first and foremost, in terms of inflicting distributional wrongs on particular individuals. And even if we think that consequences are what ultimately matter, it is not at all clear that any litany, however long, of wrongful distributive consequences to specific individuals will ever quite capture in full the wrongful consequence of exterminating a whole people or enslaving a whole race or subjugating a whole country. But more of that, again, in Section III below.

It is not just an issue of justice to individuals versus justice to groups, either. If a nuclear holocaust at the height of the cold war had destroyed all life on earth (as the nuclear winter scenario suggested it might), the leaders of the two superpowers responsible would have wronged everyone on earth. But they would not have wronged anyone differentially more than anyone else. The wrong would not have been a comparative, relative, distributional wrong of the sort referred to by the Rawls-Barry specification of the subject matter of justice.

Once again, there is always the option of defining “justice” in an inflationary way, so as to absorb everything we think is right or wrong politically. Doing that, however, provides no grounds for thinking that “justice is the first virtue of [liberal] social institutions.” It merely becomes true, purely by definitional fiat, that whatever is the first virtue of liberal social institutions is called “justice.” That, as Barry remarks in another connection, is a “pretty thin performance,” rather “like a conjurer putting a rabbit in a hat, taking it out again and expecting a round of applause.”²⁸

28. Brian Barry, “Justice between Generations,” in *Law, Morality and Society: Essays in Honour of H. L. A. Hart*, ed. P. M. S. Hacker and J. Raz (Oxford: Clarendon, 1977), 268–84; reprinted in Barry, *Democracy, Power, and Justice* (Oxford: Clarendon, 1989), 494–510, 505.

C. *An Expansive Sense of Justice*

The first two strategies tried to lend plausibility to the claim that “justice is the first virtue of social institutions” by narrowing the range of institutions to which the claim applied: to “basic, major” ones or to “liberal” ones. A third strategy would be to broaden the concept of “justice.” Scanlon’s generalization of Rawls, and Barry’s reappropriation of that to form the basis of his theory of “justice as impartiality,” might be seen as this sort of move.

Clearly, Rawls’s *Theory of Justice* constitutes Scanlon’s jumping-off point. Scanlon’s principle of “reasonable rejectability” is designed to do precisely the same work in his theory as the veil of ignorance does in Rawls’s. Although in many important ways Scanlon’s theory thus constitutes a sympathetic reconstruction of Rawls’s, it is also importantly a generalization of Rawls’s. What Rawls offers in *A Theory of Justice* is just that: a theory of justice, a contribution to political philosophy.²⁹ Scanlon is clearly more ambitious. “Reasonable rejectability” is, for him, supposed to be not merely a way of fleshing out the requirements of “justice” but a way (initially) of specifying “the subject matter of morality” as a whole.³⁰ Although Scanlon later rephrased that more modestly as “the morality of right and wrong,” that is still (I shall argue) far wider than simply “justice.”³¹ Scanlon’s concern is to provide a standard of individual conduct, Rawls’s to provide a standard for social institutions.

In adopting Scanlon’s theory as the cornerstone for his own theory of “justice as impartiality,” and thus reapplying it back to politics, Barry acknowledges the worry that Scanlon might have been talking about something different and much more general. “Scanlon talks about rules whose violation is wrong whereas I have been talking about rules whose violation is unjust,” Barry writes. “I concede that in many contexts ‘wrong’ would be more idiomatic than ‘unjust,’” he continues. But in the end Barry concludes, “I do not believe that there is any difference of substance here.”³²

We shall return to consider that issue shortly. But first let us note the way this move would work to bolster the claim of justice to be the

29. He is quite insistent on this point: *Theory of Justice*, 7–8.

30. T. M. Scanlon, “Contractualism and Utilitarianism,” in *Utilitarianism and Beyond*, ed. A. Sen and B. Williams (Cambridge: Cambridge University Press, 1982), 103–28, 113.

31. T. M. Scanlon, *What We Owe to Each Other* (Cambridge, MA: Harvard University Press, 1998), 6. Tellingly, the index to that book contains no entry for “justice” at all, as Jerry Cohen pointed out to me.

32. Barry, *Justice as Impartiality*, 68. He goes on to explain: “As the applications of his account that he offers show, what he is mainly interested in are (a) laws and institutions, including political institutions and (b) rules forming the positive morality of a society. He proposes his account as a way of explaining what we are doing when we say that it is wrong to execute convicted murders or to fail to keep one’s promises.”

“first virtue” of social institutions. If “reasonable rejectability” really does provide a general theory of what is “right and wrong” (as Scanlon supposes) and if that is what we mean by “justice” (as Barry adds), then once again it suddenly becomes plausible for us to suppose that justice is indeed the “first virtue” of social institutions. It becomes so, on this argument, not because of any special features of certain social institutions but, rather, because of the expansive nature of “justice” thus construed.

Does that analysis expand the concept of “justice” too far? Barry concedes at the outset, “Anything claiming to be a theory of justice must articulate with common modes of thinking about justice: otherwise there is no basis for calling it a theory of justice rather than a theory of, say, hurricanes.”³³ He goes on to claim that his theory satisfies that requirement: “Rawls and those who (like myself) follow in his footsteps meet this requirement in virtue of the connection we establish between the content of justice and the terms of reasonable agreement. For I believe it would widely be acknowledged as a sign of an unjust arrangement that those who do badly under it could reasonably reject it.”³⁴ His “theory of justice as impartiality” is, as Barry puts it, “a theory of justice which makes it turn on the terms of reasonable agreement. . . . Principles of justice that satisfy its conditions are impartial because they capture a certain kind of equality: all those affected have to be able to feel that they have done as well as they could reasonably hope to.”³⁵

Now, when Barry puts it like that—when he talks about people having “done badly” or “done as well as they could reasonably hope to”—the test of reasonable rejectability sounds like an essentially distributional test, thereby assimilating it to more colloquial ways (and to the Rawls-Barry way) of talking about social justice. Scanlon says similar sorts of things at places, as well.³⁶

33. Barry, *Justice as Impartiality*, 7.

34. *Ibid.*

35. *Ibid.*

36. For a start, he gives his book the distinctively justice-sounding title *What We Owe to Each Other*, and when talking about what counts as “reasonable” grounds for rejecting a principle, he emphasizes comparativist-style concerns familiar from talk of distributive justice. In “Contractualism and Utilitarianism,” Scanlon says, e.g.: “Whether it would be unreasonable for me to reject a certain principle, given the aim of finding principles which no one . . . could reasonably reject, depends not only on how much actions allowed by that principle might hurt me in absolute terms but also on how that potential loss compares with other potential losses to others under this principle and alternatives to it” (113). Or again: “It would be unreasonable, for example, to reject a principle because it imposed a burden on you when every alternative principle would impose much greater burdens on others” (111). Or yet again: “Suppose that the situation of those who would fare worse under A, call them the Losers, is extremely bad, and that there is an alternative to A, call it E, under which no one’s situation would be nearly as bad as this. *Prima facie*,

But the test of “reasonable rejectability” is supposed to be broader than that. It is supposed to be a question of whether people have any “reasonable grounds for complaint” with arrangements. “Distributional” complaints are one sort of “reasonable complaint” they might have, and that subset of their “reasonable complaints” might well describe the subset of morality defined as “justice.” But “justice” is only a subset of morality. Insofar as people might have “reasonable complaints” extending beyond complaints with the “assigning of rights and duties and the . . . division of social advantage” (to recall Rawls’s original delineation of “the subject of justice”),³⁷ the “reasonable rejectability” standard looks like pointing to aspects of morality outside “justice” as it is naturally construed.

So: Scanlon was right in thinking he was offering an analysis of “the subject matter of morality” (or at least “the morality of right and wrong”) more broadly. Barry was wrong in thinking he could appropriate that analysis holus-bolus as a theory of justice. “Justice” can be made into the “first virtue of social institutions” in this way only at the cost of equating “justice” with “morality” or “right and wrong” as a whole.

There is one final twist in this tale to note, crucially relevant to my subsequent discussion. Barry rightly remarks, and Scanlon has since agreed, that “the sphere of morality is wider than the sphere of rules that would satisfy Scanlon’s conditions.”³⁸ Barry was wrong, I think, to equate the sphere of “reasonable rejectability” with the sphere of “justice.” I think (but Barry would of course continue to disagree) that we ought to think of the sphere of “reasonable rejectability” as coterminous with the sphere of “right and wrong” more generally, and we ought to think of “justice” as a subset of that (unless we want to play the “hurricane” card). Be that as it may, Barry’s larger point remains: there certainly is more to morality than is captured by “reasonable rejectability.”

Remember, however, even on Barry’s analysis there is nothing more to “justice” than “reasonable rejectability.” So the question at the heart of this article naturally rearises. Might some aspects of political morality be among that “something more to morality” that cannot be analyzed in those terms? If so, we will once again have found a reason for supposing that justice is not all that matters, even defining “justice” in maximally expansive terms of “reasonable rejectability.”

the losers would seem to have a reasonable ground for complaint against A. [But] this complaint must be weighted against those of individuals who would do worse under E” (123).

37. Rawls, *Theory of Justice*, 10.

38. Barry, *Justice as Impartiality*, 68; Scanlon, *What We Owe to Each Other*, 7.

III. JUSTICE, AND WHAT ELSE?

The upshot of the foregoing discussion is that we have been misled by Rawls and the many philosophers following him (intermittently including Barry) into thinking of “justice” as “the first virtue of social institutions.” Anyway, we have been misled if “justice” is taken to mean—as Rawls originally stipulated, and most join Barry in continuing to assume—principles pertaining narrowly to the distribution of rights and duties, benefits and burdens.³⁹ Undeniably important though it is, the just distribution of rights and duties and benefits and burdens does not exhaust the subject matter of political philosophy. There is more to it than that.

Oddly enough, Rawls says as much himself, in a passage now almost completely forgotten and hence worth reproducing at length:

A conception of social justice, then, is to be regarded as providing . . . a standard whereby the distributive aspects of the basic structure of society are to be assessed. This standard, however, is not to be confused with the principles defining the other virtues, for the basic structure, and social arrangements generally, may be efficient or inefficient, liberal or illiberal, and many other things, as well as just or unjust. A complete conception defining principles for all the virtues of the basic structure, together with their respective weights when they conflict, is more than a conception of justice; it is a social ideal. The principles of justice are but a part, although perhaps the most important part, of such a conception.⁴⁰

So what other sorts of deliverances (or “deliverables” as we are now taught to say) might we reasonably demand of a political philosophy? In the spirit of the present occasion, I begin by mining Barry’s corpus for examples, and then I try to stand back from those particular examples to see what might more generally be said to characterize “political philosophy beyond justice.” With some authors, and with Barry on some topics, one might worry that he has changed his views over the thirty-two years represented by the works quoted below, but on these particular topics, it seems he has not, judging from what he says on them in *Why Social Justice Matters*.

A. Insights Gleaned from Barry

Let us begin with a most characteristically Barryish aside, coming in the epilogue to his *Liberal Theory of Justice*. “I have often found that off-the-cuff comments which people make are more useful in providing a key

39. An important alternative, too little discussed, is Joel Feinberg’s notion of “Non-comparative Justice,” *Philosophical Review* 83 (1974): 297–338.

40. Rawls, *Theory of Justice*, 9; reiterated in Rawls, *Justice as Fairness: A Restatement*, 14.

to their books than anything in them. For what they are worth, I am offering my own comments in print.” Barry proceeds to expound his qualified affection for the line of “English socialism running from William Morris’s *News from Nowhere*, through R. H. Tawney’s *The Acquisitive Society* to R. M. Titmuss’s *The Gift Relationship*.” In a passage that is particularly telling for present purposes, he explains: “To these men socialism is not about distribution but human relationships—the right distribution is necessary to and made possible by the right relationships but it is of secondary importance.”⁴¹ So that is one thing—right relationships—that might matter, in addition to justice in distribution. And Barry’s thought there is echoed widely, in Elizabeth Anderson’s “democratic equality,” in David Miller’s version of “complex equality,” and in “relational feminism.”⁴²

Another somewhat akin to that might be “duties of humanity”: treating others properly (“decently,” in Margalit’s recent formulation)⁴³ even if they have no right-based claim against you to do so. Barry canvassed this sort of consideration at some length in his 1982 *Nomos* paper on “Humanity and Justice in Global Perspective.”⁴⁴ There, Barry argues “that both humanity and justice require a substantial expansion in the scale of economic transfers from rich countries to poor ones.” But, as he is also at pains to point out, just “as the two rationales are very different, so are their practical implications.”⁴⁵

More of that shortly. The other crucial thing to notice up front is that obligations of humanity are every bit as strong as duties of justice. Speaking of the “obligation to relieve suffering as a matter of humanity,” Barry firmly declares that “the fact that the obligation is not derived from justice does not make it a matter of generosity, nor does it entail that it should be left to voluntary action to adhere to it. It is an obligation that would be wrong not to carry out and that could quite properly be

41. Barry, *The Liberal Theory of Justice*, 168.

42. Elizabeth S. Anderson, “What Is the Point of Equality,” *Ethics* 109 (1999): 287–337, 289, 312ff.; David Miller, “Complex Equality,” in *Pluralism, Justice, and Equality*, ed. David Miller and Michael Walzer (Oxford: Oxford University Press, 1995), 197–225, 199. On “relational feminism,” see my “Structures of Political Order: The Relational Feminist Alternative,” in *Nomos XXXVIII: Political Order*, ed. Russell Hardin and Ian Shapiro (New York: New York University Press, 1996), 498–521.

43. Avishai Margalit, *The Decent Society* (Cambridge, MA: Harvard University Press, 1996). See similarly Judith Shklar’s discussion of “putting cruelty first” in *Ordinary Vices* (Cambridge, MA: Harvard University Press, 1984), 7–44; and Barrington Moore Jr., *Reflections on the Causes of Human Misery* (Boston: Beacon, 1970).

44. Brian Barry, “Humanity and Justice in Global Perspective,” in *Nomos XXIV: Ethics, Economics and the Law*, ed. J. Roland Pennock and John W. Chapman (New York: New York University Press, 1982), 219–52; reprinted in Barry, *Democracy, Power, and Justice*, 434–62 (citations to that edition).

45. Barry, “Humanity and Justice,” 455.

enforced upon rich countries if the world political system made this feasible.”⁴⁶

In all these respects, the obligation of humanity is fully on a par with the duty of justice so far as Barry is concerned. As he insistently adds,

To use the term “just” to mark out the line between, on the one hand, what is morally required and, on the other, what is praiseworthy to do but not wrong to omit doing . . . seems to me to result in the blunting of our moral vocabulary. . . . Justice, I wish to maintain, is not merely one end of a monochromatic scale that has at the other end sacrifice of self-interest for the good of others to a heroic or saintly degree. Rather, it points to a particular set of reasons why people (or societies) may have duties to one another and picks out particular features of institutions that make them morally condemnable.⁴⁷

So what exactly is the source and nature of these “obligations of humanity” that Barry sets alongside but apart from “duties of justice”? Fundamentally, “they have different subject matters.” Whereas principles of humanity “tell us what are good and bad states of affairs and what responsibilities we have to foster the one and to avert the other, . . . the subject-matter of justice (at any rate in modern usage) is the distribution of control over material resources.”⁴⁸

To put it in the form of a slogan, we might say that the goodness of well-being and the badness of ill-being are not exhausted by the rightness or wrongness of the way in which they are distributed. Principles of justice fixate on the latter. Principles of humanity remind us of the former.

There is a cognate set of political principles to be evoked, also not reducible to distributive justice, relating to the “decent” treatment of future generations, nonhuman animals, and the natural environment more generally. Of course, we can shoehorn such concerns into a theory of justice by saying that what concerns us is the distribution of well-being among them, or between us and them.

But there might well be more to it than that. Consider, for example, Barry’s first essay on “Justice between Generations.” There, Barry declared that whatever principle we develop for justice in that realm “should surely as a minimum include the notion that those alive at any time are custodians rather than owners of the planet, and ought to pass

46. *Ibid.*, 440.

47. *Ibid.*, crediting the basic insight to T. D. Campbell, “Humanity before Justice,” *British Journal of Political Science* 4 (1974): 1–16.

48. Barry, “Humanity and Justice,” 456–57.

it on in at least no worse shape than they found it in.”⁴⁹ The second half of that principle looks pretty clearly distributive in its focus, perhaps, but the first half seems to sound another note.

Barry elaborates that latter note in his response to the “total utility” model as applied to population policy. As Barry observes, “Although the total utility doctrine is biased towards actualizing a lot of potential people, it is not biased towards spreading them over a long time span. It is consistent with total utilitarianism that we should have a massive population for another two centuries and then nothing.” At this Barry balks:

As far as I am concerned the continuation of human life into the future is something to be sought (or at least not sabotaged) even if it does not make for the maximum total happiness. . . . If I try to analyse the source of my own strong conviction that we would be wrong to take risks with the continuation of human life, I find that it does not lie in any sense of injury to the interests of people who will not get born but rather in the sense of its cosmic impertinence—that we should be grossly abusing our position by taking it upon ourselves to put a term on human life and its possibilities.

Barry immediately adds, “I must confess to feeling great intellectual discomfort in moving outside a framework in which ethical principles are related to human interests, but if I am right then these are the terms in which we have to start thinking.”⁵⁰ Those, clearly, are terms outside the scope of justice, distributively understood.

The “cosmic impertinence” objection can easily be extended to cover interference with nonhuman or even nonsentient elements of the natural environment. Of course, there are distributional wrongs involved in the treatment of the natural environment as well. Some of those are to people: poor people live in poor environments, something the “environmental justice” movement is dedicated to remedying, and there are distributional wrongs to humans arising from things like genetically modified agriculture as well.⁵¹ We might even think of distributional wrongs to nonhuman elements of nature: Barry insists that his “impartialist theory” could apply to “more than one conception of the good,” zoocentric or ecocentric as well as merely anthropocentric.⁵²

But in addition to all those distributional worries, there are “cosmic

49. Barry, “Justice between Generations,” 510.

50. *Ibid.*, 509.

51. Barry, *Why Social Justice Matters*, 277 n. 1, fumes how “the skulduggery perpetrated by the United States government in trying to force poor countries to accept genetically modified varieties of their agricultural staples arises from the fact that giant American companies . . . cannot make money if people simply plant unpatented seeds that produce plants whose seeds can in turn be planted next year.”

52. Barry, *Justice as Impartiality*, 20–21.

impertinence” sorts of objections to the way we treat the natural environment. Such objections are often raised against meddling with the very blueprint of life.⁵³ And similar objections are also sometimes leveled against gross interference with naturally occurring landscapes: “terraforming,” making rivers flow backward, making deserts bloom, and so on.⁵⁴

In *Why Social Justice Matters* Barry returns to these themes, focusing largely on climate change and also on the exhaustion of natural resources that will occur partly in consequence of that. He connects those scarcity concerns to distributional ones and rightly observes that the declining resource base to support life on earth will exacerbate distributional conflicts and distributive injustices.⁵⁵ But he also says things that suggest that, quite apart from the distributional issues, the end of (human) life on earth would be a bad thing in and of itself.⁵⁶ Presumably that is not at root a distributional concern—a concern with the distributive injustice among humans (all die equally) or between humans and cockroaches (cockroaches get to continue their species life, whereas humans do not).

To extend what Barry says above, it is perfectly conceivable that having a large population for a short time, and then nothing, might be the best way both to maximize total utility and to equalize it. The best way of achieving justice of a distributional sort would then be to embark upon a course of action leading to quick extinction. If we have an objection to that—and Barry clearly does—it seems not to be a distributional one, or even a particularly want-regarding one. Instead it seems to be an ideal-regarding objection, involving a claim about the superiority of a world that contains agents with higher-order self-consciousness.

B. Ideals versus Distributions

All of those examples suggest the range of other things that ought to matter to a political philosophy, other than the distribution of (opportunities for) want satisfaction.⁵⁷ What all else matters can be well analyzed in terms of the twin distinctions around which Barry organized his very first book, *Political Argument*.

There, Barry argued that political principles can be either ideal regarding or want regarding, and the latter can be either distributive or aggregative.⁵⁸ Focusing on justice of the sort that Rawls and Barry

53. Sheila Jasanoff, *Designs on Nature* (Princeton, NJ: Princeton University Press, 2005).

54. Robert Sparrow, “The Ethics of Terraforming,” *Environmental Ethics* 21 (1999): 227–45; Marc Reisner, *Cadillac Desert* (New York: Viking Penguin, 1986).

55. Barry, *Why Social Justice Matters*, 251–73.

56. *Ibid.*, 251.

57. “Opportunities for” to capture the point about resources made by Barry above.

58. Barry, *Political Argument*, chap. 3.

have in mind—justice in the distribution of rights and duties and benefits and burdens—fixes our focus on the distributive rather than the aggregative, and firmly so. It also fixes our focus on want-regarding rather than ideal-regarding aspects of a political philosophy (perhaps in some suitably extended “welfare consequentialist” sense).⁵⁹ In terms of Barry’s initial distinction, therefore, we might well think that Rawls’s “first virtue” captures only a quarter—or anyway, only one quadrant—of political philosophy’s subject matter.

One of the other things that matter, rather than merely the distribution of (opportunities for) want satisfaction, is aggregate levels of (opportunities for) want satisfaction. The aggregation in question works first and foremost at the individual level, and only derivatively if at all at the level of the whole society.⁶⁰ It is better for each person to have more of her wants satisfied, or more opportunities to have her wants satisfied—and that is so independently of how many of other people’s wants are satisfied or how many opportunities others have to have their wants satisfied. That is the message that grows out of Barry’s discussion, quoted above, of “obligations of humanity.”

A second other thing that matters, other than merely the distribution of (opportunities for) want satisfaction, is the pursuit of certain social ideals. Liberalism itself is one such, as Barry argues in the passages quoted earlier. Another ideal might be humility, as per the “cosmic impertinence” objection discussed earlier. Other ideals might be “decency” (which should lead us to take seriously our obligations of humanity) or “right relations with others” more generally.

Liberal egalitarians like John Rawls and Brian Barry have always been most comfortable operating in the distributive/want-regarding quadrant of political philosophy. But even egalitarians can sometimes be pulled away from a purely distributional focus by more aggregative concerns, as with Rawls’s “maximin” and Barry’s “obligations of humanity.” And even liberals can sometimes be weaned away from a purely want-regarding focus by more ideal-regarding concerns, as with Barry’s admission that liberalism itself is best seen as an ideal in its own right.

In introducing the “cosmic impertinence” objection discussed above, Barry pronounced himself wary of ideal-regarding principles that operate “outside a framework in which ethical principles are related to human interests.” But with this objection he in fact puts forth such a principle.

59. Amartya Sen, “Utilitarianism and Welfarism,” *Journal of Philosophy* 76 (1979): 463–89; Amartya Sen and Bernard Williams, eds., *Utilitarianism and Beyond* (Cambridge: Cambridge University Press, 1982).

60. That is I think a better way than Barry’s own to phrase his reformulation in “Humanity and Justice,” 456. This is, of course, just the Pareto principle.

In other connections as well, Barry concludes similarly that it is wrong to try to shoehorn everything that matters to people, socially, into the framework of “preferences,” as if they were all nothing more than mere “wants.” “If we are going to assimilate moral and aesthetic judgments to any other kind of thing,” Barry says in his famous exchange with Sen, “we might do better . . . to assimilate them to beliefs about matters of facts.” For example,

If I believe that the Sears Tower in Chicago is taller than the Eiffel Tower, we presumably are under no temptation to turn that into a statement of a preference. And if I have the (fairly incontrovertible) view that it is better that people believe what is true than what is false, it will follow that I think it would be better for people to believe that the Sears Tower is taller than the Eiffel Tower. But surely it should be plain here that they should (in my view) believe it because it is (in my belief) true—not to please me by falling in line with my “preference in the matter.”⁶¹

Barry rejects “the idea that judgments of better or worse have no cognitive content but are simply expressions of attitudes [which] . . . can be assimilated quite properly to other forms of preference.” He rejects the “crude verificationism” that construes “a ‘value judgment’ . . . as something without cognitive content.” And because of all that, he resists the “move . . . that treats moral or aesthetic judgments as preferences to be cranked into a Social Welfare Function along with other preferences.” Thus, Barry rejects “the characteristic form of post-Arrow welfare economics in which ‘social welfare’ is derived from some process of aggregating preferences.”⁶²

That is to say how social decisions ought not to be made: it is not yet to say how they should be made. At that point in the dialectic, Barry opts for “liberalism” on ideal-regarding grounds. Where people harbor conflicting moral and aesthetic judgments with cognitive content of that sort, the crucial task for liberals “is to mediate between conflicting conceptions of the good”—and liberals such as Barry, Scanlon, and Rawls, in their different ways, offer a theory of “justice as impartiality” to do that.⁶³ Where Barry differs from Rawls, in his own view, is merely in acknowledging that that solution must ultimately be justified in ideal-regarding rather than purely want-regarding terms.

In short: justice in the terms Rawls and Barry frame it—justice in

61. Brian Barry, “Lady Chatterley’s Lover and Doctor Fischer’s Bomb Party: Liberalism, Pareto Optimality, and the Problem of Objectionable Preferences,” in *Foundations of Social Choice Theory*, ed. Jon Elster and Aanund Hyllund (Cambridge: Cambridge University Press, 1986), 11–44, 36.

62. *Ibid.*, 35.

63. Barry, *Justice as Impartiality*, 12.

the distribution of rights and duties, benefits and burdens—clearly matters. But it is only part of what matters in political philosophy. It is clearly not the “only” virtue of social institutions. It may not even be the “first” virtue, either in terms of logical structures or social priorities.

IV. IN THE END

In closing, let me simply echo two of my favorite philosophers:

“Are we not trying to pack too much into the concept of justice and the correlative concept of rights? The question of whether it is wrong to act in certain ways is not the same question as whether it is unjust so to act.” I think [Barry writes] the answer to John Passmore’s rhetorical question is in the affirmative. We should not expect to get out of “justice” a blueprint for the good society. . . . Surely it ought be possible for a just society to be rich or poor, cultivated or philistine, religious or secular, and (within some limits that are inherent in justice itself) to have more or less of liberty, equality and fraternity.⁶⁴

It has been my great good fortune, personally, to count Brian Barry and John Passmore as friends. It has been our generation’s great good fortune, philosophically, to have the likes of them to guide us with such trenchant reminders of what really matters, politically and philosophically.

64. Barry, “Humanity and Justice,” 439–40, quoting John Passmore, “Civil Justice and Its Rivals,” in *Justice*, ed. Eugene Kamenka and Alice Erh-Soon Tay (London: Edward Arnold, 1979), 25–49, 47. Of course it would be better still if the society in question were both just and rich, etc.: the issue posed in this quotation arises only insofar as justice comes into conflict with those other values. On this, see Adam Swift, *Political Philosophy: A Beginner’s Guide for Students and Politicians* (Cambridge: Polity, 2001), 17.

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