



CHAPTER 4

Freedom and Justice

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CHAPTER OVERVIEW

This chapter is about freedom and justice, two political concepts that are fundamental to democracy. Since freedom is most commonly defined as the absence of constraints, we begin by examining a variety of con-

straints that may be relevant to political freedom. Then we explore the degree to which freedom is desirable by considering other values (such as equality, concern for others, and the maximization of happiness) that might

▲ A mural in Sydney, Australia, shows Australian artist Sergio Redegalli writing, “Free Speech *Conditions Apply” (© Richard Milnes/Alamy Stock Photo).

conflict with freedom, mainly in the context of the political thought of John Stuart Mill. In the second part of the chapter we turn to the concept of justice and examine various criteria for determining its meaning through

readings of John Rawls and Robert Nozick. We conclude with a look at three alternative theories of justice that challenge conventional liberal assumptions about justice: cosmopolitan, communitarian, and green thought.

Constraints on Freedom

Like most political concepts, “freedom” (or liberty; the two terms are used interchangeably) is difficult to define. Like democracy, it is regarded as a “good” that all governments should strive for. In practice, though, we might have grounds for limiting freedom to protect or pursue other “goods” that we value. A common sense starting point might be to say that freedom is the absence of constraints. But this only takes us so far, because political theorists disagree about what counts as a constraint. Take, for example, free speech and the laws that protect or restrict it. In 2005, Doğu Perinçek, the chairperson of the Turkish Workers’ Party, called the 1915 Armenian genocide “an international lie” during a demonstration in Switzerland. In 2007 he was convicted under a Swiss anti-racism law that prevents genocide denial. In 2014, on the grounds that his right to free speech had been violated, the European Court of Human Rights (ECHR) overturned the conviction. The state of Armenia filed an appeal, and Turkey took Perinçek’s side. The appeal took place in January 2015 at the ECHR in Strasbourg (Glum, 2015).

Other than the international dimensions of this case, and the fact that Amal Clooney (the wife of actor George Clooney) represented Armenia, the principles of the case are fascinating. Should governments have the right to restrict free speech? Should supranational bodies like the ECHR have the right to overturn the legal decisions of states? Should third-party states like Armenia and Turkey (both of which are not members of the European Union) have the right to intervene? Since Perinçek is a Turkish citizen and Turkey denies the Armenian genocide, can he really be convicted of a crime for echoing the official line of his own country? These and other questions arise from this complex case, and they all revolve around the question of freedom and the role of laws in protecting and limiting it.

Nondemocratic Government

To what extent is freedom restricted by living in a nondemocratic society? There may be no necessary relationship between freedom and the absence of democracy. It’s possible to imagine a benign dictatorship that grants considerable freedom to its people. Conversely, a democratic polity could conceivably limit freedom in a variety of ways. As Berlin (1969, p. 130) points out, “The answer to the question ‘Who governs me?’ is logically distinct from the question ‘How far does government interfere with me?’”

Physical Coercion

Perhaps the most obvious example of a constraint on individual freedom is a situation in which others physically prevent us from doing what we want to do; imprisonment and slavery are two extreme examples. Unfair or discriminatory laws may also fall into this

category, since, as Barry (2000, p. 196) points out, the costs of breaking the law—such as a long prison sentence or even the death penalty—are so high that they are often equivalent to physical constraints.

Physical Incapacity

We might want to add *physical incapacity* to the list of constraints, in the sense that we are unfree when physical impairment prevents us from doing what we want. One example would be a condition that deprives an individual of an ability that others have, such as the ability to walk, see, speak, or hear; but another might be a condition that affects all humans, such as the inability to fly. Such constraints may have to be accepted if the situation is beyond the control of human **agency**. It's different, however, when a disability could be altered or accommodated and all that stands in the way is a lack of resources required for, say, corrective surgery or a powered wheelchair. In that case, the argument for using the language of freedom is compelling.

Rationality

Some political theorists also say that freedom can justifiably be limited according to how rational we are. Thus we would not see the supervision and direction of children, or of adults with senile dementia, as constraints on their freedom in the way that we would in the case of healthy adults. Restrictions on the freedom of children or people with dementia are justified in the pursuit of other goals, such as protecting their safety. There are dangers in the claim that only rational behaviour is free, since it is by no means clear what rational behaviour is.

Psychology

Another set of constraints worth considering are psychological influences on our behaviour. If we can be constrained by physical coercion, we might also be constrained psychologically—that is, we can be driven to behave in certain ways by external influences that affect the way we think. A powerful example is commercial advertising, which is designed to create wants that otherwise would not exist. There is no genetic or natural desire to own an iPad Pro or a Samsung Galaxy Note 5, for example, yet effective marketing has ensured that these products are in hot demand. In the same way, tobacco advertising has fuelled a demand for cigarettes. In response, the UK government banned such advertising on the grounds that it encourages smoking, which is addictive and life threatening. Canada and Australia have also instituted large warning labels as well as photos of the damage that cigarette smoking can cause. Interestingly, both tobacco advertising and governmental counteradvertising campaigns can be seen as efforts on the part of elites to influence, if not determine, the way the masses think. Both are examples of Steven Lukes's "third dimension" of power and also reflect Antonio Gramsci's work on hegemony.



See Chapter 2, p. 47, for an exploration of the three dimensions of power.

Economic Impediments

If we see freedom as the absence of externally imposed physical coercion, we seem to be saying that freedom is best achieved if the state and society leave people alone. However, some political thinkers argue that the state can do a great deal to increase freedom by

intervening in the lives of individuals. As Mary Wollstonecraft and many later theorists pointed out, a person is not fully free to develop as a human being if she does not have enough to eat or a roof over her head. By intervening to provide a basic standard of living below which no one can fall, the state can increase the freedom of individuals to make something of their lives. This idea has been at the root of the modern welfare state in many countries, including Canada.

KEY POINTS

- Since freedom is defined as the absence of constraints, the identification of constraints on our freedom is a useful starting point.
- Possible constraints can be divided into those that are external to us and those that are internal to us, the latter including characteristics such as rationality.

Negative and Positive Freedom

The theoretical distinction between negative and positive freedom dates back to the ancient Greeks (Gray, 1991, p. 7) but was also heavily influenced by John Locke and Jean-Jacques Rousseau. Locke argued in favour of *negative rights*—that is, rights to be free from government interference, particularly in economic matters. Rousseau, by contrast, argued that the state had an obligation to provide its citizens with a decent standard of living (Forsythe, 2009, p. 91).

In modern times, the distinction between these two forms of rights has been associated with the political theorist Isaiah Berlin (1909–1997). Berlin famously argued that these



PHOTO 4.1 | The flags of Tunisia, Libya, and (in the background to the left) Egypt fly at a crowded demonstration in Cairo's Tahrir Square on 25 February 2011.

represent the two main conceptions of freedom. In the simplest terms, he defined **negative liberty** as “freedom from” and **positive liberty** as “freedom to.” According to Berlin, “liberty in the negative sense involves an answer to the question: ‘What is the area within which the subject . . . is or should be left to do or be what he is able to do or be, without interference by other persons?’” The positive conception, by contrast, is concerned with the question “What, or who, is the source of control or interference that can determine someone to do, or be, this rather than that?” (Berlin, 1969, pp. 121–2). Berlin distinguishes between the *area* of control (negative freedom) and the *source* of control (positive freedom). The ability of individuals to be self-governing is crucial for advocates of the latter. Although influential during the 1960s, Berlin’s view was later criticized, in part because theorists such as Tim Gray were able to show that there were multiple versions of freedom, not just the two that Berlin identified (Gray, 1991, pp. 8–11).

Another way of looking at this issue is to compare the approaches to rights in the United States and the Soviet Union. The United States, through its Constitution and first 10 amendments (the Bill of Rights), promoted negative freedoms: the right to freely assemble, the right to free speech, the right to practise one’s own religion without state interference, and the right to a free press that is unrestricted by government. Such rights give priority to individual autonomy—in effect, the right to be left alone by the state to pursue one’s own goals (Janda, Berry, and Goldman, 2008, pp. 457–8). By contrast, more positive rights were generally mistrusted as threats to the capitalist system (Forsythe, 2009, pp. 92–3). Economic rights to a minimum wage or workplace protection, for example, could constrain business practices, while social and cultural rights such as government-funded health or childcare or higher education were widely rejected on the grounds that they would represent either a burden on state resources or a restriction on free enterprise and consumer “choice.” Meanwhile, communist countries in general promoted positive rights, including the right to employment, the right to education, the right to healthcare, and, in many cases, the right to state-funded childcare on the grounds that the state had a responsibility to take care of its citizens.

In international law, these two types of rights are protected in two separate covenants, both adopted by the United Nations in 1966: the International Covenant on Civil and Political Rights (CCPR) and the International Covenant on Economic, Social, and Cultural Rights (CESCR) (Robertson, 1997, pp. 256–72). These two main types of rights *can* be seen as complementary if we argue that the state should try to promote equality in society to a limited extent while still safeguarding individual liberty to a limited extent. The key is to find a balance between the US and Soviet extremes. Pierre Trudeau is a good example. On the one hand he promoted state-run healthcare, and on the other he removed the Criminal Code provisions that prohibited same-sex acts between consenting adults. Trudeau saw no contradiction between the idea that the state had a role to play in healthcare and the idea that it had “no place in the bedrooms of the nation” (Ricci, 2009, p. 111).

Is Freedom Special?

Justifying freedom is different from defining it, although justification and definition are linked in that our assessment of the value of freedom depends on what we think it is. We might argue that we can limit freedom to increase equality. But if we define freedom in such a way that it requires state intervention to equalize resources, then the two concepts are not diametrically opposed. There are a number of justifications for freedom. Some

political theorists argue that there should be a presumption in favour of freedom (Benn, 1971)—that is, those who want to limit freedom need to make a strong case. However, we might ask why freedom should be valued so highly.

One argument is that freedom is a basic human right (Hart, 1967). But this argument also depends on a prior argument in favour of rights in general, and a right to freedom in particular. Ronald Dworkin (1978) argues that the freedoms necessary to ensure that individuals are treated with equal concern and respect (so-called “strong” liberties) should be inviolable. But Dworkin takes it for granted that equality is a good thing. Moreover, his argument for upholding strong liberties has been criticized as biased. Is it not a matter of opinion which liberties count as “strong” ones that uphold the right to equal concern and respect (Gray, 1991, p. 106)? This is particularly problematic if we believe that cultural pluralism—where competing norms of behaviour are regarded as acceptable—is desirable; see Box 4.1.

Mill, Utilitarianism, and Freedom

One of the best-known defences of freedom was put forward by John Stuart Mill in his essay *On Liberty* (Mill, 1972), originally published in 1859. Mill argues that freedom is conducive to the greatest amount of happiness. For Mill, certain types of pleasure are more valuable than others and should be pursued both by individuals and the state. These

KEY CONCEPT BOX 4.1

Freedom and Cultural Pluralism

Cultural pluralism refers to situations in which different cultures follow different norms of behaviour within a single society. Consider the following cases:

1. In 2013, the government of Quebec tried to introduce a Quebec Charter of Values (or *Charte des valeurs québécoises*). This would have had the effect of restricting public-sector employees (including teachers, police officers, and medical personnel) from wearing religious symbols or clothing in public places. In addition to the hijab (headscarf) worn by some Muslim women, the ban covered Jewish skullcaps, Sikh turbans, and conspicuous Christian crosses. The legislation was designed to promote secularism (or *laïcité*). Nevertheless, fear and hostility toward Muslim immigrants were also seen to be at play here, and the Charter was never implemented (Gagnon, 2014).
2. It is estimated that well over 100 million women have been subject to circumcision, which is also called female genital mutilation (FGM). This practice (involving the removal of either some or all of the clitoris) can lead to serious physical and psychological problems. Yet it is justified on cultural and religious grounds and is still widely practised in Western and Southern Asia, the Middle East, and large parts of Africa. It has also been estimated that several thousand girls are circumcised every year in Britain. In Canada, FGM is prohibited under two sections of the Criminal Code, because it is seen as assault (Weir, 2000, p. 1344).

These examples bring cultural pluralism into the debate about the limits of freedom. Should we seek to limit cultural pluralism even if that means reducing freedom? Or should we allow cultural diversity even if that means allowing practices that cause harm and deny freedom to certain groups?

“higher pleasures” are associated with cerebral activities—literature, music, art, and so forth—as opposed to physical ones.

Presenting the case for the maximum possible freedom of thought and discussion, Mill argues that even beliefs that are obviously false or hurtful to the sensibilities of others should not be censored, since true beliefs will gain support when they have to be upheld against objections, and false beliefs are more likely to be denounced if they are open to public challenge. The wider the variety of opinions and lifestyles that are tried and tested, the stronger the society will be. In this way, freedom of thought and expression are a means to social progress.

In the same essay, Mill argues that freedom of action should be subject to only one limitation, known as the **harm principle**: Only those actions that harm others (“other-regarding actions”) should be prevented by public opinion or the state. Self-regarding actions—that is, actions affecting only oneself—are not to be interfered with. We are entitled to warn someone of the dangers of pursuing a particular path, according to Mill, but we may not physically restrain that person unless his or her action would harm somebody else. Actions that others find offensive but that do not cause them physical or financial harm are not to be understood as other-regarding.

Freedom, Happiness, and Paternalism

Mill’s thoughts on liberty have been very influential in determining the nature of state intervention in modern liberal societies. Laws legalizing homosexuality between consenting adults, for instance, owe much to Mill’s distinction between self- and other-regarding actions.

Much of the debate about Mill has focused on his arguments for freedom of action. In the first place, it is regularly argued that the distinction between self- and other-regarding actions is unsustainable: Surely there are few, if any, actions that affect the actor alone. Some have challenged Mill’s view that actions which offend others but do not cause them physical harm should be seen as self-regarding. For instance, the British judge Lord Devlin (1905–1992) argued that there is no such thing as private immorality because even private behaviour will have public consequences. Widespread drug use, for instance, will affect economic performance and put pressure on health resources. For Devlin (1965), society is held together by shared moral values, and excessive moral pluralism will be catastrophic for social stability.

We can also challenge Mill’s assumption that freedom of action is conducive to happiness or well-being. Utilitarians, committed to maximizing happiness in society, would have to think hard about behaviour that others find offensive but that do not directly harm them physically or financially. They would have to assess the merits of allowing that behaviour to continue versus the merits of putting a stop to it (see the Case Study on smoking in Box 4.2). Such decisions are important in the age of the Internet, when the exercise of freedom of expression can so easily have unintended consequences. In 2005, for instance, violent protests broke out around the world when conservative Muslims learned that a Danish magazine had published a series of cartoons mocking the prophet Muhammad. In November 2011, the offices of the French magazine *Charlie Hebdo* were firebombed after the magazine issued a spoof edition supposedly “guest edited” by the founder of Islam (Jolly, 2011). Things became far more heated in January 2015, when two gunmen open fired at the *Charlie Hebdo* offices, killing half of the editorial staff. Twelve ultimately died as a result of the attack, which was traced to two Islamist militants, Saïd and Chérif Kouachi, both born and raised in Paris (Chrisafis, 2015).

CASE STUDY 4.2

Smoking and Liberty

In 2003, Prince Edward Island became the first Canadian province to ban smoking in public places. The main justification for the ban—that smoking harms nonsmokers who are forced to passively inhale the smoke produced by others—recalls Mill, who would argue that smoking in private where no one else will be harmed is legitimate, but smoking in public is not.

There are two criticisms of Mill's harm principle, however, that suggest the smoking ban does not go far enough. The first criticism points out that it is difficult to distinguish between self- and other-regarding actions. Is it not the case that smoking, even in private, has the potential to harm others? If I become ill through smoking, then this will have an impact on family members who will be harmed—financially and emotionally—by my death or illness. My poor health will also have wider financial consequences for the healthcare system that has to treat me and for the social system that has to support me if I am unable to work.

The second criticism posits that there are good reasons for the state to intervene to prevent individuals from harming themselves. In the case of smoking, then, my health and well-being may not be served by liberty, and indeed my happiness might be enhanced by restricting my freedom. You could even argue that the state should step in to ban smoking to improve the health of those who choose to smoke and thereby increase overall levels of happiness. And further, smoking is highly addictive, and many smokers who want to quit find it next to impossible.

To be fair to Mill, remember that racially motivated writing and speech could be prohibited on the grounds that they are other-regarding. This was the principle behind the prosecution in 2006 of Nick Griffin, the leader of the British National Party, and the radical cleric Abu Hamza, both of whom were charged with inciting racial hatred. Action was taken against them not because their comments were offensive, but because they were seen as inciting their followers to cause harm to others.

Mill and New Liberalism

Mill put forward a liberal theory of freedom, justifying limited state intervention and maximizing personal autonomy, that did much to shape the modern liberal theory of the state, with its emphasis on neutrality and moral pluralism. However, Mill was well aware of the poverty and squalor in which so many people lived in nineteenth-century England. Indeed, he recognized the challenge and, to some extent, the value of the socialist critique of liberalism that emerged in the second half of the century. Mill can therefore be located on the cusp between the old *classical liberalism* and the *new liberalism*, emphasizing social reform, that came to dominate British politics.

See Chapter 1, p. 35, for more on the liberal theory of the state.

See Chapter 5, p. 90, for a discussion of the difference between classical and new liberalism.

KEY POINTS

- Why do we value freedom? Various reasons have been proposed: because it is a basic human right, a means to happiness, a means to self-development, and so on.
- John Stuart Mill argues for maximizing freedom; only “other-regarding” actions should be subject to state or societal intervention.

The Meaning of Justice

Justice is another political concept that is difficult to define. In its most basic sense, justice requires us to give to others what they are entitled to. This differentiates justice from charity: Although it may be morally good for us to give to the poor, we are under no obligation to do so. In the modern world, justice is concerned with how different resources—wealth, income, educational opportunities, and so on—should be distributed. This distributional concept implies that resources are scarce, because if we had enough resources to go around there would be no need to agonize over who should have them and who should not.

Theorists distinguish between **procedural justice** and **social justice**. The first focuses on the fairness of the process by which an outcome is reached, whereas the second focuses on the fairness of the outcome itself. Modern theories of social or distributive justice have identified a number of criteria that we might use as guides to distribution (Miller, 1976, pp. 24–31). We could say that resources should be distributed according to *need* or according to *merit* or according to a principle of pure equality. All theories of justice involve equality, not in the sense that things should be distributed equally, but in the sense that treatment should be consistent. Once we have accepted that equals should be treated equally, we may decide that some humans are not equal with others in some ways and that differential treatment can be justified on those grounds. For instance, we might decide that since some people work harder than others or are more talented than others they should receive more of the resources that are available for distribution. Or we might decide that since some people or groups were wronged in the past (for example, through the Indian Residential School system in Canada) certain things must be done to acknowledge and compensate for these wrongs.

A theory of justice based on need is closely associated with socialism, as in the slogan “from each according to his ability, to each according to his needs.” Nevertheless, the existence of the welfare state indicates that modern liberal democracies also recognize that meeting needs is just (though most of them limit the needs they recognize to the most basic).

A theory of justice based on merit advocates distributing resources according to what individuals deserve, whether because of natural talent, willingness to do hard work, or general contribution to society. A **meritocratic theory of justice** considers it just to reward people differentially according to merit and recognizes the social advantages of using incentives to encourage the development and use of talent. It also recognizes the importance of equal opportunity: If rewards depend on merit, the playing field must be levelled, meaning equal educational and welfare opportunities for all.

KEY POINTS

- Justice is a distributional concept. Where different theories of justice diverge is over the criteria for distributing resources.
- A distribution principle based on need is problematic because (a) it is not always clear what qualifies as need and (b) it denies any role to the importance of merit.
- A distribution principle based on merit allows for incentives, but would seem to require considerable state intervention to ensure the equality of opportunity that the principle demands.

Rawls's Theory of Justice

The meaning of justice becomes clearer if we look at a particular explanation. The best-known account is John Rawls's *A Theory of Justice*, published in 1971; see Box 4.3. Rawls's account can be divided into two parts: the *method* he used to arrive at his principles of justice and then the *principles* themselves.

Drawing from the **social contract** tradition, Rawls devises a method for arriving at principles of justice to which everyone can consent. The problem with competing theories of justice is that they are based on judgments about values that cannot be resolved. So how do we choose between a theory of justice emphasizing merit and one emphasizing need? Our choice will probably depend on our values and our vision of the kind of society that we want: one that emphasizes equality or one that emphasizes achievements.

Rawls devises a hypothetical situation in which there will be unanimous support for particular principles of justice. Imagine, he says, an **original position** in which individuals are asked to meet and decide how they want their society to be organized. In this original position, the members will be under a “veil of ignorance.” They will have no idea what their own position in society will turn out to be—they don't know if they will be rich or poor, black or white, male or female, disabled or able-bodied. Rawls also assumes that individuals in the original position will be self-interested, wanting the best for themselves. Finally, he also suggests that they will desire what he calls “primary goods,” such as wealth, good health, education, and so on.

In the second part of the theory, Rawls outlines the principles he thinks would emerge when the individuals in the original position had imagined the perfect society. There are two:

1. Each person is to have an equal right to the most extensive total system of equal basic liberties compatible with a similar system of liberty for all.
2. 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, 1971, p. 302).

Rawls adds that principle 1 (the liberty principle) has priority over principle 2, and that 2(b) (the fair opportunity principle) has priority over 2(a) (the difference principle);

See Chapter 1, p. 32, for more on the social contract tradition.

BIOGRAPHY BOX 4.3

John Rawls (1921–2002)

John Rawls was an American philosopher, whose book *A Theory of Justice* (1971) is widely seen as one of the most influential works of political theory in the twentieth century. His rights-based theory of justice presented a major challenge to the utilitarian tradition that was dominant at the time in North America and Western Europe.

In his second book, *Political Liberalism* (1993), Rawls argued that his theory of justice applied only to the political realm. In the wider sphere of ethics he advocated the greatest possible freedom for people to pursue different conceptions of the good life. This moral pluralism has become a central feature of the liberal creed.

thus, liberty cannot be sacrificed to achieve economic improvement. This rules out slavery, in which it is possible that individuals without liberty could still have a high degree of economic and social well-being.

Critiques of Rawls

Rawls's work has generated a huge literature (see, for instance, Daniels, 1975; Kukathas & Pettit, 1990; Wolff, 1977). Some critics focus on his method, others on his principles. First, some theorists question whether people in the original position would in fact have chosen the principles of justice that Rawls describes. Jonathan Wolff (1996, pp. 177–86) questions the assumption that, because they don't know where they will end up in the social system, individuals behind the veil of ignorance will make the conservative choice to minimize their risks by adopting what Rawls refers to as the “maximin” strategy (maximizing the minimum): ensuring that the worst possible scenario is as good as it can be. This would imply a strong welfare state; protection for the sick, the poor, and the elderly; and constraints on excessive wealth and power. Certainly it would be extremely risky to adopt a “maximax” strategy and create a society in which the rich would be very rich and the poor very poor, but is there not a middle ground between the two extremes? For example, we could choose a society that would have more inequality but that would also provide the worst-off with some basic protection. In this scenario, the average position in society would be considerably improved, and though life at the bottom of the social pile would be less good, it would not be a total catastrophe.

Rawls's principles of justice have been criticized from the left and the right, and it is worth looking at these criticisms further. From the left, Robert Wolff (1977) argues that Rawls's difference principle is not as egalitarian as it seems. He is particularly suspicious of the priority given to liberty. Should liberty always be protected against any alternative? Rawls takes it for granted that most people can afford the basics required to survive. Yet there are many parts of the world where this is not the case; in such places, Wolff argues, liberty is (and in many cases should be) sacrificed to achieve a basic standard of living.

From the right, Rawls's major critic has been the American philosopher Robert Nozick (1938–2002). Nozick was writing from a libertarian perspective, which calls for a minimal state focused on protection of property rights. He put forward a procedural theory of justice in which the main concern is not the outcome (for example, meeting needs) but the way in which property (in the broad sense, meaning anything owned by an individual) is acquired. This is a historical theory in which the “past circumstances or actions of people can create differential entitlements or differential deserts to things” (Nozick, 1974, p. 155). Provided that the property was acquired fairly, then the owner has a just entitlement to it. Nozick considered any attempt to redistribute property, even through taxation, to be unjust.

For Nozick, therefore, Rawls's end-state theory—that inequality is justified only when it benefits everyone, and in particular the worst-off—is illegitimate. He notes that Rawls's principles are inconsistent. How can one hold that liberty should be prized and yet advocate a major redistribution of resources? For Nozick, any attempt to impose a particular pattern—such as an outcome that meets a particular need—will require enforcement and hence restriction of liberty.

Nozick's entitlement theory comes with two provisos. First, the original acquisition of property has to have been fair: If it involved force or fraud, then compensation is due.

As critics point out, it is clearly the case that much property has, in the past, been unfairly acquired. The levels of compensation that might be required to provide redress, and the difficulty of establishing how much is due, represent huge problems for Nozick's theory (Barry, 2000, p. 151). This is particularly true in North America, where much of the territorial landmass was simply taken from Indigenous peoples without their consent (with people forced off and sometimes killed) and many legal treaties between First Nations and the Crown were never honoured. The second proviso is that acquisition must not go against the essential well-being of others. This rules out any attempt to buy up all the water or food supplies in a community and then deny them to others.

Intuitively, one might doubt that the consequences of Nozick's theory are just. For example, his principles could result in such inequalities that the poorest members of society would be at risk of starvation. Moreover, it can be argued that redistributing resources actually increases liberty because it increases choices for the poor (Wolff, 1996, pp. 194–5).

KEY POINTS

- Rawls's theory of justice has been criticized both for his principles of justice themselves and for the way he arrives at them.
- Some argue that individuals in the original position would not necessarily choose the principles that Rawls says they will. Some theorists accuse Rawls of manipulating the method to produce the outcome he desires.
- Rawls has been criticized from the left and the right. From the left, his principles are seen as not egalitarian enough; from the right, they are seen as too egalitarian.
- Nozick provides the best-known critique of Rawls from the right. He argues that the kind of redistribution that Rawls calls for is illegitimate. Individuals should be entitled to hold the property they own without intervention by the state, provided they have acquired it fairly.

Alternative Theories of Justice

Rawls and Nozick, although different in many ways, both put forward theories of justice based on liberal ideas. Both of them also limited their focus to relationships between human beings within sovereign states. Other theories of justice are not limited in these ways.

Cosmopolitan Theories of Justice

The growing interconnectedness of peoples and sovereign states suggests that there are grounds to argue for an extension of justice beyond national boundaries. To limit discussion of justice to the internal affairs of wealthy Western states seems trivial, given the staggering inequalities between different parts of the world, particularly in light of the claim that the rich states of the global North are at least partly responsible for the poverty in the South. This has led political theorists to develop theories of justice that are global in scope; see the Case Study in Box 4.4.

CASE STUDY 4.4

Climate Change and Justice

Cosmopolitan theories of justice try to impose a duty on individuals and states to act positively to end injustices in the world, or at least to refrain from doing harm. Both approaches feature in the politics of climate change. Cosmopolitans insist that rich industrialized countries must stop burning fossil fuels at the rate they currently do. Equally, since these countries are held responsible for climate change, they should help states in the developing world. Bangladesh, with its massive flooding problems, is a well-known example of a country in serious peril from climate change. Although it did little if anything to cause climate change, it suffers from its effects, and also lacks the money to deal with its problems.

This **cosmopolitan** approach is based on the principle that our loyalties should lie with human beings as a whole, not just with those who happen to live within our country. The idea that human beings are equal members of a global citizenry has a long history in political thought. However, the growing inequality between North and South in recent decades, and the increasing recognition of this inequality, has made **global justice** “one of the great moral challenges of the age,” as the international relations theorist Andrew Linklater has argued (2008, p. 555).

There is little agreement on what our moral obligations should be to those who do not belong to our own community. At one extreme, Peter Singer (2002) has argued in favour of an unlimited obligation, whereby we (in the rich North) are obliged to help others (in the poor South) even to the point of seriously eroding our own standards of living. A less extreme position, adopted by Thomas Pogge (1989), calls for application of Rawls’s principles on a global scale to increase redistribution between the rich and poor parts of the world.



See Chapter 14, p. 285, for a further discussion of cosmopolitanism.

Communitarianism and Justice

An alternative to cosmopolitan theories of justice, and to liberal theories of justice in general, is **communitarianism**. Communitarians do not accept the idea, found in both Rawls’s and Nozick’s theories, that liberal theories can apply in all social settings, whatever their individual historical or cultural features. They reject this universalism in favour of culturally specific justice claims. In other words, principles of justice should take into account the particular social and cultural character of the society for which they are intended. Principles designed in this way will differ from society to society (Walzer, 1985). In other words, the history, languages, religious beliefs, and values of a community will help determine what is seen as just and unjust, fair and unfair.

The communitarian position offers an important critique of the cosmopolitan theory of justice. Communitarians see the cosmopolitan notion of global citizenship as naive, since our loyalties develop and our identities are forged within our own particular communities (Walzer, 1994). They also see it as undesirable and illegitimate to impose our own liberal conceptions of justice on other cultures.

Green Political Thought and Justice

In recent years, green political thought has challenged the view that justice can be applied only to currently living humans. There are a number of positions in this debate that are worth looking at. At the more moderate end, many philosophers have raised the question of whether justice should be applied to future generations of humans (see Barry, 1999). Of course, this **intergenerational justice** might clash with **intragenerational justice**. To put it starkly: Can we really justify cutting back on economic development to save the environment for future generations when there are so many people in the world starving today?

A number of green political theorists and moral philosophers want to extend the recognition of justice claims beyond those of human beings. Many, for example, have tried to apply justice to at least some nonhuman animals (Garner, 2005). Some green political theorists would go even further and include the whole of nature as deserving of justice. Some draw the line after living things (Taylor, 1986); others want to include inanimate phenomena too, arguing that it is possible to conceive of applying justice to ecosystems or biodiversity (Fox, 1984).

→ See Chapter 6, p. 118, for more on the philosophy of environmentalism.

KEY POINTS

- The conventional liberal understanding of justice has been challenged by at least three alternative understandings.
- Cosmopolitan theories of justice argue that we have obligations toward all humans, not just those residing within our own national boundaries.
- Communitarian theories argue that principles of justice depend on particular social, cultural, and historical experiences and should not be considered universal.
- Green theories challenge the assumption that justice applies only to humans.



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PHOTO 4.2 | Two polar bears caught on a shrinking ice floe. Global warming is having a severe effect on the Arctic, where sea ice is melting at an unprecedented rate.

Conclusion

In this chapter we have examined the meaning of liberty and justice (semantic analysis) and tried to assess the values central to competing theories of liberty and justice (normative analysis). As our examination of freedom and justice reveals, political concepts are interconnected. We cannot properly evaluate freedom without considering how it relates to justice. This exercise also requires us to consider the merits of freedom and equality, which most, if not all, theorists view as conflicting. At the same time we have seen that the essentially contested nature of political concepts makes it difficult to move beyond an exercise in semantics. For example, freedom has been regarded as a source of inequality, on the one hand, and as a prerequisite for equality, on the other.

Theorists of freedom and justice now have to engage with the impact of globalization. Our growing knowledge of different cultures—made possible both by technological developments that give us a clearer picture of how different societies operate and by the increasing mobility that has led to the emergence of multicultural communities—makes us more circumspect about the value of freedom and the restrictions on freedom that may be considered legitimate. Likewise, there are increasing calls for the principle of justice to be applied globally to address the shocking inequalities between different parts of the world. These developments represent important challenges for political theorists, challenges they will have to grapple with for some time to come.

Key Questions

1. What constraints exist on our freedom?
2. Are there only two types of liberty, negative and positive?
3. Is Mill's distinction between self- and other-regarding actions a viable principle?
4. Should freedom of thought and expression be maximized?
5. For what values, if any, would you want to limit freedom?
6. Can justice exist without freedom?
7. How valid is a needs-based theory of justice?
8. Critically examine Rawls's theory of justice.
9. How viable is a cosmopolitan theory of justice?
10. Can justice apply to nonhumans?

Further Reading

- Ignatieff, M. (1998).** *Isaiah Berlin: A life*. London: Metropolitan Books. An accessible biography of Isaiah Berlin that introduces readers to his philosophy as well as some of his critics.
- Mill, J.S. (1972).** *Utilitarianism, on liberty, and considerations on representative government*. London: Dent. The classic argument for individual freedom.
- Pellow, D.N., & Brulle, R.J. (2012).** *Power, justice, and the environment: A critical appraisal of the environmental justice movement*. Cambridge: MIT Press. A wide-ranging consideration of the relationship between justice and the environment through an examination of the environmental justice movement.
- Rawls, J. (1971).** *A theory of justice*. Cambridge: Harvard University Press. There is no substitute for this hugely important book.