The welfare state: justice or theft?

Invited commentary on... Talking liberties

Sameer P. Sarkar

Abstract John Rawls's theory of justice has been embraced by both the political left and the right, albeit for different reasons. This commentary points out some caveats regarding Rawls's theory as applied to healthcare in general and psychiatry in particular. An alternative political philosophy, the theory of 'entitlement justice' as advanced by Nozick, is presented and it is argued that this has more real-life relevance for healthcare ethics than the Rawlsian theory of distributive justice. The reader is invited to determine which theory, if either, is the best fit for psychiatry. The article concludes with some thoughts on the limits to autonomy that mental illness imposes and likens it to the concept of 'interstitial autonomy'.

> 'Society cannot exist unless a controlling power upon will and appetite be placed somewhere, and the less of it there is within, the more it must be without. It is ordained in the eternal constitution of things that men of intemperate minds cannot be free. Their passions forge their fetters.'
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> Edmund Burke (1729–1797).
> *Letter to a Member of the National Assembly*, 1791

John Rawls's *Theory of Justice* (1971) is a complex work, which takes many readings to fully assimilate. Each time I reread it, I find new ideas to grasp. They were always there, but it takes me some more time to understand. Rawls's everyday relevance is to politics and jurisprudence, and he makes no direct connection with health, especially psychiatry. So it is not surprising that it might be difficult to distil his thoughts and apply them to psychiatry. Ikkos *et al* (2006, this issue) should be congratulated for attempting to do this: it is very good to see a passionate exposition of one of the major political philosophical theories of the 20th century. But with a task of this magnitude, some things are bound to be missed out; it may also be difficult to present competing and critical accounts of Rawls's theory. In this commentary, I will discuss one omission and present one issue that, in my view, demonstrates the limitations of Rawls's work for mental health practice.

The omission

I believe that Ikkos *et al* have not fully examined the implications of one of the most important aspects of Rawls's theory: distributive justice. This is a noticeable omission, especially because that concept has the most direct relevance to modern healthcare and, indeed, to psychiatry. Rawls's theory of justice provides a philosophical underpinning for the bureaucratic welfare state. He was the first to provide a reasoned argument for why it was right for the state to redistribute wealth in order to help the poor and disadvantaged.

In response, Nozick wrote *Anarchy, State, and Utopia*, a direct critique of the Rawlsian theory of distributive justice (Nozick, 1974). Nozick proposed his own theory, of 'entitlement justice', suggesting that each person is entitled to all they have acquired, provided they gained their possession justly. In Nozick's view, the welfare state is a form of theft, and taxation, tantamount to forced labour.

Nozick's 'entitlement justice'

The major thrust of Nozick's argument focuses on the issue of property. According to him, any theory of property must be based on three principles: a principle of justice in initial acquisition (to explain how an individual came to be the first appropriator of a good from nature), a principle of justice in transfer and a principle of justice in rectification (for example, compensation to the victims of crime). How does one reconcile unfettered acquisition of property with liberty? One man's property (even if justly acquired) may be another man's restriction of liberty. The 19th-century philosopher Herbert Spencer likened this to the propertyless not having any space to even put his feet on the ground. In his view, therefore, the proper exercise of liberty requires state control of resources and introduces some notion of fair distribution.

However, 'fair' does not mean 'equal', or even 'identical'. This view, where the state controls and allocates resources, resembles not so much the

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libertarian view of the state, but the communist: a political theory that spectacularly failed. However, Nozick's views seem to have had more political appeal and success than Rawls', in terms of practice, even in regimes with strong welfare structures such as our own. Nozick is a strong critic of state interference in the lives of individuals, especially in the context of property: let us see how this tension between the individual and the state plays out if one equates health as a good (or commodity) and hence as property.

Let health = property

The state can argue that it has an interest in the health of its citizens, and therefore a 'right' to interfere or even coerce. But what are the proper limits of state coercion? We each have claims to absolute rights to life and liberty, in the sense that no one may justifiably interfere with another's life or liberty, except in cases of self-defence or legitimate punishment. But these are negative rights of non-interference, not positive rights to aid or assistance from others or the state (Berlin, 1958). Right to property, on the other hand, can be said to be a positive right and hence can attract legitimate state intervention, but only to safeguard it. But is the state's right to intervene more persuasive if the state is also the provider? This is where the whole rationing problem in socialised medicine links directly with the Rawlsian theory of distributive justice. This is, of course, an oversimplification and this link is not without major caveats. But Rawls does not offer an analysis of how to deal with parity of services and goods, which is a key issue in mental health.

In Nozick's view, the state is justified to use coercion only to protect people against force, fraud and theft, and to enforce contracts. Thus, it exists to safeguard rights, and the state itself violates people's rights if it attempts to do any more than this. This minimalist state (which Nozick calls the night watchman state) is distinguished by what it is not permitted to do, rather than what it does. We know that all modern states include these functions of the minimal state but when the state goes beyond this, it acts, according to this theory, without justification. The welfare roles such as a central bank, public works, education and health, which many will assume to be the proper tasks of government, will be the responsibility of private individuals or firms, for the sake of profit or out of public spirit.

Of course, this will lead to a different type of problem: the problem that a minority of people will be left behind, or excluded from goods and services. In Nozick's view this is not a real worry because 'whatever arises out of a just situation by just steps is itself just' (Nozick, 2001: p. 151); even if there is suffering. This sounds unappealing to liberal ears, but the realities of communism (described memorably as a 'society beyond justice' by Tucker, 1969), where everyone gets something, but not necessarily anything they want, should give us pause.

Balancing the locus of control

So where is the balance? How does one reconcile the communist vision of state control over individuals for their own good with the realities of a modern, democratic state, in which, arguably, tension and conflict between both individuals and the state are seen as healthy? Despite being embraced by both the politically left and the right, Rawls does not provide an answer. He does say that his theory of justice assumes a definite limit on the strength of social and altruistic motivation, and also supposes that individuals and groups put forward competing claims. Although willing to act justly, they are not prepared to abandon their interests, although Rawls assumes that there is the spontaneous coherence between the aims and wants of individuals with the ideal good. Sadly, he doesn't pursue these questions further. His theory of justice, in terms of property, therefore seems to me unworkable.

The limitation

One of the attractions of Rawls is that he assumes individuals to be moral agents, who act in a certain way and, one assumes, autonomously. As Ikkos *et al* say, this is the essence of citizenship. But politically, the crucial question in psychiatry has always been, how should we treat those who lack autonomy, especially those who have lost it or never acquired it? These are people who, arguably, lack that individuality which is central to Western notions of political and moral identity, especially in the context of rights and duties.

It is fashionable these days to emphasise the importance of autonomy in doctor–patient relationships: perhaps even to treat patient autonomy as absolute and non-negotiable. It has been suggested that concerns about patient autonomy (or its lack) grew in the 1960s, with the rise of the civil rights movement and autonomy in other domains (Tauber, 2005). But respect for autonomy is only one moral value among several, albeit one that tends to crowd out others (Dworkin, 1988; Gillon, 2003). Nowhere is the issue of respect for autonomy more complex than in psychiatry, where the tension between patient welfare and respect for patient autonomy is especially troublesome, particularly when couched in the language of human rights.

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For example, it is often claimed that within a liberal society, each person has the right to do whatever they wish with their own body, provided that no harm is done to others. Although this position has been taken in courts addressing problems of medical ethics, it conflicts with other jurisdictions that codify statutes against various types of self-harm such as attempted suicide and drunkenness (Feinberg, 1986). Most current drug laws (except laws on dealing and trafficking) exemplify the limits of the right to take risks with one's health, even when done by an autonomous agent. Although superficially violating or limiting autonomy, there would appear to be a societal interest in preserving a kind of moral community, by restricting absolute autonomy in such a way that it makes the society worth living in.

We can call this 'ordered liberty', as summarised nicely in the opening epigram to this commentary by Edmund Burke, known sometimes as the father of modern conservatism. Not everyone accepts Burke's view (Karl Marx allegedly called him 'an out-and-out vulgar bourgeois', among other unsavory names), but it is more consistent with how we as psychiatrists might understand relationships and the experience of those with compromised autonomy, who may have to depend on others for the rest of their lives. The state interferes with the lives of psychiatric patients, first because no one is free to do exactly what they like (freedom is not licence: how topical is that as a question?) and second, because we think that psychiatric disorders do lead people to make bad choices for themselves and others. Even J. S. Mill famously excluded those with mental illnesses from his account of the claims of liberty.

The reality of autonomy

I am not convinced by Ikkos *et al* that 'citizenship' means the same for everyone, nor that it is a concept that will be helpful in addressing injustice in mental health practice. How then should we treat those with compromised autonomy? I think that here the Kantian distinction between acting out of duty and acting in accordance with duty (with one's inclinations) becomes important. For Kant, an action has moral worth only if one freely chooses to do it. Nozick argues that if we impose the duty of beneficence, we take away the choice to act in charity. We then act out of duty, but not in accordance with duty. Consequently, the act is not a moral act. Thus, if the state interferes to make us act beneficently (be it in regulating, allocating or transferring wealth and health), it reduces a noble act to an amoral one (and, in my view, to nothing more than theft).

Now consider the additional difficulty when one is faced with the possibility of less than full autonomy, as one would frequently encounter in psychiatry. One can argue that full autonomy is not possible (even if desirable), since one cannot be autonomous, yet be under any sort of state control. In mental illness, autonomy can be thought of as chronically compromised because of the various day-to-day issues over which even the otherwise autonomous patient has no control. Agich (1993) has described this as a state of 'interstitial autonomy'. It is unclear how Rawls's theory of justice will fit in with the reality of autonomy in this context.

Rawls's weighing principles give absolute precedence to liberty (Ikkos *et al*, this issue: p. 204) and are thus the distinguishing feature of his 'contractarian' theory. Because absolute liberty is not guaranteed in modern democratic society, Rawls's theory remains just that, a theory. Ikkos *et al*'s article is, however, a reminder that philosophical theorists of all persuasions remain a vital resource for clinical and academic psychiatric practice.

Declaration of interest

None. The opinions expressed here are those of the author alone and in no way reflect or represent the policies of West London Mental Health Trust or Broadmoor Hospital, or that of the Ethics Sub-Committee of the Royal College of Psychiatrists, of which the author is a member.

References

Agich, G. J. (1993) *Autonomy and Long-Term Care*. New York: Oxford University Press.

Berlin, I. (1958) Two concepts of liberty. In *The Proper Study of Mankind: An Anthology of Essays by Isaiah Berlin* (eds H. Hardy & R. Hausher), pp. 191–242. London: Pimlico Press.

Dworkin, G. (1988) *The Theory and Practice of Autonomy*. Cambridge: Cambridge University Press.

Feinberg, J. (1986) *Harm to Self*. New York: Oxford University Press.

Gillon, R. (2003) Ethics needs principles – four can encompass the rest – and respect for autonomy needs to be first among equals. *Journal of Medical Ethics*, **29**, 307–312.

Ikkos, G., Boardman, J. & Zigmond, T. (2006) Talking liberties: John Rawls's theory of justice and psychiatric practice. *Advances in Psychiatric Treatment*, **12**, 202–210.

Nozick, R. (2001) (reprinted from 1974) *Anarchy, State, and Utopia*. Oxford: Blackwell.

Rawls, J. (1971) *A Theory of Justice*. London: Oxford University Press.

Tauber, A. (2005) *Patient Autonomy and the Ethics of Responsibility*. Cambridge, MA: MIT Press.

Tucker, R. C. (1969) *The Marxian Revolutionary Idea*. New York: WW Norton.

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