The Idea of Small Justice

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Abstract. Talk about social or distributive justice, at least among legal and political philosophers, tends to focus heavily on institutions. This way of thinking about justice owes a great deal to John Rawls. Rawls's theory of justice was famously criticised by Robert Nozick who, in turn, attracted an influential critique from G. A. Cohen. The story of these critiques is well known, but this article tells it in an unfamiliar way. The common theme in Nozick's and Cohen's arguments, I contend, is that there is a way of thinking about social justice that focuses not primarily on institutions, but rather on interpersonal relationships. I call this idea *small justice*. Justice, on this view, is identified with whatever institutions would arise through a process of social evolution from ethical interpersonal dealings repeated consistently over time.

1. Introduction

My topic in this article is justice—or, more specifically, what is sometimes called social or distributive justice, by contrast to other varieties, such as corrective or procedural justice. Justice, in this sense, is a feature of social arrangements, as opposed to individual acts or bilateral relationships; it concerns, to paraphrase Justinian's famous definition, how to render to everyone in the community what they are due (1987, bk 1, ch. 1, §3). The idea of justice as consisting in an appropriate distribution of goods among community members is neutral, in principle, as to how this distribution is achieved. However, talk about justice, at least among contemporary legal and political philosophers, tends to focus heavily on institutions. Justice may be a property of societies generally, but whether a society is just, on this view, depends primarily on the justice of its institutions. This way of thinking about justice, I want to suggest, owes a great deal to John Rawls. The Rawlsian paradigm, for better or for worse (I say for worse), has become so influential—both within and outside analytical political philosophy—that it is difficult for a contemporary audience to think about justice in any other way.

The Rawlsian way of thinking about justice is, however, open to question. This article highlights some drawbacks of Rawls's institutional approach, before outlining an alternative. I begin by exploring the main features of Rawls's view. I then put pressure on Rawls's conception of justice by telling what is, in some respects, a familiar story: first, Robert Nozick's criticisms of Rawls, represented by his notorious Wilt Chamberlain argument; and, second, G. A. Cohen's riposte to Nozick and his associated defence of

socialist distributive principles. I want to tell this story, however, in an unfamiliar way, drawing out a lesson that perhaps none of its protagonists would recognise. The moral of the story, as I tell it, is not that Rawls was right or wrong about the properties of just social institutions, but rather that by focusing on institutions he thought about justice in an incomplete and unstable manner. Nozick's and Cohen's arguments—and, in particular, the examples they use to illustrate those arguments—draw this out in different ways, although they may not have realised it.

The common thread running through Nozick's and Cohen's discussions, I suggest, is that there is a way of thinking about justice that focuses not primarily on the design of social institutions, but rather on interpersonal relationships. I don't mean merely that we can think about justice in corrective or procedural terms as a feature of individual acts or bilateral dealings, but rather that we can think about social or distributive justice (that is, justice as a feature of group or community arrangements) as something that happens primarily at the interpersonal level and manifests itself in social institutions only as a by-product of these more localised relations. Justice, on this conception, is identified with whatever institutions would arise through a process of social evolution from ethical interpersonal dealings repeated consistently over time. I call this conception *small justice*, since it starts out small, taking shape at the interpersonal level. Small justice, as I present it, is a kind of undercurrent running through contemporary legal and political philosophy. The dominant picture of justice found in the work of Rawls, Nozick and Cohen is an institutional one. However, under the surface—at least in the latter two authors—one finds a more radical possibility at play. Nozick's and Cohen's arguments are susceptible of a reading that highlights the viability of small justice as an alternative to the Rawlsian picture with which they are in dialogue.

2. The Rawlsian Paradigm

My primary focus in this section is not on the details of Rawls's theory of justice, such as his use of the methodological device of the original position or his substantive theory of justice as fairness. Rather, I want to focus on a more fundamental question—namely, how he conceives the subject-matter of his enquiry. Rawls titles his magisterial work *A Theory of Justice*, but what is justice in the first place? According to Rawls, it is 'the first virtue of social institutions' (1999, 3). It is notable, in this respect, how quickly Rawls moves from a general definition of social or distributive justice to a focus on institutions. In defining the concept of social justice, he begins by noting that a 'set of principles is required for choosing among the various social arrangements' that determine the distribution of advantages and resources within a society (1999, 4). This description of justice mirrors the definition from Justinian introduced above: it concerns the social arrangements needed to give each person their due. However, in the next sentence, Rawls continues that '[t]hese principles are the principles of social justice: they provide a way of assigning rights and duties in the *basic institutions* of society' (1999, 4; emphasis added). The

question of how to arrive at just social arrangements is, for Rawls, a question concerning institutions.

A similar shift occurs shortly afterwards when Rawls directly addresses the subject-matter of justice. There, Rawls says that his topic 'is that of social justice'. 'The primary subject of justice', he continues, 'is the *basic structure of society*, or more exactly, the way in which the *major social institutions* distribute fundamental rights and duties and determine the division of advantages' (1999, 6; see also 47). Rawls, again, moves smoothly from the basic structure of society to the question of social institutions—these two ideas, for him, seem to be more or less synonymous. What, then, does Rawls mean by an institution? He says later that an institution is 'a public system of rules which defines offices and positions with their rights and duties, powers and immunities, and the like' (1999, 47). The basic structure of society, then, is defined by major social institutions; these institutions are constituted in turn by public systems of rules. Rawls sees his task in *A Theory of Justice* as providing a framework for understanding the 'institutions of constitutional democracy' (1999, xi-xii); the justice of a society, for him, is determined by these legal and social structures (at least so far as social or distributive justice is concerned) (1999, 48).

I want to suggest that Rawls moves too quickly here from the basic structure of society to a focus on institutions. A community's major social institutions are, according to Rawls, its basic structure; perhaps, for him, this is a matter of definitional stipulation. However, there is another way of thinking about justice that does not rely on this close connection between social arrangements and public rules. The basic structure of society, on this view, is not its institutions but its interpersonal relationships; it is these interactions that produce the social arrangements that constitute the subject-matter of social or distributive justice. Institutions are grounded in interpersonal dealings, in the sense that they are causally, counterfactually and explanatorily dependent upon them.[1] It is therefore the interpersonal aspect of society and not its institutional dimension—its relations, not its rules—that is properly basic.

It is appropriate to say something here about Rawls's device of the original position and the related notion of the veil of ignorance. As is well known, Rawls derives his substantive theory of justice from a sophisticated version of social contract theory (1999, 10). The notion of a social contract, whereby the members of a community agree to be bound by shared rules in order to secure the common good, has a long history in political philosophy. However, Rawls builds on these theories by creating a very specific picture, known as the *original position*, of the circumstances under which a just social contract might be formulated (1999, 11, 102). Rawls does not claim that the original position ever actually existed or even that the members of the political community ever

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[1] For a discussion of different kinds of grounding relations relevant to meta-normative theory, see Crowe 2019a, 30-3.

actually entered into a social contract (1999, 11). Rather, he argues that by imagining the original position we can see what form a just social contract would take. This gives us a conceptual framework for understanding what the demands of justice are in actual societies.

Rawls asks us to imagine that the parties to the social contract are constrained by what he calls a *veil of ignorance* (1999, 11-12, 118-23). This means that the parties do not know if they will be rich or poor, privileged or underprivileged, talented or untalented, culturally favoured or culturally oppressed in the society governed by their agreement. These features themselves are at least partly dependent on social arrangements. The point of this stipulation, according to Rawls, is to ensure that 'no one is advantaged or disadvantaged in the choice of principles by the outcome of natural chance or the contingency of social circumstances' (1999, 11). In this sense, Rawls contends, the original position can be characterised as fair. The people in the original position, Rawls stipulates, are presumed to be rational. They are 'mutually disinterested'; that is, they lack any substantial sense of altruism (1999, 12, 112). The participants are presumed to be equal, in the sense of sharing a common status as moral persons, each having her own conception of what constitutes a good life and being capable of a sense of justice (1999, 17). Nothing specific is presumed about their life goals, except that they embody 'rational long-term plans' (1999, 111).

Rawls's veil of ignorance is designed to limit the self-knowledge of people in the original position to secure a fair outcome. This involves stripping out many kinds of knowledge that would normally be considered germane in political discussions or, indeed, interpersonal transactions. As noted above, people in the original position lack knowledge about their places in society; nobody knows her own class, social status, wealth, generational status or cultural background (1999, 118). Parties to the original position are presumed to lack any specific knowledge of their personal goals and values, as well as their personalities, predilections and prejudices (1999, 17, 118). They are also ignorant about their fortune or misfortune in the genetic lottery; such things as strength, intelligence, industry or special talents are undisclosed (1999, 118). Finally, the participants lack specialised knowledge about their society as a whole. They do not know its economic or political circumstances, its level of civilisation or its cultural make up (1999, 118).

The original position has been criticised from several perspectives. One compelling criticism concerns its tenuous relationship to the world that the principles of justice are supposed to govern (see, e.g., Dworkin 1989, 18-19). Parties to the original position, Rawls argues, would select the principles of justice as fairness to govern their community. However, people in the actual world have made no such agreement and Rawls does not argue that they would. Why then, should actual people consider themselves bound to follow justice as fairness, just because hypothetical people who are very unlike them in a hypothetical community very unlike theirs would opt to do so?

Much rests here on Rawls's contention that the original position represents the most philosophically favoured starting-point for theorising about justice (1999, 16, 102). It is philosophically favoured precisely because of its stripped back character, which renders it fair in Rawls's eyes. The actual world, presumably, is not philosophically favoured or, indeed, fair. People who know less about themselves than actual people will do better where justice is concerned.

Rawls's appeal to the original position gains its plausibility, I suggest, from his focus on social institutions. Imagine two people considering a serious transaction—an employment contract, say, or a marriage. How should they decide what—or whether—to agree? Suppose we said this: they should imagine themselves behind a veil of ignorance, where they lack knowledge about not only their position in society, but also their life plans, values and special qualities. Having placed themselves behind the veil of ignorance, they should ask what type of agreement, under those conditions, they would choose to make. The decision they would make under those conditions, we might say, should dictate what terms of employment they should conclude or whether they should get married. They should decide in this way, the argument goes, because the original position is fair; it is a philosophically favoured starting-point. The decision they make under those conditions will therefore also be fair. It will embody the value of justice, by making sure each party to the transaction gets her due.

I doubt, however, that anyone would accept this argument. The original position, whatever its merits for thinking about social institutions, has little appeal as a way of planning interpersonal dealings. This is primarily, I think, because it strips out all the knowledge that we ordinarily think is relevant to such matters. We want to know, before we make an agreement with another person, how it fits in with our goals and values, as well as our strengths and weaknesses. We also want to know—or, at least, we *should*—how the agreement will impact on the other person. This involves taking account of her personal characteristics, as well as our own. An agreement that furthers both parties' life plans, coheres with their values and commitments, and takes account of their personalities and characters is, other things being equal, superior to one that ignores these matters. We would normally advise a person contemplating a serious decision like those mentioned to reflect carefully on these kinds of factors. We would, in other words, advise the *opposite* of the veil of ignorance.

Our advice to such a person, I suggest, would be to adopt what we might call a *web of immersion*: we would counsel a richer appreciation of the personal qualities of those affected by the decision, not a deliberately impoverished one (see Crowe 2019a, 25-6, 124-5). The position a person occupies behind the web of immersion would not be a stripped back version of reality, but rather an enhanced version where those facets of the world relevant to the decision she faces—particularly its potential impact on the parties involved—would be brought vividly to mind. She would, in this position, be mindful of facets of her own situation and outlook that she would otherwise overlook. She would

also be able to place herself in the shoes of others affected by the transaction, imagining intensely what the impact on their lives would be. She would thereby form a holistic and nuanced understanding of *what it would be like* to decide in a given way. This standpoint would be a philosophically favoured starting-point for her deliberations. Its appeal lies not primarily in its fairness (although it does not seem inherently *unfair*) but in its existential groundedness—its firm purchase in the lives of those affected.

Interpersonal decisions, like employment or marriage, are not the topic of Rawls's theory of justice (1999, 6). A Rawlsian might therefore concede that the original position is plausible only insofar as it applies to the choice of principles of justice to govern society and not to personal decisions such as contracts or marriages (cf. Nozick 1974, 204-7). However, she might contend that such personal choices are not something to which the idea of justice applies. The private choices of individuals are, on this view, at least to a certain extent beyond justice; they can be good or bad choices in a moral or prudential sense, but not just or unjust in themselves. Their relevance to justice would rest on the contribution they make to the overall structure of society. This perspective suggests that the veil of ignorance and the web of immersion may play different roles: the former suits the choice of principles of justice, while the latter is suitable for deriving reasonable individual choices or life plans.[2]

Why think, then, that the veil of ignorance is better suited than the web of immersion to select principles of justice? Why should less information about the circumstances be better than more? Rawls offers two interrelated responses to this question (1999, 120-3). The first returns to his emphasis on fairness: the original position is fair because it strips out factors related to social status and power, which would unduly influence the choice of principles. This information might produce more rationally self-interested principles from the decision-makers' perspective, but not necessarily more just or reasonable ones. The second concerns the feasibility of reasoning from each of these starting-points to general principles of justice. The veil of ignorance, it might be said, enables convergence on common principles, while the web of immersion would bring too many complicating factors into play (as well as potentially the wrong kind of factors, as mentioned above).

The proper response to both these claims, I suggest, lies in paying attention to what we might call the *history* of justice. I don't mean the history of theories of justice, but the history of justice itself. The idea I will suggest, in a nutshell, is that the web of immersion is indeed better suited to making reasonable personal decisions (in both moral and prudential senses) than formulating abstract principles of justice. However, this does not mean that we should leave it to something like the veil of ignorance to dictate society's fundamental structure. Rather, there is another method available: we could first utilise something like the web of immersion to guide interpersonal exchanges

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[2] I am grateful to an anonymous reviewer for prompting me to address this perspective.

and then rely on a process of social evolution to translate these into community arrangements. Rawls's two rationales for using less information rather than more to derive principles of justice assume that these principles—and the institutions they entail—are, at least to some extent, deliberately selected. However, this neglects a crucial fact about institutions: they have a history.

3. Wilt Chamberlain Revisited

The history of justice plays an important role in Nozick's criticisms of Rawls's theory of justice. Nozick contrasts two types of theories of justice, which he describes as *end-result theories* and *historical theories* (1974, 153). End-result theories judge a distribution of resources as just or unjust based on its attributes at a specific point in time. Historical theories, by contrast, judge a distribution as just or unjust based on past circumstances or actions. Rawls's theory, according to Nozick, is an end-result theory, because it counts a distribution as just or unjust based on whether it fulfils his two principles of justice at a given juncture (1974, 198-204). (We will return later to the question of whether this characterisation is accurate.) Nozick's own theory, which he calls the entitlement theory, is a historical account (1974, 154). On this view, if all property was justly acquired by its original owners and is subsequently transferred only in a just manner, then the resulting distribution will itself be just (1974, 150-2).

Nozick argues that end-result theories are inconsistent with the idea that an owner's free choice is a legitimate basis for just transfers of resources. Anyone who accepts the principle of freedom of transfer is effectively committed to the entitlement theory. Nozick supports this conclusion using a famous thought experiment, involving the basketball star, Wilt Chamberlain (1974, 160-1). Nozick asks the reader to imagine a situation where the distribution of resources in a community complies exactly with the requirements of a particular end-result theory of justice (1974, 160). It might, for example, wholly satisfy the demands of Rawls's account of justice as fairness. On the theory in question, an 'ideal' distribution has been reached. Imagine, then, that Chamberlain signs a contract to play for a particular basketball team, on terms which entitle him to a proportion of the profits from every home game (1974, 161).

Due to Chamberlain's popularity, many people attend his team's home games. Each person who attends the games drops a separate part of her admission fee in a special box with Chamberlain's name on it. As a result, Chamberlain ends up with far more money than anybody else in the community—certainly much more than he had under the previous 'ideal' distribution (1974, 161). The question this example raises is whether or not the distribution of resources incorporating Chamberlain's new fortune is just. It seems odd, Nozick argues, to claim that it is not (1974, 161). After all, everybody was entitled to the resources they held under the 'ideal' distribution and each person who attended Chamberlain's games simply *chose* to pay him a certain amount of money. No third parties are directly affected; they still have their share from the previous

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distribution. All that has happened is that some people have voluntarily transferred some of the resources which the 'ideal' distribution gave them. If the first distribution was just, must not the new, voluntarily altered distribution also be just?

The end-result theorist seems committed to denying this consequence. According to such theories, the original, 'ideal' distribution is the ultimate yardstick for justice. This precludes end-result theories from approving any modified situation that does not also meet the requirements of justice, regardless of how it is produced. Nozick concludes that 'no end-result principle or distributional patterned principle of justice can be continuously realised without continuous interference with people's lives' (1974, 163). The entitlement theory is the only theory of distributive justice that allows people to deal with their justly acquired resources as they choose. This, according to Nozick, is an important advantage. According to end-result theories, a just distribution could only be maintained through continual intervention in people's free choices about how to use their resources. This is not only practically troublesome, but also unattractive as an account of what constitutes a just social arrangement.

Nozick's entitlement theory of justice—and, in particular, his use of the Wilt Chamberlain example—has been widely discussed. Some main lines of critique have come to be broadly accepted. One criticism is that Nozick's characterisation of Rawls's position as an end-result theory neglects the latter's claim that social justice is a matter of pure procedural justice (Kaufman 2004, 564).[3] Pure procedural justice, as Rawls defines it, exists 'when there is no independent criterion for the right result: instead there is a correct or fair procedure such that the outcome is likewise correct or fair ... provided that the procedure has been properly followed' (1999, 75). Rawls contends that to understand whether a particular distribution is just we need to know whether it was arrived at through just institutions or not. Just institutions are therefore not aimed at producing a particular distribution, but rather at ensuring whatever distribution results from those institutions will be just. Chamberlain could therefore still get richer than other people in a society governed by justice as fairness if others freely transfer to him some of their resources. However, the transfers would be subject to institutions governed by the principle of equal liberty and difference principle (1999, 53, 266). These institutions would guarantee a fair distribution overall. They might, for example, require Chamberlain to pay taxes on the income he receives from playing.

A second criticism concerns Nozick's derivation of the principle of freedom of transfer. Nozick's theory of justice is based upon a robust theory of rights, known as the side-constraint theory, whereby each person's rights place highly stringent constraints on the actions of others (1974, 28-33). Specifically, each person has a right to self-ownership, which entails that her life, liberty and person are, in a real sense, her own property, and only she may determine what is to be done with them. Nozick's

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[3] Thanks to an anonymous reviewer for raising this issue.

endorsement of the right to self-ownership plays an important role in motivating his principle of just transfer, which in turn plays a central role in the Wilt Chamberlain argument. However, many critics have noted that Nozick provides no decisive argument in favour of the right to self-ownership (or, indeed, the existence of natural rights generally).[4] Indeed, the existence of these rights is, to a large extent, simply assumed as the basis for the subsequent discussion.

Nozick's theory is sometimes portrayed as if he offers no arguments for his theory of rights at all. This is unfair—although Nozick offers no deductive argument for his account of rights (as he acknowledges (1974, xiv)), he does place them in a broader explanatory context intended to make them plausible. The central idea Nozick relies on in this context is the *capacity to lead a meaningful life.* Nozick asks, 'in virtue of precisely what characteristics of persons are there moral constraints on how they may treat each other or be treated?' (1974, 48). His answer is that these rights are connected with the 'ability to form a picture of one's whole life and to act in terms of some overall conception of the life one wishes to lead' (1974, 50).[5] This connection has to do with the basic existential issue of 'the meaning of life'; the only way that a person can add meaning to her life is to shape it according to an overarching plan that she herself formulates (1974, 50). Elsewhere, Nozick contends that individual rights may not be violated to attain an overall social benefit, because using 'a person in this way does not sufficiently respect … the fact that [she] is a separate person, that [hers] is the only life [she] has' (1974, 33). This consideration, too, seems to be related to the capacity to lead a meaningful life. It is questionable, however, whether this explanatory context supports a highly stringent right to self-ownership.

A third criticism of Nozick's account of justice concerns its wider social implications. Cohen famously argues that Nozick's use of the Wilt Chamberlain example overlooks the unforeseen consequences of voluntary exchanges of income. Cohen suggests that a distribution arising from voluntary transactions could only be considered just if the parties were fully aware of the long-term consequences of their actions (1995, 22-4). People may well be willing to pay money to see Chamberlain play; 'it is', as Nozick puts it, 'worth the total admission price to them' (1974, 161). However, would they still be willing to part with their money if they knew it would not only give Chamberlain himself disproportionate social and economic power, but eventually lead to entrenched inequalities in the overall distribution of social resources? Cohen argues that the entitlement theory of justice must be subject to significant limitations if its outcomes are to be reasonable in the long run (1995, 26-7). The mere fact that the entitlement theory preserves people's choices about how to transfer their resources does not mean the overall consequences of those transactions are just, particularly if they would not be accepted by consumers who were fully aware of them. Nozick effectively confuses

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[4] See, e.g., Wolff 1991, 27; Scheffler 1981, 148, 152; Nagel 1981, 191, 196-7; Thomson 1977.

[5] This is, indeed, similar to the conception of a person utilised by Rawls (1999, 12-13).

people's willingness to pay Chamberlain to play with their willingness to grant him total control of the resources they assign him.

Cohen's criticism of Nozick's theory effectively proceeds by targeting its historical character. A historical theory of justice, Cohen's argument suggests, can never be adequate if it ignores the long-term consequences of the transactions that comprise it. The mere fact that a series of transactions is just cannot mean that the resulting social distribution is just. Justice, for Cohen, must be considered at least partly at an institutional level.[6] This argument has some purchase against Nozick's entitlement theory, which explicitly disavows any interest in overall distributions. There is, however, an underlying methodological lesson to be drawn from Nozick's arguments, which Cohen's response does not fully recognise. This lesson concerns the disruptive character of interpersonal exchanges and, in particular, their propensity to unsettle theories of justice focused on social institutions. Justice, for Rawls, is a virtue of social institutions (1999, 3); for Nozick, by contrast, it is a virtue primarily of voluntary transactions (and secondarily of the social structures that result from those transactions over time). The problem Nozick's argument poses for the Rawlsian paradigm is that the contrast between these two positions reveals Rawls's focus as unstable.

It is possible, in principle, to have a purely historical theory of justice, provided one is willing to say that whatever outcome follows from a just series of transfers is itself just. It is also possible to have a purely end-result theory of justice, provided one is willing to endorse the corresponding claim that any series of transfers that does not lead to the correct end-result is itself unjust. The methodological lesson of Nozick's critique of Rawls, I suggest, is that any theory of justice that adopts a purely or primarily institutional focus is prone to be destabilised once the emphasis is shifted to the interpersonal level. This is because it seems possible, in principle, for any putatively just institutional distribution (including one arising through Rawls's model of pure procedural justice) to be disrupted by a putatively ethical, reasonable or appropriate series of interpersonal transactions.[7] Cohen, however, effectively uses a similar strategy against Nozick, pointing out that the appeal of a purely or primarily historical theory is potentially undermined when one examines its institutional consequences. The question this exchange therefore raises is whether it is possible to frame a theory of justice in such a way that it integrates institutional and interpersonal perspectives, without allowing either viewpoint to undermine the other. A possible route to such an account is, I think, suggested by a later example offered by Cohen.

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[6] Cohen denies that a socialist conception of justice necessarily requires coercion to enforce a particular distribution. However, he does think it requires institutions that can effectively monitor and, if necessary, correct the overall pattern (1995, 28-31).

[7] This methodological shift was effectively at work in the argument advanced in the previous section against the original position. I argued there that the appeal of the original position is undermined when one considers its application on the interpersonal level.

4. Picnic with the Cohens

Cohen's posthumously published book, *Why Not Socialism?*, begins with an extended thought experiment (2009, 3-11). The experiment concerns a group of friends who go on a camping trip—for present purposes, however, let's make it a picnic. The friends collaborate in planning the outing—everyone is responsible for bringing part of the necessary supplies and equipment. Then, when the picnic occurs, resources are pooled and shared alike (2009, 3-4). Events proceed harmoniously, as everyone contributes according to their abilities and mutually enjoys the outcome. At a certain point, however, some participants begin to defect from this arrangement. One person, who has caught fish for the group, demands extra food in return. Others demand special treatment or payment for their skills and contributions. Cohen points out that, in the context of a picnic, the attitudes of these members would seem repugnant (2009, 7-9). Their actions make the picnic worse, not better. The attitudes and practices that prevailed at the start of the story—which Cohen identifies with socialism—seem clearly preferable to those advocated by the defectors towards the end—which he identifies with capitalism.

Cohen concludes that socialism is better than capitalism when it comes to picnics. However, he does not stop there. He argues that precisely the same point applies to large-scale societies (2009, 50-1). People tolerate capitalism in their societies, he contends, only because (mistakenly, in his view) they think they have no alternative. If socialism were proved to be feasible, people would prefer it, for the same reasons that they do so in the case of the picnic. Socialism, then, seems desirable; the remaining question is whether it is feasible (2009, 52). The rest of Cohen's book discusses various issues surrounding the latter issue; he concludes that there is no decisive reason to believe socialism is infeasible, although serious challenges arise in relation to economic calculation (2009, 57-61). My interest, for present purposes, is not so much in Cohen's argument for socialism, as his methodology. Cohen's argument proceeds by considering a small-scale interpersonal arrangement—a picnic—which he then extrapolates to an institutional level. Critics have, predictably, taken issue with this way of proceeding. A common charge levelled against Cohen's reasoning points out that, even if socialist principles are well suited for picnics, this doesn't mean they also apply to social arrangements writ large.[8]

Cohen's argumentative strategy differs importantly from both Rawls's and Nozick's. Rawls, as we have seen, argues for a set of principles of justice applicable to social institutions; he denies that the same principles necessarily apply at an interpersonal level. Nozick, meanwhile, endorses a historical theory of justice, meaning that a sequence of just interpersonal exchanges necessarily yields a just overall arrangement. Cohen directly repudiates Rawls's distinction between institutional and interpersonal justice, since his argument begins with a small-scale interpersonal

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[8] Cohen anticipates this objection (2009, 49-50). See also Brennan 2014, 57-62, 92; Ronzoni 2011.

arrangement and then applies the same principles at an institutional level. However, Cohen's theory of justice is not historical, in Nozick's sense.[9] He articulates a set of principles of justice, one of which is the principle of socialist equality of opportunity; this clearly seems to be an end-result principle.[10] Cohen's argument is blocked, then, if interpersonal justice and institutional justice are distinct in the way that Rawls's argument suggests. It seems to me that Cohen's strategy fails, but not simply because he moves from the interpersonal to the institutional level. Rather, it fails because he makes this move in the wrong way.

The problem with Cohen's argument lies not in its inference from interpersonal to institutional justice, but rather in its ahistorical character. It remains mysterious how Cohen gets from his discussion of a picnic to his treatment of society at large. He essentially relies on readers sharing his intuition that the same principles ought to apply. Cohen treats society like one big picnic. Consider, however, an alternative argument according to which society is not one big picnic, but rather a series of small (that is, normal-sized) picnics. Let us suppose that Cohen and his friends have their picnic on a Saturday afternoon; that same Saturday, many other people in the same community also have their own separate picnics. There are other picnics on Sunday, then more picnics during the rest of the week. Over time, numerous picnics occur. These picnics will, in some respects, be diverse; they will involve different groups of people, with different preferences as to food, drink, location and recreational activities. Some picnics, like Cohen's, will involve fishing and football; others may involve cream buns and croquet. At a deeper level, however, many of the picnics might be expected to share some similarities. These similarities are likely to include the principles of organisation described at the beginning of Cohen's narrative: many picnics will proceed by people pooling resources and sharing them with the other members.

Over time, as numerous picnics occur, conventions will arise within the community about how they should be conducted. It will come to be generally known and accepted that, when invited to a picnic, everyone should bring some food or drink and share it with the other attendees. People who are aware of this norm will use it to critically evaluate both their own behaviour and that of others. This might be expected to yield general compliance with the norm in the community. This, in turn, is likely to result in an overall situation where picnics generally proceed in an efficient, harmonious and enjoyable way. The interpersonal practice of having a picnic, extended over time, becomes what we might call the institution of the picnic. (The institution of the picnic, so conceived, is an institution in Rawls's sense of the term (1999, 47).) Furthermore, on the assumption that the conduct of individual picnics generally complies with the demands

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[9] There are, of course, other differences. For example, Nozick holds that justice protects voluntary transactions regardless of the motives behind them, while Cohen argues that principles of justice govern both individual choices and social institutions.

[10] Cohen, unlike Rawls, makes no appeal to pure procedural justice.

of justice applicable at that level (whatever these might be), it seems plausible that the *institution* of the picnic will also generally be just. This story, then, represents one way that we might move from interpersonal to institutional justice.

This view of institutional justice is historical in the sense that it derives the justice of the institution from past actions and practices (1974, 153). However, it is not historical in precisely the same way as Nozick's entitlement theory, because it does not simply deny that institutional justice has any separate existence apart from the content of individual transactions. Rather, it yields what we might call a *process theory of justice*, because it trusts a certain process—namely, the repetition of ethical interpersonal exchanges over time—to yield just results at a wider social level. Justice in social arrangements is not *identical* to justice in exchanges—as on Nozick's theory—but rather is produced through a historical process. The postulation that a series of ethically sound interpersonal dealings will yield a just institutional outcome is not an analytical truth, on this view, but rather a hypothesis based partly on empirical observations of how social institutions develop over time. However, if true, the hypothesis has both epistemological and ontological consequences. Epistemologically, it suggests that the best way of knowing the content of institutional justice may be to observe the kinds of social norms produced by ethical interpersonal dealings. Ontologically, it suggests that institutional justice may be best defined as whatever social arrangements are produced by ethical interpersonal dealings repeated consistently over time.

I call this view *small justice*. The view has two components. The first is an account of ethically sound interpersonal dealings.[11] The second is a view of the history of justice— that is, the mechanisms by which interpersonal dealings give rise to social institutions— that rests on might be called a *corporate view of time*. Time, on this account, is not understood simply as a succession of moments. Rather, time incorporates. Each event is perceived by human interpreters against the context of a series of previous events and builds on them to create a holistic picture of the whole sequence (see Crowe and Lee 2015). A picnic, for example, is not understood or experienced in isolation; it is, rather, viewed in the context of previous picnics of which the observer is aware. The very act of calling a gathering a 'picnic' places it under a category which associates it with previous gatherings of the same nature. The flaw in Nozick's historical theory is that his conception of time is too sequential: he seems to see justice as a series of voluntary exchanges. Nozick does, of course, speculate about what the *consequences* of such a sequence of exchanges might be, but he treats this merely as observing what follows from respecting people's entitlements (1974, ch. 10). He fails to see how the coalescence of repeated interpersonal encounters can generate its own kind of institutional justice, which depends upon (but is not identical to) ethics at the interpersonal level.

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[11] I do not claim to offer such an account here, although I have done so elsewhere. See particularly Crowe 2019a, ch. 2-4.

5. The Value of Immersion

I have so far sought to show that the Rawlsian paradigm for thinking about justice—with its determinedly institutional focus—is not the only way such a theory might proceed. The methodological strategies adopted by Rawls, Nozick and Cohen, as well as the criticisms to which they have been subjected, reveal the complexities posed by the relationship between interpersonal and institutional outlooks. Rawls's neglect of interpersonal justice leaves his theory unstable, because it is open to critiques that show its implausibility at a more local level. Nozick exploits this feature of Rawls's account, drawing a contrast with his own historical theory. However, Nozick's attempt to locate justice in voluntary exchanges bites back, because it makes him vulnerable to the criticism that he neglects the institutional consequences of such an arrangement. Cohen, the best-known champion of this line of criticism, offers his own account of justice, which begins at the interpersonal level, but extrapolates from this in an ahistorical way. Cohen's strategy, although flawed, paves the way for an alternative approach that historicises his use of small-scale interpersonal dealings. An important advantage of this approach, which I call small justice, is that it integrates the interpersonal and institutional aspects of justice, thereby avoiding the pitfalls of views that either separate the two dimensions or move too blithely between them.

The preceding argument therefore shows both that a theory of small justice is conceivable and has certain methodological advantages. I have not explained, however, why it is desirable. Where does the normative force, if any, of such a conception of justice come from? The fact that small justice integrates interpersonal and institutional viewpoints, without illegitimately privileging one over the other, counts for little if its normative content proves to be unattractive. Evidently, the precise content of small justice will depend upon both the corresponding account of ethical interpersonal dealings and the details of the process whereby these dealings are translated into social institutions. The full details of these two components are beyond the scope of this article. My aim in this article is not to demonstrate conclusively that small justice is the correct way to think about justice, but rather to show that the *idea* of small justice is coherent, distinctive and in certain ways appealing. Nonetheless, the notion of *immersion* introduced in our discussion of Rawls's original position goes some way towards explaining why small justice might be expected to yield a normatively attractive basis for social arrangements.

I argued earlier (against Rawls) that a person who immerses herself in the context for a practical decision—in particular, by becoming acquainted with its existential consequences for those affected, including both herself and others—is generally better placed to make a morally and prudentially sound choice than someone who does not. One normatively appealing feature of small justice is that it harnesses these conditions of immersion and translates their outcomes to a broader social level. The inputs for small justice, as I said before, are ethical interpersonal dealings. These transactions, whatever

substantive ethical principles they may follow, may be expected to reflect deep and considered knowledge of the practical circumstances in which the encounters occur (see Crowe 2019a, 25-6, 124-5). Small justice draws upon this immersion—on a diachronic, as opposed to merely synchronic, level—by allowing emergent social norms to supply the framework for wider community arrangements. Emergent social norms, as we saw in the previous section, aggregate the experiences of a wide range of decision-makers over time. They therefore create and preserve knowledge about the normative principles that survive generalisation and repeated application over diverse practical scenarios and multiple generations.

The intuitive appeal of Rawls's veil of ignorance stems substantially from the idea that self-interest tends to compromise justice. The original position is fair in the sense that it prevents the parties from taking their self-interest into account, except insofar as their interests align with the most vulnerable members of the community (1999, 11). Rawls's solution to the problem of self-interest, in other words, is to make the agents deciding between principles of justice *less* immersed in the features of their local environment, including their personal circumstances, than might otherwise be the case. However, as we have seen, this strategy comes at a cost, because it renders the original position strangely abstract and, as such, ahistorical. Small justice, by contrast, addresses the problem of self-interest by means of an alternative strategy. It rests on the premise that the way to mitigate the biases of self-interest is through *more* immersion in local circumstances, rather than less. The problem posed by self-interest is that we tend to pay more attention to our own needs than those of others. However, perhaps the solution to this challenge is not to strip out all consideration of our own needs, but to immerse ourselves in the needs of others to the same extent as our own.

The agents of small justice are actual decision-makers who are both immersed in the situations calling for judgment and directly confronted by the persons who are most affected by their decisions. The agents of institutional justice, by contrast, are either actual or (for Rawls) hypothetical persons considering the design of social structures to govern large and relatively abstract groups of people. The advantage of small justice, then, is that it draws on the immanence and intimacy of interpersonal exchanges under ethically ideal conditions (represented by the web of immersion); the challenge it faces is how to translate these features of the interpersonal realm to the domain of large-scale social arrangements. I have suggested that this can be done through the mechanism of emergent social order. If one accepts that social norms and practices can emerge over time in such a way as to preserve the wisdom in small-scale ethical dealings, then one has reason to consider small justice a persuasive competitor to institutional conceptions. (The way in which this transition might occur will be discussed further in the following section.) This appeal holds not only against highly stylised constructivist theories of the kind offered by Rawls, but also purely sequential theories like Nozick's or ahistorical principle-based theories like Cohen's.

6. The Problem of Scale

Small justice, as I have described it, is premised on the idea that just social institutions can be generated by ethical interpersonal dealings through a process of emergent order. The following objection might be raised here.[12] Many small picnics repeated over time in accordance with the same principles, it might be acknowledged, could result in the institutionalisation of these principles as those appropriate to small picnics. However, why think these principles would translate to the governance of society at large? Rawls, for example, recognises that private associations (such as families and friendships) play an important role in social organisation and that these associations are governed by conventional rules (1999, 7, 460-1). However, he denies that these associations are governed by the same principles of justice as comprehensive social groups (1999, 7). Why think, then, that a series of small associations within society could lead to anything more than the institutionalisation of principles of justice applying to small-scale associations? Why should they be expected to give rise to principles of justice for external associations between small groups, let alone society at large?

This objection raises the question of how precisely small justice scales from the interpersonal to the societal level. We encountered the problem of scale previously in our discussion of Cohen's theory of justice. The central challenge confronting Cohen's account concerns the way he moves from small-scale to large-scale social arrangements by assuming that the same principles of justice apply at both levels. Small justice does not make this assumption, because it does not hold that the same normative standards apply to interpersonal dealings and social institutions. Rather, it holds that justice, as a feature of social institutions, is grounded in interpersonal ethics (in that the former is causally, counterfactually and explanatorily dependent on the latter). Just institutions are whatever institutions would emerge organically from a series of interpersonal ethical dealings repeated consistently over time.

The distinction between Cohen's strategy and the idea of small justice rests on two different understandings of scale. Cohen's theory of justice assumes that justice scales *linearly*: justice for large-scale societies is like justice for small-scale groups, only bigger (see West 2017, 15-19). We should, according to Cohen, share our resources when we attend a picnic; likewise, we should share our resources within society. The only difference between picnic-sharing and society-sharing, on this view, is that the latter involves more resources and more people. Small justice, by contrast, scales *non-linearly* (see West 2017, 25-8). Justice, on this view, is grounded in interpersonal ethics, but it is not simply ethics with larger numbers of people. It is, rather, a complex adaptive system based around social networks. The patterns that obtain at the level of interpersonal ethics give rise to similar patterns at the wider social level, but the two sets of patterns are not identical. It is useful here to draw an analogy with approximately fractal patterns in

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[12] I am grateful to an anonymous reviewer for pressing me to address this point.

nature, such as leaves on a tree or peaks on a mountain range (see Mandelbrot 1982). If we look closely at a small patch of leaves on a tree, then gradually expand our field of vision, we can see that similar patterns are repeated across the tree; these repeating patterns, in turn, combine to produce larger repeating patterns. However, these scalar similarities do not mean the pattern in any given patch of leaves is identical to the structure of the tree as a whole.

The social institution of a picnic is, on this view, not simply one big picnic—nor is it simply a collection or sequence of small picnics. It is, rather, the pattern that a sequence of small picnics generates when repeated across society and over time. This pattern reflects features of the small-scale picnics judged to be normatively salient by actors within the community and therefore adopted as a guide to their actions when engaging in picnic-type behaviours. It can hardly be doubted that social practices can and do arise in roughly this way; the emergence of social norms and institutions has been well-studied by a diverse range of authors spanning different disciplines.[13] Actual emergent institutions are, of course, not always just; this is partly because the decisions that shape them are frequently imperfect. They reflect human fallibilities—in terms of both flawed motivations and limited imaginative and reasoning capacities—as well as the distorting effects of social prejudices (see Crowe 2016). Small justice, however, assumes that the interpersonal exchanges that give rise to justice are themselves ethically sound. It therefore excludes the problems that actual social institutions confront in the form of unfair, prejudiced or poorly informed small-scale transactions.

Would the principles of justice resulting from interpersonal exchanges scaled to a social level be significantly different from those governing the interpersonal realm? Would they, in other words, result in anything more than the institutionalisation of ethical principles governing small-scale associations? Two related points should be made in this context. On the one hand, small justice may well result in a more decentralised conception of social justice than, for example, the theories of Rawls and Cohen. It might be expected to rely on the ethical conduct of small-scale associations to govern social arrangements to a greater extent than those rival views. On the other hand, it would be wrong to think small justice would result in an atomised array of small-scale groups preoccupied with their own affairs. This is because no small group exists in isolation; they must interact with one another. Picnic groups, for example, must cooperate to secure the success of their respective endeavours; this plausibly extends to not only sharing parkland with other groups in a peaceful manner, but cooperating with others in society to ensure there is parkland to enjoy in the first place.

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[13] See, e.g., Bicchieri 2017; Ellickson 1994; Hayek 1945; Hindriks 2019; Lewis 1969; Miller 2001; Ostrom 1990; Schotter 2011; Wellman and Berkowitz 1997; Williamson 1985.

Society, on this view, is best conceived not as an assortment of disconnected small-scale groups, but rather as a complex and dynamic network of individuals and groups overlapping with each other. Small justice conceives each point of contact between the many individuals and associations within society as a source of ethically rich information about what principles should govern their cooperative engagements. The relevant principles are devised by imagining an idealised situation where each person acts in an ethically engaged and richly informed way, taking responsibility for not only their own welfare but that of others who are affected by their actions. This philosophically favoured situation, represented by the web of immersion, gives rise to community institutions through the mechanism of emergent order. A combination of small-scale principles applicable to particular kinds of associations and more general principles governing the wider social order may be expected to emerge from this process, as individuals and group members will have to confront the collective action problems posed by communal life and seek to resolve them in a mutually beneficial manner. Small justice starts small, but it expands dynamically through social contact.

Emergent institutions in real human communities potentially raise assurance problems: how can we be sure, in the absence of centralised authority and enforcement, that the norms and institutions arising from these institutions will actually be followed (Rawls 1999, 237-8)? However, small justice excludes these issues as well, because it assumes ethical behaviour by members of the community, meaning that they will follow emergent norms where these represent reasonable and salient modes of fulfilling their responsibilities to the common good (see Crowe 2019a, ch. 4). It might be thought that, even under these idealised conditions, distributional problems would still arise in the absence of centralised coordination (due, for example, to market failures) (see, e.g., Heath 2009, ch. 1). The extent to which this would occur is a complicated question with both theoretical and empirical dimensions. It is appropriate, for present purposes, to leave open the issue of whether small justice, as an ideal theory, would rely upon centralised authority to resolve distributional issues. If the content of justice is as small justice describes it, then a further question would arise as to how this might best be approximated in the structure of actual societies (including whether, and to what extent, centralised coordination is needed).

Small justice, like the other theories of justice discussed in this article, belongs to the realm of ideal (as opposed to non-ideal) theory, since it seeks to describe the institutions that would govern societies under ideal conditions where the demands of justice are respected (Rawls 1999, 216; see also Valentini 2012). Its strategy, as explained in the preceding sections, is to identify justice with those social arrangements that would emerge over time from the accretion of ethical interpersonal dealings. The theory's postulation of consistently ethical interpersonal conduct of the scale and duration

necessary to generate stable institutions is clearly an idealised one.[14] It does not entail any specific conclusion about how its prescriptions would best be realised in real human communities, any more than Rawls's theory entails that actual societies will have perfectly just institutions. The role and limits of ideal theory in political philosophy has been vigorously debated in recent times (see, e.g., Gaus 2016; Estlund 2019), but it is beyond the scope of this article to engage that debate in any detail. It suffices, for present purposes, to note that any conception of political philosophy that rejects the relevance of ideal theory to real-world questions would ground an objection not only to small justice, but also to the rival views discussed previously.

Rawls's account of justice yields a small collection of determinate principles that he holds to be universally applicable to human communities (1999, 266-7). Small justice, by contrast, is a process theory of justice: it consists, as we saw previously, of a sequence of ethically sound interpersonal dealings combined with a process of social emergence premised on a corporate view of time. The institutions produced by this process will plausibly differ from society to society. Small justice is therefore pluriform; despite its idealised character, it will not yield the same results in every social environment. This, it seems to me, is a strength, rather than a weakness. Rawls's theory has been criticised for reflecting a liberal deontological view of social relations premised on an individualistic conception of the person (see, e.g., Sandel 2012, ch. 1). Small justice, by contrast, can potentially be adapted to diverse conceptions of ethics and may play out differently depending on the social backdrop. It offers a universal idea of justice that also takes account of cultural differences.

Some readers may nonetheless find it troubling that small justice does not clearly tell us what the *principles* of justice are. The alternative theories discussed throughout this article all ultimately generate abstract principles we can use to structure our social institutions. Small justice, by contrast, says that just social institutions are what will emerge from ethically sound interpersonal decisions. In order to generate principles of justice based on this methodology, we would have to speculate about what the outcomes of this process might be. We might, for example, hypothesise that treating everyone ethically at an interpersonal level would result in a social norm of responding compassionately to the needs of the vulnerable and an institution of communal wealth sharing. It is certainly possible to engage in such speculation; the exercise is hardly more far-fetched than Rawls's speculation about the choices people would make in the original position. Furthermore, this kind of enquiry does not start from nowhere. Every human community has a store of practical knowledge—what we might call a *tradition*—about the forms of life that are best suited to enable its members to flourish in a cooperative

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[14] It is worth emphasising, to avoid any confusion, that small justice does not assume that the principles that govern small-scale interactions in the actual world are ethical or just. The entrenchment of gender, racial and other forms of systemic discrimination in real-world institutions refutes any such assumption. However, the ethically sound interactions that provide the foundation for small justice would not be tainted by these biases. This illustrates the idealised nature of the theory.

environment (Crowe 2019a, 38, 125-6; see also Crowe 2019b). This body of knowledge, critically considered, represents a plausible presumptive guide as to the principles of justice best adapted to life in that community.

7. Conclusion

I commenced this article by exposing the strong emphasis that Rawls's theory of justice places on social institutions. This important feature of the Rawlsian paradigm is widely taken for granted, but rarely explicitly noticed. I then argued that the influential post-Rawlsian theories of justice offered by Nozick and Cohen can be seen as responding in different ways to Rawls's institutional focus. Nozick's case for an entitlement theory of justice destabilises Rawls's account by showing how it is unable to accommodate the historical consequences of a series of putatively reasonable interpersonal transactions. Cohen, however, turns the tables on Nozick, by showing how his entitlement theory is similarly unstable. A purely historical theory of justice may be able to accommodate the results of a chain of reasonable transactions, but it does so only by allowing for the possibility of deep inequalities in social institutions. The parties to the transactions, Cohen suggests, would not (and, in any case, should not) agree to them if these long-term societal consequences were revealed. The consensual foundations of the entitlement theory are therefore open to question.

This exchange shows that an ideal theory of justice would accommodate both historical and institutional perspectives. It may appear from either a Rawlsian or a Nozickian perspective that such a unified theory is not possible. However, I have argued that Cohen's posthumously published work provides a clue as to how we might arrive at such a conception. Cohen provides a compelling picture of how socialist principles of justice might operate at the level of small-scale social institutions, such as picnics. His argument is open to a serious objection: namely, that a large-scale society is quite different to a picnic. However, this objection can be circumvented by modifying Cohen's strategy. We can usefully think about social justice, I argued, by imagining society not as one enormous picnic, but as an extended sequence of ordinary-sized picnics. These picnics, if conducted in a reasonable and ethical manner (which may or may not be exactly as Cohen imagines them) might be expected to give rise over time to a wider social institution of the picnic that is, itself, substantially just. Interpersonal ethics, in other words, can give rise to social justice when combined with a certain kind of historical perspective. This historical perspective draws on what I have described as the corporate view of time: that is, time as the accretion of lived experiences.

I call the resulting theory small justice. The normative appeal of small justice, I have argued, comes at least in part from the fact that it is grounded in the experiences and responses of those who are immersed in the predicaments it is intended to govern. It therefore addresses one of the main weaknesses of Rawls's appeal to the original position. Its reliance on emergent social order also helps avoid the different problems of

scale confronted by Nozick and Cohen. Small justice, in a nutshell, avoids (1) Rawls's heavy reliance on the abstract and unrealistic original position, (2) Nozick's myopic focus on historical factors at the expense of institutions and (3) Cohen's underexplained transition between small-scale and large-scale social units. These advantages come with what some readers may consider a drawback: small justice, unlike its rivals, may not enable us to readily identify determinate abstract principles. However, this feature could equally be viewed as an advantage, insofar as it produces a hermeneutic conception of justice embedded in the social environment.

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