

Justice the Next Frontier: Inclusion of Individuals with Mental Disorders within Liberal Theories of Justice

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Abstract: Liberalism has throughout Western history attempted to ensure the just or 'fair' treatment of all persons in society. The past century has seen a slow but steady progression towards the inclusion of marginalized individuals, primarily within the realm of socio-cultural differences (such as gender and race/ethnicity). This has significantly facilitated the expansion of our understanding of justice within liberal theory; however, while it is difference that gives rise to political organizing, we remain unable to fully accommodate all types of difference within a liberal theory of justice, specifically with respect to individuals with mental disorders (mental illnesses).

It follows then, that since our notion of justice continues to progress and expand, and because protection of the rights of individuals is considered to be significant, an important feature of liberalism seems to be an intuitive sense – or gut feeling – that there is something inherent about inhabiting a human form that requires some sort of just treatment. In the case of individuals with mental disorders, there is a paucity of research and theoretical development on this matter. This particular type of difference has been largely ignored or altogether excluded from liberal theories of justice. In addition, the reliance on the concept of rationality at the base of formal theories of justice (especially within the social contract tradition) individuals with mental disorders are in effect discursively excluded from what is thought to be an inclusive principal. As a partial response to this dilemma, I will address the challenges posed to liberalism by consideration of justice for individuals with mental disorders, and discuss why this new form of inclusion is necessary for justice within liberal theory.

Introduction

Difference can be argued as giving rise to political organizing in the first place. It is the concept of difference that is responsible for our continuous revisions to political theory over time in order to become more 'just' and by extension more inclusive. This is particularly apparent in liberal theory where the rights of the individual are considered to be politically significant. However, to date liberal theorists have not come to a completely just way of accommodating for all types of differences. While some forms of difference

have in recent years gained attention within liberal theory (such as gender and race/ethnicity) there remain several unsolved problems with regard to justice, one of which as argued by Martha Nussbaum (2006) is ‘the problem of doing justice to people with physical and mental impairments’. Nussbaum argues that these individuals ‘have not yet been included, in existing societies, as citizens on a basis of equality with other citizens’.ⁱ The community members that Nussbaum is referring to specifically are individuals who have disabilities. Disabilities are beginning to be addressed at the theoretical level yet several problems persist when we begin to open the discussion in regards to individuals with mental illnesses. While the disabilities that Nussbaum addresses are both mental and physical, I argue that individuals with mental disorders experience different forms of exclusion in comparison with individuals with disabilities and therefore should receive specific attention. This case is distinct in that the stigma attributed to individuals with mental disorders is distinct. Our discomfort with individuals who have mental disorders exemplifies our general discomfort with irrationality in Western cultures. Therefore, in order to truly facilitate inclusivity of individuals with mental disorders in society we must address the social stigma that they face as well as the systemic barriers that affect their everyday lives. This case not only speaks to the difficulties that are associated with being defined as ‘irrational’ within a cultural context that is dominated by rationality, but also the substantial effects associated with the complete lack of theoretical perspectives pertaining to justice for these individuals within liberalism. Historically these individuals were ignored via the process of institutionalization where they were subject to physical, psychological and other abuse. While we no longer habitually institutionalize these individuals, they remain marginalized and over-represented in homeless populations and in the prison system – which some scholars argue has become the newest incarnation of the mental institution as ‘people with mental illnesses are incarcerated at rates much higher than their non-mentally ill counterparts’ⁱⁱ – which in effect still renders them invisible. The exclusion of these individuals from dominant discourses as well as in theories of justice facilitates our ability to exclude them from participation in mainstream social and political society. Of specific concern is the link between discursive exclusion and substantive inequalities faced by marginalized individuals, and how this pertains to the mistreatment of individuals with mental disorders. . As argued by Charles Taylor, ‘[e]qual recognition is not just the appropriate mode for a healthy democratic society. It’s refusal can inflict real damage on those who are denied it’ⁱⁱⁱ.

Through this exploration I hope to point to some of the shortcomings that exist within liberal theories of justice when we consider individuals with mental

disorders, as well as gain some insights as to what true inclusivity would look like at the theoretical level.

Difference and Social Inequality

As previously highlighted, difference is arguably what makes political organizing necessary. Yet within liberal theory, a commitment to neutrality is what our notion of justice is based on. This is highlighted most prominently within liberal theories of justice of the social contract position^{iv} where difference is often ignored altogether. Simply, the social contract is imagined to be a hypothetical agreement where human beings rationally agree to the terms and conditions of the contract, as this is perceived to serve their self-interest. Since as asserted by David Stevens, '[i]n contemporary political philosophy virtually all roads lead back to Rawls'^v it is very important to include John Rawls in our discussion of social contract theorists. Rawls is interested in the organization of a well-ordered society. His theory of justice fits into the category of ideal theories of justice and is also in general a project based on the idea of the social contract. Ideal theories of justice simply put, are theories of justice that assume a 'tabula rasa' (blank slate) or 'original position' from which to begin their theoretical approach. Rawls, following in the footsteps of social contract theorists who have come before him^{vi}, is interested in coming to a 'conception of justice which generalizes and carries to a higher level of abstraction the familiar theory of the social contract as found, say, in Locke, Rousseau and Kant'^{vii}. He argues that individuals should reasonably come to an understanding of justice from an ideal standpoint – thus it is necessary to remove context to come to principles of justice that should theoretically accommodate all individuals and also should be able to account for all substantive differences and afford true equality of opportunity to all individuals. In order to facilitate the creation of a well-ordered society, this ideal theory of justice must ignore especially the following inequalities: 'social class of origin... native endowments... opportunities to develop these endowments as affected by their social class of origin [and] their good or ill fortune, or good or bad luck over the course of their life (how they are affected by illness and accident; and say by periods of involuntary unemployment and regional economic decline)'^{viii}. We are conceived of as being 'free and equal citizens over a complete life'^{ix}. Therefore, Rawls is allowing certain structural inequalities to exist and persist. These are seen merely as 'bad fortune'. What I find particularly interesting about Rawls' allowable inequalities is the notion that 'native endowments' and 'good or ill fortune'^x are included in his list. If we examine this in the context of individuals with mental disorders, Rawls is in effect not only ignoring but also explicitly excluding this group of individuals (as well as any other group of individuals

who are disadvantaged by their biology) from his conception of justice. Taken in this context, the experience of having of a mental disorder then becomes 'natural' or a 'native endowment' since onset of mental disorders is often tied to genetic and biochemical factors and can be the product of 'ill fortune'. While Rawls conceives his ideal theory of justice with its allowable inequalities is meant to be 'fair', the specific allowable inequalities strike me as being very unfair in that they do not expose various structural inequalities that affect the lives of individuals with mental disorders substantively. If you have a mental disorder, it's your fault and you have to suffer the consequences. Rawls' conception of a 'well-ordered society' is meant to be fair, just and inclusive, yet his allowable inequalities explicitly exclude all individuals who are not naturally advantaged, and those who encounter ill fortune at some time over the course of their life. In some sense I suppose this can be construed as being reasonable (in that it is true that there is little we can do about the natural endowments that we enter this world with in some sense), but I argue that Rawls' allowable inequalities cannot be construed as 'just' or 'fair'.

Further to this difference, as argued by Martha Minow is defined in relation to a non-neutral norm. In the West this norm is usually conceived of as being able bodied, Caucasian males of the middle or upper classes. Thus those who are different are only 'different' in relation to the 'norm', which in our case happens to be the most powerful group of people in our society. When you are in a position of power, it is very difficult to understand the experience of those who are marginalized. Since it is usually the 'normal' (read powerful) individuals who define what is just, it is clear that their privilege does not allow them to understand fully what is just for all individuals in society nor are they likely to understand the inequalities that stem from the experience of marginalization (as we can see clearly in Rawls' allowable inequalities). Therefore, current theoretical understandings of justice within liberalism are unjust since they are based on what is just for the privileged 'norm'. We cannot have justice without context. Therefore in order to promote greater inclusivity within liberal theories of justice it is necessary to consider what is just for all (marginalized) groups within a given society.

While other types of difference have gained attention within liberal theory, individuals with mental disorders are often either ignored or explicitly excluded. This is problematic in that it renders individuals with mental disorders invisible in theoretical approaches to justice from a rights and freedoms perspective. This can also translate into invisibility in society more generally. Where these individuals were institutionalized historically – and often subject to physical, psychological and other abuses – and rendered invisible as a result, now they are located within the criminal justice system (which some scholars

argue has become a new form of mental institution) and in homeless populations where they remain invisible. Invisibility is essentially another form of exclusion. Therefore the gap in theoretical perspectives pertaining to justice for individuals with mental disorders not only has discursive implications but also substantive consequences. Lack of recognition and ignoring differences altogether leads to injustices at the theoretical level which translates into broader substantive social and systemic injustices.

Rationality

A key discursive challenge to liberal theory posed by the case of individuals with mental illnesses is the challenge posed to the concept of rationality. The dominant paradigm within the West is that of rationality. Liberal theories of justice within the social contract tradition^{xi} are largely based on the understanding that individuals are rational and able to rationally decide what best serves them. Social contracts are imagined to be hypothetical agreements that define how a society is organized by '[a]sking what rational people would consent to – what the 'rational consensus' would be – [which] becomes the touchstone for analysis of this sort, as developed by such theorists as John Rawls, Robert Nozick, Ronald Dworkin, and Bruce Ackerman'^{xii}. This is tied to Rational Choice theory, which asserts that '[r]ational choosers elect the option they expect to [best serve their objectives]' and further '[t]he benefits of others or collective benefits can only be a by-product of individual rational choices'^{xiii}. According to Martha Minow, '[t]he idea of a rational consensus and the image of a contracting process afford some degree of equal membership for those ready and able to join such processes. Yet these same ideas erect a boundary distinguishing those who can participate, given the set ground rules, from those who cannot'^{xiv}. Individuals with mental disorders are of course most commonly understood to be irrational, thus they are unable to participate. Therefore the discursive exclusion at the very basis of liberal theory of individuals with mental disorders is highly problematic. While rationality is largely understood to be an inclusive principal, it is clear that this has some problematic limitations with regard to individuals with mental disorders specifically, but this can also be applied to other marginalized groups. For example, women were once understood to be 'irrational' which not only allowed for their complete exclusion from political society but also for them to be defined as property instead of persons. When you are defined as property your rights do not matter and this makes it very easy to be subject to various abuses. This can also be reflected in the historical institutionalization of individuals with mental disorders. These individuals were defined as 'irrational' and by extension less than persons under the law, which allowed them to be devoid of rights. Thus the

physical and psychological abuses that were a product of institutionalization is justified in that these individuals were not politically significant. The danger associated with defining our entire society on the principal of rationality – and the rights and freedoms that stem from this definition by extension – is that the definition of who is considered to be ‘rational’ and who is considered to be ‘irrational’ is mutable and can change over time. Moreover, those who are defined as irrational can easily be denied rights and freedoms since political personhood is so closely tied to rationality.

This also has broader implications in that critics of Rational Choice theory argue that human beings in general don’t necessarily behave rationally. Rationality perhaps is more of a learned behavior as opposed to something that is at the core of our very being. Thus the case of considering justice for individuals with mental disorders poses an important challenge to liberal social contract theories at their base.

Inclusivity

While there have been many attempts to come to a just way of including marginalized individuals within mainstream theoretical approaches to justice, I argue that no past attempt has been satisfactory when considering justice for individuals with mental disorders. For example, Martha Nussbaum’s Capabilities approach to justice offers a more inclusive understanding of what it is to live a ‘fully human life’^{xv}. Nussbaum outlines ten capabilities, which are in some sense similar to the approach used in the United Nations Declaration of Human Rights and Freedoms in that it outlines ‘humane’ treatment in some sense. This approach ensures that the interests of those defined as ‘different’ (thus marginalized individuals) are addressed at the base of her theoretical approach. Nussbaum considers context and in so doing attempts to come to a just theoretical approach to properly considering individuals who have been marginalized. Nussbaum considers specifically the needs to individuals with disabilities, but never discusses individuals with mental disorders. While she does leave her list of capabilities open to revision from other scholars and thus allows room for any groups of persons who have been left out, I argue that there are some issues with this approach to justice from a liberal standpoint. Primarily, Nussbaum has been criticized for distorting liberalism in some sense. It can be argued that her approach to justice is perhaps something other than liberalism. In addition, a capabilities approach to justice would be very difficult to implement. The resources necessary for this approach to be viable are often above and beyond that which most liberal governments feel comfortable with committing to and in addition this approach would require monitoring which may compromise autonomy, which I argue is highly problematic.

Nancy Fraser^{xvi} argues that what is necessary in terms of facilitating the just treatment of individuals who are marginalized (she does not address any group specifically at least to any significant degree) is to consider both proper recognition and just redistribution of resources. Her work largely summarizes the postmodern vs. welfare state liberalism debate, and as a result she ends up combining the two approaches and taking the best from both theoretical approaches. I absolutely agree with her to a point in that it is clear that both approaches have their merits. This is a simplistic solution which I feel has to some degree been negotiated within most Western societies. The problem with this approach is that when we really examine the implications, again we run the risk of compromising autonomy, and 'just recognition' has also in many cases lead to the unfortunate result of further stigmatization of marginalized individuals.

Martha Minow argues that what is necessary is to combine a rights based approach to justice combined with a social-relations approach. A social-relations approach to justice, which 'invites a focus on context and particularity'^{xvii} which I argue is particularly important when discussing individuals who are defined as 'different'. This approach takes into account the importance of the rights of individuals and their autonomy while recognizing that we do not exist in isolation and that our rights are only significant when taken within the context of relationships. In addition, Minow's analysis of difference offers us the opportunity to understand the power relations inherent within liberal democratic societies (despite our best efforts to ensure that both democracy and liberalism are inclusive). This is incredibly important in our assessment of individuals with mental disorders in that as mentioned previously, difference is defined as such in relation to a non-neutral norm. Thus the importance of particularity is reflected, and the structures and ideologies that keep certain segments of the population marginalized (such as individuals with mental disorders). Inherent in Minow's analysis also is the problem associated with stigmatization as a result of too much recognition – that is recognizing difference can work to the disadvantage of marginalized segments of the population. The question becomes whether it is best to minimize difference in order to reduce stigmatization or to highlight difference in order to ensure that disadvantaged groups receive the social support they require. While this approach is promising (most promising in my view) I still argue that it is necessary to consider the specific requirements of each marginalized segment of the population in order to truly facilitate the just treatment of these individuals (and I think Minow would agree). Thus individuals with mental disorders need to be considered both in isolation as well as within a matrix of other types of difference and the social stigma and structures that affect their lives.

Conclusion

As stated by Minow,

‘Ours is a world that has made difference matter. Being neutral about this... and ignoring someone’s difference assigns remaining burdens of difference to that person... We have seen assumptions about difference deeply entrenched in our social institutions, and in the legal rules that govern them... They so inscribe other points of view as natural and orderly that any conscious decision to seek other points of view seems irrelevant or strange’^{xviii}

The ideologies that cause difference to matter and by extension are responsible for the marginalization of ‘different’ individuals are deeply entrenched and pervasive. However, with a commitment to inclusivity and the progress that liberalism promises I argue that these ideologies will begin to change over time. Since, as stated previously, other forms of difference have gained attention within liberalism this suggests that there is room for progress and change. The first step is to take a good hard look at the ideologies that cause exclusion in the first place. From there, it is necessary to address the substantive consequences associated with a particular form of difference. In the case of individuals with mental disorders, we must begin with the ways in which we frame difference and by extension the concept of rationality – which as stated previously forms the basis of citizenship and assignment of rights and freedoms in most liberal democratic societies. It becomes a question of how we frame ‘difference’ as well as who we define as ‘different’. If we understand these tensions from the perspective of a ‘non-neutral norm’, we will not be able to facilitate inclusivity – either discursive or substantive – of marginalized individuals, such as those with mental disorders.

Notes:

- ⁱ Nussbaum, M. (2006). *Frontiers of Justice: Disability, Nationality, Species Membership*. Belknap Press of Harvard University, Cambridge, MA.
- ⁱⁱ Cox, Morschauser, Banks and Stone in Mackain and Mueser (2009). Training in Illness Self-Management in the Criminal Justice System. *American Journal of Psychiatric Rehabilitation* 12, p. 31-56.
- ⁱⁱⁱ Taylor, C. (1995). *Philosophical Arguments*. Harvard University Press, Cambridge, MA.
- ^{iv} See Rawls 2001, Dworkin 1978, Locke 1690/1980, Hobbes 1651/1968
- ^v Stevens in MacKenzie, I. et al (2005). *Political Concepts: A Reader and Guide*. Edinburgh University Press, Edinburgh, UK.
- ^{vi} Locke 1690/1980, Hobbes 1651/1968
- ^{vii} Rawls in Nussbaum 2006, p. 11
- ^{viii} Rawls, J. (2001). *Justice as Fairness: A restatement*. Harvard University Press. Cambridge MA, p. 55.
- ^{ix} Rawls, J. (2001). *Justice as Fairness: A restatement*. Harvard University Press. Cambridge MA.
- ^x Rawls, J. (2001). *Justice as Fairness: A restatement*. Harvard University Press. Cambridge MA.
- ^{xi} See Rawls 2001, Dworkin 1978, Locke 1690/1980, Hobbes 1651/1968
- ^{xii} Minow, M. (1990) p.149
- ^{xiii} (Montada 1998, p. 83).
- ^{xiv} (Minow, 1990 p. 151).
- ^{xv} Nussbaum, M. (2006). *Frontiers of Justice: Disability, Nationality, Species Membership*. Belknap Press of Harvard University, Cambridge, MA.
- ^{xvi} Fraser, N. and Honneth, A. (2003). *Redistribution or Recognition: A Political-Philosophical Exchange*. Verso, New York NY.
- ^{xvii} Minow, M. (1990). *Making All the Difference: Inclusion, Exclusion, and American Law*. Cornell University Press, Ithica NY.
- ^{xviii} Minow, M. (1990). *Making All the Difference: Inclusion, Exclusion, and American Law*. Cornell University Press, Ithica NY.

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