Rawls’s Socialism and Pure Procedural Justice

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William Edmundson has written a very necessary book. *John Rawls: Reticent Socialist* makes the case for Rawlsian socialism in light of Rawls’s complete corpus, and manages to do it thoroughly in under 200 pages. Of course there have been many discussions and interrogations of Rawls’s socialism, though none which have attempted to tie everything together so neatly in light of everything Rawls has written. One reason may be that interest in Rawls’s socialism has roughly tracked the political fashions in the US and UK, with a higher interest in defending socialism in the 1970s and 80s and then a waning interest through the 90s and aughts, and only now picking up steam again. Another reason may be that all of our interpretive energy about how to fit together the later Rawls and the earlier Rawls was so taken up with the questions of global justice that we were too exhausted for anything else. In this vacuum the defenses of Rawlsian capitalism have flourished, perhaps culminating in John Tomasi’s *Free Market Fairness*. In light of this, Edmundson has provided a very welcome counterweight, which I hope to see gain a wide audience. For better or worse, Rawls has served as the lingua franca for significant sectors of academic political philosophy, meaning that the question of whether Rawls was a socialist is also the question of whether there can be a legitimate argument for socialism at all, at least in some circles.

In this article, I want to focus on one small but crucial step in Edmundson’s argument: his account of pure procedural justice. Pure procedural justice is a technical term coined by Rawls, and how we understand it will be fundamental to how we understand Rawls’s attitude towards market economies. Rawls’s requirement of pure procedural justice seems to play an important role in his arguments in *A Theory of Justice*, but it has been hard to reconcile this requirement with Rawls’s critique of capitalism. There is not only the problem that his remarks in *TOJ* are (even for Rawls) obscure, but there is also the fact that Rawls did not substantially revisit them in *Justice as Fairness.* In Edmundson’s account, pure procedural justice functions as a kind of limit to Rawls’s socialism, the point at which a socialist can find common ground with a critic of government and a defender of free markets like Hayek. In this way, Edmundson grants the central conceit of John Tomasi’s reading of Rawls, and thus he has to look outside of the account of pure procedural justice for support for nationalizing industry. But when it comes to defending liberal socialism against property-owning democracy, Edmundson can draw again on pure procedural justice, as he believes liberal socialism is more compatible with its requirements.

In broad strokes, Edmundson’s argument as it involves pure procedural justice goes like this. Pure procedural justice is the standard we use to assess economic inequalities, when the basic elements of background justice are in place. Unlike imperfect procedural justice and perfect procedural justice, where there is an independent standard we can use to assess the outcome of some procedure, in pure procedural justice there is no external standard we can use to question the result of the procedure. When cutting a cake, we know we want equal slices, and we have luckily designed a procedure that will reliably lead to this independently valuable result; we simply make sure the person who cuts the cake is the last to choose their slice. In a criminal trial, we know we want to convict all and only the guilty parties, but it is possible that even when the trial (i.e. the procedure) itself is fair, the result may not be what we hoped for. However, in pure procedural justice the results cannot be judged independently. Edmundson takes this to mean that

“Nozick, Hayek, and Rawls disagree about what principles are needed to assure a fair procedure, but all three share the ambition of stating general principles that leave no room for further complaint about the distributive justice of the result.”[[1]](#footnote-1)

For Edmundson, Rawls’s ambition comes from his requirement of stability and publicity. If a person in a well-ordered society did press a complaint about their share of the results of cooperative production on the basis that it did not conform to an independently defined pattern, this complaint would amount to a rejection of the society’s conception of justice, and could not be heard.[[2]](#footnote-2)

When comparing liberal socialism and property-owning democracy, Edmundson focuses on the fact that liberal socialism would recommend nationalizing society’s major productive assets, while property-owning democracy would potentially allow private ownership of these. He argues that liberal socialism can more easily meet the ambition of pure procedural justice because the inequalities that would result from trading only small-scale productive assets are more plausibly regarded as unobjectionable, in light of the justice of the basic structure as a whole. Whereas in property-owning democracy, trading of major productive assets is likely to lead to domination that threatens the justice of the basic structure as a whole. This would mean that constant interference in these private trades would be required, and the society would open itself up to the complaints of various interested parties, which it might be unable to find a principled way to answer.[[3]](#footnote-3)

Though I agree with much of what Edmundson says, I want to urge a reading of pure procedural justice that would bring Rawls more in line with Marx and further from Hayek. Specifically, as Edmundson notes, Rawls was impressed with Marx’s idea that distribution of wealth is not something separate from relations of production.[[4]](#footnote-4) I take this to be why much of Rawls’s discussion of pure procedural justice is focused on distinguishing procedural justice from allocative justice. Rawls says "…allocative justice applies when a given collection of goods is to be divided among definite individuals with known desires and needs.”[[5]](#footnote-5) In the case of allocative justice, there are no legitimate expectations to shares in the proceeds of a cooperative activity, because in allocative justice “The collection to be allotted is not the product of these individuals, nor do they stand in any existing cooperative relations.” The suggestion here is that there are cases where allocative justice is appropriate, but that is not our society, in this idealized thought experiment at least. Rawls instead characterizes our society as cooperation for mutual benefit, and he notes that within such a cooperative scheme, we will be influenced by what the rules say we are entitled to, and thus we form what he called “legitimate expectations” of a share in the proceeds of our mutual activity.[[6]](#footnote-6) He says that because of this we should treat distributive shares as a matter of pure procedural justice.

Pure procedural justice is defined entirely by contrast with perfect and imperfect procedural justice. In perfect procedural justice, like the cake cutting, the procedure perfectly leads to the right result because the cutter is motivated to cut equal size slices, knowing that if they cut any slice bigger than the others another person will certainly take it and they will end up with a smaller slice. What is distinctive about this type of procedural justice to Rawls is that we can know the justice of the outcome independently of the procedure – to see whether a cake cutting was fair we just look at the apportionment of the slices, and to see whether the procedure was fair we ask whether it led to that exact result. The procedure is considered just because it leads to the outcome we want.

In imperfect procedural justice, like the criminal trial, both the outcome and the procedure can be considered fair separately. A fair trial can result in the acquittal of a guilty person, and a guilty person can be convicted as a result of an unfair trial. In this case we would like a procedure that always led to the right result, just as we have with the cake cutting, but we consider this impossible, so we are content to do the best we can with an imperfect procedure. But as with the cake cutting, we at least know what outcome we would like.

In pure procedural justice we do not know this. Rawls says we actually have to carry out the procedure. His example is gambling, and within that context this makes sense. We can’t say before the dice is thrown whether the craps players received their fair share of winnings. So at first it seems as if Rawls is saying that we do know independently what a fair procedure would be, so we simply apply this, and then accept the results whatever they are. This is why people are inclined to read this as a defense of a free market – if you can prove that Rawls considered a free market part of a just system of institutions, then you can say that whatever distribution of goods results from a free market would have to be considered fair under pure procedural justice. More plausibly, you could say that this at least sets a limit on what type of redistribution we should tolerate. However I think this misses the point.

Pure procedural justice would in this case be the opposite of perfect procedural justice. Any procedure that leads to the outcome we want would be the just procedure in perfect procedural justice. Many would read pure procedural justice as a situation where any outcome that results from the procedure we want is just. But this would not helpfully distinguish pure procedural justice from imperfect procedural justice. So why would Rawls insist on giving us three types rather than just two? It is my contention that in pure procedural justice both the justice of the outcome and the justice of the procedure are intertwined.

Just as we must carry out the craps game to know whether the results are just, so too must the results be known for us to know whether the game was just. We don’t often notice this because in a craps game it is trivially true, it wouldn’t make sense to think about the justice of the game separately from the justice of the result. Compare this to the way we are able to say that the trial was just regardless of a bad result. In a gamble, the result and the procedure are so closely intertwined that we can’t prioritize one over the other in considerations of fairness. If cheating is involved, the result of the game becomes automatically unfair, and if the results are consistently unwanted we would have no problem changing the rules to better suit our ends. Unlike the cake cutting, we are not looking for the best way to get a certain result, and unlike the trial, the game’s procedures are arbitrary and not valued for their own sake.

If this is right then Rawls’s three types of procedural justice make perfect sense, we must contrast pure procedural justice with perfect procedural justice to show that in pure procedural justice the outcome cannot be considered fair independently of the procedure used to arrive at it. And then we must also contrast pure procedural justice with imperfect procedural justice to show that in pure procedural justice the procedure cannot be considered fair independently of the outcome.

Understanding this fully in the context of our judgments about economic policy would mean not only rejecting the very idea of the value of the free market, it would mean not attaching any weight to the procedures by which people come to have things independent of the distribution of income and wealth.

It also means that the distribution itself has no independent value. This would seem to be anathema to Rawlsian egalitarianism, but it doesn’t mean that equality has no value. Rather it is in line with relational egalitarian understandings of Rawls, in which the value of egalitarianism is in its attempt to equalize authority, status, and standing.[[7]](#footnote-7)

In our judgment of economic policy, we should then look at the policies and their results as a whole because we are not aiming to allocate to each person their rightful share, rather we know that one’s “rightful” share can only be considered in the context of a particular system of production. Within such a system, people are justified in expecting to get what that system entitled them to, but that system is no better than its outcome.

I cannot say that absolute equality is the most just distribution without considering how it was arrived at, but I also cannot say that the property and tax law of a certain society is the most just procedure without considering what distribution would result from it. Pure procedural justice requires that economic systems and distributions are evaluated as a whole. Rather than taking pure procedural justice to require that we must consider the result of the procedure just whatever it is, we should understand this as a strict requirement on both procedures and outcomes such that any injustice in either will taint the other.

None of this tells against Edmundson’s overall account of Rawls as a socialist, if anything it would deepen it. It would though affect Edmundson’s account of the virtues of liberal socialism over property-owning democracy. The fact that a property-owning democracy would likely require continual governmental interference in the buying and selling of major productive assets does not mean that a property-owning democracy offends against pure procedural justice. But similarly, if I am right then a proponent of property-owning democracy cannot argue that their more extensive market system is preferable on the grounds of pure procedural justice. Pure procedural justice, on my account, tells us that markets have no independent value, apart from their outcomes. Any Rawlsian case for markets must be based on grounds of efficiency, or stability, but not on pure procedural justice.

1. *John Rawls: Reticent Socialist*, p.66. [↑](#footnote-ref-1)
2. Ibid, p. 141. [↑](#footnote-ref-2)
3. Ibid, p. 146-148. [↑](#footnote-ref-3)
4. Ibid, p. 57-58. [↑](#footnote-ref-4)
5. *Theory of Justice*, p. 77. [↑](#footnote-ref-5)
6. *Theory of Justice*, p. 74. [↑](#footnote-ref-6)
7. See Anderson “What is the Point of Equality” Ethics 109:2 (1999). Some relational egalitarians, like Elizabeth Anderson, have in my view overemphasized the way that pure procedural justice disregards the distribution’s value. [↑](#footnote-ref-7)