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## **Comment on Andrew Walton**

The Basic Structure Objection and the Institutions of a Property-Owning Democracy

*Abstract:* Andrew Walton argues that a Rawlsian property-owning democracy (POD) requires a fraternal ethos and certain forms of social interaction, such as high trade union membership. The basic structure objection could be used to challenge these claims as it indicates that Rawls's principles of justice should only be applied to the basic structure of society, and not, for example, to an ethos. Walton has two responses to the objection: firstly, that it does not apply to his argument, and, secondly, even if it were to apply, the objection itself is unconvincing. In this article I argue however that (1) the basic structure objection does apply as a fraternal ethos is difficult to reconcile with Rawls's understanding of what should be included as part of the basic structure, and (2) although I do not defend the basic structure objection, it is not made explicit in Walton's argument why the objection should be dismissed as unconvincing.

John Rawls's claim that the principles of justice should apply to the basic structure of society (as the primary subject of justice) is considered to be a defining element of his theory of justice. Rawls has described the basic structure as "the way in which the main political and social institutions of society fit together into one system of social cooperation and the way they assign basic rights and duties and regulate the division of advantages that arise from social cooperation over time" (Rawls 2001, 9; see also 1999, 6–10; 2005, 11). Precisely what this emphasis on institutions implies, however, is somewhat contentious. A first question to address is what is meant by the notion of institution, and which institutions are included as part of the basic structure. The second is to consider what it means that the basic structure is the primary subject of justice: does this imply that principles of justice only apply to institutions or is there room for them to apply elsewhere? What would 'elsewhere' be in this case?

Andrew Walton aims to describe what a property-owning democracy (POD), as a society characterized by Rawlsian justice, would look like, claiming particularly that it might require (1) a sense of fraternity and (2) certain forms of social interaction, such as high trade union membership and a public education system. I am broadly sympathetic to his attempt to characterize a Rawlsian society, and I also believe that Walton's analysis can help to provide substance to the notion

of an egalitarian ethos. His argument, however, does not critically assess what is meant by ‘institution’ in Rawls’s theory, and is too quick in brushing over a significant objection—the basic structure objection. In order to be convincing, Walton cannot claim, as he does, that the basic structure objection does not apply to his argument, and he would need to provide better reason to demonstrate why the basic structure objection should not be heeded. Despite being critical, I hope that my analysis can be understood, ultimately, as a friendly recommendation on how the argument may need to be developed further.

We can say that Walton is claiming, at least partially, that a POD requires a fraternal *ethos*,<sup>1</sup> making his argument at least somewhat similar to claims such as those made by G. A. Cohen, who argues that Rawlsian justice requires an egalitarian ethos (Cohen 2001, 117–47). Walton concedes that his emphasis on a fraternal ethos could make his argument (at least seem to be) vulnerable to the basic structure objection. He phrases the objection as follows: “*ethoi* are incompatible with Rawlsian justice because the latter is concerned with only the institutional structure of a society.” (Walton, 179)

I do not find this an entirely convincing description of the basic structure objection. It is not the case that *ethoi* are necessarily incompatible with Rawlsian justice. After all, an ethos may emerge as a result of Rawlsian justice and I doubt Rawlsians would say in this case that the ethos is incompatible with Rawlsian justice. Rather, I would describe the objection as consisting of two parts, with potential implications for *ethoi*: (1) the positive claim that the principles of justice apply to the basic structure, and (2) the negative claim that the principles of justice do *not* apply outside of the basic structure, for example to norms, or personal choice (Rawls 1999, 47; Fourie 2007, 18–70).<sup>2</sup> In relation to *ethoi*, one could say that according to the basic structure objection, the principles of justice do not apply to *ethoi* as they are not part of the basic structure.

One can respond to the basic structure objection in various ways, including (i) by claiming it does not apply because, actually, one’s argument complies with both the negative and the positive claims or (ii) by questioning the objection itself, for example, claiming that the definition of basic structure needs to be widened to include social norms and personal choice.<sup>3</sup> Walton appears to adopt both of these responses, however, as I will argue, I do not think option i. is open to him. Furthermore, he would need to provide a much more extensive argument for option ii. to be convincing.

Firstly, Walton claims that the objection does not apply as his argument is also concerned with institutions (and thus the basic structure of society). Secondly, he claims that the basic structure objection is not itself entirely convincing. For example, if it is defined as applying only to the coercive framework of society it seems that it would not to be able to condemn sexist attitudes which should clearly, Walton claims, be the subject of justice.

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<sup>1</sup> An ethos can be described as a set of norms that determines (and is also influenced by) pervasive patterns of attitudes, expectations and behaviour in a particular society or community.

<sup>2</sup> For one of the most influential descriptions and critiques of the basic structure objection, see also Cohen 2001, 129–47.

<sup>3</sup> Cohen 2001 opts for the latter.

Let's consider more specifically why he claims that the basic structure objection, even if we agree with it, does not pose a problem for his argument. He maintains that his argument is "linked to considering what form of institutional framework should be deemed appropriate for realizing Rawlsian justice. In this respect, my arguments can be read as proposing a particular set of institutions in virtue of links to particular *ethoi*." (Walton, 179) There are two questions that this raises. The first is: which institutions are being proposed? The second is: precisely what is the relationship between these institutions, *ethoi* and Rawlsian justice?

I am going to assume that trade unions and a public education system are examples of (a commonsense understanding of) institutions in Walton's argument, although this claim is not made explicitly. Walton can only maintain that the basic structure objection does not apply to his claims, firstly, if what he means by institutions, as part of the basic structure, and what Rawls means are something similar. A problem is that it is not entirely clear what Rawls means by these conceptions either. While it is impossible to go into any detail in the scope of this comment, I claim that at least one feasible interpretation of Rawls is the following: The basic structure seems to consist of the institutions of political form, the economic system, the constitution, and legislation, where such legislation is specifically concerned with assigning rights and distributing social goods. Other institutions, specific policies and laws, associations and behaviours, such as the family, firms and universities are only included in or affected by the basic structure in so much as the public rules applicable to them are determined and regulated by the application of the principles of justice to the institutions of the basic structure (Fourie 2007, 18–70).<sup>4</sup>

According to this interpretation, the most obvious institutions of a POD are the constitutional and legislative elements that determine that it is both property-owning in the requisite way, and that it is a democracy. In this case, however, a public education system and, to some extent, trade unions *could* also be included—through legislation. While we would not want trade unions themselves to be organs of the state, I am assuming that market and employment laws will make a difference to the possibility for and the strength of trade unions. To try to make Walton's argument fit into a Rawlsian framework more precisely we could say that in order to secure the basic rights and liberties of the first Rawlsian principle, certain market and employment regulations, with influence on, among other things, trade unions, as well as legislation to ensure a public education system, will be necessary. Perhaps this is justifiable purely from the perspective of the first principle but fair equality of opportunity could also be brought in. If it is correct that these forms of legislation are necessary and this alone were Walton's argument, it would indeed be doubtful that he would need to respond to the basic structure objection: I think the claim made here would be relatively uncontroversial and seems to violate neither the negative nor

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<sup>4</sup> While Rawls seems to include the family explicitly as part of the basic structure, this is actually misleading as he does not seem to believe that the principles of justice should apply directly to the family, as they should to the basic structure.

positive claims of the objection. However, this is not how Walton's argument goes overall. The problem comes in with a sense of fraternity.

Using empirical evidence, Walton claims that a sense of fraternity (operationalized as trust) is correlated with income equality, and thus what he takes to be a characteristic of Rawlsian justice (he claims that notwithstanding the prioritarianism of the difference principle, there is a presumption of income equality expressed in the Rawlsian principles of justice). The forms of interaction among citizens that he believes would be valued in a Rawlsian POD are high trade union membership and a public education system, which have been correlated with a sense of fraternity.

The claim seems to be that a sense of fraternity might be necessary to achieve Rawlsian justice, and that in turn, trade unions and a public education system are necessary to achieve a sense of fraternity. I am setting aside as an empirical question the causality implicit for the argument to work (to claim that a sense of fraternity is necessary for Rawlsian justice it would need to be the fraternity that is influencing income equality, rather than the other way around). With this argument, Walton cannot side-step the basic structure objection by claiming that his argument applies to institutions. The 'institutions' here, understood as the legislation behind trade unions and a public education system, are only instrumentally necessary to achieve a sense of fraternity. So it seems that Walton is using the principles of justice to justify why we need a fraternal ethos, and he is not applying these principles to institutions. It seems in this case, then, that the basic structure objection would indeed be relevant to his argument.

Walton, as we have seen, however, has a further response to the objection, which is to question the objection itself. I believe in order for his argument to work, he must indeed question the basic structure objection (and should simply jettison his claim that the objection does not apply to his argument). However, I do not think that as it stands, his criticism of the basic structure objection is adequate.

Relying on G. A. Cohen's criticism of the objection, Walton argues that sexist attitudes are clearly subject to justice, and if the basic structure cannot accommodate concern about the justice of sexist attitudes, then we should be skeptical of the basic structure objection.

The discussion of sexist attitudes does not, however, make the problem with the basic structure objection clear. One can agree with the claim that sexist attitudes are clearly 'subject to justice' and still defend the basic structure objection. It does not follow from the claim that sexist attitudes are subject to justice, that the Rawlsian principles of justice should apply outside of the basic structure (where basic structure is understood to exclude attitudes). We could be concerned that sexist attitudes are unjust but we still do not believe that we need to apply the principles of justice directly to attitudes.

For example, firstly, perhaps we believe that sexist attitudes will be mitigated or decreased by the application of the principles of justice to the basic structure, and we do not need to (or should not) interfere with attitudes, even if they do seem unjust. The claim could be something like this: once formal, institutional justice has been achieved in a POD (through the application of the principles

of justice to institutions such as the constitution and relevant legislation), sexist attitudes are likely to dissipate or no longer have much influence.

Alternatively, for example, we could argue that *Rawls's principles of justice* (explicitly designed for institutions) should only apply to the basic structure, and we require *other* principles to apply to personal choice and attitudes (see Fourie 2007). I do not aim here to defend the basic structure objection, nor even to defend the claims described here in these two examples. However, I am arguing that Walton's concerns about sexist attitudes do not adequately indicate why the basic structure objection should be ignored—at the least, more work would need to be done to indicate this.

Walton also claims that his argument is not vulnerable to Andrew Williams' formulation of the basic structure objection. Williams claims "that justice should regulate only the 'public system of rules'" and these rules need to be subject to the publicity condition meaning that "individuals are able to attain common knowledge of the rules' (i) general applicability, (ii) their particular requirements, and (iii) the extent to which individuals conform with those requirements" (Williams; cf. Walton, 179).

Walton claims that his notion of a fraternal ethos, operationalized as social trust, is quantifiably measurable and thus, he claims that it seems to be compatible with the criteria of the publicity condition. However, the fact that we can *measure* social trust is beside the point. The question is whether what Walton refers to as institutions can conceivably be referred to as institutions which specify public rules in the requisite sense. As discussed, it seems fairly uncontroversial to claim that Rawlsian justice may require certain market and employment regulations, and the legislation to ensure a public education system. In relation to Williams' claims, these seem to fit the notion of a public system of rules—thus the basic structure objection, where basic structure is defined according to a public system of rules—would not apply to this part of Walton's argument. However, considering that his argument is ultimately that we need a fraternal ethos to achieve Rawlsian justice it seems he would have to show that this ethos can be described as a public system of rules, but this, however, he has not done.

On the basis of this discussion, it is difficult to see why we should accept Walton's claims that the basic structure objection does not apply to his argument or that the objection is incorrect. I do not believe that the questions I have raised in this comment provide any kind of knock-down argument of Walton's view. I do want to highlight, however, that without further critically examining the notion of institution, and providing a more extensive and critical discussion of the basic structure objection, Walton's argument is incomplete.

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