

Do we need a theory of Justice?

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1989

CONTENTS

	<i>Page</i>
I INTRODUCTION	2
II RAWLS'S THEORY OF JUSTICE	3
III THEORY AND REALITY	6
IV CONCLUSIONS	10
BIBLIOGRAPHY	11

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I INTRODUCTION

Since its publication in 1971, John Rawls' book A Theory of Justice has received wide public interest. His work has inspired hundreds of critics in the last decade. An annotated bibliography published in 1982 (Wellbank et.al.) contains 2538 items of publications relating to Rawls's work. Barry (1978) noted a three-stage trend in the reaction to Rawls's theory: first, a somewhat uncritical enthusiasm; second, a challenge to its internal consistency; and third, four directions of argument aimed at either (a) keeping Rawls's framework but changing its conditions or application, (b) using alternative arguments to derive Rawls's conclusion, (c) a call for a more sympathetic reading of Rawls, or (d) an assessment of Rawls's work as a social document expressing a political ideology.

In this paper, I shall lay out the main features of Rawl's theory first. Then, I shall take Rawls' principles of justices as given and evaluate whether his principles can be a useful guide for policy making. The examples that I shall use to support my argument are taken from the recent debate of welfare policy formulation in this country. Although I believe that fairness is an important decision criterion for public policy, I don't think we need (or can have) a theory of justice.

II RAWL'S THEORY OF JUSTICE

The Purpose of a Theory of Justice

Rawls's primary objective in A Theory of Justice is to work out a theory of justice that represents an alternative to utilitarianism, on the one hand, and 'intuitionism' on the other.

The primary subject of his theory is the basic structure of society (Rawls p.7), not individuals and their actions in particular circumstances. According to Rawls, the major institutions of a society influence profoundly a man's chance to realize his own good. The major institutions include the political constitution and the principal economic and social arrangements. A theory of justice is to provide a standard which the distributive aspects of the basic structure of society are to be assessed. However, the basic structure of a society is always changing. In fact, the cumulative effect of social and economic legislation is to specify the basic structure. In this sense, the theory of justice should also guide us to develop policies and laws which can correct injustices in the basic structure (this has direct relevance to policy analysis).

'Justice,' Rawls says, 'is the first virtue of social institution, as truth is of system of thought.' (Rawls, 1971 p.2) Although a conception of social justice cannot encompass all the virtues of the basic structure, Rawls argues that it is perhaps the most important virtue. He even thinks that his theory of justice is compatible with socialism as well as capitalism. A theory of justice, according to Rawls, can be constructed without any reference to existing social conditions. He says:

'.....despite the individualistic features of justice as fairness, the two principles of justice are not contingent upon existing desires or present social conditions.....can serve a standard for appraising institutions and for guiding the overall direction of social change. In order to find an Archimedean point it is not necessary to appeal to a priori or perfectionist principles. By assuming certain general desires, such as the desire for primary social goods, and by taking as a basis the agreements that would be made in a suitably defined initial situation, we can achieve the requisite independence from existing circumstances.' (Rawls, 1971 p.263)

The Original Position

Rawls describes his theory as 'justice as fairness', by which he means that the principles of justice are agreed to in an initial situation that is fair. He argues that if the initial situation is fair, then the fundamental agreements reached in it will also be fair. He is trying to generalize a conception of justice from the traditional theory of social contract. The original contract in his theory is not to set up a particular form of government, but to derive the principles of justice.

Rawls asks us to imagine a hypothetical situation, which is the 'original position'. The choice which men would make in this hypothetical situation determines the principles of justice. Rawls's theory differs from other contractarian theories is that the parties of the contract must choose their principles from behind a 'veil of ignorance.'

The use of the veil of ignorance is to assure that no one is advantaged or disadvantaged in the choices of principles by the outcome of natural chance or the contingency of social circumstances. According to Rawls, no one in this situation 'knows his place in society, his class position or social status, nor does any one know his fortune in the distribution of natural assets and abilities, his intelligence, strength, and the like' (Rawls, 1971 p. 12). They also don't know the particular circumstances of their own society (e.g. its economic or political situation), or even to which generation they belong (Rawls, 1971 p. 136-7).

However, Rawls specifies that there are certain things that the parties in the original position do know. They know that they all have various values, aims, and purposes, as well as conceptions of the good. Further, they know some 'general facts' about human society, e.g. the principles of economic theory and the laws of psychology (Rawls, 1971 p. 138). In addition, they know that each individual values certain primary goods, which are rights and liberties, self-respect, opportunities, income, and wealth. These goods are called primary goods. These goods are primary because they are pre-eminently desirable. All persons would prefer to have more rather than less of these primary goods since they are useful in pursuing whatever ends an individual may have.

Two Principles of Justice

Rawls argues that the veil of ignorance would predispose the people involved to invoke what is called the 'maxmin' rule in determining priorities between different principles. The maxmin rule requires that one ranks alternatives according to their worst possible outcomes and adopts that alternative for which the worst outcome is superior to the worst outcome of the others. Rawls argues that the parties in the original position will agree upon two principles of justice. The two principles read as follows: (Rawls, 1971 p. 302)

The First Principle

Each person is to have an equal right to the most extensive total system of equal basic liberties compatible with a similar system of liberty for all.

The Second Principle

Social and economic inequalities are to be arranged so that they are both:

- (a) to the greatest benefit of the least advantaged, consistent with the just savings principle, and
- (b) attached to offices and positions open to all under conditions of fair equality of opportunity.

The Priorities of Justice

These principles are put in 'lexical order', that is to say, the first principle takes precedence over the second, and the second principle over its first clause (known as the 'difference principle'). These priorities are expressed in two priority rules:

First Priority Rule (The Priority of Liberty)

The principles of justice are to be ranked in lexical order and therefore liberty can be restricted only for the sake of liberty. There are two cases:

- (a) a less than equal liberty must strength the total system of liberty shared by all;
- (b) a less than equal liberty must be acceptable to those with the lesser liberty.

Second Priority Rule (The Priority of Justice over efficiency and welfare)

The second principle of justice is lexically prior to the principle of efficiency and to that of maximizing the sum of advantages, and fair opportunity is prior the difference principle. There are two causes:

- (a) an inequality of opportunity must enhance the opportunities of those with the less opportunity;
- (b) an excessive rate of saving must on balance mitigate burden of those bearing this hardship.

III THEORY AND REALITY

In this section, I shall take Rawls's principle of justice as given and evaluate whether his principles are useful guide for policy making. I shall only focus on the greatest equal liberty and the difference principles.

THE PRINCIPLE OF THE GREATEST EQUAL LIBERTY

Since Rawls's first principle has the highest priority in his theory, one would think that it should be clearly articulated. However, critics (Wolff, Barry and Hart) have argued that they even don't understand the meaning of the principle. What is the meaning of 'the most extensive liberty' (Wolff, 1977 p.91)? How can we aggregate different types of liberty (Barry, 1973 p.34)? I think if we try to answer these questions, we need a scale that can express various liberties in a common denominator, so that they can be compared with each other. If we don't have a common scale, how can we compare different liberty systems?

Rawls gives a list of what he means as basic liberties which are (1) freedom to participate in the political process, (2) freedom of speech, (3) freedom of conscience, (4) freedom of the person, (5) freedom from arbitrary arrest and seizure, and (6) the right of hold personal property.

Here, I want to discuss two particular problems of the principle of greatest equal liberty, which, I think, have direct relevance to welfare policy.

First, should we include welfare rights or freedom from poverty in basic liberties? Some critics (Gutmann 1980, Haksar, 1973) have argued that there is a need to include the welfare rights in the basic liberties. It is a prerequisite for people to enjoy other liberties. When people are very poor, they may well be prepared to trade of some basic liberty of citizenship for greater social and economic advantage. Rawls's theory does suggest that a certain level of material well-being must be achieved before the equal-liberty principle is recognized as a prior concern of

rational individuals (Rawls, 1971 p. 152).

However, the introduction of welfare right into the basic liberties will create conflict with the freedom of property right. The conflict between the welfare right and the freedom of property right has been a majority dilemma in policy debate. How can we make trade-offs among various liberties? Rawls does not pay much attention on that. According to Grey (1976), a serious defect of Rawls's theory is its failure to deal directly with the issue of property and economic power and freedom that are so central to the thought of both the libertarians and socialists.

Second, there is a question in whether equality of liberty is compatible with inequality of income and wealth—whether Rawls's first principle is compatible with the inequalities that may arise under the difference principle. Both Daniels (1975, p. 153-83) and Wolff (1977, p. 85-98) argued that the two principles are not compatible. Substantial inequalities of income, wealth and power tend to produce inequalities of liberty. Even though we guarantee every person has identical voting rights, wealthy persons have more ability than the poor to influence public opinion and elected officials.

Political arguments about equal liberty can be distorted by the inequalities of income among different groups. In the area of welfare policy, poor people have vitally no participation in the policy making process. One can argue that poor people's preferences should not be considered because they are deviants. They have behavioural problems and can't express themselves properly. This kind of attitude toward the poor had been dominated in the welfare reform discussion last year. Once this conception of poverty is adopted, it can be used to justify that welfare recipients must be subjected to rules, habits, and commands in order to transform and improve them, to make them productive members of society. Workfare programs had been proposed as a means to correct the behavioural problems of the poor (Mead, 1986). Proponents of workfare have emphasized the importance of work as a mechanism to heighten the self-esteem of the poor, regardless of the nature of the work or the conditions under which the work is performed. As the rhetoric of workfare is popularized, the very notion that people should be free,

individually and collectively, to examine the nature of work and to choose to accept or to restructure the conditions of work life is undermined.

Poor people seldom have opportunities to participate in any political discussion. Most of the time, their behaviours are arbitrarily being interpreted by politicians and academics. There is a lot of evidence indicating that the conception of poverty described above is simply wrong (see Hawkesworth, 1988 p. 169-83). All I want to say is that our acceptability of limiting one freedom for the sake of another depends on our conception of a problem. Inequality in power and resource can distort political debates and communications.

THE DIFFERENCE PRINCIPLE

Similar to the first principle, there are lots of ambiguities in Rawls's difference principle. Some critics regard the difference principle as very strong egalitarian and redistributive principle (Nisbet 1974, Gutmann 1980), but others suggest that it may be rather weak (Barry, 1973; Phillips, 1986; and Thurow, 1973).

On the one hand, the policy implications of the difference principle may be highly egalitarian and redistributive: the least advantaged are always the first concern; on the other hand, it could justify "trickle-down", free market capitalism. Rawls himself reaches no concrete judgements here.

One of the major problems with the difference principle is how the least advantaged are defined. Rawls offers two examples of what least advantaged persons are—the average unskilled worker or someone with less than the median income (Rawls, 1971 p.98). Rawls does not say much about special payments for sickness and unemployment. In his theory, the distribution of resource is not based on individual needs. Sick people, individuals with young children, blind persons, and the like, are not to be provided with special resources. In reality, they are the major target groups of welfare programs. But there is a still deeper problem, the definition of who are the least advantaged persons in a society is subject to ideological judgements (like in the case of workfare discussed above).

Second, Rawls believes that there must be highly unequal economic incentives in order to assume that competent people will fulfill the important positions, that investments will be stimulated, and that efficiency will be maximized. That application of the difference principle would be likely to result in a social minimum quite similar to what is currently found in the United States. Businessmen always claim that their investments can create jobs and finally will benefit the poor. Rawls may respond in this way- there may be several unequal income distributions that can benefit the poor, however, according to the difference principle, we should choose an unequal income distribution that will generate the greatest benefit to the least advantaged. There is a major assumption here, that is, efficiency and equality are mutually exclusive (a big trade-off between efficiency and equality). In fact, we can have several unequal income distributions that will generate a same level of benefit to the poor (see the diagram below).

Level of Inequality	30	40	50
Maximum Level of Benefit to the poor	10	10	10

The basic premise of the 'big trade-off view' is that we can have perfect information. Decision makers are well-informed, consistent, and rational- that they have clearly defined objectives, well-defined options for achieving them, accurate knowledge about how each option contributes to the objectives, and they choose among the options so as best to attain the objectives. But, in reality, the basic premise of the 'big trade-off' view is false (Haveman, 1988 p. 40-50). It does not correspond with the functioning of the U. S. political system. Decision makers are constrained by powerful private interests and they often lack information about the effects of policies they undertake. Perhaps most seriously, in an unjust society, the level of benefit that the poor should get is often determined by dominant groups.

A SINGLE AND UNIVERSAL SET OF PRINCIPLES OF JUSTICE

I think the greatest contribution of Rawls's theory lies on his attempt to answer the question of justice in a highly unequal industrial society. Although his answer is controversial, his basic orientations- fairness and the concern of the least advantaged group- are worth taking.

However, do we need a single and universal set of principles of justice? Rawls's theory can be seen as a kind of manifestation of the so-called 'Cartesian Anxiety'. The Cartesian anxiety means that philosophers always try to search for an Archimedean point upon which we can ground our knowledge and moral judgement (Bernstein, 1983 p.11). The major component of Rawls's argument is his insistence of having in possession a 'scientific' theory of justice, which can be used as a standard to evaluate the basic structure of a society.

Intellectuals tend to transform real problems into imaginary debates until they become as abstract and inaccessible as their own discourse. As a result, many of them have moved away from life into a realm of abstract knowledge (Feyerabend, 1987, chapter 1). The search for a coherent set of principle as the criteria of distributive justice is simply wrong. Our reality is many-sided, and more than one argument is valid. It would be best to start with a skeletal version of the arguments that are relevant in present social conditions. What Rawls's idealistic version of justice is just a utopia thought which has limited practice use in reality.

A modern society is not governed by a single organizing principle. Social conditions depend on a variety of diverse processes and conditions, which are not themselves reducible to any single principle or principles of social organization (Hindess 1987, Taylor 1986). The judgement of what is just in a particular society involves combining mutually irreducible principles in a weighting that is appropriate for the particular society, given its history, economy, and degree of integration. All these indicate that we don't need any global, abstract and coherent set of principle of justice.

IV CONCLUSIONS

I am not saying that we don't need to consider the value of justice in our policy discussions, but I don't think we can have a coherent set of principles in regard to distributive justice. However, some things can be said about the welfare policy discussions in this country. The first aspect is that there are too much simplistic slogans which are current in policy discussions. The clearest example is the notion of a general trade-off between 'equality' and 'efficiency'. It creates the impression that the policy choices involved in a discussion of economic inequality are easy—either 'growth' or 'equality'. A lot of evidence have indicated that the 'big trade-off' view is false. International comparison do not reveal any tendency for high-growth countries to become unequal (Osberg, 1984 p. 224-27). I think efforts should be made to go beyond the dichotomy of equality and efficiency (Haveman's work is a good example).

The second aspect is that there is a substantial degree of essential agreement on the existing mechanism of income determination. Rawls also bases his discussion on existing market arrangement to promote just distribution. However, the current degree of income differentials may not be necessary for the production of economic growth. The actual inequalities required to help assure that certain positions are filled and performed in a competent manner are considerably less than is widely believed. Thurow (1981, p. 7-8) compares gap between the top and bottom ten percent of the population in different societies and finds that West Germans work hard with 36 per cent less inequality than exists in the United States, and Japanese with 50 percent less inequality.

The third aspect is that policy analysis can be used as a means to uncover the distorted communications in policy debates. I believe that we don't have solid answers to the questions under policy debates, or even a solid method for getting the answers. Rational consensus can only be achieved through continuous communications among affected groups. But nowadays, policy debates are being dominated by powerful groups. Efforts should be made to provide more counter-

proposals for existing policy discussions. A good example is the work done by The Institute for women's Policy Research (Spalter-Roth, 1988). It allow us to see that there are various ways to determine the costs and benefits of a policy.

Finally, Rawls's theory may lead us to believe that there exist rules of social justice outside our mind, which we can follow to make good policy. However, it would justify a significant trend to a planned, rationalized capitalism and deny the significance of citizen participation. Who needs citizens, when the policy makers can construct the just world by thought-experiment, without bothering to consult their views?

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