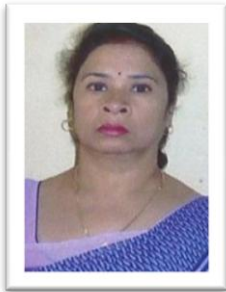


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Justice: A Reflection on Rawls and Amartya Sen's View



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Abstract

In Rawls theory "justice as Fairness", Rawls derives his two principles of justice: the liberty principle and the difference principle in 'A *Theory of Justice*', Rawls argues for a principled reconciliation of liberty and equality. *Theory of Justice*, presents a very strong defence of the idea of justice based on the basic tenets of procedural theory, ie. Justice requires a meticulous following of rules. Rawls has meant distributive justice to be - domestic justice. To understand this claim, we must consider the concepts of "society" and "basic structure." Rawls developed a scheme of basic liberties. The basic liberties are those that free and equal persons with the relevant moral capacities would choose in what he calls the 'original position'. Amartya Sen has certain reservations about freedom-oriented evaluation of justice. In his opinion, the Rawlsian framework concentrates only on the means to freedom rather than on the extent of the freedom that a person actually has. What is important in the idea of justice is emergence of various social alternatives which can be ranked based on priorities and from among those alternatives, based on the public reasoning, some alternative could be selected. In '*The Idea of Justice*' Sen presents a serious challenge to those departments, forcing them to prove their relevance and demonstrate how they can actually inform tough decision-making. On Sen's view Philosopher turns out to be anyone willing to cross boundaries, willing to explore alternative ways of thinking and living across disciplines, communities and time. Sen thus gives importance to the plurality of approaches, role of public reasoning and availability of democratic institutions.

Keywords: rawls, a *theory of justice*, principles of justice, procedural theory, distributive justice, domestic justice, social alternatives, public reasoning, *the idea of justice*, plurality of approaches, public reasoning, democratic institutions.

Introduction

John Rawls, a social contract theorist of the 20th century, attempted to reconcile the values of liberty and equality through his 'veil of ignorance' argument. The motive behind this was as much to secure the inviolability of liberty as welfarist and redistributivist ideals of equality. In *A Theory of Justice*, Rawls attempts to solve the problem of distributive justice by utilising a variant of the familiar device of the social contract. The resultant theory is known as "justice as Fairness", from which Rawls derives his two principles of justice: the liberty principle and the difference principle. In *A Theory of Justice*, Rawls argues for a principled reconciliation of liberty and equality. Rawls's effort is an account of the circumstances of justice, inspired by David Hume, and a fair choice situation for parties facing such circumstances, similar to some of Immanuel Kant's views. Principles of justice are sought to guide the conduct of the parties. These parties are recognized to face moderate scarcity, and they are neither naturally altruistic nor purely egoistic. They have ends which they seek to advance, but prefer to advance them through cooperation with others on mutually acceptable terms. Rawls offers a model of a fair choice situation within which parties would hypothetically choose mutually acceptable principles of justice. Under such constraints, Rawls believes that parties would find his favoured principles of justice to be especially attractive, winning out over varied alternatives, including utilitarian and right-libertarian accounts. John Rawls' well known book, *Theory of Justice*, presents a very strong defence of the idea of justice based on the basic tenets of procedural theory, ie. Justice requires a meticulous following of rules. Rawls' theory however, takes care to respond to the most common criticism levelled against procedural theory - that despite the meticulous following of rules unjust conditions might be created. In order to avoid this, Rawls suggests that under controlled conditions rational human beings would choose principles that would

uphold ideas consistent with the basic idea of distributive justice. Rawls insist that justice prevails only when every departure from equality can be rationally justified. Unlike Nozick's entitlement theory where the equality is an idea is obvious by its absence. Rawls's theory of justice is premised upon the need for equality. Rawls depicted in his theory by placing individuals abstracted from their social and economic contexts behind what he called the 'veil of ignorance'. Individuals behind his veil are unaware of who they are and what their interest, skills, needs and so on. Why does Rawls do this? Because usually people are prevented from upholding just principles guided as they are by their selfish interests.

Aim of the study

My purpose in this article is to present Rawls view on justice and Amartya Sen's critical treatment of Rawls's ideas in the book. In his most recent book, *The Idea of Justice*, he argues that this traditional strain of political philosophy, which seeks to identify 'the just', or a single set of just principles that can then be used to design perfectly just institutions for governing society, reveals little about how we can identify and reduce injustices. In Rawls' theory of justice, for instance, his two lexically ordered principles of justice are, it is argued, those that would be unanimously selected through an impartial decision procedure - through the hypothetical original position using the 'veil of ignorance' device. These principles then provide the basis for choosing actual institutions in the 'legislative stage'. It has been assumed that Rawls' two principles of justice are those that would indeed emerge from the original position. And Sen is skeptical that this is so. This are the issues which I have attempted to discuss in this study.

Discussion

John Rawls's foundational idea is that justice has to be seen in terms of demands of fairness. Fairness is to avoid bias in our evaluations, taking note of interests and concerns of others as well and in particular need to avoid being influenced by our respective vested interests or by personal priorities or by eccentricity. This essentially means demands for impartiality. To achieve this impartiality, Rawls proposes an imaginary position called 'original position', which is a imagined situation of primordial equality, in which parties involved have no knowledge of their personal identities or vested interests. Under this 'veil of ignorance' group of people have to select their representative who in that state of ignorance chose the principles of justice unanimously. So chosen principles of justice become then the foundation for social institutions for the basic structure of the society. Rawls belongs to the social contract tradition. However, Rawls' social contract considers a different view from that of previous thinkers. Specifically, Rawls develops what he claims are principles of justice through the use of an artificial device he calls the 'original position' in which everyone decides principles of justice from behind a 'veil of ignorance'. This "veil" is one that essentially blinds people to all facts about themselves so they can't make principles to their own advantage:

"...no one knows his place in society, his class position or social status, nor does anyone know his fortune in the distribution of natural assets and abilities, his intelligence, strength, and the like. I shall even assume that the parties do not know their conceptions of the good or their special psychological propensities. The principles of justice are chosen behind a veil of ignorance."

According to Rawls, ignorance of these details about oneself will lead to principles that are fair to all. If an individual does not know how he will end up in his own conceived society, he is likely not going to privilege any one class of people, but rather develop a scheme of justice that treats all fairly. Rawls claims, in particular, that those in the Original Position would all adopt a maxim in strategy which would maximise the prospects of the least well-off.

"They are the principles that rational and free persons concerned to further their own interests would accept in an initial position of equality as defining the fundamentals of the terms of their association."¹

Rawls claims that the parties in the original position would adopt two such principles, which would then govern the assignment of rights and duties and regulate the distribution of social and economic advantages across society. The difference principle permits inequalities in the distribution of goods only if those inequalities benefit the worst-off members of society. Rawls believes that this principle would be a rational choice for the representatives in the original position for the following reason- each member of society has an equal claim on their society's goods, natural attributes should not affect this claim, so the basic right of any individual, before further considerations are taken into account, must be to an equal share in material wealth. What, then, could justify unequal distribution? Rawls argues that inequality is acceptable only if it is to the advantage of those who are worst-off.

The agreement that arises from the original position is both hypothetical and a historical. It is hypothetical in the sense that the principles to be derived are what the parties would, under certain legitimating conditions, agree to, not what they have agreed to. Rawls seeks to use an argument that the principles of justice are what would be agreed upon if people were in the hypothetical situation of the original position and that those principles have moral weight as a result of that. It is historical in the sense that it is not supposed that the agreement has ever been, or indeed could ever have been, derived in the real world outside of carefully limited experimental exercises. Rawls argue that an adequate theory of justice must morally respond to and preserve the 'distinction of persons'. Rawls theory of justice as fairness consists of the two principles:

The First Principle of Justice

"First: each person is to have an equal right to the most extensive basic liberty compatible with a similar liberty for others"²

The basic liberties of citizens are the political liberty to vote and run for office, freedom of speech and assembly, liberty of conscience, freedom of personal property and freedom from arbitrary arrest.

However, he says: "liberties not on the list, for example, the right to own certain kinds of property (e.g. means of production) and freedom of contract as understood by the doctrine of laissez-faire are not basic; and so they are not protected by the priority of the first principle."³

The Second Principle of Justice

Social and economic inequalities are to be arranged so that ⁴

- (a) they are to be of the greatest benefit to the least-advantaged members of society, consistent with the just savings principle (the difference principle).
- (b) offices and positions must be open to everyone under conditions of fair equality of opportunity

Rawls' claim in (a) is that departures from equality of a list of what he calls primary goods—"things which a rational man wants whatever else he wants"⁵ are justified only to the extent that they improve the lot of those who are worst-off under that distribution in comparison with the previous, equal, distribution. His position is at least in some sense egalitarian, with a provision that equality is not to be achieved by worsening the position of the least advantaged. An important consequence here, however, are those inequalities can actually be just on Rawls' view, as long as they are to the benefit of the least well off. His argument for this position rests heavily on the claim that morally arbitrary factors shouldn't determine one's life chances or opportunities. Rawls is also keying on an intuition that a person does not morally deserve their inborn talents; thus that one is not entitled to all the benefits they could possibly receive from them; hence, at least one of the criteria which could provide an alternative to equality in assessing the justice of distributions is eliminated.

The stipulation in (b) is lexically prior to that in (a). Fair equality of opportunity requires not merely that offices and positions are distributed on the basis of merit, but that all have reasonable opportunity to acquire the skills on the basis of which merit is assessed. It may be thought that this stipulation, and even the first principle of justice, may require greater equality than the difference principle, because large social and economic inequalities, even when they are to the advantage of the worst-off, will tend to seriously undermine the value of the political liberties and any measures towards fair equality of opportunity.

Rawls has meant distributive justice to be - domestic justice. To understand this claim, we must consider the concepts of "society" and "basic structure." A "society," as Rawls has defined it, is a "cooperative venture for mutual advantage."⁶ The "primary subject" of justice is the "basic structure" of this society. It is "the way in which the major social institutions distribute fundamental rights and duties and determine the division of advantages from social cooperation...Major institutions are the political constitution and the principal economic and social arrangements that "define men's rights and duties and influence their life-prospects."⁷ It is the role of these institutions to secure just background conditions against which the actions of individuals and associations take place. The existing wealth must

have been properly acquired, and all must have had fair opportunities to earn income, to learn wanted skills, and so on.⁸ The basic structure, Rawls says, ought to be regulated by principles just from the perspective of "free and equal moral persons."⁹ Thus, in working out a conception of distributive justice, we must abstract from existing inequalities to define a baseline from which we measure the prospects for fair cooperation. The baseline is one of equality: principles of justice are acceptable when it would be reasonable for "equal moral persons," represented in the "original position," to accept them without reference to their actual social positions and economic endowments.¹⁰ To proceed otherwise would bias the theory. As regards compliance with a principle of global justice, what is assumed is only the principal possibility of it. Now, the cosmopolitan-liberal stance is that a society and basic structure exist that are global rather than— what Rawls thinks - domestic,¹¹ so that it is natural to globalize the doctrine of distributive justice.¹²

Rawls cosmopolitan argument of is that, one can consistently speak of a global society in an ideal sense. If the original position is to represent individuals as equal moral persons who should reach agreement on principles of background justice, then the criterion of membership is possession of the two powers of moral personality: the capacity for a sense of justice and the capacity for a conception of the good.¹³ Now it has been objected that one cannot plausibly see the world as a "cooperative venture for mutual advantage," "thus not really as a society in Rawls's sense."¹⁴ It is indeed true that the extent of global economic cooperation is empirically disputable,¹⁵ and that there is simply too much global inequality and too little mutual advantage resulting from exchange between the rich and poor. His theory organizes both familiar and basic ideas implicit in the public political culture of a democratic society and more abstract ideas in order to resolve points of contemporary controversy. For example, his theory of justice reveals to us that income and wealth inequalities have more in common with gender and race based discrimination than we might have supposed,¹⁶ leads us to see why formal equality of opportunity is a limited measure for redressing injustice, provides an argument for a certain minimum level of entitlement to citizens¹⁷ and offers an alternative to other ways of looking at these issues such as utilitarianism and libertarianism. Rawls holds that the test for the plausibility of his theory is if, using our reflective powers of reasoning and bringing our judgments into equilibrium, we find his two principles of justice to be preferable to a set of given alternatives or, after engaging in wide reflective equilibrium, all the plausible alternatives that we can imagine.

Rawls developed a scheme of basic liberties. The basic liberties are those that free and equal persons with the relevant moral capacities would choose in what he calls the 'original position'. This original position is a position where individuals divide liberties and resources in society without knowing their placement in society. According Rawls, these basic liberties consist in freedom of thought and liberty of conscience; the political liberties and

freedom of association, as well as the freedom specified by the rule of law. To resolve conflict between various liberties, Rawls suggests that the institutional rules that define these liberties must be adjusted so that they fit into a coherent scheme of liberties. This scheme is secured equally for all citizens. In the Rawlsian scheme, redistribution of resources to bring about equality is qualified by two conditions –that (1) the basic liberties will not be infringed upon and (2) increase of resources at any level should not be at the cost of the worst-off-person. Thus Rawls claimed that because it ignores distributions of rights, liberties, opportunities, and other social goods, utilitarianism respects neither the separateness of persons nor the freedom and equality of democratic citizens; utilitarianism is prepared to sacrifice the rights, liberties, and opportunities of the few to promote the greater happiness of the many. Drawing on the social contract tradition of John Locke, Jean-Jacques Rousseau, and Immanuel Kant, Rawls argued that justice requires that societies be governed by principles that free rational persons would agree to from a position of equality.

He proposed a thought experiment- imagine an impartial situation where we are ignorant of particular facts about ourselves and society, but know all general facts from the social and natural sciences. From this “original position,” people would then agree to principles of justice to govern society. Rawls’s first principle of justice guarantees equal basic liberties for all: liberty of conscience, freedom of thought and expression, freedom of association, equal political rights, and freedom of conduct with a right to personal property. Rawls’s second principle affords everyone “fair equal opportunities” to develop their capacities and talents and to compete for social positions. This requires, he argues, extensive educational and health care benefits for all.

Amartya Sen criticises John Rawls’s theory of Justice but also acknowledges its historical value. Sen writes how he felt ‘over the top’ when he first read the final text of *A Theory of Justice* written by John Rawls in 1971 and describes the feeling by citing Wordsworth’s poem:

‘Bliss was it in that dawn to be alive / but to be young was very heaven.’ Commenting on the topic “Demand for justice in India,” a theme of his book *The Idea of Justice*, Sen pointed out that theorizing about justice often leads to concerns about the prevalence of injustices. He said “In India, the prevalence of injustice is at several levels—in the form of widespread malnutrition, lack of affordable health care, and education and gender inequality”.

Dealing with a complex issue like justice and its relevance in the practical sense, Sen suggested that one might revert back to the ancient Hindu thought which examines the concept of *Niti and Nyaya*. *Niti* in Sanskrit legal thinking deals with just rules and institutions, while *Nyaya* is about their realization. *Niti* is an abstract exercise that, if implemented completely, would result in maximum public welfare and justice. *Nyaya*, on the other hand, relates to the enforcement of laws and regulations. Addressing the issue of affirmative action in India, Sen explained that *Niti* drives the policy, whereas it

should be a *Nyaya*-based approach. Citing Wittgenstein’s assertion at the start of the first chapter of *The Idea of Justice* and referring to it at several points in the book, Sen suggests that reason can do more than help people to achieve their goals. It can also enable them to criticise their goals, and in this way make them better people. In Sen’s view, a smarter world is sure to be a better world. Unlike some rationalists in the past, however, he does not think we need a conception of an ideal world in order to improve the one we live in. One of the important themes of *The Idea of Justice* is to contest the assumption that a theory of ideal justice is either necessary or desirable.

It is a far-fetched view of how any society could operate, but Sen’s objection is not to the lack of realism in Rawls’s theory. It is the very idea of perfect justice that he questions. The reasons why society may be unjust are many and various; there is no reason to think that there is a set of just principles that everybody will accept. A just society will accord its members a range of basic liberties but also the capabilities needed to make use of them. Sen also argues strongly that justice should have a global reach; he knows that people will reasonably disagree about how wide the scope of particular requirements of justice should be. So, rather than opting for what he calls ‘transcendental institutionalism’ - the attempt to design an ideally just framework for society - Sen urges a comparative approach, which recognises the plural demands of justice while maintaining the struggle for a less unjust world.

The Idea of Justice serves also as a commanding summation of Mr Sen’s own work on economic reasoning and on the elements and measurement of human well-being. Amartya Sen has certain reservations about freedom-oriented evaluation of justice. In his opinion, the Rawlsian framework concentrates only on the means to freedom rather than on the extent of the freedom that a person actually has. Sen would like describe his approach to justice as a capability-based one, wherein it is not just the access to primary goods but the extent of capabilities that each individual has to convert these primary goods into lives that they value and that would determine freedom and ultimately uphold justice. Sen clarifies that capability means a person’s freedom to choose between alternative lives and there need be no unanimity about what would be considered a valued way of life.

Sen calls Rawls’ theory as a transcendental approach while the approach under social choice theory as comparative approach. Sen argues that transcendental approach of John Rawls is neither sufficient nor necessary to arrive at social decisions that would be necessary to address the problems of social justice. He writes the question ‘What is just society?’ is not a good starting point for the useful theory of justice. A systematic theory of comparative justice does not need, nor does necessarily yield an answer to this question. What is important in *The idea of justice* is emergence of various social alternatives which can be ranked based on priorities and from among those alternatives, based on the public reasoning, some alternative could be selected. In *The*

Idea of Justice Sen presents a serious challenge to those departments, forcing them to prove their relevance and demonstrate how they can actually inform tough decision-making.

Sen's argument raises interesting questions about the role of the philosopher and their claim to any authority or special knowledge. According to Sen, 'philosophers' should not - and cannot - strive to become the architects of castles in the sky. Instead, he asks us all to start right at the foundations: to share, explore, and debate our perspectives on how to repair the edifices in which we currently live. Justice arises not from a blueprint, but from a process of open public reasoning in which as many potential policies, strategies or institutions are considered as possible. However, in this process it is not clear that the people who currently occupy philosophy departments have any special standing. They become, according to Sen, purveyors rather than adjudicators of wisdom, on an even standing with economists, doctors, scientists and lawyers, with whom they should collaborate intensely. Sen's Philosopher turns out to be anyone willing to cross boundaries, willing to explore alternative ways of thinking and living across disciplines, communities and time. What matters is that people know more about what's out there and make more informed choices - that they are smarter - because, for Sen, smarter is better.

According to Sen the idea that distributional equality should concern itself with equalising people's capabilities, instead of emphasizing on resources or incomes. Sen considers that focus on the freedom that people enjoy such as being able to read, being healthy, having self-respect, being politically active, being able to take part in the life of the community, and so on. The proper focus should be on what people are able to be and do, that is on their function, and not on how much resource is allotted to them. Resources only secure for us what makes happy lead valuable lives, and are therefore, to be considered as means of well-being. Sen thus gives importance to the plurality of approaches, role of public reasoning and availability of democratic institutions. Sen also argues that thus ranked and selected approaches also must be re-examined if need be for their effectiveness and actual delivery of justice. As regards, focus and measure of actual delivery of justice, Sen argues in favour of using capability approach. Capability Approach, Sen argues is a general approach focusing on information of individual advantage judged in terms of opportunities rather than specific design on how society should function. It points to the central relevance of inequalities of capabilities in assessing social disparities but on its own does not propose any formula for policy decisions.

Conclusion

Sen discusses many positives of Rawls's theory of justice such as establishing the foundational priority to the idea of fairness in the idea of justice, importance of objectivity in practical reasoning, pointing out and underscoring the importance of moral power people have which bestows them with capacity for sense of justice and for conception of the good, and finally, establishing pre-eminence of liberty above all welfare in person's life. However, Sen severely

attacks Rawls's theory of justice by bringing out its inadequacies to deliver the actual justice. At the same time, he also proposes the usefulness of Social Choice Theory for propagation and enhancement of social justice. Thus theories of justice play many roles in individual and collective deliberation. They help us think through the consequences of our views, help us understand the costs and benefits of different principles, push us to make our views consistent with one another, provide bases for reconciliation with our society, and guide judgment on contested matters. One of the most important roles they play is providing us with systematic visions; roadmaps for different ways the world could be and to which we might reasonably aspire. Sen very plausibly argues that there is no one single principle for ranking all alternatives and no standard of justice to which everyone will agree. Here, Sen follows those such as Max Weber who note that we live out our lives among warring gods. Additionally, and more formally, social choice theory has shown that, even under very weak and reasonable sets of assumptions, it is quite easy to generate conflict in the ranking of alternatives among individuals. He argues that transcendental theories offer no practical guidance with respect to the choices we actually face. He claims that the quest for perfect justice leads philosophers to embrace an unobtainable standard of theoretical completeness and consistency. Perfect justice does not allow for conflicts about justice. Sen uses this finding to point out the pretensions of theorists who assume such conflicts away or claim they can always be transcended. Much contemporary political philosophy is, then, according to Sen, flawed by both its practical uselessness and its unrealistic standard of completeness. Sen considers two themes i.e. economic rationality and social injustice alike. Economists have tended to content themselves with a simple picture of human motivation, rationality and well-being. People are not purely self-interested. They care for others and observe social norms. They do not always reason "instrumentally", seeking least-cost means to given ends. Rawls held that social justice depended on having just institutions, whereas he thinks that good social outcomes are what matter. Both can be considered as right. Rawls's work has shaped academic discussion for over thirty years, it has had a negligible impact on political practice, and one of the reasons may be that his theory leaves so little room for politics. For Rawls, justice is a unique set of principles that reasonable people would choose from an imaginary initial position that ensures impartiality. Once these principles have been chosen all that remains is to set the right institutions in place. Conflicts about the scope of basic liberties and the distribution of resources will then be settled by applying the theory, which is a legal rather than political process. The practical aspect of Sen's criticism, however, is that just institutions do not ensure social justice. He also considers that, that social-choice theory permits good-enough, albeit incomplete, social comparisons. Also that the inevitable fact that moral judgments are made from a viewpoint does not make moral values local or subjective; that when talking of equality, we must

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always ask "equality of what?" that rights carry extra weight without necessarily outweighing every concern; that justice's demands outrun countries' borders. Thus Sen considers that, though values are complex, economics provides tools for thinking clearly about complexity. In showing why those who pursue justice do not need an ideal of a perfectly just society, only a view about what would make the world a more just place, The Idea of Justice deserves to be acclaimed as a major advance in contemporary thinking.

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