

Critical Analysis of John Rawls' Two Principles of Justice

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ABSTRACT

Rawls' principles of justice is the principles for just society. He derives these principles from the hypothetical initial position known as original position. There are two principles of justice. First principle protects the basic liberties of the individual and second principle maintains the equal opportunity for all and maintain that kind inequality which benefits the least advantaged people of the society. As Rawls deduces the principles from the hypothetical position, he also show how these principles can be applied to the just institution.

Keywords: *Veil of Ignorance, Original Position, reflective equilibrium, realistic utopia*

Introduction: Rawls' theory of justice has an important role in the theory of political philosophy. Rawls formulates a new of answering the old aged question- what does justice require? In doing so he was inspired by traditional idea of social contract advocated by Locke, Rousseau, and Kant. In formulating his theory of justice, he was opposed to well-known philosophy utilitarianism prevailed that time. His theory of justice influenced the theory of government, policies, public political debates and policies in the well-fare states.

The significance of Rawls' theory of justice which issued so much debates in the political philosophy till now is that Rawls theory addresses how liberal democratic society consists of plurality of religion, philosophical and moral beliefs can be organised in a systematic way that is just?

In this paper, entitled "Critical Analysis of John Rawls' Two Principles of Justice", I shall try to give Rawls' account of two principles of Justice which is explanatory and analytic in nature. For the purpose of clarification this paper has been divided into three parts. Part I deals with the Rawls' first principles of justice. Part II deals with the Rawls' second principles of justice and Part III deals with the application of the two principles of justice to the just institution.

Rawls' aim was to derive the just principles for the basic structure of society. For that he made an assumption of hypothetical situation known as original position. The purpose of original position is to make people free and equal and that consequently lead to derive the unbiased principles of justice. According to him, once we derive just principles, we can work later in accordance with it. That means we can apply them to basic structure. The basic structure important in Rawls philosophy as it plays a significant role in making people initial chances in life. To quote Rawls, "...the original position is the initial status quo which insures that the fundamental agreements reached in it are fair."¹

According to Rawls, in the original position, from the hypothetical position that is original position, we derive two principles are as follows-

"First: each person is to have an equal right to the most extensive scheme of equal basic liberties compatible with a similar scheme of liberties for others.

Second: social and economic inequalities are to be arranged so that they are both (a) reasonably expected to be to everyone's advantage, and (b) attached to positions and offices open to all."² First principles of justice secures the basic liberties of the individual and second principles of justice secures the right distribution of wealth considering the least advantaged members of the society.

Part I

First Principles of justice

According to Rawls, the two principles of justice must apply to the basic structure of society. Basic structure according to Rawls is how major social institution allocate rights and duties and determine the appropriate distribution of advantages from social cooperation. Here, major institution means political, economic and social arrangements which play role in the defining the complete life prospects of the constituting members of society. To quote Rawls, "...primary subject of justice is the basic structure of society, or ...the way in

¹ Rawls, John, (1999), *A Theory of Justice*, (Current Edition), Massachusetts: Harvard University Press, p. 15.

² *Ibid.* p.53.

which major social institutions distribute fundamental rights and duties and determine the division of advantages from social cooperation.”³ Rawls gives importance in his theory of justice to the basic structure as basic structure plays a significant role as this structure contains different social position and men are bound to fall under different social position by their birth. And nobody has control over that initial start.

So, Rawls initiated to make a basic structure just by incorporating two principles of justice in the original position. First principle of justice protects the basic rights and duties whereas the role of second principle of justice is to regulate the distribution of social and economic advantages.

The first principle is: “each person is to have an equal right to the most extensive scheme of equal basic liberties compatible with a similar scheme of liberties for others.”⁴ According to Rawls, The fundamental idea of a just society is society is a fair system of cooperation that cooperation never comes to an end as long as the concept of just society prevail. To quote Rawls, “....that of society as a fair system of cooperation over time, from one generation to the next.”⁵ This central idea is developed with two indispensable idea- the idea of citizen as and free and equal and the idea of a well ordered society which regulated by political conception of justice. And the idea of citizen as free and equal will be defined in term his or her basic rights and liberties.

Now the question is –What is basic rights and liberties? Right according to The Concise Oxford Dictionary of Politics “Legal or moral recognition of choices or interests to which particular weight is attached.”⁶ Rawls assume certain basic liberties citizen in a just society must have. There are many liberties of individual. But some are very important. Rawls’ principles of justice refers to the liberties which are basic are those which are essential for the fulfilment of their ends and determine the form of their society. Among various liberties Rawls give priority to the few such liberties enlisted below:⁷

- (i) Political liberties and freedom of speech and assembly.
- (ii) Liberty of conscience and freedom of thought.
- (iii) Freedom of person.
- (i) The right to hold personal property and freedom from arbitrary arrest and seizure.

Part II

Second Principles of justice:

The second principle of justice applies to the distribution of income and wealth. This distribution need not be equal but the position and offices must be within the reach of all and open to all. According to Rawls, two principles of justice should be arranged in lexical order. It means that the first principle must be given priority over the second. Where the first principle is a principles of equality. The lexical order implies that any departure from the principle of equality cannot be justified or compensated by a greater social and economic advantages. According to Rawls, Inequalities will be permissible and taken as just when they are for the benefit of all, otherwise if inequalities are not for the benefit for all will be considered as injustice. Following Ashok K. Upadhyay, “...if inequalities are for the benefit of all, in spite of having ‘injustice’ they become ‘justice.’⁸

Rawls takes it for granted that while explaining the interpretation of second principle, the first principle is satisfied. The first part of the second principle means the principle of efficiency, and the second part as an open social system in which careers are open to talents. In the second principle, two phrases have been used: Everyone’s advantage’ and ‘open to all’. The phrase ‘open to all’ has been taken by Rawls as equally open to all, by virtue taking into consideration the first principle.

According to Rawls the first principles of equal liberty has some meaning throughout. And in the second principle the phrase “everyone’s advantage” and “equally open to all” are ambiguous. He brings out four independent interpretations of the phrases of the second principle. ‘Equally open to all’ has two interpretations:

³ Ibid p.6

⁴ Ibid. p.53.

⁵ Rawls, John, (1993), *Political Liberalism*, New York: Columbia University Press, p.14.

⁶ Iain Mclean and Alistair Mcmillan, ed., (2009), *The Concise Oxford Dictionary of Politics*, (3rd), India: Oxford Publishers, p. 463.

⁷ Daniels, Norman, (ed), (1975), *Reading Rawls: Critical Studies of A Theory of Justice*, Oxford: basic Blackwell, P.235

⁸ Upadhyay, Ashok K., (1999), *John Rawls: Concepts of Justice*, New Delhi: Rawat Publications, pp. 80-81.

- (i) Equality as career open to talent; and
- (ii) Equality as equality of fair opportunity.

Similarly the phrase 'everyone's advantage' has two independent interpretations. They are"

- (i) 'Principle of efficiency' having its further two variations as 'system of natural equality' and natural liberty; and
- (ii) 'Difference principle', having its two variations: natural aristocracy and democratic equality.

Rawls elaborately discusses primarily three interpretations –natural liberty, liberal equality and democratic equality. The first interpretation of the second principle he takes is that of natural liberty. The system of natural liberty says that a basic structure must satisfy the principle of efficiency and the condition where positions are open to those able and willing for them, will lead to a just distribution. Rawls's statement, "The system of natural liberty asserts, then, that a basic structure satisfying the principle of efficiency and in which positions are open to those able and willing to strive for them will lead to a just distribution."⁹ This statement has an important element of pure procedural justice.

The principle of efficiency indicates a state of distribution in which it is not possible to increase or decrease the good of one individual without changing the state of another's good. In another respect, efficiency principles means that the resources are being applied to an optimum level and there is no chance of any betterment within this scheme provided that there is a basic change in the system.

The principle of efficiency can be applied to basic structure by reference to the expectation of the representative man. The arrangement of rights and duties in a basic structure are efficient provide that there is no chance to change the rules, to modify the scheme of rights and duties in favouring the expectation of one representative man without disfavouing the some other representative man. Rawls asserts "...an arrangements of rights and duties in basic structure are efficient if and only if, it is impossible to change the rules, to redefine the scheme of rights and duties, so as to raise the expectation of representative man without at the same time lowering the expectations of some other representative man."¹⁰

According to Rawls, there are many efficient arrangement of the basic structure as well as different system of distribution. But the problem is that for Rawls is to find out the conception of justice which considers not only efficient distribution but also just.

Although the liberal interpretation can be given a priority over natural liberty, it is not free from defect. The talent and skills are affected by institutions like family. An individual born in a family of good economic and social status would be exposed for skill and talent more than an individual born in a poor family. Rawls argues, "...it works to perfection in eliminating the influence of social contingencies, it still permits the distribution of wealth and income to be determined by the natural distribution of abilities and talents...distributive shares are decided by the outcome of natural lottery; this outcome is arbitrary from a moral perspective

The concept of natural aristocracy can never be regarded as satisfactory interpretation, as it contains in itself the problem of inequality between people on the ground of the status with which they are born. Here no attempt is made to regulate social contingencies. So, from the moral point of view both liberal conception and natural aristocracy are equally arbitrary and can notbe called as just system. Thus, natural liberty, liberal equality and natural aristocracy are not acceptable interpretations of the second principles of justice. At this stage, it appears that the most acceptable one will be that of 'democratic equality.'

The principle of democratic equality suggests as Rawls says "This principle removes the indeterminateness of the principle of efficiency by singling out a particular position from which the social and economic inequalities of the basic structure are to be judged."¹¹ The higher expectation of better situated are just subject to constraints- (i) institution should be regarded as possessing the framework of equal liberty and equality of opportunity. (ii) they improve the expectation of the least advantaged member of the society. Rawls says, "Assuming the framework of institutions regarded by equal liberty and fair equality of opportunity, the higher expectations of those better situated are just only if they work as a part scheme which improves the expectations of the least advantaged members of the society."¹²

⁹Ibid., p.57.

¹⁰Ibid., p.61.

¹¹ Ibid., p.65

¹² Ibid.

According to the difference principle, it is justifiable only if the difference in expectation is to the advantage of the representative man who is worse off. Inequality is permissible only if it is to the advantage of poor class individuals. Making a relationship between justice and efficiency, Rawls gives priority to justice. He says that justice may require some changes which are not efficient.

Commenting on the concept of perfectly just society. W. E. Cooper says that this concept of society is developed in Rawls' discussion of the system of democratic equality in which the basic structure of the society is regulated by Rawls' three main principles of justice—the liberty principle, the difference principles and the principle of fair equality of opportunity. Thus, a perfectly just society is simply a system of democratic equality in which the difference principle is understood strictly as demanding maximisation of expectation of the least advantaged class subject to the constraints of liberty principle and the principle of fair equality of opportunity.¹³

Now, we shall discuss the liberal principle of fair equality of opportunity. It is the second part of the second principle. According to Rawls, this principle rejects the objection that it will lead to meritocratic society. Rather, the fair equality principle of justice is co-related to the idea of pure procedural justice. Rawls says that in the second principle, the positions are required to be equally open to all, not for the reason of efficiency. Even if it is possible to improve the general condition by keeping the positions in few hands, and in such a scheme, the group of persons excluded from getting those positions, are also benefited, Rawls would not approve of this scheme. To quote Rawls, "For it may be possible to improve everyone's situation by assigning certain powers and benefits to positions despite the fact that certain groups are excluded from them....But the principle of open position forbids this."¹⁴

While showing that the two principles of justice have egalitarian notions also, Rawls clears certain points. Difference principle is a principle that underserved inequalities call for redress since inequalities of birth and natural endowment are underserved, these are somehow to be compensated for. Although the difference principle is not the same as the 'theory of redress', it does contain some of the features of that theory.

According to Rawls, the democratic interpretation of the two principle of justice should not lead to a meritocratic society. The meritocratic society is a danger for the two principle of justice which Rawls holds. Meritocratic society based solely on efficiency rejects the liberal interpretation of the principle that economic gain may be subordinated to the social status in some special cases.

Part III

Application of the Principles of justice to The Just Institution

Rawls envisions two roles for the principles of justice as fairness. First, it embodies abstract ideals that provide the basis for social unity in a well-ordered society. Second role will provide practical guidance in application of the principles of justice. Freeman says, "A second role for principle of justice is to enable the assessment of the justice of policies and to give practical guidance in formulating laws."¹⁵ Here, I shall discuss the second role of the principle of justice. Rawls introduced in his theory of justice four stage sequence to apply the principle to just institution.

Here, Rawls takes the help of a procedure so that the principles of justice can be applied. He extends the basic idea of the original position through a series of hypothetical deliberative procedures. This four-stage sequence is not a procedure for real world. In real world it is not possible Rawls thinks. It is a procedure for an idea world where constitutional or legislative representatives reflect upon what is just or unjust. Rawls argues, "... he does this is by extending the basic idea of the original position via a series of hypothetical deliberative procedures-rational agreements subject to reasonable constraints. This is the 'four-stage sequence.'¹⁶

Now, we shall see how Rawls uses the four-state sequence in applying the principles of justice. The first stage of "four-stage sequence" is the original position itself. Here, under the veil of ignorance, the rational representatives of free and equal persons come to a unanimous agreement regarding the principle of justice. But, the aim of the theory of justice does not end here. It subsequently leads to further steps for application to the just institution.

¹³ Cooper, W. E., (1977), *The Perfectly Just Society*, Philosophy and Phenomenological Research, Vol.36, Sept., p. 46.

¹⁴Ibid., p.73.

¹⁵ Freeman, Samuel, (2008), *Rawls*, London and New York: Routledge, Indian Reprint, p.199.

¹⁶ Freeman, Samuel, *Rawls*, p.201.

Second stage, constitutional stage: In the constitutional stage, a constitution would be agreed to among rational representatives of free and equal under the veil of ignorance and whose judgement is guided and constrained by the principles of justice. Here, the principle of justice apply directly to constraints the decision of the representatives. Rawls holds, "They are to decide upon the justice of political forms and choose a constitution....Subject to the constraints of the principles of justice already chosen, they are to design a system for the constitutional powers of government and the basic rights of citizens."¹⁷ Here, the aim of the parties are to select a constitution that not only "...is best calculated to lead to just and effective regulation."¹⁸ But also one that implements and realizes the basic liberties specified by the first principles of justice. The veil of ignorance is relaxed so that they have access to relevant information as different society consists of different histories.

Once a just constitution that protects the basic liberties and defines a reasonable procedure for making laws is selected, we imagine the parties moving on to the "legislative stage" where they assess "...the justice of laws and policies..."¹⁹ At this stage the veil of ignorance is further relaxed, so that "...the full range of general economic and social facts is brought to bear."²⁰ Rawls says that there is a 'division of labour' between the constitutional and legislative stage. While the constitutional stage is the appropriate perspective for implementing the first principle of justice, this legislative stage is the appropriate perspective for considering the implementation of the second principle of justice.

Conclusion: There is a name 'realistic utopia' which is labelled against Rawls' theory of justice. He has tried with all his efforts to make just social order. For Just social order he assumes certain things like original position, veil of ignorance etc. He not only assumes these conceptions to derive principles of justice, he also shows how these principles can be applied to the basic structure to make it just with enough justification. Somewhere or other he was successful or somewhere not. The desires that kind of institution which is not only just but at the same time which fair. But we can say his methods was innovative one and shows the other philosopher how to go ahead.

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¹⁷ Rawls, John, *Theory of Justice*, p.172.

¹⁸ *Ibid.*, p.173

¹⁹ *Ibid.*, p.174

²⁰ *Ibid.*, p.175