

A Comparative Study of Rawls' and Nozick's Concept of Justice

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Abstract: The purpose of this paper is to compare the theories of Rawls and Nozick on Social Justice with a view to showing that normative and first-order judgments are still possible in political philosophy despite the dominance of analytic philosophy and logical positivism in the 20th and 21st century philosophy. Social justice is: 'Who ought to get what?' The word 'ought' should be noticed because no matter how the answers to this question are wrapped up in a scientific outlook and complex mathematical formulations, the ethical component of this socio-political problem cannot be made to disappear. The basic aim of this paper therefore is that of establishing the potency and urgency of the idea of social justice in the face of the current libertarian and capitalist order. The basic question is: How can social justice be achieved in the present order? Following the above, it is the contention of the present engagement that Rawls' discussion of social justice can be seen as a revolt against the tradition of the practice of social justice of which the entitlement theory is a typical and prominent cotemporary representative of the question of justice and this makes Rawls' discourse is more abiding than that of Nozick despite their seeming points of convergence.

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Introduction

One of the puzzling facts of life has been the attitude of religion to the poor. Both Christianity and Islam, as world religions, have alms-giving as one of the cardinal virtues of their faiths. At a point Jesus talks about the poor 'always' being in our midst. The use of the adverb of frequency - 'always' here suggests that there isn't much we will be able to do about ending the continued existence of the poor in our midst. In Islam the mentality is even stronger. The idea of 'sadaqat' (alms-giving) which is so pivotal in Islam is a clear indication of this fact. In the Northern part of this country one will observe that begging is almost like an occupation. It is what some people do for a living and it thrives because the dominant religion in the region allows it. The rich must give alms as a religious duty and the poor must be there to receive these alms as a religious obligation. In this kind of setting, talks about social justice and the elimination of poverty will obviously be superfluous. The reason is apparent enough- to do this is tantamount to infringing on religious ordinances. This disposition seems to favour the ideas that the concept of social justice is a mirage.

The fact that the moral question that social justice raises affects everybody in society makes it an imperative that attracts attention despite the prevalent religious attitude described above. The debates on the issue have generally been divided between the rightists and the leftists. Both praise their own form of society while at the same time they condemn their counterpart as unethical. This is quite understandable because the rightists stress the importance of liberty or freedom, and point out that no socialist country on earth nowadays respects the full rights of their citizens. The leftists, in turn, remind the rightists that their so-called liberties are, in most cases, merely formal. This tension demands a balanced and reasonable solution. The urgency of finding a reasonable solution to this problem and one of the deepest conflicts of mankind prompts this research. In the 1970s, two scholars made their names known by their writings on the topic. They are John Rawls and Robert Nozick. The paper is devoted to their different and competing theories. The purpose of the study is to compare the theories of Rawls and Nozick

on Social Justice with a view to showing that normative and first-order judgments are still possible in political philosophy despite the dominance of analytic philosophy and logical positivism in the 20th and 21st century philosophy.

Rawls Theory of Social Justice

Rawls' political theory of social justice is commonly called 'justice as fairness', the name derives its origin from the fact that all final agreements on distributive principles are made in a situation which is fair to everybody who is a party to the agreement. However, a basic understanding of the need and of the structure of Rawls' moral theory is a necessary key to his political theory.

The moral force in this regard can be captured in two basic sentences: (1) If a society is to function, there must be a relatively stable scheme of basic structure; (2) But this scheme must not be set up by using either force or appeal to any allegedly objective or metaphysical moral truths. In his opinion, a moral theory is the study of the structures or the possible structural relations of our fundamental moral conceptions like right, the good, and moral worth. Hence, the main purport of moral theory is: "a comparative study of moral conceptions. And each person work towards choosing a coherent set of moral postulates. But to be sure, it is practically difficult for a person to be certain that he has actually reached such a perfect equilibrium state.

If my understanding of Rawls above is correct, it will not be out of place to hold that Norman Daniels has expounded the method of wide reflective equilibrium wrongly. According to Daniels, a wide reflective equilibrium has three parts: (a) a set of considered moral judgments, (b) a set of moral principles, (c) a set of background theories. In achieving a wide reflective equilibrium, we do not, Daniels continues, just strive for a good fit between (a) and (b). This sort of equilibrium is only a narrow reflective equilibrium. Instead (c) is needed to assess the strength and weaknesses of (b). This self imposed limitation on the kind of support given to a set of moral principles is named by Daniels the independence constraint. The background theories that Rawls has used to justify his two principles of justice are at least two. (1) A theory of the persons and (2) a theory of the rule of morality in society.²

Under Daniels' interpretation, Rawls is actually attempting a very profound undertaking, viz to derive notions like rights, entitlements, which usually appear at levels (a) and (b), from entirely different notions that appear in the theory of persons and in the theory of the role of morality in society. This is successful for two reasons. Rawls by so doing has achieved a reductive task in moral philosophy and he has also propounded a real solution to the problem of conflicting moral principles.

a. Ideals and the Original Position

The strength of Rawls over Daniels subsists in his ideas of 'the ideal of the person'. The potency of this point resides in the fact that a resolution of conflicting moral principles can only be possible when those choosing from a range of moral principles are properly understood as persons. Only at this point can their preferences be predictable and this is of great value.

For Rawls this conception of the person has to be sufficiently informative and relevant, this common political conception of the person is an empirical matter, these ideal must be one which is accepted by the people in the political aspect, this concept of the person must not derive from human rationality alone; Based on these, Rawls avers that there is a common political conception of the person and of society in constitutional democratic states. This resides in the act that, society as a system of fair social cooperation between free and equal persons. In these kind of societies, principles for the actualization of justice has to be chosen.³

The analytic construction which Rawls has used to choose the principles of justice is called the original position.⁴This position is 'a device of representation' which Rawls adopted as far back

as 1963. Since in this light, if the choice of the parties in the original position has any justificatory force on the selection of principles of justice, it is derived not from this artificial construction per se but from the common fundamental political belief or set of ideals of the people living in democratic states.

In summary therefore, the binding power of the hypothetical construction is a direct result of the common political ideals. Real people and governments in democratic states would like to or ought to follow whatever choices are selected. As such, they have to submit to the principles of majority rule directly and thereby have to submit to these ideals indirectly. Thus, common political ideals are the ultimate justification of the whole project. In view of this striking feature, Rawls classifies his political theory as an 'ideal-based' or a 'conception-based view.

b. The Theory of Primary Goods and the Two Principles

With the above in place, Rawls begins to construct a set of general social conditions and goods in a democratic society which can serve as 'all-purpose means normally necessary for developing and exercising them. This collection of generally needed goods is called the primary goods. One also notices that the set of primary goods is selected only to fit the needs of those three interests of a moral person, it is not set up after an empirical survey of the goods that are needed to satisfy every want of the people living in a democratic states.⁵

The set of primary goods thus identified can be classified into the following items: the basic liberties, freedom of movement and choice of occupation, powers and positions, income and wealth, the social basis of self-respect which enable us to regard their own determinate conception of the good as worthy. The two principles accompanying these are: each person has an equal right to a fully adequate scheme of equal basic liberties which is compatible with a similar scheme of liberties for all. Secondly, social and economic inequalities are to satisfy two conditions. First, they must be attached to offices and positions open to all under conditions of fair equality for opportunity; and secondly, they must be to the greatest benefit of least advantaged members of society (the difference principle). These principles are prior because they guarantee the security of the basic liberties for every individual so that no utility calculations can override them⁶This constitutes the care of Rawls' understanding of justice for Nozick. It must guarantee equality of opportunity and must be of advantage to less privileged society. This is what makes justice fair.

Nozick's Concept of Social Justice

In this section, we consider Nozick's claim that a more extensive state is justified, become necessary (or the best instrument) to achieve distributive justice. The term 'distributive justice' is not a neutral one. Hearing the term 'distribution,' most people presume that something or mechanism uses some principle or criterion to give out a supply of things. Into this process of distributing shares some error may have crept. So it is an open question, at least, whether redistribution should take place; whether we should do again what has already been done once, though poorly. However, we are not in the position of children who have been given portions of pie by someone who now makes last minute adjustments to rectify careless cutting. There is no central distribution, no person or group entitled to control all the resources, jointly deciding how they are to be doled out. What each person gets, he gets from others who give to him in exchange for something, or as a gift. In a free society, diverse persons control different resources, and new holdings arise out of the voluntary exchanges and actions of persons. There is no more a distributing or distribution of shares than there is a distributing of mates in a society in which persons choose whom they shall marry. The total result is the product of many individual decisions which the different individuals involved are entitled to make.

Some uses of the term 'distribution,' it is true, do not imply a previous distributing appropriately judged by some criterion (for example, 'probability distribution'); nevertheless, despite the title of this chapter, it would be best to use a terminology that clearly is neutral. We shall speak of people's holdings; a principle of justice in holdings describes (part of) what justice tells us (requires) about holdings.

Justice as Entitlement

The subject of justice in holdings consists of three major topics. The first is the *original acquisition of holdings*, the appropriation of unheld things. This includes the issues of how unheld things may come to be held, the process, or processes, by which unheld things may come to be held, the things that may come to be held by these processes, the extent of what comes to be held by a particular process, and so on.⁷ We shall refer to the complicated truth about this topic, which we shall not formulate here, as the principle of justice in acquisition. The second topic concerns the *transfer of holdings* from one person to another.⁸ By what processes may a person transfer holdings to another? How may a person acquire a holding from another who holds it? Under this topic come general descriptions of voluntary exchange, and gift and (on the other hand) fraud, as well as reference to particular conventional details fixed upon in a given society. The complicated truth about this subject (with placeholders for conventional details) we shall call the principle of justice in transfer. (And we shall suppose it also includes principles governing how a person may divest himself of a holding, passing it into an unheld state.)

If the world were wholly just, the following inductive definition would exhaustively cover the subject of justice in holdings: (i) A person who acquires a holding in accordance with the principle of justice in acquisition is entitled to that holding; (ii) A person who acquires a holding in accordance with the principle of justice in transfer, from someone else entitled to the holding, is entitled to the holding; (iii) No one is entitled to a holding except by (repeated) applications of i and ii.

The complete principle of distributive justice would say simply that a distribution is just if everyone is entitled to the holdings they possess under the distribution. A distribution is just if it arises from another just distribution by legitimate means. The legitimate means of moving from one distribution to another are specified by the principle of justice in transfer. The basis for all these is Locke's theory of acquisition⁹.

Points of Convergence and Difference between both Positions

There are basically very minimal points of arrival between both positions on social justice. For this reason, the emphasis here will be on their points of difference. Under the current analysis of the two philosophers, their differences might be traced simply to their different attitudes towards the issue of objective ethics: Nozick has made use of the notion of moral truth freely; but Rawls believes that this move is both problematic and unnecessary for a theory of justice. For one thing, Rawls seems to have adopted some form of objective ethics also. In "Kantian Constructivism in Moral Theory", Rawls repeatedly stresses that his theory endorses objectivity in a Kantian sense.¹⁰ Whether it is really Kantian or not, isn't the concern here. What is the concern is to argue is that the senses of objectivity in Rawls' and Nozick's theory are not the same. Moreover, Rawls' sense of objectivity does not have to be involved in either asserting or denying the existence of moral truths in the realist sense; which is highly problematic.

If the argument above is correct, then a deep source of their differences has now appeared: in fact, Nozick's and Rawls' theories have completely different aims. If Rawls is understood aright, he is actually trying to strive for a working agreement on the question of social justice, regardless of whether that agreement corresponds to the external objective moral order, if there is one. Nozick, on the other hand, tries to investigate what we ought to do and ought not to do under the correct moral order which he has partly assumed and described. In this light, we can now understand easily why Nozick pronounces his entitlement theory "the correct theory of justice": if the entitlement theory can reveal the external moral order which is the only correct one, logically speaking this theory is the correct theory. In contrast to Nozick, Rawls thinks of himself as addressing a "practical problem" rather than an "epistemological problem." Hence a "workable public agreement" is all that is needed.

It will be apparent by now that there is no simple solution to the question: Do Nozick's and Rawls's theories conflict with each other? It all depends on the level of the comparison. At the most general level, one thinks that they are simply attempting different projects although they have a common area of concern: how should property be allocated? This might sound very Kuhnian. But if this is the case, can we compare them in certain aspects so as to show that one is superior to the other? The answer to this question is a positive one. Nozick's theory is very controversial, because it could justify very unique distributions of property that may not respect what people deserve, nor what they need, nor give any kind of priority to people who are worse off. If he is right, redistribution cannot be justified except to rectify a previous injustice.

Rawls challenges Nozick's defence of property rights. Much of what people own is the result of people's social position and natural talents, both of which are morally arbitrary. Therefore, any inequalities in ownership are unjust. Furthermore, what rights people have to property can't be decided before deciding on the principles of justice. People don't have a right to earnings their talents bring them, only to that share which they keep according to the principles of distributive justice.

Nozick responds that each person's talent and ability belong to them. They therefore have a right to keep (or do whatever they want with) whatever these talents and abilities gain for them. To forcibly redistribute what they earn is to fail to respect their autonomy.

But even if people own themselves, we can argue that this doesn't entail that we have the right to do whatever we want to do with our property. A reinterpretation of 'justice in transfer' could place restrictions on property rights. Nozick supposes that any transfer, if it is freely consented to, is just. We can argue that rules governing transfer should be sensitive to many political values, not just liberty. The rules we currently have (regarding tax, inheritance, transfer between married couples, gifts and so on) are the products of balancing many considerations relating to patterns of production and work, family life and political institutions.

Furthermore, we can interpret individual liberty as a goal to be pursued, not a constant. If the value of justice rests on liberty, then surely we must ensure that everyone has sufficient property to be free. Redistribution of liberty. But this is a patterned principle of justice.

A final objection to Nozick is this: History shows that a great deal of initial acquisition of property was unjust based on theft, exploitation, slavery and colonization. All property that derives from unjustly held. You do not have a right to transfer property you stole, nor does the new owner have a right to do what they receive. But, of course, we cannot now rectify the injustice of the past. We have no way of establishing what belongs to whom. So Nozick's theory has no application if we do not start from a just beginning; we must therefore work out a different theory of justice that is not so sensitive to past injustices that we cannot correct. The historical nature of Nozick's theory turns out to be a weak spot.

Critique of Both Positions

In the construction of the original position as a device of representation, the rules of representation seem to be quite arbitrary. For example, Rawls has never explained why the parties there are allowed to think only in terms of their own possible but unknown determinate conception of the good, but not from the desire to uphold the sense of justice. At some points, Rawls has produced some sloppy reasoning. For example, Rawls thinks that reciprocity supports the principle of the original positions (POPs) to assign a priority to the basic liberties. But even utilitarianism, a doctrine which is usually taken to be an ethical theory which allows the denial of the basic liberty to any citizen in certain circumstances, has a good fit with the notion of reciprocity. Thus, it will not be easy for one to think that it is so easy to argue from the

acceptance of reciprocity to the selection of the set of basic liberties, which the principle of the original positions (POPs) are supposed to choose to maintain at all costs.¹¹

A Summary and Conclusion

Are there any natural rights? The answer to this question will lead to a very clear and undeniable ranking of the two theories. To put it another way; there is at least one way of looking at the theories by which one of them will appear to be wiser than the other. In the light of this approach, it is Rawls who has got the upper hand. This is because to base the significant problem of social distribution on natural rights, as Nozick does, is like building a skyscraper upon mudflats. For one thing, it is highly doubtful whether there are any natural rights at all. This weakness is made worse by the fact that in modern societies a lot of people simply do not believe that there are any constant and unchanging natural rights. As a consequence, to impose laws made in the name of natural rights is bound to arouse a lot of reasonable as well as unreasonable opposition. This will result in a very unstable society. But this aside, it is also pertinent to note that Rawls' approach to political philosophy is far wiser than Nozick's from a theoretical point of view.

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