



Critical Valuation of "Justice as Fairness" of Karl Max by Rawl

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Abstract: *Although a society is a cooperative venture for mutual advantage, it is typically marked by a conflict as well as an identity of interests. So, it is incumbent upon a political philosopher to establish principles according to which the external goods of society can be distributed. These goods are limited. Not everyone can be provided a car, not everyone can be guaranteed a seat in a college or in a University. Indeed, not every kidney patient can be provided with renal dialysis. There just are not enough resources to go around. And no great surge in production will ever meet the desires and felt needs of our, or for that matter, any society. Thus, principles are needed for choosing among the various social arrangements which determine the division of advantages and for underwriting an agreement on the proper distributive shares. These requirements define the role of justice. Through this research work, the concept of justice along with the role of its principles in assigning rights, duties and work during division of social advantages in Max's philosophy, will be seen in Rawl's principles of justice.*

Keywords: *social justice, utilitarian, conservative approach.*

INTRODUCTION

Within Rawlsian framework, principles of justice are thought of as arising from an original agreement in a situation of equality and fairness, which explains the propriety of the title of his theory "justice as fairness" "Justice as fairness" begins with the most general of all choices which persons might take together, namely, with the choice of first principles of a conception of justice which is to regulate all subsequent criticism and reform of institutions. Rawls's solution of the problem of decision making under conditions of uncertainty is in the form of "maximum criterion". The term "maximin" means the "maximin minimorum" and the rule directs our attention to the worst that can happen under any proposed course of action, and to decide in the light of that "maximin" simply refers to the fact that it prescribes the choice which maximizes the minimum pay off. In other words, the decision maker looks at the possible consequences of each alternative to discover the worst possible outcome that each could produce. For each alternative he asks: 'If everything went wrong, how catastrophic could it be?' And he then picks up the alternative which gives him the smallest losses if everything went wrong. Clearly it is a play-safe strategy, a conservative approach. Clearly it is a pay-safe strategy, a conservative approach. The decision maker is more concerned to avoid taking chances (that are likely to be there if he were to adopt any other strategy, the principle of utility, for example) and wants to ensure for himself a "satisfactory minimum" even if his place in the society were assigned by his enemy. Brian Barry protests that it is not rational to follow the maximin policy except where someone is responding to your choices in such a way as to damage you. In other cases, some sort of system for playing the percentage is more rational. No initial plausibility has been provided by the reference to one's enemy assigning one's place, he points out.

RAWLS'S VIEWS

Rawls's tries to defend his claim that in the original position it is rational to adopt the maximin rule which leads one to choose principles which favour the bottom of the social hierarchy instead of accepting a greater risk at the bottom in return for the possibility of greater benefits at the top (as might be prudentially rational if one has an equal chance of being anyone in the society).

According to Rawls there are three features of any situation which increases the rationality of a conservative approach to decision making and he suggests that the original position manifest these features to the fullest degree, caring them to the limit, so to speak. At the limit absolute conservatism is presumably in order and hence the maximin criterion is appropriate. The three features are as follows:

First:

"Since the rule takes no account to the likelihood of the possible circumstances, there must be some reason for sharply discounting estimates of these probabilities".

Second:

"The person choosing has a conception of the good such that he cares very little if anything, for what he might gain above the minimum stipend that he can, in fact, be sure of by following the maximin rule".

Third:

The rejected alternatives have outcomes that one can hardly accept. We Shall examine these three features in turn. The first says in



effect that if you don't know much about the probabilities attached to the various possible outcomes of decision X, the various possible outcomes of decision Y, and so on, but do know what the worst possible outcome of each decision is, it is rational to take the decision which is known to have the most preferred worst outcome. Since any outcome can occur with any possibility it is obvious that any idea of maximizing expected value is out of the question in such a situation and there is no point in looking at the outcomes between the best and the worst.

Taken by itself this argument does not entail a maximin strategy. Some further argument is required to get to the conclusion that it is rational in the circumstances to be 'pessimist' rather than an 'optimist' and to take account only of the worst possible outcome.

Rawls wishes to argue that the people in original position do not know the probability of finding themselves in any of a number of different positions in different kinds of society. This being so they have the choice of operating on the principle of "insufficient reason" (i.e., The idea that in the absence of information to the contrary it is rational to assume that each separately identifiable state is equally probable) or choosing a criterion which does not require any information about probabilities, maximin being an example of such a criterion.

Rawls finds fault with the principle of insufficient reason and rejects it. The question then is, of course, whether it is rational to go for the highest average expectation or the highest minimum expectation. If the chooser knows his attitude to risk, the question is in principle answerable. But Rawls is clear and rightly so that the parties in the original position cannot have any definite attitude to risk ascribed to them. He says that, the veil of ignorance" also rules out the knowledge of these inclinations: the parties do not know whether or not they have a characteristic aversion to taking chances. As far as possible the choice of a conception of justice should depend on a rational assessment of accepting risks unaffected by peculiar individual preferences for taking chances one way or the other. In the absence of a particular attitude to risks we are thus back at the basic question whether, it is rational to maximize one's average expectation or one's minimum expectation. Rawls is supposed to be trying to show that it is more rational to choose the latter, but the fact that the parties are ignorant about the range of likely averages or likely minima is a part of the specification of the problem and not an argument tending toward one solution or the other. On the face of it, it would appear that Rawls has carefully removed all information (including attitude to risk) which could provide a basis for making a rational choice of a criterion. In as far as anything can be said, it might be that since the chooser does not know whether he likes risks or is neutral, a version of the "principle of insufficient reason" might lead him to act as if he were neutral. This might result in his choosing the criterion of maximizing the average. But the main thing is that Rawls establishes nothing whatever by his first feature'.

The other two special features which Rawls claims to be exhibited to the ultimate degree in the original position can be analysed within this framework. The 'second feature ran as follows: the person choosing has a conception of the good such that he cares very little, if anything, for what he might gain above the minimum stipend that he can, in fact, be sure of by following the maximin rule'.

There is a preliminary point to be made. Rawls is assuming that, as a matter of psychological fact, there is a definite threshold (and the same one for everybody) up to which increments of wealth and power are valued but above which they have little or no value. On the face of it, this hardly looks at all plausible. But we shall not argue against it. There are, it should also be noted, problems of internal consistency facing Rawls if he really wants to say that power and wealth above the minimum work as an incentive and thus get people to do things that make even the worst of better off than they would be in a condition of equality.

Suppose, however, that we accept the assumption that for each person there is a threshold and also that it comes in the same place for everyone. This does not lead to the deduction of a maximin criterion. Once again we can put forward the case from within what appear to be Rawls's premises or we can challenge them. If we see the question as one of choosing between alternative societies, the point to be made is that the people in the original position do not know what the minimum will be if they choose a society organised in accordance with the maximin criterion. Rawls' argument from the threshold effect to the maximin criterion works only if the minimum level obtainable under a maximin-satisfying organisation of society happens to coincide exactly with the level at which the threshold effect operates. Pretty obviously the a-priori probability of this being the case is exceedingly low. If the minimum obtainable is either above or below the threshold level, we cannot say without further information whether in any particular situation maximizing the minimum will be a good idea or not. Rawls' argument for the relevance of the second "special feature" to the situation of the people in the original position is that maximin considerations underlie the choice not merely of the first part of the second principle of justice but of the two principles as a whole including the priority relations between them. He says that if we can maintain that the principles provide a workable theory of social justice, and that they are compatible guarantees a satisfactory minimum there may be, on reflection, little reason for trying to do better" He adds that this line of thought is practically decisive if we can establish the priority of liberty, the lexical ordering of the two principles. For this priority implies that the person in the original position have no desire to try for greater gains at the expense of the equal liberties. The minimum assured by the two principles in lexical order is not one that the parties wish to jeopardize for the sake of greater economic and social advantages" these quotations which are supposed to be arguments for the rationality of choosing the two principles, have a circular look about them. The circularity is not quite complete (this must be so if they are not conclusive) but the very strong dependence on special and extreme utility functions is evident. What Rawls is saying is that, if the preference structures of the people in the original position are known by them to be such that they are not willing to trade off any amount however tiny of liberty for any amount however great of wealth and power provided they have some minimum amount of these, they will choose principles corresponding to these preference- structures.

What we have been saying so far boils down to this the most that Rawls can establish by this kind of postulates about the structure of preferences is that the parties would insist that if some specified minimum could be provided for all (the threshold amount above which increases are of little or no value to anyone) then it should be provided rather than let some fall below to



enable others to rise above it. This minimum is to be conceived of as comprising the complete implementation of equal liberty' plus the achievement of a set minimum amount of wealth and power. But the maximin criterion is not appropriate if the minimum achievable in a society applying the criterion either falls short of this set minimum or if it exceeds it. Rawls agrees that the priority relation should be waived at low levels of development but he nowhere concedes the further point we have been making that at a low level of development the maximin criterion for wealth and power may also be in-appropriate.

Rawls' third 'special feature of the original position was that the rejected alternatives have outcomes that one can hardly accept. The most straightforward interpretation of this is that the outcomes of other choices may be extremely bad. This appears to be what Rawls has in mind when he explains how this feature can be found in the original position. For example, it has sometimes been held that under some conditions the utility principle (in either form) (ie. Maximizing either average or total utility) justifies, if not slavery or serfdom, at any rate serious infractions of liberty for the sake of greater social benefits. We need not consider here the truth of this claim, or the likelihood that the requisite conditions obtain. For the moment this contention is only to illustrate the way in which conceptions of justice may allow for outcomes which the parties may not be able to accept and having the ready alternative of the two principles of justice which secure a satisfactory minimum, it seems unwise, if not irrational, for them to take a chance that these outcomes are not realized. Brian Barry raises two objections against this argument developed by Rawls:

First Rawls' argument depends crucially on the idea that choosing a maximin solution (regarding the package of the two principles and the priority relations between them as constituting a maximin choice for this purpose) guarantees a "satisfactory minimum": This assumption, contends Barry, is baseless. If the people in the original position are ignorant of all features of their society then they must of necessity be ignorant of the minimum position that would be achieved if a maximin criterion were to be applied to the design of social institutions, laws and public policies in it. They have no reason to suppose that the application of a maximin rule to their society will provide them with a "satisfactory minimum". Moreover, it is highly implausible to suppose as the people in the original position are supposed by Rawls to do, that there is a "satisfactory minimum" defined as a collection of primary goods, the same for everyone, such that increases in the amount of primary goods have little or no value for everyone. Even if each person has a satiation point for wealth and power it is probably higher for most people than the minimum obtainable by maximin policies in even the richest societies.

Second the plausibility of Rawls' example concerning the curtailment of liberty on utilitarian criteria depends upon the falsity of his own "Psychological generalizations". Liberty is more important to everybody than "social benefits (let's say material benefits) than just as it would never be A's wish to trade in his own liberty for increased material benefits to himself, so it would never be a way of increasing average utility within a whole society for the institutions, laws and policies to trade in A's liberty for increased material benefits to B. If Rawls is right about the structure of preferences, liberty must add more to the average level of utility than material benefits. The case as stated by Rawls therefore could not arise.

CONCLUSION

Although Rawls does officially repudiate any use of special assumptions about risk aversion, he does in a rather vague way introduce them anyway in respect at least of the choice to be made in the original position by his repeated emphasis on the 'grave risks' involved (one factor mentioned by Rawls in favour of choosing the maximin strategy by the contractees is that the subject matter of the choice is extremely serious, since it involves institutions that will determine the total life prospects for the parties and those close to them. It is not just a choice of alternatives for a single occasion, as if one could somehow establish the rationality of risk aversion when the consequences of accepting a risk may be catastrophic without making any special assumptions about attitude to risk. This however is attempting to square the circle. A man with a neutral attitude to risk will rationally accept a small risk of a catastrophic outcome for a high probability of a moderate gain. It is not a priori irrational to accept risks of catastrophe, for those in the original position. Nor can it be said to be rational: it really depends on attitude to risk.

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