

Rawls Under the Scrutiny of Nozick

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In 1971 John Rawls published A Theory of Justice (TJ) in which he expounds what is today one of the most debated theories of social justice. Just three years later, partially in response to Rawls' work, Robert Nozick explained his own views in Anarchy, State, and Utopia (ASU). In ASU, Nozick goes to some lengths to demonstrate weaknesses in Rawls' argument and strengths in his own. This paper will examine three of Nozick's criticisms, their weight, and analyses of Rawls' theory which serve to rebut them.

The Nozickian criticisms which have been selected for discussion represent three aspects of TJ. The first relates to the question of distributive justice and will be characterized as economic. The second criticism examines the formulation of Rawls' theory and will be referred to as the historical/end-state dilemma. The final debate centers on the proper grounds of co-operation between the individual and society.

The Rawlsian argument spans hundreds of pages in its entirety but may be pared to its essentials by stating his

principles of justice and the circumstances under which they would be chosen.

#### First Principle

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

#### 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.

#### 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 extensive liberty must strengthen 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)

There are two cases:

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

#### General Conception

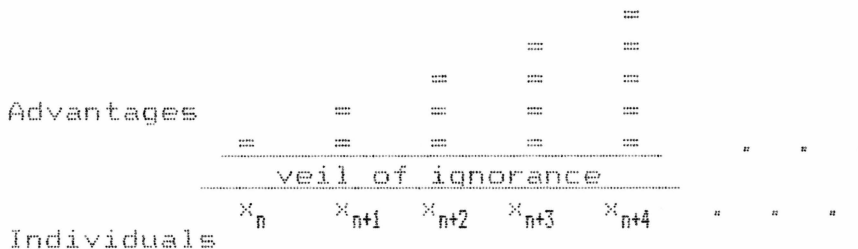
All social primary goods--liberty and opportunity, income and wealth, and the bases of self-respect--are to be distributed equally unless an unequal distribution of any or all of the goods is to the advantage of the least favored. (TJ, 302)

These principles and their lexical application are designed to concur with the conception of justice one adopts through what Rawls calls "reflective equilibrium". To

support his principles, he uses a hypothetical situation called the Original Position, which may be likened to gathering a group of people together and deciding to put on a play. A script is needed and parts must be handed-out; some will be leads and some cameos. In the same way, Rawls places representative individuals in a position of defining a concept of justice and just social order under conditions where,

no one 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. (TJ, 12)

Following is a diagram to visualize the concept.



In analyzing the various possible configurations of wealth and position, the actor cannot bias his determination with what is in his best interest since he does not know his position. Neither can his decision between a configuration of distribution which promotes vast inequalities and one which tends to equality be affected by his tolerance to risk since he does not know how many players and positions exist



and thus cannot know the probabilities for various returns. It is by reason alone, then, that he comes to the determination that the maximin game strategy is the only one unassailable to counter-argument. In this strategy one will always choose to play for the highest minimum return on the options available to him. Thus it is that Rawls' second principle is designed to gauge justice by the standard of the welfare effect on the least advantaged individual in society.

As stated earlier, the first criticism chosen for examination is economic. Nozick attacks Rawls' determination that just terms of social co-operation require protection of the best possible returns to the least advantaged. If Nozick is right, then Rawls' argument is dealt a crippling blow since this protection is the crux of both the Second Principle and the Second Priority Rule.

Rawls' position here is clear. The justice of a social constitution is to be based on equal liberties and strict preference toward elevation of the least advantaged. This preference is explicitly stated as one notes above. To repeal this aspect of Rawls' argument would leave it with no guidelines for interaction other than the basic environment of formal equality of liberty and opportunity.

The exact nature of Nozick's criticism is as follows. He questions whether terms of co-operation which are derived by constant preference for the position of those least fortunate are acceptable to those who are better endowed in society.

Nozick makes points by focusing on endowments as they may now stand with the condition that they be the actual result of just past transfers. He determines that any willing transfers from just present endowments will lead to equally just endowments in the future, regardless of their inegalitarian effects on particular sectors or individuals in society. Nozick's point of view is strikingly consistent with classical liberalism and laissez-faire capitalism. While supporting the equality and liberty of Rawls' First Principle, Nozick would leave the balancing of the benefits of social co-operation wholly in the hands of individual participants and call this justice.

Rawls foresaw the tack of criticisms such as this one by Nozick and comments on alternative systems and their failings in TJ. In the course of his discussion of the Second Principle, Rawls draws distinctions between two interpretations of "equally open" and "everyone's advantage". "Equally open" may be construed to be either equality as careers open to talents or as equality as equality of fair opportunity. "Everyone's advantage" may be taken as either a constraint toward efficiency or a constraint toward egalitarianism. Nozick's system combines the definitions of equality as careers open to talents and the constraint of efficiency in what Rawls calls a system of Natural Liberty. Rawls, however, combines equality of opportunity with egalitarianism to form a system of Democratic Equality.

The system of Natural Liberty, which corresponds to laissez-faire capitalism, Rawls states, is unable to assure justice because of its unavoidable instability. As Alexis de Tocqueville noted one hundred and fifty years ago in his Democracy in America, the opportunity to succeed or fail is open to all in democratic societies and will lead in time to grave disparities in the allocation of primary goods derived from the division of labor. The resultant framework of social leadership is called by some meritocracy.

Nozick's criticism of Rawls' economic theory cannot be characterized as strictly meritocratic because of the inclusion he makes of bequests. But there are two sides to a bequest. It may be true that making a bequest is a just use of liberty extendable to all in a community. Nevertheless, there is no necessity of granting a right to claim a bequest. Such is merely a privilege entirely subject to the benevolence of some other member of society and not defensible by a claim on the part of him who receives the bequest.

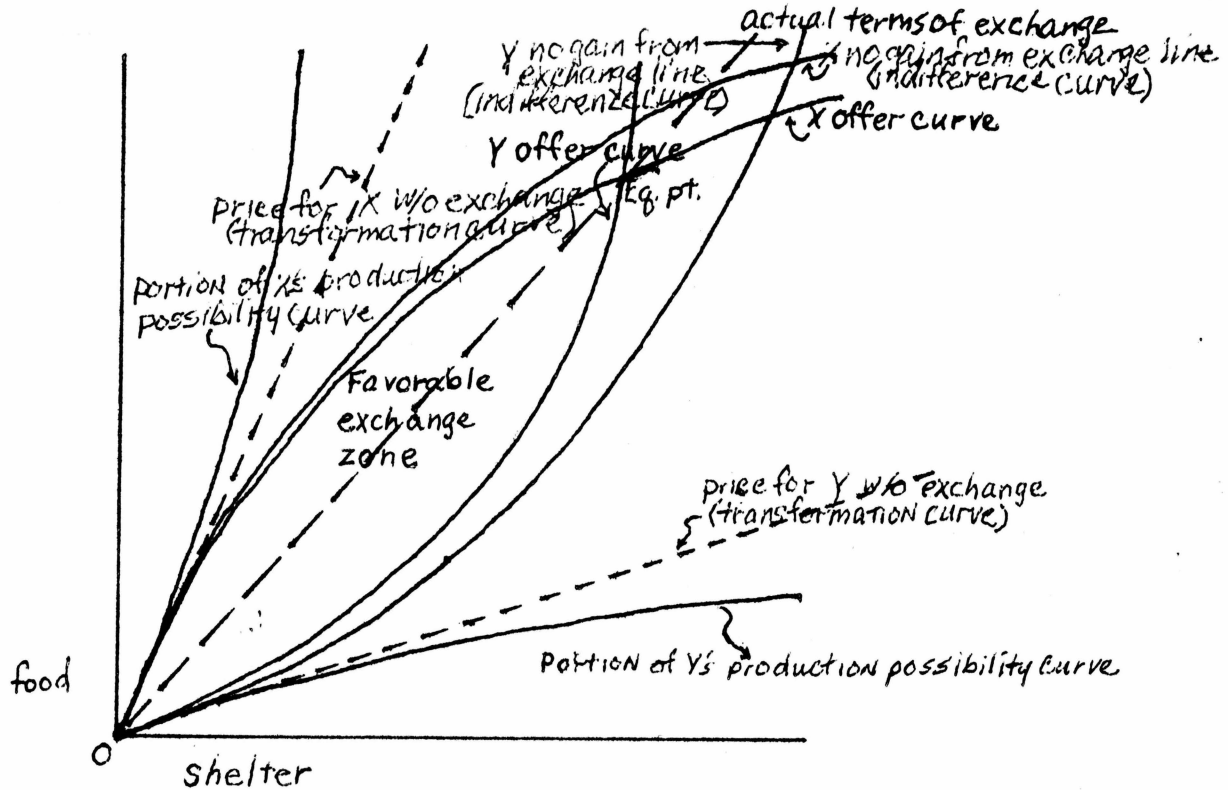
With the elimination of the special case of rights to bequests, Nozick's criticism becomes one which advocates the justness of a system on the grounds of justice as exchanges voluntarily made by specific individuals in a society. But the formal equality and liberty of some who make exchanges are jeopardized by the market power of others. The relentless pressures of social contingencies and natural

chance exacerbate disparities in distributive shares and lead, with little imagination, to the scenario of might making right, which was contradicted centuries ago by Socrates in the Republic.

Both Nozick and Rawls espouse the view that social collectivities exist for the mutual advantage of their component members. Unfortunately, Nozick's unrestricted individual right to transfers can lead to the situation where the least advantaged partner in the social exchange is rewarded with only what his more powerful partner desires to give him. Rationally, this will be only what is necessary to retain the poorer in the marketplace--subsistence. Rawls states flatly that institutions are to be designed so as to provide the greatest possible returns to those least advantaged. It appears that one champions the cause of the most advantaged while the other backs the most deprived. But is there no common ground among rational partners?

A quick review of the economic term "comparative advantage" as used in trade will show that there is a solution to the problem of arriving at terms of co-operation which are not abusive of either the worst or best off in a society. For simplicity, imagine two members of society who each direct their endeavors toward the production of only food and shelter. Each is relatively better at one of the tasks. There will always be terms of co-operation which are in the best interests of each. The following diagram

demonstrates the hypothetical zone of commonly advantageous interaction and its equilibrium point for two rational self-interested parties such as compose either Rawls' or Nozick's society.



Extortion or abuse by either of the parties can be demonstrated as being outside of the favorable interaction zone and thus outside of the basic parameters each gives for society, ie, 1) that it consist of rational self-interested beings, and 2) that social links be formed for mutual benefit. Interaction at the equilibrium point will provide the greatest amount of each commodity at ratios mutually acceptable. If either decides to attempt terms of interaction more favorable to himself than the actual terms

of co-operation line, the result will be either less exchange or terms unacceptable to a partner. Either of these outcomes over time would be irrational. The conclusion is that efforts to improve only one's personal position are abusive of the conditions which make interaction possible and the apparent conflict of interests can be reconciled.

This brings us to a third point in response to Nozick's criticism of the constant emphasis on the situation of the poorest in a community. He fails to grant the logic of the Original Position and is thus unwilling to admit of decision makers without knowledge of their specific endowments and interests. As a consequence, he misses the strength of combining pareto optimality with the Original Position conditions.

He complains that given two ways of organizing the benefits of interaction where in one  $A_1$  receives much more than  $B_1$  and in the other  $B_2$  receives slightly more than  $A_2$  and both receive more than  $B_1$ , selection of the second option creates a situation where the improved position of B entails the impoverishment of A. No such distinction or conclusion is necessary. In the Original Position, simple placemarkers may be used to show the various rewards in different systems. Thus, the choice is simply between a system where one X receives much more than another X or one where returns are more equal and the least advantaged X does better than in the first system.

In fact Rawls does mention pareto optimality in conjunction with models distinguishing between more than two actors or groups. He argues that those in the Original Position will first seek to maximize the outcome of the least advantaged and then turn to maximization of the second worst, taking as given the constraints inherent in the maximization of the worst's position. So it continues on up to the most advantaged position in a society. From the perspective of the most advantaged, this means that, given two ways to improve further his position, the just choice is that one which will most improve the position of the worst off individual to be effected within the constraints of fair exchange. Strong support for an equivalent interpretation of the difference principle is given by Shenoy and Martin in Theoria.

The second criticism which Nozick makes of Rawls' theory of justice is based on a distinction between historical and end-state principles of justice. Historical principles are those whose fulfillment require only constant adherence to certain procedures. End-state principles entail evaluation of the results of a society's interaction procedures with the added right given to some actor, for example the government, to realign distributions in accordance with some criterion like utility or need. Nozick claims that historical principles are superior because those which are

end-state require interference in the particular choices of individuals so as to maintain certain desired distributions.

Part of the beauty and strength of a purely procedural theory of justice, into which class falls Nozick's theory, is that it does not require perfect knowledge on the part of the decision maker, as is required for example in Utilitarianism. Take for instance the cake-cutting case used by Rawls. Imagine a cake, a knife, and a group of people who wish to agree on a just division. What is the simplest way to come to a fair distribution? The least complicated solution is a system of procedural justice which harnesses personal interests to the good of the group. If they hold a lottery to determine who will cut the cake and stipulate that he who does the cutting will get the piece left-over after everyone else has taken his, his own greed will motivate him to cut the pieces as equally as possible, since his own piece will in effect be the smallest. In this case where shares can be equal, we see the directness and simplicity of a purely procedural theory of justice.

Where shares are unequal the superiority of pure procedure still holds. An example from Mason in John Rawls and His Critics will serve as demonstration.

Suppose that there were six bottles of beer to be distributed between S and T and that S and T are equal in all relevant respects. Suppose further that both S and T require four bottles to achieve their goal of pleasant intoxication. If we utilize (strictly equal shares) this goal would be impossible for both S and T. However, suppose they agree to flip a coin, the winner receiving four bottles. In this case the



distribution would still be just even though the distribution was unequal. Each party's consent to the rules justifies the unequal distribution.

Had Rawls' theory remained purely procedural it would have retained this kind of strength.

Nozick's historical/end-state dilemma portrays the formulation of Rawls' theory as an end-state theory. The style of argument chosen by Rawls' is referred to when Nozick states,

Let us call a principle of distribution patterned if it specifies that a distribution is to vary along with some natural dimension, weighted sum of natural dimensions, or lexicographic ordering of natural dimensions. (ASU, 156)

He then goes on to show that patterned principles are susceptible to the same problems as end-state principles. Nozick assumes that free market conditions of social and economic interaction will adequately preserve justice. He then points out that if at one point in time the preferred conditions of an end-state principle advocate hold true, the repeated use of liberties open to all in a free market will result in any of many allocational patterns different from the original. The end-state advocate would then need to countermand, at least occasionally, the choices of transfer of society members to once again arrive at his ideal configuration.

End-state and patterned principles are unstable in regard to justice because they cannot be relied upon to constantly mete it out. Since Rawls' principles are lexically ordered,

and, since despite all his efforts toward pure procedural justice, he does stipulate a pattern in the difference principle, his theory is subject to the kind of instability described by Nozick. Nozick believes that this invalidates it as a rational choice for principles of justice.

However, Rawls is not without reply. The first point to note is that Rawls' theory of justice concerns the basic structure of society chosen in the Original Position; it is not a constant decision rule for individuals or groups in actual situations. This means that his principles are meant to be used in choosing one structure of society over another and not in choosing the most just of various time-slices or individual options, as Nozick seems to assume.

Still, there are further problems with the end-state character of Rawls' theory of justice. The rational choice in the Original Position to judge systems by the lot of their least advantaged participant leads to complications. Although the difference principle is the single part of Rawls' theory which requires patterning, this criterion requires that the least advantaged be defined.

The actors in Rawls' Original Position are not burdened with the need to know everything about everyone but, they do need to know a great deal about the least advantaged in society. That there is at least one least advantaged in each of various structural options is a truism of set theory. The

existence of a non-empty partially ordered set guarantees an identifiable least element or elements.

A difficulty surfaces in trying to declare the holder of this distinction. To do so requires that his allocation be compared to each other in society. This does not require ordering all the members. It does require comparing two members at a time and retaining the lesser to compare to still another member which has not yet been examined, until each has been. Finally the least advantaged from each structure in question must be compared. Such a process demands that the actors of the Original Position understand greater or lesser advantages from society to each member in each of the structures.

Since it was determined earlier that the set of members of society be infinite to avoid risk-tolerant strategies, we cannot now limit the set. The decision process would therefore be endless. It breaks down. Even if the actors move to representative sets, they have no knowledge of how many sets there are unless the maximum limits of advantages attainable are implicit in the specific organizations of the structures.

And that is only the beginning. Four years after publication of TJ, Rawls wrote in the Cambridge Review that the difference principle is intended to work only for the benefit of the person who is least advantaged in society through no fault of his own. Rawls says,

The least advantaged are defined very roughly, as the overlap between those who are least favored by each of the three main kinds of contingencies. Thus this group includes persons whose family and class origins are more disadvantaged than others, whose natural endowments have permitted them to fare less well, and whose fortune and luck have been relatively less favorable, all within the normal range (as noted below) and with the relevant measures based on social primary goods. ("A Kantian Conception of Equality", 96)

It almost goes without saying that this level of distinction requires a great deal of those who are making the analysis.

Its added definition surrenders practicability for plausibility. Weatherford comments on this further classification in The Philosophical Quarterly where he states,

By redefining the least-advantaged class in terms of undeserved inequalities, Rawls has brought the Two Principles of Justice much closer to the spirit of the Principle of Redress. At the same time, it is a change which might improve the chances that Rawls' two principles of justice would be selected by the hypothetical social contractors in the original position. Many who would balk at committing large amounts of social resources to help all the poor might well agree to help those who suffer through no fault of their own and who are therefore deserving of succor. Indeed, since the contractors are assumed to be rational individuals following a maximin strategy, they might consistently agree to protect themselves from undeserved misfortune while accepting whatever suffering might flow from their own free choices. This would provide scope and incentive for the individual initiative so dear to the capitalist's heart, while eliminating the most unjust of the social conditions which offend the socialist. (Discussions: Defining the Least Advantaged, 63)

The narrower focus may also make Rawls' theory more palatable to those whose Socratic opinion leans toward a theory less paternal than Rawls' original formulation and closer to

Nozick's.

A final problem apparent in Rawls' theory under the scrutiny of Nozick's historical/end-state criticism continues in the vein of knowledge implicit in the choice of social structures based on the patterned Second Principle. In the real world, evaluations must repeatedly be made as to which particular individuals are found in the least advantaged group. If a further assumption is made that technological innovations and changing economic understandings can produce previously unknown social structures, then a problem surfaces in the need to allow for changes in institutions to meet newly discovered possibilities for the least advantaged in society.

One way to avoid the further complication is to say that actors in the Original Position take such changes into account in their choice of a system. But they are supposed to be under a thick veil of ignorance. It seems unlikely that the veil of ignorance would be so spotty as to lift their vision in this area beyond that of men who operate without such a veil.

Granted the introduction of new understandings or technological advance which can change the well-being of the least advantaged, transience of institutions is implied. This situation serves to the impairment of the rational life expectations of society's members and may be an even more noxious complication than the definition of the least

advantaged. Rawls identifies his theory as ideal but this criticism would hold in the hypothetical realm as well as in real life.

The whole of contract theory requires that those entering the (hypothetical) agreement understand the consequences of their pact. This in turn hinges on their ability to forecast results of different decisions. The introduction of an indeterminate factor creates a dilemma for the actors of the Original Position and allows lamentable possibilities in real life. On this point Allen Buchanan says in Philosophical Studies 28,

The greatest grievance of a person who is disadvantaged by such institutional changes is not simply that his wants have been thwarted. His functioning as a rational planner and executor of long-range plans has been undercut by his society's attempts to continue to satisfy the difference principle. Continued satisfaction of the difference principle--or any end-state principle--has all the tribulations of rectificatory justice, but none of its consolations. We cannot say: but after all, the previous scheme was unjust. (Distributive Justice and Legitimate Expectations, 422)

In the worst of cases, great personal efforts may be made by an individual to provide for himself, his fellow citizens, and his progeny under conditions of private ownership of the means of production only to learn that his society is converting to an economic structure which includes public ownership since it has only recently come to light that more can be provided for the least fortunate in a differently structured society. His rational goals, the methodical

implementation of requisite work, and the possible sacrifices made for his goals' attainment are suddenly moot. The rules of the game have changed in the blink of an eye and what accorded with justice one moment does not the next. Allowance for such a case must impair the chance that the difference principle would be accepted today or in the Original Position.

To avoid such cases, an additional branch of government could be added to those outlined by Rawls. To allocation, stability, transfer, and distribution, would be added one of institutional change. Its role would be to identify institutional changes which will modify the expectations of citizens to precipitate modifications in the structure of society. The adoption of such a branch into Rawls' theory protects "the stability of legitimate expectations so essential to us as rational agents" (Legitimate Expectations, 425) from disruptions derived from the above outlined indeterminacy.

Before terminating discussion of this criticism, there are some comments to be made in favor of Rawls' argument. First, the use of pure procedural justice in the real world requires an assumption of acceptable starting positions. The starting point poses a problem for proponents of any purely procedural system of justice. They must argue either for the justice of the status quo or they must argue for some counter-factual apportionment. In either case, they must

give a defense independent of their proposed rules. Thus two parts are required for the practice of a historical theory of justice. Whereas patterned theories require a defense of their desired distribution and the efficacy of their procedures to attain it, the historical theories must defend an original distribution and pure procedure as just. The latter requires just as much persuasive argument as the former.

Additionally, the constancy of Nozick's historical theory is just as susceptible to his time-slice complaint as patterned principles. If the time-slice is made between when one side of a transfer is made and its just response, the slice will be unjust. His theory is not constantly just either. This calls into question the validity of the complaint. The verdict falls against it. Quite simply, just as one requires that a budget balance at intervals and not constantly, the same generosity should be extended to a framework which attempts to explain or regulate transfers including but, not restricted to, those which are financial. Rawls' and other patterned theories may not produce justice as quickly as Nozick's, but they can produce it regularly. The difference is that they arrive at just configurations after each adjustment rather than after each individual transaction.

The third of Nozick's criticisms of Rawls' theory of justice concerns the grounds Rawls gives for an individual



to co-operate with others in just society. A sense of individualism permeates Nozick's critique of the Rawlsian theory of justice. This is in contrast to Rawls' widespread communalism. Each refers to individual actors co-operating in society, but they differ in the weight each grants to the demands of the two parts. Nozick is not willing to grant to Rawls that social co-operation introduces "a muddying of the waters that makes it unclear or indeterminate who is entitled to what." (ASU, 185)

That social interaction does create a need to distribute the benefits of association is fundamental to Rawls' theory. It is even more fundamental than a concern for the least advantaged or the subsequent choice of a patterned principle of justice. These are derived from it. If social theory were nothing more than looking at a lot of discreet individuals and accounting for all of their individual associations, Nozick's theory would carry the day and this criticism of Rawls would be fatal.

Rawls proposes a wider view of social interaction based on his belief in the force of a hypothetical contract. The contract makes each member of society a partner in perpetuating basic conditions which allow each to better achieve his personal conception of the good life. Rawls hopes that the process of reading TJ and pondering its points will bring readers to recognize that the contractarian aspects of his theory are consistent with their own sharpened

understanding of justice. Interaction subsequent to the chartering of a community, or the apprehension of the rationality of conceiving society as chartered, is accepted as partially due to the community's constitution. Society does, therefore, have a partial claim on individual production in the community. Succinctly, Rawls understands society as a state of co-operation.

Nozick does not imagine the genesis of society to be a social contract. Rather, he sees only individual cases of co-operation. Because of this, he does not grant a societal contribution in the individual production of goods. Nor does he grant a societal claim to an individual's labors. In this light, poverty is a purely personal matter. Society, or rather government, has the responsibility to ensure only certain kinds of transfers--not certain kinds of distribution. This is the reason why he will not admit the legitimacy of Rawls' Second Principle or the Original Position. This perspective illuminates his argument for a historical versus a patterned principle of justice. Each of Nozick's criticisms mentioned above is based on his contrasting view of social co-operation. For Nozick, society consists in acts of co-operation.

A review of Rawls' style of discourse in the search for justice immediately exposes the social premises of his theory. First, the entire book is written conversationally. Rawls speaks from the page, using the first person. Such

phrases as, "I introduce", "I suppose", "I assume", and "I imagine", are common. He admits and even induces self-analysis of the reader's opinions by using such constructions as "now it may seem at first sight that . . ." and "one might think that . . ." At times he will even go so far as to identify himself with the reader by saying such things as, "we often acquiesce without thinking in . . ." and "we must not overlook . . ." All of these quotes serve as examples of how he gently encourages the reader to ponder, rather than simply read TJ. Second, Rawls often offers argument for points by appealing to the reader's intuitions. Before arriving at the final construction of his principles, he goes through a number of approximations to them which reflect Walras' idea of **tâtonnements** and Kant's progression from simple statements to ideals. He uses many examples, generalizations, and apologies. In drawing from many disciplines, he gives the impression of conceptual unity among fields which combine to support his theory. All of these aspects of his style support the thesis that he conceives of the search for justice as a discussion among rational inquirers; the search itself is a communal activity.

Rawls imagines society as providing more than the opportunity for just exchanges of goods. Society also shapes the character of man, his wants and his goals. Expanding one's focus to encompass the underlying values of a system of just distribution, Rawls proposes that one will readily

see in his an attempt to reflect the democratic ideal of fairness found in liberty, equality, and fraternity which have permeated popular thought since the French Revolution.

Theorists such as Nozick have demonstrated how to impose as procedures the ideals of liberty and equality but have balked at the task of legislating fraternity because of its oft-noted psychological/emotional connotations. It is commonly imagined as an attitude of goodwill or esteem, a feeling almost impossible to define in legislatable actions. But Rawls argues that the logical conclusions derived from the Original Position mitigate the need to address this aspect head-on. He states that from the perspective of social justice,

the principle of fraternity is a perfectly feasible standard. Once we accept it we can associate the traditional ideas of liberty, equality, and fraternity with the democratic interpretation of the two principles of justice as follows: liberty corresponds to the first principle, equality to the idea of equality in the first principle together with equality of fair opportunity, and fraternity to the difference principle. In this way we have found a place for the conception of fraternity in the democratic interpretation of the two principles, and we see that it imposes a definite requirement on the basic structure of society. (TJ, 106)

They are the minimal just conditions for the pursuit of anything else in life.

After accepting the communal nature of the search for justice, the steps to the Original Position and the value of fraternity are simple to plot. The Original Position provides an analytical structure which reflects the idea of

rational discussion. It does not allow the specific natural assets of each participant to color his reasoning since their connection to individuals supports demands of justice but does not support the justice of demands. The group is thereby composed of individuals each of whom could be the reader himself. Rawls' persuasion in the book is analogous to debate in the Original Position.

In large part, the reader's acceptance of the nature of interaction with others as best described as a state versus isolable incidents hinges on the underlying moral psychology he holds. Rawls points out that,

However attractive a conception of justice might be on other grounds, it is seriously defective if the principles of moral psychology are such that it fails to engender in human beings the requisite desire to act upon it. (TJ, 455)

Rawls believes that his theory of justice is grounded on the widely accepted concept of reciprocity. This means that one reacts to others in ways similar to the way they act toward him. Nozick concurs up to this point.

Their opposition surfaces in the difference between what one might call Nozick's "act reciprocity" and Rawls' "rule reciprocity". If it is more realistic to approach each interpersonal event with one's attention securely fixed on only what that individual has done for one's benefit, act reciprocity best describes human behavior. If it is more realistic to approach each interaction with one's attention fixed on what other individuals in similar situations have

done for one, then rule reciprocity better describes human behavior. Alternatively, the question is, how far may one reasonably generalize?

The beliefs one holds boil down to probabilities based on personal experience as a point of reference. Thus all one knows can be stated by: 'a  $\vee$  -a' (a or not a), giving a probability from personal perspective to each option. Because nothing is a certain in the experienced world, generalization is necessary to make determinations. Will like objects be drawn for comparison exclusively from past experience with a particular individual or simply from one's past experience? Nozick's criticism of Rawls requires that people compartmentalize their memory to a strikingly greater degree than Rawls. He cannot in fact argue that his degree of distinction is logical since conceptual particularity logically extends to the point where one cannot synthesize information at all. Rawls' position is more reasonable. It does not require the additional supposition that mankind will not generalize from both similar individuals and similar situations. And in addition, it agrees with reflection on one's personal experience.

A reasonable next step is to move from rule reciprocity to rational sympathy. This move entails generalizing from expectations based on how others have treated one under similar conditions in the past which are used to predict the present, to personal expectations to treat future partners

as others have treated one's self in similar situations in the past. Again, if it is reasonable for A to expect X of B and B to expect Y of A in certain circumstances, then it is reasonable for B to expect X of A and A Y of B when conditions are reversed. If it is reasonable that A and B expect X and Y under the given conditions, it is reasonable that they generalize the norm and that society (A and B together) expect such. Having demonstrated the rationality of each identifying himself with either position A or B, prudence moves the members of society to strive the greatest pay-offs to both where members in society recognize the claim of each to equal consideration and respect. Such evenhandedness is embodied in the democratic ideals of liberty, equality, and fraternity noted above.

Consideration of actual natural assets does not have a place in a rational search for justice. Rather, the veil of ignorance found in the Original Position is the reasonable condition for the discussion of justice since it formalizes the separation of just claims and power in society. The Original Position conditions coincide with the view of social interaction as a state of co-operation. Since social organization includes conditions for interaction which enhance the life prospects of each member, it is just that society have a claim on the distribution of benefits derived from specific instances of co-operation. Behind the Original Position's veil it is rational to adopt the principles of

justice outlined by Rawls in TJ and thus it is reasonable for people to accept them in real life. While the entitlement approach to justice espoused by Nozick will possibly appear truer to life at first glance, than the veil of ignorance, it is not as reasonable as the principles of justice supported by Rawls which powerfully formalize the generalizations humans make in every day life to interpret and predict events.

A case supporting society's claim of deciding the justice of individual transactions, beyond regulating the conditions of them, can be derived even less abstractly than was done in the previous argument. Suppose, as in the earlier economic graph that two people can produce certain known amounts of goods X and Y without interaction. If under conditions of co-operation they make the same contributions as before co-operating, the comparative advantages of each will allow them to produce all that A did and all that B did plus some extra. Co-operation plus their natural assets allows for greater rewards. That extra portion is the return on co-operation which must be divided among them, but the distribution of natural assets gives no indicator as to who should receive what portion.

The significance of various parts of the graph now becomes clearer. The portion of the additional production allotted to each could not be claimed by right. It is a privilege of association. The fair return to their investments is what



they received without co-operation. The motivation for each to co-operate is the possibility of rising to a higher indifference curve. The favorable zone for interaction represents the additional returns to investment made possible by various schemes of co-operation. The social constitution which best actualizes the aspirations of each under fair conditions and pareto optimality is the equilibrium point.

The Lockean argument from entitlements made by Nozick as an alternative to Rawls proposes a right to proceeds from natural assets if there is no violation of others' rights. In the move from original holdings to shares after co-operation, Nozick overlooks the central focus of an inquiry into just distribution--the decision process for the division of proceeds produced between the first point and the second. Locke himself, without recourse to contemporary understandings of reciprocity, sympathy, and identification, thought it reasonable to treat others as one desires to be treated.

No one doubts that different people have different abilities to attain their goals in life. What is being questioned is the nature of interaction. The terms Nozick proposes are not as just as those of Rawls, despite their own flaws, which he has critiqued. Neither do they outline as carefully what a just process must be like. This is due in large part to Nozick's erroneous conception of social co-

operation as an act which sets the individualistic tone of his own theory and his criticisms of Rawls.

In the first section of this work, Nozick criticizes Rawls' stipulation that a just social order is that one which provides the highest possible returns to the least advantaged partner in social co-operation. A defense of Rawls is made using some of Rawls' own analyses on different social structures and their interpretations of "equally open" and "everyone's advantage". In it Rawls demonstrates the inherent instability of systems of Natural Liberty such as Nozick's. The economic term "comparative advantage" is used to show the rationality of seeking the best possible returns to the least advantaged partner and how this corresponds in abstract to the best returns to the most advantaged. Finally, the logic of the Original Position and the strength of its combination with pareto optimality is shown, despite Nozick's criticism.

In the second section, an analysis of the difference between historical and patterned principles of justice is made. Examples are given to demonstrate the strength and beauty of pure procedure, but the problem of a point of beginning is also noted. The credibility of Rawls' patterned principle theory is mentioned, but it too has a number of weaknesses. The difficulty of distinguishing the least advantaged, both ideally and actually, is outlined. This task was made even more burdensome by the further

restrictions on the least advantaged individual's definition by Rawls in "A Kantian Conception of Equality". In addition, Rawls' decision process requires a further alteration to avoid problems caused by the incompleteness of knowledge, both in the Original Position and in real life, relevant to possible structures of society. Nonetheless, it does stand up against Nozick's complaint that it does not constantly produce justice since this is really a question of recognizing the passage of time in processes.

The final section examines the thorough-going division between Rawls and Nozick which is made evident by their disagreement over the nature of social interaction. Nozick is shown to conceive of co-operation as distinct exchanges where reciprocity extends only to specific individuals. Rawls, it is explained, understands co-operation as a contract which serves as the fundamental condition for exchanges. Reciprocity extends through various generalizations to include rational sympathy. This extension is utilized formally in the style of his argument and conceptually in the veil of ignorance in the Original Position. The assumptions that both Rawls and Nozick make about man's rational self-interest are shown, again through use of the comparative advantage model, to agree with the thesis that society is more than the sum of its members and therefore has a right to set terms of distribution. Thus Rawls' theory withstands these three criticisms by Nozick and

at least in these aspects retains its viability as a sensible theory of justice.

In closing the analysis of these three points of criticism, some unity is apparent. Although Rawls goes farther than Nozick in affirming that just social exchange occurs under conditions which most improve the possible returns to the least fortunate actor, both admit that social exchange is based on mutual advantage. Whereas Nozick favors a historical and Rawls a patterned theory of justice, each is willing to debate the issue openly and rationally. Neither resorts to damning or making personal attacks on the other. The yardstick to measure the worth of either's arguments is their rational persuasiveness. They also agree that reciprocity is necessarily linked to justice in social exchange. All of these points serve to demonstrate that Rawls and his critic, Nozick, operate within shared values of democratic equality.

Ronald Dworkin suggests that, "the particular right which lies at the heart of Rawls' 'deep' theory is the right of each individual to equal concern and respect." (John Rawls and His Critics, xx) But one need not be dismayed by the suggestion of an additional unargued element. Equal concern and respect to each individual is itself basic to the concept of democracy. Justice as fairness, as described in TJ and revised here, is sensible. Fairness is again apparent in the very investigation of societal values and structures. That

kind of openness which seems best suited to rational inquiry is also manifestly appropriate to any particular association or schema of association between human beings.

Rawls' genius comes very opportunely at a time in the history of political thought when democracy is being re-evaluated world-wide. Each reader will find in Rawls' work a thought provoking discussion of the ideal democratic state, its qualities, and its rationale. The present inquiry, under conditions of open and rational investigation, may itself help develop in individuals the sense of justice necessary to approach Rawls idea of the just state.

*pledged - [Signature]*

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