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ARTICLES

Defending Rawls from behind the 'veil of ignorance': An attempt to salvage Rawls' public conception of social justice

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Abstract

The paper considers the question whether Rawls' (1971) 'public conception of justice' can provide a guiding principle for legislation by institutions in governance. It argues that in order that Rawls' principles would be universally acceptable to "rational, equal and free individuals", they would have to be "thin" in content. However, the actual statement of Rawls' principles cannot be interpreted as limiting entitlements to "social primary goods," or even precisely, what these goods are, without regard to the different types of specificities of individuals identified by Amartya Sen (1999). In arguing thus, it purports to defend Rawls' theory of justice from Sen's (1999) criticism that in adopting the resourcist paradigm, Rawls' theory fails to respond to the heterogeneity of individuals. Interpolating Rawls' "presuppositions" about the original position in 12 conditions that underlie and determine the choice of the principles of justice, the paper argues that these conditions taken individually or collectively can provide a strong response to Sen's criticisms.

Citing relevant examples of institutional orders/schemes, the paper attempts to show how Rawls' principles of justice can take into account heterogeneities that characterise individuals without compromising the objectivity of the principles themselves.

Key Words: social primary goods, public conception of justice, veil of ignorance, capabilities, personal heterogeneities.

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Introduction

Amartya Sen (1999) and Martha Nussbaum (2002) have claimed that the capability approach is a better approach to understanding human development and social justice than the welfarist theory of the utilitarians and the resourcist theory of John Rawls (1971). Criticising the latter, (Sen



1999) has argued that while Rawls' "social primary goods"¹ (income, wealth, education, health-care, etc.) are important enablers of individuals to pursue their life-plans, the real value of such resources lie in the "capability" that each has to transform the resources into "functionings". Further, the set of capabilities that an individual has is determined by several factors like the socio-cultural climate and the geographical location of the individual as also the personal heterogeneities that characterise the individual and define her unique 'situatedness'. Referring to such factors Sen (1999) mentions five determinants, influencing the capability of individuals to transform resources into 'functionings'. He says, "It is easy to identify at least five distinct sources of variation between our real incomes and the advantages — the well-being and freedom — we get out of them" (Sen 1999, 70). These determinants or variations that affect 'freedom and well-being' need to be factored into any idea of justice that would govern and guide the functioning of social institutions that are instrumental in delivering justice in a society. For instance, if one is to evaluate between competing institutional orders, as also their capacity to deliver justice, then the policy or order that takes into account the specificities expressed by these determinants is better, compared to another that does not. In Sen's view, Rawls' theory gives us principles of justice that ought to govern an 'ideally just' society, but they fail to tell us which of two given social setups is a more just society because the principles are chosen behind a 'veil of ignorance' that hides the factual specificities of any social setup. For that reason, Rawls' principles of justice fail to deliver social justice in the true sense of the term where the 'primary goods' available to individuals can effectively be turned into capabilities. It fails to deliver the resources in a just and equitable manner.

Thus, in Sen's opinion, accessibility to primary goods alone is not an adequate index of how well a society is doing, or how just a society is; what one needs to gauge is the extent to which individuals are able to use those goods (adjusted to their specific 'situatedness') to lead a life they value enhancing their well-being. In this respect Sen claims that the capability approach provides a better comprehensive criterion to measure the "well-being" of society, and in general a more grounded theory of social justice. In emphasising "procedural justice" alone overlooking the 'situatedness' of individuals, Rawls' approach fails to give us a comprehensive criterion to gauge and compare how well a society is doing in terms of the fairness of its institutional orders (policies, schemes, etc.). This, in Sen's view, is a shortcoming of the resourcist approach to social justice and the idea of human development. In this paper, I wish to examine Sen's charge and defend

1 Social primary goods are means or resources (broadly conceived) that anyone would want regardless of whatever else they wanted and typically include personal liberties and securities, income and other social goods.

Rawls' position from behind 'the veil of ignorance'.² I propose to argue that it is possible to defend Rawls provided we accept his understanding of the 'original position' and the conditions that are true of the participants in it who seek the principles of justice on grounds of 'fairness' and 'impartiality'.

It is noteworthy that Sen's criticism is based on the 'comparative' idea of justice and the idea of 'partial ordering' of social arrangements (Sen 2010). Rawls, on the other hand, is not examining and evaluating competing social arrangements in his *Theory of Justice*. In this work his primary aim is to seek the universal principles of justice that would apply to all social institutions in an 'ideally just' society, irrespective of the factual contingent situations of their functioning. So, in a sense, Sen's criticism of Rawls seems to be misplaced considering the fact that the two are operating with different notions of justice and at different levels. One also needs to note that Rawls' position in *Political Liberalism* (2005) is more accommodating to the concerns expressed by Sen and *post facto* may bring the views of the two thinkers closer. Sen himself has acknowledged this. (Sen 2010, 66) True as this might be, Sen's concerns need to be addressed and the paper aims at doing that. In brief, Sen's objection to Rawls' position may be stated thus. If the five determinants as stated by Sen³ hold ground, the 'veil of ignorance' will need to reveal more, and it will then defy the purpose for which it was intended in the first place. But, if these determinants are not factored in the choice of the principles, then the policies/schemes of social institutions will not serve to enhance 'capabilities' of individuals and thereby deliver social justice.

In order to defend Rawls in the strongest possible way, I begin with a short exposition of Rawls' theory, highlighting the conditions that define Rawls' original position. I next go on to take up the five determinants discussed by Sen and a possible Rawlsian response to them, both from the point of view of individual agents as well as social institutional policies. I conclude with

2 Rawls' idea of the 'veil of ignorance' and the concept of the 'original position' has been criticised by many others, like Harsanyi John, "Can the Maximin Principle Serve as the Basis for Morality? A Critique of John Rawls's Theory," *American Political Science Review* 69 (2005): 594–606, MacIntyre Alasdair, *After Virtue*, Notre Dame: Notre Dame University Press (1981), Sandel Michael, *Liberalism and the Limits of Justice*, (Cambridge: Cambridge University Press, 1982), who hold that the choice of principles cannot be made under a 'thin' veil of ignorance as argued for by John Rawls, *A Theory of Justice*, (Cambridge, MA: Harvard University Press, 1971). Here I will limit myself to discussing Sen's specific criticism made in the backdrop of the capability approach to social justice. Amartya Sen, *Development as Freedom*, (Oxford: Oxford University Press, 1999).

3 The reference is to the five determinants mentioned and discussed by Thomas Pogge, "A Critique of the Capability Approach." https://www.researchgate.net/publication/288967482_A_critique_of_the_capability_approach (retrieved 2010). I am following Pogge's ordering of these determinants in the discussion that follows.



the observation that one needs to distinguish two orders - the order of things (order *essendi*) and the order of knowledge (order *cognoscendi*) - a distinction often used to circumvent philosophical impasses - to understand how Rawls' theory of justice, especially his principles of justice can be defended and applied in determining fair and just policies that affect the actual 'lived life' of individuals in society.

Presuppositions of Rawls' "original position" and the "veil of ignorance"

Following the tradition of John Locke and Immanuel Kant, Rawls presents a version of the contractarian theory of the functioning of social institutions. However, as is well known, Rawls was not interested in offering a contractarian theory of the *origin* of social institutions but was devising a hypothetical thought experiment with fictional people as participants who would choose principles of justice from a limited menu available to them. Rawls rejects the idea of the Lockean "state of nature" which in his view is an idea without moral significance (Rawls 1999, 278-280) since it starts with the idea of a "pre-social or a pre-political rational moral agent" (Freeman 2019). As an alternative Rawls sets forth his conception of the "original position" that provides a profoundly social basis of justice. The principles of justice that the participants would agree to upon due deliberation would help allocate rights and duties, income and wealth, power and opportunities. But, since the risk was that different people would favour different principles reflecting their personal, religious and moral beliefs and convictions, their interests and social standing, a consensus would be difficult to reach. Also, the possibility of coercion and compromise making the consensus unfair could not be ruled out. Rawls sought to circumvent this difficulty by assuming that "the participants in the original position are "moral persons" who regard themselves as free and equal citizens, have a conception of their rational good and also have a "sense of justice"⁴ (Freeman 2019).

The individuals are equal in the sense that though, as a matter of fact, they are differently placed in society, these differences are not known to them. The assumption is that they are not aware of their personal facts like age, gender, class, caste or race. They are not aware of their specific goals in life, their abilities or their natural and acquired endowments, their religious and socio-political affiliations, their advantages or disadvantages with respect to health and family support, etc. In short, they do not have any knowledge of any aspect of their socio-economic-political status that is morally irrelevant

4 A better and clearer understanding of the conditions that define the original position and how the process of 'fairness' is supposed to work is afforded by the later writings of Rawls, in particular in his *Political Liberalism*. John Rawls, *Political Liberalism*, (New York: Columbia University Press, 2005).

to the choice of the principles. They are like individuals who are under a "veil of ignorance" and are deliberating from an original position of equality. Positioning the parties behind a "veil of ignorance" was important and necessary for Rawls because, otherwise some would exploit their social and natural circumstances and bargain for a position to suit their own advantage.

Rawls describes a multi-stage unfolding of social justice. The first stage is the stage of unanimous choice of principles, the second 'constitutional' stage is that of choosing institutions and the third stage is the 'legislative' stage of formulating appropriate legislation for the fair functioning of social institutions. For Rawls it was imperative that the first stage was impartial to ensure that the applications of those principles in subsequent stages ultimately resulted in a fair distribution of resources to create a more level playing field for everyone. Hence, in the quest for the principles of justice, it was necessary for Rawls to keep the differential facts of the participants hidden from them

Further, Rawls maintained that the participants in the thought experiment are free and rational in their thinking. About the people in the "original position", Rawls states that they understand "political affairs and the principles of economic theory; they know the basis of social organisation and the laws of human psychology. Indeed, the parties are presumed to know whatever general facts affect the choice of the principles of justice." (Rawls 1971, 137) What exactly did Rawls mean by the participants understanding "political affairs", "principles of economic theory", "basis of social organisation" and "laws of human psychology" in this statement? I wish to extrapolate and interpolate conditions that could be said to be true about the participants from Rawls' own account of the original position. The interpolated conditions are drawn from Rawls' rationalistic Kantian leanings. As Freeman states it:

"Knowledge of the moral powers and their essential role in social cooperation, along with knowledge of other general facts, is all that is morally relevant, Rawls believes, to a decision on principles of justice that are to reflect people's status as free and equal moral persons. A thick veil of ignorance thus is designed to represent the equality of persons purely as moral persons, and not in any other contingent capacity or social role. In this regard the veil interprets the Kantian idea of equality as equal respect for moral persons (cf. CP 255)" (Freeman Section 3, 2019).

Noting this important point, I propose the following 12 presuppositions that can be said to be true of the participants in Rawls' hypothetical thought experiment.

1. That each individual in the original position is free to consider and rank the options of just principles from the limited menu consisting of historical theories of justice including the idea of justice as fairness. This right is given to all the individuals involved.



2. That all have an interest in being protected from a more powerful enemy and in furthering their self-interest.
3. That all know that resources are limited but not so scarce that members find no reason to cooperate, but scarce enough so that social cooperation will be beneficial to all.
4. That all want more of certain basic goods like freedom and they are risk averse in the sense that though they do not have details of their life plans, they do not want to be in a disadvantageous position.
5. That society is subject to circumstances of justice. People in this society have an understanding that the principles of justice they would arrive at would have been the outcome of comparing the well-ordered societies corresponding to each available option and that they would all abide by their choice of principles for the sake of the stability of society. In other words, they would not agree to principles they could not honour and that they could also rely on one another to adhere to whichever principles were adopted.
6. That all participants know of their sociality, that they are social beings, influenced by prevailing social conditions and sustained by emotive bonds. Rawls mentions concerns that individuals have at least for their next two generations.
7. That as human beings they have an intuitive sense of what is morally right or wrong. For example, causing avoidable suffering to another is wrong, intolerance to religious differences is wrong, etc. This sense of right and wrong is general and thin in content.
8. That society influences our psycho-socio makeup in terms of who and what we are, our beliefs, desires, aspirations in life. They know this though they are not aware of who they are, what they desire and what their life aspirations are.
9. That social existence requires social institutions that must function justly for all.
10. That one ought to help those who are lacking in natural endowments, including those naturally deficient in physical and/or intellectual abilities. Not knowing whether they belong to this class or not they would be considerate towards people belonging to this class.
11. That everyone is affected in different ways by the prevailing environmental/climatic conditions though no one knows how each is affected by it.

12. That the needs of individuals differ with respect to age, gender, and natural and socially caused handicaps. They are aware that they may be affected by these conditions at some time of their life.

In Rawls' view these conditions are widely acceptable to all the participants although they may not be self-evident. For him it was important that nothing in these conditions is specific enough to give any individual an advantage over others in making his choice. Only in that way equality and neutrality could be maintained. So, although they shared common concerns about their individual and collective well-being, no one was more privileged than another *vis-a-vis* his or her own personal situation in life. According to Freeman, Rawls' original position seeks "to combine into one conception the totality of conditions which we are ready upon due reflection to recognize as reasonable in our conduct towards one another" (Freeman Section 2, 2019).

The logical trajectory of this initial condition of fairness led Rawls' to his two principles of justice⁵ that he claimed would influence everything in the system of social justice. It would influence the constitutional and legislative stage as also the behaviour of individuals to arrive at a position of 'overlapping consensus' despite the fact that they subscribed to "deeply opposed though reasonable comprehensive doctrines" (Rawls 1999, 18).

Rawls' claim about the uniqueness of the choice of his principles, as well as their effectiveness as instruments to deliver social justice through primary goods has been called in question by many thinkers, including Sen. In what follows I will take up Sen's concerns and embark on a possible defence of Rawls.

Sen's critique of Rawls and a possible defence

Thomas Pogge in his article "Can the Capability Approach be Justified" (2010)⁶ has tried to defend Rawls' resourcist approach to social justice against the onslaught of the capability approach. He takes up each of the five determinants cited by Sen and shows how the resourcist approach is adequate in responding to the demands of these determinants of social justice. Pogge interprets Rawls' two principles in ways which facilitate this exercise while admitting that in some cases the matter is far too complex to be resolved in any simple way. My line of argument against Sen's critique of Rawls is largely in line with Pogge's defence of Rawls but I wish to present a different, and

5 For a statement of Rawls' two principles refers to *Political Liberalism*. John Rawls, *Political Liberalism*, (New York: Columbia University Press, 2005), 291.

6 The article is an abridged version of a longer essay "Can the Capability Approach be justified?" in Martha Nussbaum and Chad Flanders. *Global Inequalities*, [special issue], *Philosophical Topics*, 30:2 (2002): 167 - 228.



perhaps stronger, defence of the Rawlsian position in terms of deductively connecting the presuppositions/conditions about the original position and the applicability of his theory in framing institutional orders. This would then provide for a public criterion of social justice as strong, if not stronger, than that provided by the capability approach.

First determinant: intrafamily distribution of incomes

Sen's first determinant is about the distribution of resources within the family. According to Sen, "intrafamily distribution of incomes is quite a crucial parametric variable in linking individual achievements and opportunities with the overall level of family income" (Pogge 2010, 4). Sen's claim is that Rawls' resourcist approach overlooks this point. I wish to argue that one could defend Rawls by taking recourse to presuppositions 6 and 12 above. Presupposition 6 states that all participants know that they are social beings that live in groups (families, communities) and that this living is influenced by prevailing social conditions and sustained by emotive bonds. Further, presupposition 12 states that the participants are also aware that the needs of individuals differ with respect to age, gender, and natural and socially caused handicaps and that they may be affected by these conditions at some time of their life. As these conditions determine the choice of the principles, the application of the principles in turn would ensure that only such policies and schemes are chosen that would actually result in fair and just intra-family distribution of resources. The application of the principles would ensure that among competing schemes, a scheme that would take into account the basic needs of each family member would be chosen over an alternative scheme that treats the family as one unit disregarding the intrafamily distribution of resources.

We need to remember that Rawls was critical of the utilitarian aggregative assimilation of heterogeneities and hence his theory is not bracketing off intrafamily distributive concerns, though these concerns in their specific form need to be bracketed at the stage of choosing the principles. There are instances of government schemes like scholarships for the girl child (Press Information Bureau, Government of India) or schemes for pregnant and lactating women (Women and Child Development Department, Government of Haryana, India) where the specific needs of members of the family are considered. These schemes allocate a resource/service (scholarship money or free or subsidised nourishment) for the specific needs of the family member, keeping in mind that transferring a sum of money (resources) to the family considered as a unit may not result in a direct benefit to the concerned family member. Sen's doubt also pertains to a patriarchal family set up where distribution of resources (family income and other resources) is inequitable, neglecting the needs of vulnerable members, particularly the female members. Here again,

one can argue that since the conditions of being rational and emotional are characteristics of being human, the emotive bonds within the family would ensure that the distribution of resources in the family would, by and large, be equitable, though exceptions can persist. Rawls was optimistic in believing that the fairness condition that determined the principles of distributive justice would influence and modify individual behaviour to align well with the shared conception of justice. When and where it fails to happen, the state needs to step in with its schemes/ policies that are specifically meant to cater to the specific needs of the neglected family members, for example, the girl child, the pregnant or lactating mother, the elderly and infirm as also the differently abled.

Though Rawls may not be openly endorsing a strong care ethics approach to social justice, his presuppositions about people in the original position do not overlook the care dimension. So, I would agree with Pogge that "contrary to what Sen suggests, capability and resourcist criteria of social justice do not differ on the issue of intrafamily distribution" (Pogge 2010, 5). As Pogge holds, the difference lies only in emphasising the metrics of distribution - for Sen it is capabilities and for Rawls it is primary goods. With regard to intra-family distribution Pogge says that the capability theorist will describe the injustice as "family resources being distributed so that males systematically have greater capabilities. The resourcist will describe the injustice as men and boys systematically receiving larger shares of family resources than women and girls do." (Pogge 2010, 5) So, there seems to be no essential difference between Sen and Rawls on the point of intra-family distribution.

Second determinant: personal heterogeneities

A similar response can be made to the concerns of "personal heterogeneities" expressed by Sen. According to Sen, "People have disparate physical characteristics connected with disability, illness, age or gender, and these make their needs diverse" (Pogge 2010, 8). Their ability to convert the resources available to them to "functionings" is also determined by these needs. If appropriate conditions (including societal support) and facilitating infrastructure is not available to them, then equal income or access to primary goods is not enough to tell whether they are leading a "good life"; a life that they would value. The capability theorists claim that their theory has made space for and taken into account personal heterogeneities that are crucial determinants of the capability of an individual. Their allegation is that because the resourcist approach arrives at a standardised value of a certain resource for an individual in abstraction, i.e., *without* taking personal heterogeneities into consideration, it does not do justice to the personal needs of the individual.



Situatedness brings to the fore personal heterogeneities like disability, age and gender related specific needs of people. It must be noted here that Sen's complaint against the resourcist on the ground of situatedness is really a complaint against the application of Rawls' principles to institutional policies and schemes and to that extent can be tackled at the legislative stage. The logic is that if the principles meet the demand of fairness then this element of fairness would percolate down to the levels of legislation and implementation in a manner that would take into account the special needs of individuals. We must remember that Rawls' principles are normative principles of how social institutions 'ought' to function. What is agreed to at the first stage must necessarily influence the subsequent stages. Freeman makes an important point when he says, "assuming that the premises underlying the original position correctly represent our most deeply considered moral convictions and concepts of justice, then we are committed to endorsing the resulting principles and duties whether or not we actually accept or agree to them. Not to do so implies a failure to accept and live up to the consequences of our own moral convictions about justice" (Freeman Section 2, 2019). If one goes by what happens in real societies then the fairness of the principles is compromised thereby subverting the idea of the original position.

As against Sen's claims, Pogge provides many illustrations showing how a capability approach to a public criterion of just institutional orders can be covertly discriminatory against women and therefore fail to be considerate of the gender factor, and also how the resourcist criterion could succeed in this respect (Pogge 2010, 9-11). He effectively shows how a 'sophisticated' resourcist can address the concerns of personal heterogeneities such as age, gender, historical injustices, and other social injustices "more compellingly" than the capability theorists. (Pogge 2010, 14). I agree with Pogge, largely, but wish to add to the point he makes.

There is no doubt that natural endowments or a lack of them play an important role in effectively converting resources into valuable functioning. But, the ensuing inequality in functioning cannot be termed unjust if equal opportunities to convert the given resources into effective functioning were open to both. Social institutions are responsible to provide for a "level playing field" but inequalities in natural endowments cannot be remedied by them. Natural endowments do not fall under the category of "resources" that social institutions are required to provide, which does not mean that the influence of natural endowments should not be factored in, in the functioning of social institutions and Rawls' system allows for that. The question is whether equal opportunities have been provided for all including those with physical and intellectual disabilities. This brings us to the specific issues of people with disabilities and, here again the state needs to intervene with policies that are fair to all. How can a resourcist handle this?

There are two aspects to how a resourcist could handle this. One pertains to actually arriving at the quantum of resources that needs to be allocated to such individuals keeping in mind the disability specific needs of the individuals. Understandably this is not an easy task. After all, what would be the benchmark of sufficiency of resources or capabilities to lead a good life? This is a vexing problem both for the resourcist as well as the capability theorist. But, assuming that a threshold can be set for able bodied persons then we can add other resources to it to accommodate the special needs of differently-abled persons. The second aspect pertains to providing 'enabling public infrastructure' (like ramps, advanced braille facilities, hearing aids and other aids) to overcome/ minimise the concerned disability.

The package consisting of the standard primary resources and the additional compensation could be worked out taking into consideration factors of gender, age, geographical location, climatic conditions etc. in addition to the specific disability. Conditions 6, 7, 10, and 12 above express concerns about personal heterogeneities and again as these conditions were presupposed in the choice of the principles in the original position, social institutions, guided by these principles, would be forced to address these concerns. If policy makers were to choose amongst institutional orders based on a public criterion of social justice they would not fail to choose those that address the aforementioned concerns adequately for such an order would be more just than any that failed to do so.

Besides a package of basic primary resources and additional compensation for the specific disability, public sentiment/attitude of sensitivity and inclusivity is also required, especially when it concerns differently abled people, the elderly and infirm. Sensitivity and inclusivity towards vulnerable people needs to be increased and that can be achieved by state interventions by means of their schemes/ policies/ awareness campaigns etc. The individuals behind the veil of ignorance did not know about their own vulnerabilities (including the fact that they or anyone close to them was differently abled). Endowed with a basic sense of justice they chose principles that were deemed fair and there is no reason to believe that at a later stage in their individual capacities as contributors to public opinion determining public attitude towards the vulnerable categories, or in their capacity as legislators, people would not comply with considerations that would put the least advantaged at some benefit. Of course, it cannot be denied that as a matter of fact prejudices and biases continue to exist against many marginalised sections of society and public opinion and attitude takes time to change.

Sen is sceptical about this when he says, "Rawls's approach ...does involve a formulaic and drastic simplification of a huge and multi-faceted task - that of combining the operation of principles of justice with the actual



behaviour of people...” (Sen 2010, 69). In my opinion, as there is no inherent conflict in the essential (rational and moral) nature of individuals and the change demanded on grounds of fairness, it is only a question of time when the change will happen. Thus, one could argue that Rawls too was taking personal heterogeneities seriously, although for the purpose of ensuring fairness at the level of deciding on the principles of justice, he bracketed these considerations.

Third determinant: relational perspectives

The next determinant of capabilities that Sen admits of is “relational perspectives”. As he states it:

“The commodity requirements of established patterns of behavior may vary between communities, depending on conventions and customs. For example, being relatively poor in a rich community can prevent a person from achieving some elementary ‘functionings’ (such as taking part in the life of the community) even though her income, in absolute terms, may be much higher than the level of income at which members of poorer communities can function with great ease and success” (Pogge 2010, 5).

Sen is of the view that Rawls’ resourcist theory, which only looks at the fair distribution of resources (primary goods) in terms of standards and norms that are fixed, fails to take into account the relative advantages or disadvantages afforded by relational perspectives. This charge does not pose a serious threat to Rawls’ position and can be taken care of by Rawls’ Difference Principle that requires that equal opportunities to compete for offices and positions be open to all whereby everyone is free to narrow the gap of relative advantage that person(s) who are relatively better off enjoy. The implementation of institutional orders may create inequality of relative advantage/disadvantage but even so that is just, insofar as it is to the advantage of the least well-off person in the hierarchy.

A policy example can help understand the point. A basic income for a certain job is fixed by its a to meet the basic needs of the person irrespective of other specific considerations like the city in which she resides and has her job. But, depending on whether she happens to live and serve in a first-tier city or a second- tier city, a dearness pay is added to her basic income to take care of her relative position in income as compared to another person with the same job in a lower tier city. An institutional order that incorporates such relative advantage/ disadvantage into its resource metrics would be more just than another which does not. Thus, the relative advantage or disadvantage that a person faces on account of differing social status is not problematic in Rawls’ theory.

Fourth determinant: social climate or prevailing social conditions.

Another determinant that affects the capability of people is what Sen calls social climate or prevailing social conditions. He says, "The conversion of personal incomes and resources into the quality of life is influenced also by social conditions, including public educational arrangements, and the prevalence or absence of crime and violence ... epidemiology and pollution ... the nature of community relationships" (Pogge 2010, 6). Undoubtedly this is true. Social conditions may hinder the individual's capabilities to translate resources into functionings, despite the fact that all resources are available to him/her. Social stigma against certain people on account of their gender, race, caste, religious beliefs, abilities, life styles including sexual preferences, age etc. can have a debilitating effect on people's functioning. How does Rawls' primary goods approach address this issue? Pogge's response to this is tepid and rather general, but valid nonetheless.

Referring to the resourcists, he says, "They do not focus on personal (rivalrous or excludable) resources alone, but rather count the prevalence of crime and violence and the lack of public safeguards against biological and chemical hazards as diminishing a person's resources broadly conceived" (Pogge 2010, 7). If the prevailing social climate is unfavourable to the people then it would not only affect their capabilities as the followers of the capability approach believe but also render "insecure some of the basic liberties of citizens such as their physical and psychological integrity and their freedom of movement" (Pogge 2010, 7). If, however, freedom and psychological integrity is present then people can influence the social climate and make it conducive to a good social living. Pogge concludes with the remark that "a sophisticated resourcist view does take account of social conditions and of their potentially differential impact on persons and groups — albeit in a different way than the capability approach which is sensitive to these factors only in proportion to the influence they exert on individuals' capabilities or quality of life" (Pogge 2010, 7). If social climate is also a resource to be provided by social institutions, then they would function according to the guiding principles underlying them. These guiding principles are chosen by people who believe in social cooperation. Hence the principles of justice emanating from those conditions would also allow for a social climate that facilitates the effective use of other resources. Awareness campaigns by state and non-state actors along with more sensitive legislation and implementation of stricter laws will also be conducive to this. There is no conflict between Rawls' distributive notion of social justice and social conditions that would make such distribution effective.



Fifth determinant: environmental diversities

Another determinant cited by Sen is about environmental diversities. According to Sen:

“Variations in environmental conditions ... can influence what a person gets out of a given level of income. Heating and clothing requirements of the poor in colder climates cause problems that may not be shared by equally poor people in warmer lands. The presence of infectious diseases in a region ... alters the quality of life that inhabitants of that region may enjoy” (Pogge 2010, 7).

Pogge (2010) candidly admits that resourcists have failed to take this genuine concern into account, a concern that affects a person’s ability to enjoy the real value of the resources she gets. Making a weak effort to defend Rawls, Pogge says that Rawls could accommodate this concern by reiterating that people enjoy freedom of movement so that if they cannot do enough with some resources owing to climatic conditions, then they are free to move elsewhere where the climate is more favourable to them. But, this is hardly a convincing defence of Rawls. In my opinion condition 11 above could be adduced to defend Rawls more strongly. Behind the veil of ignorance people do not know their location but they know that different climatic conditions come with different costs and hence when the principles they have chosen underlie the functioning of social institutions, these costs would be taken into consideration when fixing resource metrics for allocating resources to individuals. People would be careful in choosing only those institutional schemes that internalise the cost of climatic conditions in the resource metric along with other considerations. So, a person serving in harsh conditions (e.g., an army personnel serving in the treacherous cold climate of the Siachen mountains) may receive the same basic pay as another in the same job in more favourable conditions, but his entitlements could be increased to create a level playing field. This is something that would not be contrary to Rawls’ principles. Providing adequate resources can absorb the cost of environmental diversities. Since Rawls would not deny that, the two theories are complementing each other and not really opposed.

Conclusion

Rawls in his writings has offered a political criterion of justice that he claims is an objective and public criterion of justice. Sen, on the other hand, has provided a comprehensive criterion of justice that takes into account the “realised” justice for people. He draws a distinction between “niti” (principles of justice) and “nyaya” (justice that is realised by people in real life), and in his opinion, in gauging how well a society is doing, what is important is to see

whether justice is realised and that may not happen to be the case despite the fact that the principles of justice (niti) are in place. Policies that are framed in an attempt to remedy the ills of prevailing injustices need to be "realization based" and deliver in Sen's terminology "nyaya".

Sen also distinguishes between what he calls "comprehensive outcomes" and "culmination outcomes" of public policies. For him, comprehensive outcomes are those that "include actions undertaken, agencies involved, processes used, etc., *along with* the simple outcomes"(Sen 2010, 215). Culmination outcomes are those "that are detached from the process, agencies and relations" (Sen 2010, 215). He emphasises the fact that it is the comprehensive outcome of institutional policies and schemes that needs to be considered when evaluating how well a society is doing rather than the culmination outcome. Clearly, he is against aggregative evaluation in terms of GDP and other purely economic criteria. So is Rawls.

It appears that in the field of governance where both the end, i.e., good governance, and the means to it (i.e. processes, including the fair functioning of social institutions) count, the culmination outcome and comprehensive outcome must come together. Good governance is all about starting with principles, examining consequences and reviewing principles in the light of them. This process is in sync with Rawls' conception of justice and when this happens then the overreliance on the ethos of justice alone is also somewhat diffused in the context of the workings of the modern state.⁷

Social institutions that are responsible for delivering social justice must be governed by principles of justice. However, the institutional orders (schemes and policies) cannot be framed and implemented in a vacuum. They are meant for the welfare/well-being of people situated within their real-life contingencies. The actual statement of Rawls' principles cannot be read as limiting entitlements to "social primary goods", or even precisely what these goods are, without regard to the different types of specificities of individuals identified by Sen. However, for the guiding principles of social institutions to be universally acceptable to "rational, equal and free individuals", they would, of necessity, have to be "thin" in content. The principles are in the nature of Constitutional Principles, and like all constitutional provisions, would have to be interpreted in each society and at each time in light of the prevailing social circumstances.

7 Michael Sandel, *The Tyranny of Merit: Can We Find The Common Good*, (New York: Farrar, Straus and Giroux, 2020), and many other thinkers are of the view that the overreliance on the ethos of justice alone can lead to dangerous biases like 'the tyranny of meritocracy', 'death of despair', etc. in the modern state system.,



The process of moving from a general position to a more specific position is similar to the deductive method in a deductive argument where by applying the principles of logic to a specific case along with the truth about general cases, a valid conclusion is drawn with respect to the specific case. In the procedural justice followed by Rawls, we begin with general truths about society (i.e., about people in the original position), reach a consensus on the principles of justice, apply those in specific cases to arrive at a 'fair' and 'just' position with respect to those cases. Since the fairness conditions 1-12 (listed at the beginning of the paper) determine the choice of the principles that ought to guide social institutions, the considerations that are expressed in them cannot be ignored in the application of principles to distribute resources to people in the real world.

In my opinion, Sen's specific charges brought against the resourcist view arise if one ignores the distinction between two orders - the order of knowledge (*ordo cognoscendi*) and the order of things (*ordo essendi*). This distinction has been used, very often, to put in clear perspective apparently conflicting philosophical positions and can be adduced at this point to put in proper perspective the relevance of the resourcist theory of justice *vis-a-vis* the capability theory. In the order of things/real world, it is true that we encounter injustices first and in attempting to get rid of them we realise that justice consists in building and enhancing capabilities of individuals by catering to the specific concerns/situatedness of individuals. However, in the order of knowledge we must begin with the knowledge of what constitutes the idea of justice and the principles of justice that ought to guide the social life of individuals and social institutions. As we have seen that at this level, the actual individual situatedness of people cannot facilitate the process of arriving at an objective, public criterion of justice. The 'veil of ignorance' needs to be thick. It is in this light that the debate between the resourcist and the capability theorist must be considered.

I wish to conclude that if policy makers and their implementers did not pay heed to the concerns expressed by Sen's five determinants, then it would not only go against the grain of the principles of justice but also against their own human nature. Hence, although Rawls' principles are primarily about the fair distribution of primary goods, opportunities and provide a general template for distributive justice. It would hardly be fair to Rawls to suggest that when put to practise these principles could be taken in isolation, neglecting the practical requirements and considerations mentioned by Sen. Thus, I am inclined to believe that Rawls' theory can accommodate the concerns expressed by Sen without losing its status as an objective public criterion of social justice.

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